Philippine Extractive Industries Transparency Initiative Report 2014

VOLUME 1

CONTEXTUAL INFORMATION

Foreword

President of the Philippines



A people cognizant of their capacities and responsibilities in fostering development comprise an empowered nation. This is the underlying principle of our goverment's efforts to institutionalize accountability across all our sectors and expand avenues for stakeholders to engage in the dialogue of progress. With the publication of the 1st Philippine Extractive Industries Transparency Initiative (PH-EITI) Country Report, we provide an accessible resource for citizens to further inform themselves of the revitalization thats is sweeping our country and the challenges contingent to our advancement.

My administration attests to our country's commitment to the EITI standard and turns to the public for support in ensuring that development borne of this industry provides for the meaningful growth of its host communities. May this survey allow for the wider participation of Filipinos in the reconciliation of interests among the extractive industries' various players, the closing gaps in forging a more robust and equitable sector, the accordance of due share and benefit to our localities and governing units, and the outlining of opportunities and duties in our collective pursuit of a prosperous and sustainable tomorrow.

The Philippines accelerates on the path of reform, with the strength of our fellowmen fuelling its positive momentum. I enjoin each true nation-builder to keep faith on this course and navigate with us in our continuing resurgence. May this document serve as our roadmap in making tangible the future our people have long aspired for.

BENIGNO S. AQUINO III
Manila, November 2014

With the publication of the 1st Philippine Extractive Industries Transparency Initiative (PH-EITI) Country Report, we provide an accessible resource for citizens to further inform themselves of the revitalization thats is sweeping our country and the challenges contingent to our advancement.

Message from the Secretary of Finance



I am pleased to present to you the first country report of the Philippine Extractive Industries Transparency Initiative (PH-EITI).

The Philippines is recognized as one of the most mineralized countries in the world, with around 30% or 9 hectares of our land mass with deposits. Moreover, gross value added in mining and quarrying for the first three quarters of 2014 grew at 5.6%. In order to ensure the Philippines continues to benefit from our natural resources while promoting inclusive and sustainable development, the PH-EITI provides stakeholders with a reporting process that promotes accountability and transparency.

This landmark achievement for the Philippines is a testament to the Aquino Administration's commitment towards governance reforms and greater transparency in the extractives sector aligned with the agenda set forth in EO 79. It likewise highlights the dedication and persevereance dispalyed by the PH-EITI Multi-Stakeholder Group (MSG) composed of government, civil society and members of mining, oil and gas industries to pursue the common agenda of transparency in extractive industry.

The EITI has substancial impact on countries that have implemented it. For example, Nigeria identified as much as USD 8.3 billion in revenues that the government has not collected from the sector while Mongolia was able to account for the government's actual revenue from the sector which comprises 18% of GDP. Indonesia was recently declared an EITI compliant country after it was able to produce a report covering 230 companies and USD 80 billion in government revenues for 2010 and 2011.

Through the continued participation and support of all the stakeholders, it is our hope that the Philippines will realize similar gains in terms of transparency for our own extractive sector.

I am glad that most players in the Philippine extractive industries have been very supportive of the EITI. I would like to commend the mining, oil and gas companies which have provided waivers to the BIR in order for the PH-EITI to access critical tax information required for the country report. By submitting the waivers, these companies helped ensure the comprehensiveness and credibility of the EITI report.

Our work does not stop with the release and publication of the first PH-EITI country report. From here, the PH-EITI MSG will begin the challenging task of formulating policies for reforming governance of the extractive sector and enhancing government systems to promote transparency and improve EITI implementation in the country. Further trainings and capacity building activities will also be conducted to ensure that all gaps in data generation and data collection will be addressed in time for the publication of the next report.

Transparency - a key pillar of President Aquino's good governance agenda - is only the first step in what we want to accomplish for the extractive sector in the Philippines. We must sustain the change we have started through the EITI for the government to recieve our just share in the extraction of our natural resources.

CESAR V. PURISIMA
Secretary of Finance
Manila, November 2014

Chamber of Mines of the Philippines



Expected by the end of 2014 is the first Philippine Extractive Industry Transparency Initiative (PH-EITI) report, which will provide an answer to the long debated issue of how much taxes are paid to the government by mining companies.

The EITI Report contains the full disclosure of taxes and other payments made by oil, gas, and mining companies to government. Thirty (30) firms from the large-scale metallic mining, petroleum, and gas industries have pledged to disclose their tax payments.

We commend the Chairperson of the MSG in steering the group towards a tangible and factual report and for tirelessly giving her time and efforts towards the success of this undertaking. The Secretariat should likewise receive a commendation for their hard work in producing well-polished minutes of meetings and reports as well as in coordinating all the work leading to the accomplishment of the first report. The CSO members looked at the details of the EITI process and how the first report could add value to all stakeholders.

There will still be problems in the reconciliation but hopefully, in the succeeding reports; these shall be addressed as we move towards improving our templates and our statistical data. We are certain that as the industry grows, we will see how the revenues from the national patrimony are being utilized for the benefit of our country and our people.

There will still be problems in the reconciliation but hopefully, in the succeeding reports; these shall be addressed as we move towards improving our templates and our statistical data.

ARTEMIO F. DISINI
Chairman, Chamber of Mines of the Philippines

Petroleum Association of the Philippines



Welcome to the 1st Philippine - Extractive Industries Transparency Initiative (PH-EITI) Country Report.

Let me give context as to what made this report a milestone from a perspective of the Oil and Gas Industry and we are sure, also for the whole country.

The world is on the path to unprecedented progress. The growing population is expected to reach 9 billion by 2050. In the decades to come, many people will become wealthier, buying their first or second cars, gadgets or televisions. More people will migrate to cities. New megacities will rise.

The extractive industries play a bigger role in powering our growing world. Unlocking indigenous resources of raw materials and energy is key to sustainability. It is a path to a country's prosperity. Energy, for one, is essential in life. More than powering cities, providing enough food and water to sustain people needs energy.

It is our responsibility to provide the building blocks of progress on one hand, and ensure that the fair share of revenues acquired from the country's natural riches goes back to the people on the other. This is the governance challenge we face: to improve accountability and understanding of the industry we operate.

The 1st PH-EITI Country Report is the product of the collaboration spearheaded by the government with members of the extractive industry and civil society, in the effort to shape a "daang matuwid" or straight path in extractive industry governance. We in the Oil and Gas Sector, a nascent industry in the Philippines, want to ensure that as we mature, we do it with in partnership with all stakeholders for the good of our world and our people. Hence we give PH-EITI our full and wholehearted support.

This report, and the others that will follow, bears the PH-EITI's hopes for transparency that will lead to our vision of a more level playing field that would allow new investments in the country.

We never forget that we are all in this in the long-haul. Through cooperation between and among government agencies, non-government agencies, and private sector can we promote sustainability, integrity and inclusive growth.

Through strong collaboration, we can power the future together!

Kayang-Kaya Kung Sama-Sama (Together, We Can)

SEBASTIAN "BASTE" QUINIONES
President, Petroleum Association of the Philippines
Managing Director, Shell Philippines Exploration, B.V.



Bantay Kita, the coalition of civil society organizations advocating for transparency and accountability in the Philippine extractive industry, has been committed to implementing EITI in the Philippines. This mechanism is envisioned to provide genuine access to information that will help individuals, communities and governments make informed decisions regarding the extractive industry. The Philippine EITI and its multi-stakeholder group (MSG) provides a venue to discuss critical issues related to natural resource management.

As part of the MSG, Bantay Kita engaged the government and the industry players, to bring forth the issues, concerns and initiatives of Civil Society Organizations (CSOs) in cultivating a culture of transparency and accountability in the extractive industries.

This PH-EITI report is the first collaborative output of civil society, the national government and the industry. The report is an achievement considering the many controversies surrounding this sector. This first report is expected to trigger debates and discussions on ways forward to strengthen natural resource governance in the country.

BK envisions citizens using information produced by the EITI to make informed decisions that affect their welfare and holding government and industry to account for their decisions. EITI, if used correctly, can be a powerful tool that leads to a more level playing field among stakeholders in the extractive industry. This Report, with the full cooperation of these stakeholders, can be a significant start in our common quest for a sustainable future.

We look forward to the debate that the Country Report will generate in the following months. It is our sincere hope that the publication of the Country Report will produce positive changes in the understanding, structure, governance and framework of the Philippines' natural resource management policies.

Bantay Kita would like to express its gratitude towards all the members of the MSG, the Technical Working Group, and most especially to Assistant Secretary Maria Teresa Habitan of the Department of Finance and Secretary Elisea "Bebet" Gozun for their commitment and leadership. We likewise commend the PH-EITI Secretariat for their dedication to ensure the success of this endeavor. Bantay Kita would like to especially mention Mr. Augusto Docena who tirelessly dedicated his life to advocating for the environment.

May the first PH-EITI Country Report usher in genuine reforms in the EI sector that will profoundly impact our country.

BANTAY KITA

PH -EITI Secretariat

ATTY. MARIE GAY ALESSANDRA V. ORDENES
National Coordinator

MARIA MELIZA T. TUBA
ABIGAIL D. OCATE
MARYANN D. RODOLFO
LIEZEL B. EMPIO
MARY GRACE E. JURADO

MULTI-STAKEHOLDER GROUP MEMBERS

Government
ASST. SEC. **MA. TERESA S. HABITAN**
PH-EITI Focal Person

UNDERSECRETARY **JEREMIAS N. PAUL**
UNDERSECRETARY **AUSTERE A. PANADERO**
UNDERSECRETARY **ZENAIDA Y. MONSADA**
ENGR. **LEO J. JASARENO**
GOV. **ALFONSO UMALI JR.**
ANNA LIZA F. BONAGUA
NENITO JARIEL JR.
ENGR. ROMUALDO D. AGUILOS
MICHAEL JOSEPH U. JUAN

Business Sector
ENGR. ARTEMIO F. DISINI
GERARD BRIMO
SEBASTIAN C. QUINIONES, JR.
FRANCISCO J. ARAÑES JR.
ADRIAN RAMOS
NELIA C. HALCON
EMMANUEL L. SAMSON
SABINO SANTOS
JAMES ONG
RENATO N. MIGRIÑO
RONALD RECIDORO
ERWIN R. RIÑON

Civil Society Organizations
DR. **CIELO D. MAGNO**
PROF. **JAY L. BATONGBACAL**
PROF. **MARIA AURORA TERESITA W. TABADA**
RONALD ALLAN A. BARNACHA
ROLDAN R. GONZALES
FILOMENO STA.ANA III
VINCE LAZATIN
DR. **MERIAN C. MANI**
STARJOAN VILLANUEVA

PH-EITI
Philippine Extractive Industries Transparency Initiative

PH-EITI Report 2014 EDITORIAL TEAM

ATTY. BRENDA JAY A. MENDOZA
Head Editor

ATTY. MARIE GAY ALESSANDRA V. ORDENES
Content Editor

ABIGAIL D. OCATE
MA. MELIZA T. TUBA
CARMINA T. MOSURA
ASST. SEC. MA. TERESA S. HABITAN
HON. ELISEA G. GOZUN
DR. CIELO M. MAGNO
Contributing Editors

KARLO FERMIN S. ADRIANO
EMMANUEL GENESIS T. ANDAL
ATTY. JAY L. BATONGBACAL
DR. RAMON L. CLARETE
MS. NELIA HALCON
ATTY. JULIUS M. LOTILLA
ATTY. MA. ALETA C. NUÑEZ
ANTON MIGUEL P. RAGOS
ATTY. JENNIFER L. RAMOS
PROF. MARIA AURORA TERESITA W. TABADA
MARIA ALTHEA M. TEVES
REGINE MARIE A. TUMLOS
Contributing Writers

IMEE S. HACLA
CARMINA T. MOSURA
Graphic Artists

ABIGAIL D. OCATE
RODA ATHEA E. BARAQUIO
Layout Editor

Table of Contents

Philippine Extractive Industries Transparency Initiative Report 2014
CONTEXTUAL INFORMATION

37 The Extractive Industries Transparency Initiative: An Overview

40 **CHAPTER 1: Overview of Extractive Industries in the Philippines**

41 **I. Mining Industry**
- A. Mineral Potential
- B. Contribution to the Economy
- C. Production Figures
- D. Mining Operations

56 **II. Oil and Gas Industry**
- A. Potential Deposits
- B. Contribution to the Economy
- C. Production Figures
- D. Significant Exploration Activities

62 **III. Coal Industry**
- A. Coal Resource Potential
- B. Contribution to the Economy

70 CHAPTER 2: Legal Framework Governing the Extractive Industry and Transparency in the Philippines

71 **I. Natural Resource Governance**
- A. 1987 Constitution
- B. Laws Governing the Mining Sector
- C. Laws Governing the Oil and Gas Sector
- D. Laws Governing the Coal Sector

72 **II. Agencies Regulating the Extractive Sector**
- A. Mining Sector
- B. Oil, Gas and Coal
- C. Specific Areas Governed by Other Agencies

73 **III. Laws Governing Transparency**
- A. Constitutional Provisions
- B. Transparency in the Extractives Industry (Revenue and Investments)
- C. Public Information and Access to Information

78 **IV. Payments**

79 **V. Revenue Sharing Scheme**
- A. Mineral Resources
- B. Revenue Sharing Scheme (Petroleum and Coal)

81 **VI. Sanctions**
- A. Under the Mining Act
- B. Under the National Internal Revenue Code
- C. Under the Tariff and Customs Code
- D. Under EO 513 (Philippine Ports Authority)
- E. Under the Joint DOE-DILG Circulars (Guidelines on the LGU Use of Proceeds from Energy Sources)

82 **VII. Incentives (Fiscal and Non-Fiscal Incentives)**
- A. Mining Investments Incentives
- B. Oil, Gas and Coal Investments Incentives

86 **VIII. Contracts**
- A. Types of Mining Contracts
- B. Standard Contractual Stipulations

91 **IX. Social and Environmental Provisions**

91 **X. Pending Bills and Cases on Mining**
- A. Reform Initiatives
- B. Mining Cases Awaiting the Supreme Court's Decision

92 CHAPTER 3: Licensing Processes

93 **I. Licensing System for Mining Operations**
- A. Mining Agreements and Permits

98 **II. Licensing System for Oil and Gas**
- A. Applicable Laws and Reviewing Body
- B. Documentary Requirements
- C. Approval Procedure

99 **III. Licensing System for Coal Operations**
- A. Applicable Laws and Reviewing Body
- B. Documentary Requirements
- C. Approval Procedure

100 **IV. List of License Holders in the Extractive Industries**
- A. Mining Sector
- B. Petroleum and Coal Sector

101 **V. Procedural and Substantive Relief for License Disputes and Rejected Mining Applications**
- A. Summary of Outcome/Status of Applications for Licenses and Permits

101 **VI. License Transfers and Systems**
- A. Mining Sector
- B. Petroleum: Oil and Gas Sector
- C. Coal Sector

104 CHAPTER 4: Subnational Payments

105 **I. The National Government and the Local Government Units**
- A. Political Subdivisions and Classifications of LGUs
- B. National Government as the Main Regulator of the Extractive Industry
- C. The Role of LGUs in Regulating the Extractive Industry

106 **II. Sources of Revenues of LGUS**
- A. LGUs' Share in the National Wealth (Excise Tax and Royalty Income)
- B. LGUs' Internal Revenue Allotment (IRA)
- C. LGUs' Direct Collections Based on National Laws and Local Tax Codes

114 **III. Institutional Arrangements and Processes**
- A. Fiscal Arrangements: Local Collection and Actual Receipts
- B. Actual Collections and Reporting Process

115 **IV. National Government Agencies' Collection and Transfers to LGUs**
- A. Excise Tax Collection and Transfer
- B. Royalty Income from Mineral Reservations: Collections and Transfer

117 **V. Local Bodies Exercising Oversight Functions on Mining Operations**

124 CHAPTER 5: State-Owned Extractive Enterprises: PMDC and PNOC

125 **I. Legal Basis**

125 **II. Philippine Mining Development Corporation**
- A. Creation, Ownership and Structure
- B. PMDC's Projects
- C. PMDC's Fiscal Arrangements

129 **III. Philippine National Oil Company**
- A. Creation, Ownership and Structure
- B. PNOC-EC's Projects
- C. PNOC-EC's Fiscal Arrangements

132 CHAPTER 6: Procedures for Obtaining Permits in Ancestral Domain Areas

134 **I. Legal and Regulatory Framework Governing Extractive Operations in Ancestral Domains**
- A. Recognition and Protection of Indigenous Peoples' Rights under the Constitution
- B. Philippine Mining Act of 1995
- C. Indigenous Peoples Rights Act of 1997 (IPRA)

136 **II. Free and Prior Informed Consent**
A. The Concept of FPIC
B. Process of Securing FPIC for Extractive Operations

138 **III. Memorandum of Agreement**
A. Preparation of the MOA
B. MOA signing
C. Salient Provisions of the MOA
D. Transfer of Rights under the MOA
E. Violations of the MOA
F. Examination of Existing MOAs

147 **IV. Royalties**
A. Rate and Negotiation
B. Management
C. Monitoring of Royalties

150 CHAPTER 7: Social Expenditures and Environmental Funds

151 **I. Mining Companies: Social Development Management Programs (SDMP), Community Development Programs (CDP), Programs on Development of Mining Technology and Geosciences and the Program on Information, Education, and Communication**
A. SDMP Cost
B. Development, Approval, Implementation and Monitoring of SDMP and CDP

156 **II. Mandatory Environment-Related Funds: Environmental Protection and Enhancement and Rehabilitation Funds**
A. Environmental Work Program and Environmental Protection and Enhancement Program
B. EPEP Processing, Approval, Implementation, and Monitoring
C. Contingent Liability and Rehabilitation Fund: MRF – MTF and RCF, MWT, FMRDF
D. Mine Rehabilitation Fund: Monitoring Trust Fund and Rehabilitation Cash Fund
E. Final Mine Rehabilitation and Decommissioning Fund (FMRDF)
F. Mine Waste and Tailings Fees Reserve Fund
G. Donations/Turn Over of Facilities upon Cessation of Mining Operations
H. Mining Monitoring Reports
I. Corporate Social Responsibility
J. Actual Social Projects

168 CHAPTER 8: Budget Process and Revenue Management

169 **I. National Government**

171 **II. Local Government Units**
A. Budgeting and Expenditure
B. Budget Accountability
C. Allocations
D. Bottom-Up Budgeting

174 CHAPTER 9. Ongoing Reforms in the Mining Sector

175 **I. Executive Order No. 79**

176 **II. Actions Taken Pursuant to EO No. 79**
A. Creation of the Mining Industry Coordinating Council (MICC)
B. Review of the Performance of Existing Mining Operations and Cleansing of Non-Moving Mining Rights Holders
C. Moratorium on the Grant of Mineral Agreements Pending New Legislation on Revenue Sharing
D. Clarifying the Areas Closed to Mining Applications and Creation of an Integrated Map System for Mining
E. Rationalizing Small-Scale Mining Activities
F. Establishment of Mineral Reservations
G. Development of Downstream Industries for the Mineral Sector
H. Creation of Anti-Illegal Mining Task Force
I. Full Enforcement of Environmental Standards
J. Creation of a Centralized Database for the Mining Industry
K. Joining the Extractive Industries Transparency Initiative (EITI)

List of Tables

42 **Table 1** Estimated Reserves and Quality of Selected Metals in the Philippines, by Region, in 2010

44 **Table 2** Estimated Value of Philippine Mineral Reserves

47 **Table 3** Philippine Metallic Mineral Exports from 2009 to 2012 (F.O.B. value in million US dollars)

50 **Table 4** Share of Mining Tax Revenue to Total Government Receipts from 2009 to 2012

53 **Table 5** Operating Metallic Mines as of 2013

56 **Table 6** Areas in the Philippines with Potential Petroleum Reserves

60 **Table 7** Breakdown of the FPIA

60 **Table 8** Sample Distribution of Revenues from Petroleum

62 **Table 9** List of Areas with Potential Petroleum Reserves

63 **Table 10** Philippine Regional Distribution of Coal Reserves, by Classification, as of December 2012

64 **Table 11** Coal Production and Revenues, 2009-2013

65 **Table 12** Coal Production, by Province and of Small-Scale Mining, 2013

66 **Table 13** Semirara Mining Corporation Annual Volume of Coal Export (in mmt and as percentage of Philippine total production), and Value of Coal Export (in PHP and as percentage Philippine total exports), 2007-2012

67 **Table 14** Semirara Mining Corporation Annual Remittance of Government Share from Coal Proceeds and Income Tax Payment, 2004-2012

68 **Table 15** Remittance of Government Share from Coal Proceeds by Other Contractors, 2013

83 **Table 16** Mining Investments Incentives (Fiscal and Non-Fiscal Incentives)

85 **Table 17** Oil, Gas and Coal Investments Incentives

108 **Table 18** LGUs' Sources of Revenues

109 **Table 19** Direct Payments Made to LGUs by Mining Companies Provided under National Statutes and Local Tax Codes

112 **Table 20** Direct Payments Made to LGUs by Mining Companies Not Provided by National Statutes

114 **Table 21** Local Revenue Streams – Direct Payments from Oil & Gas Companies

115 **Table 22** LGUs Tax Imposition, Collection and Distribution Scheme

130 **Table 23** Summary of PNOC-EC's Projects for both Petroleum and Coal

142 **Table 24** Number of Companies and MOAs Provided by NCIP

142 **Table 25** Number of MOAs by Company, by Operating Mines as of 2012

152 **Table 26** Credited Activities for Social Expenditures

152 **Table 27** Allocation for Social Expenditures

159 **Table 28** EPEP Financial Requirements

159 **Table 29** Environmental Guarantee Fund Mechanism: Contingent Liability and Rehabilitation Fund

160 **Table 30** 2012 MRF of Mining Companies and Environmental Trust Fund

162 **Table 31** Summary of 2012 Mine Waste Tailings Reserve of Covered Mining Companies

164 **Table 32** Survey of Mining Monitoring Reports for 2012

166 **Table 33** 2012 SDMP of Carmen Copper

167 **Table 34** Malampaya Foundation, Inc. (MFI) Social Investment

167 **Table 35** Pilipinas Shell Foundation, Inc. (PSFI) Social Investment

167 **Table 36** Mindoro Biodiversity Conservation Foundation, Inc. (MBCFI) Social Investment

List of Figures

43 **Figure 1** Selected Mineral Reserves of the Philippines, by Island Group as of 2010 (in %)

44 **Figure 2** Number of Mineral Production Sharing Agreements (MPSA) and Financial or Technical Assistance Agreements (FTAA) as of July 2014, by Region

45 **Figure 3** Mining Areas Covered by Mining Permits as of July 2014 (in hectares)

46 **Figure 4** Gross Value Added from Selected Metallic Mining Activities, 2010 to 2013 (in mln. PhP at current prices)

46 **Figure 5** Share of Metallic Mining to Philippine GDP, 2010 to 2013 (in %)

47 **Figure 6** Average Share of Metallic Mineral Products to Total Exports, 2009 to 2012 (in %)

48 **Figure 7** Contribution of the Mining Industry to Employment, 2009-2012

48 **Figure 8** Number of Operating Metallic Mines from 2009 to 2013, by Mineral

49 **Figure 9** Mining Tax Revenues (in million PHP) and Average World Metal Prices (2009 to 2012)

49 **Figure 10** Mining Taxes, by Type of Tax, 2009 to 2012

51 **Figure 11** Metallic Production by Value and No. of Projects from 2009 to 2013

51 **Figure 12** Metallic Production by Volume from 2009 to 2013

52 **Figure 13** Average Contribution per Type of Metal to Total Metallic Production Value from 2009 to 2013 (in %)

55 **Figure 14** Number of Existing Exploration Permits and Land Area (in hectares) Covered as of 2014

55 **Figure 15** Potential Mineral Products of Existing Exploration Permits as of 2014

58 **Figure 16A** Oil and Gas Value Added and the Respective Shares in Total, 2008-2013 (in Million PhP)

58 **Figure 16B** Oil and Gas Exports and the Respective Shares in Total, 2007-2013 (in Million PhP)

59 **Figure 17** Shares of Government Offices Receipts and Tax Nature in Total Revenue Receipts (2012)

61 **Figure 18** Domestic Oil and Gas Production, Total and by Field (2005-2013)

62 **Figure 19** Value Added of Oil and Gas Industry, 2009 to 2013

63 **Figure 20** Philippine Regional Distribution of Coal Reserves, by Classification, as of December 2012

64 **Figure 21** Philippine Annual Volume of Production (in mmt), 1977-2013

65 **Figure 22** 2013 Volume of Coal Production among different Provinces

67 **Figure 23** Semirara Mining Corporation Annual Remittance of Government Share from Coal Proceeds and Income Tax Payment, 2007-2012

74 **Figure 24** Rules on Confidentiality for the Mining Sector

76 **Figure 25** Standards of Confidentiality and Disclosure for Oil and Gas

77 **Figure 26** Summary of Pertinent Laws Regarding Confidentiality in the Extractive Industry

78 **Figure 27** List of Payments made by the Extractive Companies

80 **Figure 28** Production Sharing- Service Contract

80 **Figure 29** Production Sharing- Service Contract (FPIA)

81 **Figure 30** Production Sharing- Coal Operating Contract

93 **Figure 31** Areas Open and Closed to Mining

95 **Figure 32** Exploration Permit Flowchart

96 **Figure 33** Mineral Agreement Flowchart

97 **Figure 34** FTAA Flowchart

99 **Figure 35** Service Contract Flowchart

100 **Figure 36** Coal Operating Contract Flowchart

116 **Figure 37** Procedure in Release of LGU Share in National Wealth: Excise Taxes

117 **Figure 38** Release of Share in National Wealth: Royalty Income in Mineral Reservations

126 **Figure 39** PMDC Ownership

126 **Figure 40** Organizational Structure of PMDC

127 **Figure 41** Mining Operations of PMDC

128 **Figure 42** PMDC's Revenue Streams

129 **Figure 43** Corporate Structure of PNOC

137 **Figure 44** FPIC Process

155 **Figure 45** SDMP Development, Approval, Implementation and Monitoring

158 **Figure 46** EPEP Development, Approval, Implementation and Monitoring

165 **Figure 47** MMT Monitoring Process

List of Illustrations

Illustration 1 Map of Areas with Potential Mineral Deposits

Illustration 2 Map of Areas with Potential Deposits of Petroleum

Illustration 3 Mine Rehabilitation Fund Committee

Illustration 4 Multipartite Monitoring Team

Illustration 5 Contingent Liability and Rehabilitation Fund Steering Committee

Illustration 6 CLRF Steering Committee's Technical Working Group and the Regional Investigation and Assessment Team

Illustration 7 Contingent Liability Rehabilitation Steering Committee Administrative Fund

Illustration 8 List of Metallic Mining Operations within Ancestral Lands

Illustration 9 List of Salient Provisions and Stipulations of the MOA

List of Annexes

Annex I EO 147

Annex ii List of MSG Members

Annex iii List of TWG Members

Annex iv Members of the Secretariat

Annex V Profile of the Chamber of Mines of the Philippines, Petroleum Association of the Philippines and Bantay Kita

Annex A Agencies Involved in Regulating the Extractive Industries

Annex B Reportorial Requirements for Mining Companies

Annex C Standard Mining Agreement

Annex D Standard Service Contract

Annex E EP, MA, FTAA Table of Requirements

Annex F Application Requirements for Service Contracts

Annex G Requirements for Coal Operating Contracts

Annex H List of Existing Exploration Permits by Region

Annex I List of Existing MPSAs and FTAAs

Annex J List of Existing Coal Operating Contracts

Annex K List of Existing Service Contracts

Annex L Status of Endorsed/Approved Mining Applications and Recommended for Cancellation

Annex M Requirements for Transfer of Service Contracts

Annex N Taxes and Fees Collected by Local Government Units Hosting Extractive Operations Based on Local Tax Codes

Annex O DOF-DBM-DILG-DENR Joint Circular 2009-1

Annex O-1 DOF-DBM-DILG-DENR Joint Circular 2010-11

Annex P List of IPs and Extractive Operations in IP Areas

Annex Q Plans, Programs, and Activities that are Considered Large Scale, Extractive, Intrusive Activities

Annex R List of Benefits Indicated in the MOA by Company and IP Recipient

Annex R-1 Summary of Benefits in the MOA between Mining Companies and IP/ICCs

Annex S Important Information on the MOAs by Company and IP Recipient

Legal References

LAWS		
1	**1987 PHILIPPINE CONSTITUTION**	
2	RA 10021	EXCHANGE OF INFORMATION ON TAX MATTERS ACT OF 2009
3	RA 387	PETROLEUM ACT OF 1949
4	RA 5455	AN ACT TO REQUIRE THAT THE MAKING OF INVESTMENTS AND THE DOING OF BUSINESS WITHIN THE PHILIPPINES BY FOREIGNERS OR BUSINESS ORGANIZATIONS OWNED IN WHOLE OR IN PART BY FOREIGNERS SHOULD CONTRIBUTE TO THE SOUND AND BALANCED DEVELOPMENT OF THE NATIONAL ECONOMY ON A SELF-SUSTAINING BASIS, AND FOR OTHER PURPOSES
5	RA 6173	OIL INDUSTRY COMMISSION ACT
6	RA 7076	PEOPLE'S SMALL-SCALE MINING ACT OF 1991
7	RA 7160	LOCAL GOVERNMENT CODE OF 1991
8	RA 7638	DEPARTMENT OF ENERGY ACT OF 1992
9	RA 7729	AN ACT REDUCING THE EXCISE TAX RATES ON METALLIC AND NON-METALLIC MINERALS AND QUARRY RESOURCES, AMENDING FOR THE PURPOSE SECTION 151(a) OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED
10	RA 7918	AN ACT AMENDING ARTICLE 39, TITLE III OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987, AS AMENDED, AND FOR OTHER PURPOSES
11	RA 7942	PHILIPPINE MINING ACT OF 1995
12	RA 8371	THE INDIGENOUS PEOPLES' RIGHTS ACT OF 1997
13	RA 8424	NATIONAL INTERNAL REVENUE CODE OF 1997
EXECUTIVE ORDERS		
14	EO 147	CREATING THE PHILIPPINE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE
15	EO 192	PROVIDING FOR THE REORGANIZATION OF THE DEPARTMENT OF ENVIRONMENT, ENERGY AND NATURAL RESOURCES, RENAMING IT AS THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND FOR OTHER PURPOSES
16	EO 226	OMNIBUS INVESTMENT CODE
17	EO 270-A	AMENDING EXECUTIVE ORDER NO. 270 ENTITLED "NATIONAL POLICY AGENDA ON REVITALIZING MINING IN THE PHILIPPINES"
18	EO 292	INSTITUTING THE ADMINISTRATIVE CODE OF 1987

19	EO 323	CONSTITUTING AN INTER-AGENCY PRIVATIZATION COUNCIL (PC) AND CREATING A PRIVATIZATION AND MANAGEMENT OFFICE (PMO) UNDER THE DEPARTMENT OF FINANCE FOR THE CONTINUING PRIVATIZATION OF GOVERNMENT ASSETS AND CORPORATIONS
20	EO 513	REORGANIZING THE PHILIPPINE PORTS AUTHORITY
21	EO 689	TRANSFERRING THE PHILIPPINE MINING DEVELOPMENT CORPORATION FROM THE OFFICE OF THE PRESIDENT TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
22	EO 79	INSTITUTIONALIZING AND IMPLEMENTING REFORMS IN THE PHILIPPINE MINING SECTOR PROVIDING POLICIES AND GUIDELINES TO ENSURE ENVIRONMENTAL PROTECTION AND RESPONSIBLE MINING IN THE UTILIZATION OF MINERAL RESOURCES
PRESIDENTIAL DECREES		
23	PD 1174	AMENDING PRESIDENTIAL DECREE NUMBER NINE HUNDRED SEVENTY TWO, OTHERWISE KNOWN AS THE "COAL DEVELOPMENT ACT OF 1976"
24	PD 1177	REVISING THE BUDGET PROCESS IN ORDER TO INSTITUTIONALIZE THE BUDGETARY INNOVATIONS OF THE NEW SOCIETY
25	PD 1234	INSTITUTING A PROCEDURE FOR THE MANAGEMENT OF SPECIAL AND FIDUCIARY FUNDS EARMARKED OR ADMINISTERED BY DEPARTMENTS, BUREAUS, OFFICES AND AGENCIES OF THE NATIONAL GOVERNMENT, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS
26	PD 1459	AUTHORIZING THE SECRETARY OF ENERGY TO ENTER INTO AND CONCLUDE SERVICE CONTRACTS, OR RE-NEGOTIATE AND MODIFY EXISTING CONTRACTS SUBJECT TO CERTAIN LIMITATIONS
27	PD 1464	TARIFF AND CUSTOMS CODE
28	PD 1586	ESTABLISHING AN ENVIRONMENTAL IMPACT STATEMENT SYSTEM INCLUDING OTHER ENVIRONMENTAL MANAGEMENT RELATED MEASURES AND FOR OTHER PURPOSES
29	PD 1857	AN ACT GRANTING NEW INCENTIVES TO PETROLEUM SERVICE CONTRACTORS, AND FOR THIS PURPOSE AMENDING CERTAIN SECTIONS OF PRESIDENTAL DECREE NUMBERED EIGHTY-SEVEN, AS AMENDED, OTHERWISE KNOWN AS "THE OIL EXPLORATION AND DEVELOPMENT ACT OF 1972"

27	PD 1464	TARIFF AND CUSTOMS CODE
28	PD 1586	ESTABLISHING AN ENVIRONMENTAL IMPACT STATEMENT SYSTEM INCLUDING OTHER ENVIRONMENTAL MANAGEMENT RELATED MEASURES AND FOR OTHER PURPOSES
29	PD 1857	AN ACT GRANTING NEW INCENTIVES TO PETROLEUM SERVICE CONTRACTORS, AND FOR THIS PURPOSE AMENDING CERTAIN SECTIONS OF PRESIDENTAL DECREE NUMBERED EIGHTY-SEVEN, AS AMENDED, OTHERWISE KNOWN AS "THE OIL EXPLORATION AND DEVELOPMENT ACT OF 1972"
30	PD 334	CREATING THE PHILIPPINE NATIONAL OIL COMPANY, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS THEREFORE, AND FOR OTHER PURPOSES
31	PD 87	THE OIL EXPLORATION AND DEVELOPMENT ACT OF 1972
32	PD 910	AN ACT CREATING AN ENERGY DEVELOPMENT BOARD, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS, THEREFORE, AND FOR OTHER PURPOSES
33	PD 972	THE COAL DEVELOPMENT ACT
PROCLAMATIONS		
34	PROC. NO. 2146	PROCLAIMING CERTAIN AREAS AND TYPES OF PROJECTS AS ENVIRONMENTALLY CRITICAL AND WITHIN THE SCOPE OF THE ENVIRONMENTAL IMPACT STATEMENT SYSTEM ESTABLISHED UNDER PRESIDENTIAL DECREE NO. 1586
35	PROC. NO. 297	EXCLUDING A CERTAIN AREA FROM THE OPERATION OF PROCLAMATION NO. 369 DATED FEBRUARY 27, 1931, AND DECLARING THE SAME AS MINERAL RESERVATION AND AS ENVIRONMENTALLY CRITICAL AREA
ADMINISTRATIVE ISSUANCES		
36	COA CIRCULAR NO. 2001-005	NEW GOVERNMENT ACCOUNTING SYSTEM
37	DBM MEMORANDUM NO. 121	GUIDELINES FOR THE IMPLEMENTATION' AND MONITORING OF FY 2013 and FY 2014 GRASSROOTS PARTICIPATORY BUDGETING PROJECTS
38	DBM-DILG-DSWD-NAPC JMC NO. 1	POLICY GUIDELINES AND PROCEDURES IN THE IMPLEMENTATION OF BOTTOM-UP PLANNING AND BUDGETING FOR THE FY 2013 BUDGET PREPARATION
39	DBM-DILG-DSWD-NAPC JMC NO. 4	POLICY GUIDELINES AND PROCEDURES IN THE IMPLEMENTATION OF THE GRASSROOTS PARTICIPATORY BUDGETING PROCESS (FORMERLY CALLED BOTTOM-UP BUDGETING) FOR THE FY 2015 BUDGET PREPARATION
40	DENR AO 2003-30	IMPLEMENTING RULES AND REGULATIONS (IRR) FOR THE PHILIPPINE ENVIRONMENTAL IMPACT STATEMENT (EIS) SYSTEM

41	DENR AO NO. 2010-21	PROVIDING FOR A CONSOLIDATED DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ADMINISTRATIVE ORDER FOR THE IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 7942, OTHERWISE KNOWN AS THE "PHILIPPINE MINING ACT OF 1995"
42	DENR AO NO. 2012-07	RULES AND REGULATIONS TO IMPLEMENT EXECUTIVE ORDER NO. 79 DATED 06 JULY 2012 ENTITLED: INSTITUTIONALIZING AND IMPLEMENTING REFORMS IN THE PHILIPPINE MINING SECTOR PROVIDING POLICIES AND GUIDELINES TO ENSURE ENVIRONMENTAL PROTECTION AND RESPONSIBLE MINING IN THE UTILIZATION OF MINERAL RESOURCES
43	DILG MC NO. 2010-83	FULL DISCLOSURE OF LOCAL BUDGET AND FINANCES, AND BIDS AND PUBLIC OFFERINGS
44	DILG MC NO. 2011-134	AMENDING DILG MEMORANDUM CIRCULAR NO. 2010-83, SERIES, 2010, TITLED FULL DISCLOSURE OF LOCAL BUDGET AND FINANCES, AND BIDS AND PUBLIC OFFERINGS, AS AMENDED
45	DOE DC 2007-04-0003	PRESCRIBING THE GUIDELINES AND PROCEDURES FOR THE TRANSFER OF RIGHTS AND OBLIGATIONS IN PETROLEUM SERVICE CONTRACTS UNDER PRESIDENTIAL DECREE NO. 87, AS AMENDED
46	DOE DC 2014-02-0005	REITERATING A TRANSPARENT AND COMPETITIVE SYSTEM OF AWARDING SERVICE AND OPERATING CONTRACTS FOR PETROLEUM AND COAL PROSPECTIVE AREAS, REPEALING FOR THIS PURPOSE DC 2011-12-0010 AND DC 2012-02-003
47	DOE-DILG CIRCULAR NO. 98-01	GUIDELINES AND PROCEDURES ON THE UTILIZATION OF THE SHARE OF NATIONAL WEALTH TAXES, FEES, ROYALTIES AND CHARGES DERIVED FROM ENERGY RESOURCES
48	DOF-DBM-DILG-DENR JOINT CIRCULAR NO. 2009-1	UPDATED GUIDELINES AND PROCEDURES ON THE RELEASE OF THE SHARE OF LOCAL GOVERNMENT UNITS FROM THE COLLECTIONS DERIVED BY THE NATIONAL GOVERNMENT FROM MINING TAXES
49	DOF-DBM-DILG-DENR JOINT CIRCULAR NO. 2010-1	REVISED GUIDELINES AND PROCEDURES ON THE RELEASE OF SHARE OF LOCAL GOVERNMENT UNITS DERIVED BY THE NATIONAL GOVERNMENT FROM ROYALTY INCOME COLLECTED FROM MINERAL RESERVATIONS
50	NCIP AO 3-2012	THE REVISED GUIDELINES ON THE EXERCISE OF FREE AND PRIOR INFORMED CONSENT (FPIC) AND RELATED PROCESSES

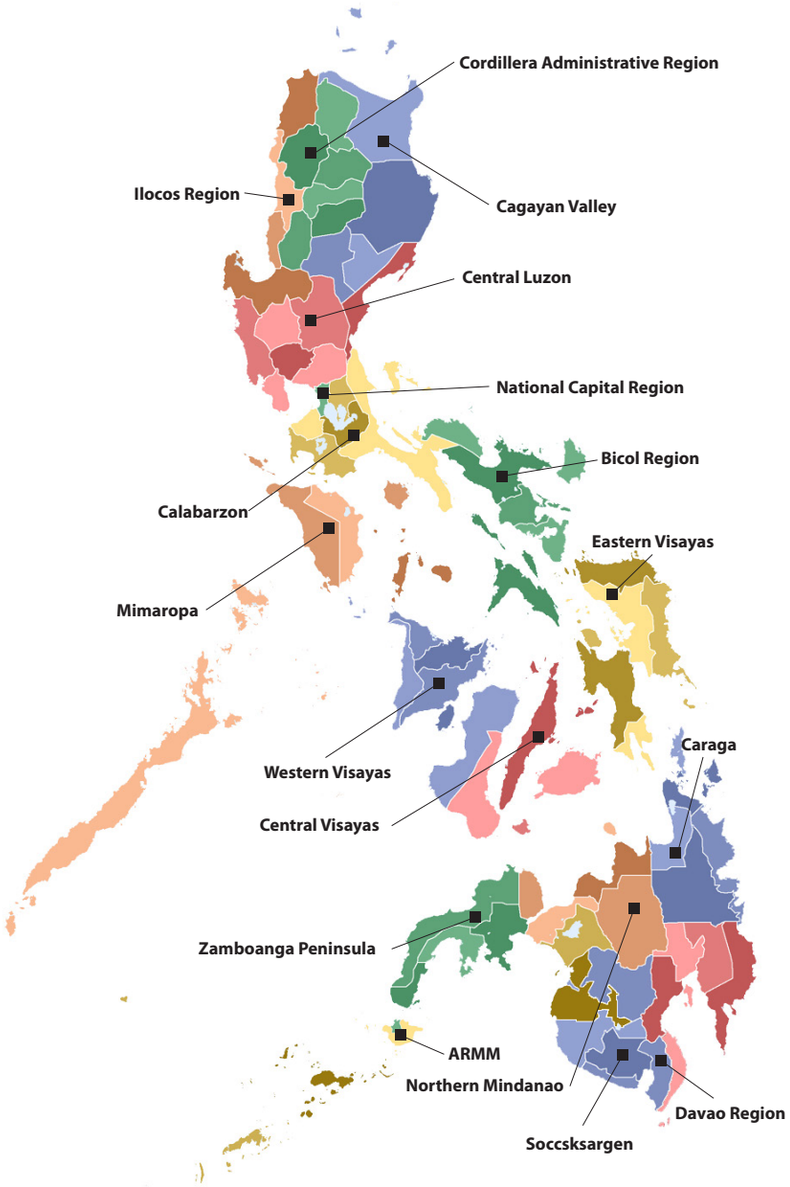
Abbreviations

AAcR	Annual Accomplishment Report
AD	Ancestral Domain
ADO	Ancestral Domain Office
ADSDPP	Ancestral Domain Sustainable Development and Protection Plan
AEPEP	Annual Environmental Protection and Enhancement Program
AO	Administrative Order
ARMM	Autonomous Region in Muslim Mindanao
AUP	Agreed Upon Procedures
BFAD	Bureau of Food and Drugs
BIR	Bureau of Internal Revenue
BL	Bill of Lading
BLGF	Bureau of Local Government Finance
BOC	Bureau of Customs
BOI	Board of Investments
BSP	Bangko Sentral ng Pilipinas
BTr	Bureau of Treasury
CA	Co-Production Agreement
CADT	Certificate of Ancestral Domain Title
CALT	Certificates of Ancestral Land Titles
CAR	Cordillera Autonomous Region
CDP	Community Development Program
CHO	Cargo Handling Operator
CLRF	Contingent Liability and Rehabilitation Fund
CO	Certificate of Origin
COA	Commission on Audit
COC	Coal Operating Contracts
COR	Certificates of Registration
CP	Certification Precondition
CRDP	Community Royalty Development Plan
CRO	Community Relations Office
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
DAO	DENR Administrative Order
DBM	Department of Budget and Management
DC	Department Circular
DENR	Department of the Environment and Natural Resources
DILG	Department of the Interior and Local Government
DMPF	Declaration of Mining Project Feasibility
DOE	Department of Energy
DOF	Department of Finance
DOTC	Department of Transportation and Communications
DP	Decommissioning Plan
DST	Documentary Stamp Tax
E2M	Electronic-to-Mobile
ECA	Environmentally Critical Areas
ECC	Environmental Compliance Certificate
ECP	Environmentally Critical Projects
EEZ	Exclusive Economic Zone
EFPS	Electronic Filing and Payment System
EIS	Environmental Impact Statement
EITI	Extractive Industries Transparency Initiative
ELISA	Extractive/Intrusive Large Scale Activities
ELTAD1	Excise Large Taxpayer Audit Division 1
EMB	Environmental Management Bureau
ENRO	Environment and Natural Resources Office
EO	Executive Order
EP	Exploration Permit

EPEP	Environmental Protection and Enhancement Program
ERDB	Energy Resource Development Bureau
eSRE	Electronic Revenue and Expenditure System
FAN	Final Assessment Notice
FBI	Field Based Investigation
FLD	Formal Letter of Demand
FMR	Final Mine Rehabilitation
FMR/DP	Final Mine Rehabilitation and/or Decommissioning Plan
FMRDF	Final Mine Rehabilitation and Decommissioning Fund
FPIA	Filipino Participation Incentive Allowance
FPIC	Free and Prior Informed Consent
FTAA	Financial or Technical Assistance Agreement
FY	Fiscal Year
GMIAB	Gold Mining Industry Assistance Board
GOCC	Government Owned and Controlled Corporation
IAET	Improperly Accumulated Earnings Tax
ICC	Indigenous Cultural Community
IP	Indigenous People
IPO	Indigenous People's Organization
IPRA	Indigenous Peoples Rights Act
IRA	Internal Revenue Allotment
IRR	Implementing Rules and Regulations
ITH	Income Tax Holiday
ITS	Integrated Tax System
JVA	Joint Venture Agreement
LBDES	Limited Bank Data and Entry System
LBP	Land Bank of the Philippines
LGC	Local Government Code
LGU	Local Government Unit
LOA	Letter of Authority
LTD	Large Taxpayers Division
LTDPQAD	Large Taxpayer - Document Processing and Quality Assurance Division
LT-PMPD	Large Taxpayers Performance Monitoring and Programs Division
MA	Mineral Agreement
MGB	Mines and Geosciences Bureau
MMTF	Mine Monitoring Trust Fund
MMT	Multipartite Monitoring Team
MOA	Memorandum of Agreement
MOEP	Mineral Ore Export Permit
MP	Mining Permits
MPSA	Mineral Production Sharing Agreement
MRDB	Mineral Resources Development Board
MRF	Mine Rehabilitation Fund
MRFC	Mine Rehabilitation Fund Committee
MSID	Management Information & Services Department
MTF	Mining Trust Fund
MWT	Mine Waste and Tailings
NCIP	National Commission on Indigenous Peoples
NCR	National Capital Region
NDC	National Development Corporation
NESSA	Non-Extractive Small Scale Activities
NGO	Non-Government Organization
NIRC	National Internal Revenue Code
NRDC	Natural Resources Development Corporation
NRFC	Non-Resident Foreign Corporations
NRMDC	Natural Resources Mining Development Corporation
OTP	Ore Transfer Permit
P/CMRB	Provincial/City Mining and Regulatory Board

PAN	Preliminary Assessment Notice
PD	Presidential Decree
PDEA	Philippine Drug Enforcement Agency
PDO	Port District Office
PECR	Philippine Energy Contracting Round
PIN	Property Item Number
PMDC	Philippine Mining Development Corporation
PMO (PPA)	Port Management Office (PPA)
PMO (DOF)	Privatization Management Office (DOF)
PNOC	Philippine National Oil Corporation
PNOC-EC	PNOC Exploration Corporation
PNOC-EDC	Philippine National Oil Corporation - Energy Development Corporation
PO	People's Organization
PPA	Philippine Ports Authority
PTO	Permits to Operate
RA	Republic Act
RAD	Revenue Accounting Division
RCF	Rehabilitation Cash Fund
RDO	Revenue District Offices
REC	Review Evaluation Committee
RIATs	Regional Investigation and Assessment Teams
RPT	Real Property Tax
RPTAR	Real Property Tax Assessment Record
RR	Revenue Regulation
SC	Service Contract
SDMP	Social Development and Management Program
SDMP	Social Development and Management Projects
SEC	Securities and Exchange Commission
SEF	Special Education Fund
SOE	State-Owned Enterprises
SPEX	Shell Philippines Exploration B.V.
TOP	Treasurer of the Philippines
TWG	Technical Working Group
VASP	Value Added Service Provider
VAT	Value Added Tax
WFP	Work and Financial Plan

COMPOSITION
7,107 islands; 3,144 named; 300,000 sq. km.
LAND AREAS (in sq. km.)
Luzon 142,655.5
Mindanao 120,812.6
Samar 13,428.8
Negros 13,309.6
Palawan 14,896.3
Panay 12,507.1
Mindoro 10,245.6
Leyte 8,349.9
Cebu 6,331.1
Bohol 4,117.3



REGIONS OF THE PHILIPPINES	
National Capital Region	
Cordillera Administrative Region	
Region I	Ilocos Region
Region II	Cagayan Valley
Region III	Central Luzon
Region IV-A	Calabarzon
Region IV-B	Mimaropa
Region V	Bicol Region
Region VI	Western Visayas
Region VII	Central Visayas
Region VIII	Eastern Visayas
Region IX	Zamboanga Peninsula
Region X	Northern Mindanao
Region XI	Davao Region
Region XII	Soccsksargen
Region XIII	Caraga
Autonomous Region In Muslim Mindanao (ARMM)	

Source: National Statistic Office (2014), The Philippines in Figures

List of Provinces per Region

REGION	PROVINCES
NATIONAL CAPITAL REGION	
CORDILLERA ADMINISTRATIVE REGION	Abra
	Apayao
	Benguet
	Ifugao
	Kalinga
	Mt. Province
REGION I - ILOCOS REGION	Ilocos Norte
	Ilocos Sur
	La Union
	Pangasinan
REGION II - CAGAYAN VALLEY	Batanes
	Cagayan
	Isabela
	Nueva Vizcaya
	Quirino
REGION III - CENTRAL LUZON	Aurora
	Bataan
	Bulacan
	Nueva Ecija
	Pampanga
	Tarlac
	Zambales
REGION IV-A – CALABARZON	Batangas
	Cavite
	Laguna
	Quezon
	Rizal
REGION IV-B (MIMAROPA)	Marinduque
	Occidental Mindoro
	Oriental Mindoro
	Palawan
	Romblon
REGION V - BICOL REGION	Albay
	Camarines Norte
	Camarines Sur
	Catanduanes
	Masbate
	Sorsogon
REGION VI - WESTERN VISAYAS	Aklan
	Antique
	Capiz
	Guimaras
	Iloilo
	Negros Occidental
REGION VII - CENTRAL VISAYAS	Bohol
	Cebu
	Negros Oriental
	Siquijor
REGION VIII - EASTERN VISAYAS	Biliran
	Eastern Samar
	Leyte
	Northern Samar
	Southern Leyte
	Western Samar
REGION IX - ZAMBOANGA PENINSULA	Zamboanga del Norte
	Zamboanga del Sur
	Zamboanga Sibugay
REGION X - NORTHERN MINDANAO	Bukidnon
	Camiguin
	Lanao del Norte
	Misamis Occidental
	Misamis Oriental
REGION XI - DAVAO REGION	Compostela Valley
	Davao del Norte
	Davao del Sur
	Davao Oriental
REGION XII- SOCCSKSARGEN	North Cotabato
	Sarangani
	South Cotabato
	Sultan Kudarat
REGION XIII – CARAGA	Agusan del Norte
	Agusan del Sur
	Dinagat Island
	Surigao del Norte
	Surigao del Sur
AUTONOMOUS REGION IN MUSLIM MINDANAO (ARMM)	Basilan
	Lanao del Sur
	Maguindanao
	Sulu
	Tawi-Tawi

Source: Department of the Interior and Local Government

Overview of the Report

Overview of the Report

As part of its commitment to the Extractive Industries Transparency Initiative (EITI) and to the principles of transparency and accountability in the extractive industry and in government, the Republic of the Philippines is submitting its First EITI Country Report to the EITI International Board in December 2014.

This Report seeks to stimulate further collaboration among the extractives stakeholders and to improve the Filipino citizens' understanding of how their natural resources should be governed.

The PH-EITI Report consists of two volumes:

1. The **first volume** provides the contextual information about the Philippine extractive industry. It gives a comprehensive picture of the legal framework and governance mechanisms for the sector, the contracts and licensing processes, including payments and revenue-sharing schemes at the national and local (sub-national) levels. It also covers discussions on state-owned extractive enterprises and the process for securing the free and prior informed consent of indigenous peoples. The contextual information is part of the new EITI reporting standards to achieve a better understanding of the reconciliation aspect of this report.

2. The **second volume** provides the reconciliation report. This contains information on the material payments from the extractive industry as reported by the participating companies and the national government. These include both fiscal payments (taxes, fees, charges) and non-fiscal payments, such as social development and management program (SDMP) funds, contingent liability and rehabilitation funds (CLRF), and royalty payments to indigenous peoples. It also identifies and explains any discrepancies in the reported figures, offering recommendations on how to address such issues.

The Philippine EITI Multi-Stakeholder Group (PH-EITI MSG) and its Secretariat facilitated the preparation of this Report. The PH-EITI MSG commissioned individual consultants to write on different topics that would comprise the contextual information. After going through a series of review by the PH-EITI MSG, the consultants' outputs were then summarized and consolidated for this part of the report. Full studies, however, of each chapter may be accessed at the PH-EITI website (www.ph-eiti.org). The PH-EITI MSG also engaged an Independent Administrator to perform the reconciliation process.

The Report provides a brief background of the EITI, the benefits of its implementation for the government, the extractives companies, and the civil society, and the process that the PH-EITI is taking to achieve full compliance with the EITI standards.

In summary, the PH-EITI Report covers a discussion of the following:

Volume One: Contextual Information

I. An Overview of the Extractive Industries in the Philippines

This chapter illustrates in broad strokes the Philippine extractive industry. It describes the enormous wealth of the country in terms of mineral, oil and gas, and coal resources, which have remained largely untapped for varied reasons.

On a per sector basis, it explains the industry's contribution to the economy in respect of added value, exports, employment, and revenue, and presents production figures.

This chapter also gives a profile of the companies comprising the extractive industry, including the areas where they undertake exploration and development activities.

II. Legal Framework Governing the Extractive Industry and Transparency in the Philippines

This chapter presents the legal framework and policy governing mineral, oil and gas, and coal resources, highlighting the significant role of the State as resource owner in the exploration, development, and utilization of these natural resources. The chapter includes a discussion of the role of different government agencies in regulating these resource extractive activities. It identifies the primary role of the Department of Environment and Natural Resources (DENR) – Mines and Geo-Sciences Bureau (MGB) and the Department of Energy (DOE) in this effort.

In addition, the chapter explains the country's disclosure policies, citing that the Philippines does not have a straightforward policy or legislation on transparency, but has existing provisions, in general and by sector, that deal with disclosure or non-disclosure of confidential information, access to public information, and public participation.

The chapter further enumerates the payments made to the government by the extractive industry, which take the form of taxes, fees, royalties, and other charges. While not fully discussed in this chapter, it makes reference to the royalty payments given to indigenous peoples, as well as the special funds that the industry, especially the mining sector, needs to create for social development and environmental management programs.

Across the industry, the chapter also discusses the revenue-sharing arrangements that are negotiated by the government and the contractor, with the law merely providing the minimum sharing standards and the factors that should be considered in concluding such arrangements. It finally describes the standard provisions that may be found in different mining agreements, oil and gas service contracts, and coal operating contracts, including the incentives and other privileges that may be provided to the contractors.

III. Licensing Processes

Companies in the extractive sector must first obtain a license or permit from the government before it can proceed to explore, develop, and use the country's mineral, oil, gas, and coal resources.

This chapter explains the requirements and procedures for obtaining these licenses from the DENR-MGB in case of applications for mining exploration permits, mineral agreements, and financial and technical assistance agreements or FTAA; and from the DOE for oil and gas service contracts and coal operating contracts.

In this discussion, the chapter underscores the need to establish one's eligibility to be issued a license, including to demonstrate proof of technical competence and financial capability, and to submit other documents to support the application, such as work programs, environmental compliance certificates, work programs, and certificate of non-overlap over ancestral lands.

This chapter finally provides a list of the industry's license or permit holders in the country.

IV. Subnational Payments

This chapter recognizes the important role of local governments units (LGUs) in implementing EITI at the subnational (local) level. LGUs host the mining sites, oil and gas fields, and principal offices of extractive industries. They are directly affected by the operations of the extractive industry, hence, the industry is required to periodically consult the LGUs on such projects that impact on the environment and the local communities.

Indirectly, LGUs share benefit from the proceeds derived by the national government from the country's natural wealth and internal revenue. At the same time, they receive direct payments from the extractive industry by reason of national laws or their own local tax ordinances.

This chapter discusses the revenues directly collected by LGUs, their share in the revenues collected by the national government from extractive industries, and their role in monitoring extractive operations within their localities.

V. State-owned Extractive Enterprises

When the State opts to directly undertake the exploration, development, and use of the country's natural resources, it does so through state-owned enterprises. In the mining, oil and gas, and coal sectors, these activities are undertaken by the Philippine Mining Development Corporation (PMDC) and the Philippine National Oil Corporation (PNOC).

The PMDC manages a number of mining projects involving mineral reservations, privatized assets, and cancelled tenements. PNOC is engaged in the exploration, development, use, and marketing of oil and gas and other viable energy resources. Like private contractors, these state-owned extractive companies also share their net income or proceeds with the government.

This chapter discusses the legal basis for the creation of the PMDC and PNOC, their structure, powers and functions, extent of participation in extractive operations, and their fiscal arrangements with the government.

VI. Procedures for Obtaining Permits in Ancestral Domain Areas

This chapter takes into consideration the rights of indigenous peoples/indigenous cultural communities (IP/ICC) to their ancestral lands and domains, which in many instances are affected by the operation of contracts to explore and develop natural resources in the country.

With this context, the chapter describes the procedures that the extractive industry must follow in order to obtain the free and prior informed consent (FPIC) of the IPs/ICCs, a requirement before they can pursue their extractives projects. Ideally, the FPIC process ends with the execution of a Memorandum of Agreement between the contractor and the IP/ICC concerned. The minimum terms of this agreement, including the payment of royalties to the concerned IP/ICC, are discussed in this chapter.

Volume II – Reconciliation Report

Volume II of this Report provides information on the material revenue streams in the extractive industries as reported by the government and the companies. An Independent Administrator was engaged to gather data from government agencies that collect payments from industries and from extractive companies with the objective of comparing whether their reported collections and payments tally. After data collection, a reconciliation process was performed by the Independent Administrator where discrepancies between the figures provided by the government and the companies were identified. 36 extractive companies and 6 government agencies participated in this exercise covering total revenues in the amount of Php 52.7 Billion. The total amount of unreconciled discrepancies for the mining industry is Php 76.8 Million while the total amount of unreconciled

discrepancies for the oil and gas sector is Php 18.6 Million. Other material discrepancies per revenue stream and per agency as well as reasons for such discrepancies are discussed in this volume.

Contracts and Maps of Mining and Oil and Gas Operations

As an integral part of this report, contracts of large-scale metallic mines and oil and gas companies may be accessed at http://data.gov.ph/infographics/eiti-dashboard. Although this is not required but merely encouraged under the EITI Standard, the MSG decided to include contract disclosure in this report to give a complete picture of the extractive industries.

Maps of mining tenements and oil explorations are also accessible at *http://data.gov.ph/infographics/eiti-dashboard.*

Legal References

All laws cited in the report are uploaded at the PH-EITI website for easy reference.

Annexes

Annexes of this report may be accessed at *http://ph-eiti.org/#/EITI-Report/First-Country-Report/Annexes-Volume-I*

Philippine EITI Report 2014

The Extractive Industries Transparency Initiative: An Overview

The EITI is a global standard of transparency that requires oil, gas, and mining companies to publish what they pay to the government; and the government to publish what they collect from these companies. The initiative aims to encourage countries to be more transparent in reporting the benefits they receive from their country's natural resources. By publishing material information on payments and revenues, the EITI aims to address the resource curse phenomenon in resource rich but poor economies.

The EITI adheres to the principle that there must be sound management of natural resources. It operates on the premise that the citizens own these resources, and therefore have the right to know how these resources are managed. The EITI standards rest on 3 pillars:

- All revenues from extractive industries should be regularly published and independently verified;
- Publication of data should be managed by a multi-stakeholder group composed of the government, the extractive industries, and civil society; and
- Data should be effectively shared with the country's citizens and stimulate an informed debate about how natural resources are governed.

A consistent and workable approach to disclosure is promoted, with its members collaborating to produce a comprehensive and comprehensible country report that aims to answer the following questions: How much is the government really getting from the extractive industries? How much is the industry actually paying to the government? What are the gaps in our system that we need to address to foster transparency in the extractive industry?

Benefits of EITI implementation

Governments benefit from following an internationally recognized transparency standard that demonstrates commitment to reform and anti-corruption, leads to improvements in the tax collection process, and enhances trust and stability in a volatile sector.

Companies benefit from a level playing field in which all companies are required to disclose the same information. They also benefit from an improved and more stable investment climate in which they can more effectively engage with citizens and civil society.

Citizens and civil society benefit from receiving reliable information about the sector and a multi-stakeholder platform where they can better hold to account the government and companies.

Who are involved in the EITI process?

Globally, EITI is overseen by an international board led by a Chairman, and composed of 20 members who represent implementing countries, supporting countries, civil society groups, business, and investment companies.

The EITI board is supported by an international secretariat which operates under Norwegian law.

The international community provides support to EITI implementation both bilaterally and through the EITI Multi-Donor Trust Fund managed by the World Bank.

At the national level, the EITI is governed by a multi-stakeholder group composed of

representatives from the government, the extractive industries, and the civil society. This body sets the direction for EITI implementation by formulating country objectives, engaging stakeholders, crafting and implementing a work plan, publishing an EITI report, and recommending reforms based on the findings of the EITI report.

How does EITI work?

A country admitted to the EITI first assumes the status of a candidate country. It then publishes a report within 18 months from admission, which contains the following information:

1. Contextual information about the extractive industries;
2. Material payments from the extractive sector as reported by the companies and the government;
3. Identification and explanation of discrepancies in the reported figures; and
4. Recommendations on how to address the problems identified by the report.

An Independent Administrator performs the reconciliation process. After publication, the report is widely disseminated to stimulate public debate and improve the citizens' understanding on how their natural resources should be governed.

Following the publication of the report, a candidate country goes through a validation process to determine if its implementation of EITI complies with the EITI standards. A validator appointed by the International Board evaluates the country's overall implementation according to the following requirements:

1. Effective oversight by the multi-stakeholder group.
2. Timely publication of EITI Reports.
3. EITI Reports that include contextual information about the extractive industries.
4. Production of comprehensive EITI Reports that include full government disclosure of extractive industry revenues, and disclosure of all material payments to government by oil, gas and mining companies.
5. A credible assurance process applying international standards.
6. EITI Reports that are comprehensible, actively promoted, publicly accessible, and contribute to public debate.
7. The multi-stakeholder group is taking steps to act on lessons learned and to review the outcomes and impact of EITI implementation.

If the Board finds that the country has complied with the requirements, the country is declared a compliant country and then undergoes validation every three years.

A country may hold EITI candidate status for not more than five years from the date of its admission as an EITI candidate. If a country has not achieved compliant status within three and a half years of becoming a candidate, the country will be designated EITI candidate country (suspended) while undertaking final corrective actions. The Board may revoke the country's candidate status when it has exceeded the maximum candidacy period, or where the validation shows no meaningful progress has been achieved.

EITI implementation in the Philippines

The Philippines expressed its commitment to participate in the EITI through Executive Order (EO) No. 79 and EO 147 (Annex i). The latter executive issuance formally established the Philippine EITI Multi-Stakeholder Group (MSG) and laid down the operational requirements for the initiative. The MSG is tasked to ensure sustained commitment to the initiative, set the strategic direction for implementing the EITI, remove barriers to its implementation, set the scope of the EITI process, and make sure that the initiative is effectively aligned with the government's reform agenda.

The Philippine MSG is composed of representatives from the government, the extractive industries, and the civil society. The

government is represented by the:

1. Department of Finance
2. Department of Environment and Natural Resources, Mines and Geosciences Bureau
3. Department of Energy
4. Department of the Interior and Local Government
5. Union of Local Authorities of the Philippines.

The civil society is mainly represented by Bantay Kita Philippines, a broad coalition of civil society organizations advocating transparency and accountability.

The extractive industries are represented by the Petroleum Association of the Philippines, Chamber of Mines of the Philippines, and an elected representative from non-chamber members.

The MSG is supported by a Technical Working Group (TWG) and a Secretariat lodged under the Department of Finance which implements the directives of the MSG. (The list of MSG and TWG members, Secretariat and profiles of the agencies or organizations they represent are provided in Annexes ii – v)

Why is the Philippines implementing EITI?

The Philippines was admitted as a candidate country by the EITI Board on May 22, 2013 at the EITI Global Conference in Sydney, Australia. Subsequently, the Philippine EITI multi-stakeholder group determined its objectives for EITI implementation by examining major issues in natural resource management in the country. Consultations with government, industries, and CSO representatives revealed the following major issues that should be addressed:

1. The need for more transparency and accountability in the extractive industries;
2. Conflicting laws and fiscal regime in relation to extractive industries;
3. Lack of or conflicting information on taxes paid and benefits received by communities from extractive industries;
4. The need for a stronger law enforcement to regulate small-scale and stop illegal mining and errant operators in the extractive industries;
5. Unclear sharing of revenues between the national and local governments;
6. Lack of understanding of how the extractive industries work; and
7. Conflict among stakeholders

Given the above issues, the MSG delved into a discussion of how EITI implementation can address these concerns, taking into account the information and procedures prescribed by the new EITI standard. As an outcome of this exercise, the MSG articulated its expectations from the EITI as follows:

1. Build trust among stakeholders;
2. Facilitate the production of timely and reliable data that can serve as bases for the formulation of policies;
3. Provide a platform for informed discussion and dialogue for improved natural resource governance;
4. Level the playing field for industry players;
5. Potential to influence where revenues may be spent;
6. Empowered citizenry; and
7. Promote transparency and accountability

Linking their identified issues in extractive industries with their expectations from EITI implementation, the MSG then determined their common goals and proceeded to finalize their objectives as follows:

1. Show direct and indirect contribution of extractives to the economy.
2. Improve public understanding of the management of natural resources and availability of data.
3. Strengthen national resource management and governance systems.
4. Create opportunities for dialogue and constructive engagement in natural resource management in order to build trust and reduce conflict among stakeholders.
5. Strengthen business environment and increase investments.

CHAPTER 1
Overview of Extractive Industries in the Philippines

CHAPTER 1

Overview of Extractive Industries in the Philippines [1]

The Philippines is rich in mineral, oil, gas, and coal resources, which are largely untapped. There are debates about whether and how to maximize the potential of these resources from varied perspectives: economic growth, history, social and environmental risks, cost and benefit, and inclusive management, among others.

In order to better understand these debates and to help address the issues relating to the extractive industry, it is important to have an appreciation of the sector's value and potential. This chapter provides a general picture of the Philippine extractive industry and explains the following:

- The potential of the country's mineral, oil and gas, and coal resources;
- Its contribution to the economy in terms of added value, exports, employment, and revenue; and
- The companies comprising the extractive industry, including the areas where they explore and operate.

A full text of this chapter is available at *http://ph-eiti.org/#/Papers*

I. Mining Industry

A. Mineral Potential

The Philippines is one of the world's richest countries in mineral resources. This is attributed to its location in the Pacific Ring of Fire, an area that is heavily endowed with mineral deposits. According to the Philippine Mines and Geosciences Bureau (MGB)[1], the country ranks fifth in the world in terms of total mineral reserves. In terms of specific metals, the Philippines is third in gold, fourth in copper, fifth in nickel, and sixth in chromite. In 2010, its total metallic mineral reserves were assessed at 14.5 billion metric tons as shown in Table 1, while its non-metallic mineral reserves were estimated to be 67.66 billion metric tons. Thirty percent of the total land area of the country or 9 million hectares is found to be geologically prospective for metallic minerals. [2]

Based on data provided by the Australia-New Zealand Chamber of Commerce in the Philippines, Gozum, Forbes and Ridsdel (2014) reported lower estimates of the country's mineral reserves as shown in Table 2.[3] In that report, copper reserves are still the largest but the country has only 5.0151 billion metric tons of the metal or 63 % of the MGB's estimate. Gold, nickel, chromium and zinc reserves were estimated in that report to be 79%, 96%, 96% and 85%, respectively, of the Philippine government's mineral reserve estimates. The quality of the reserves was comparable for copper, chromite, and zinc. However, gold and nickel were assessed to be higher in quality. Table 2 also shows the level and quality of the reserves in four other metals, namely iron, manganese, aluminum, and molybdenum.

The country's mineral reserves are estimated to reach US$ 1.387 trillion (see Table 2). Gold, nickel and copper contribute 75% of the total value. Gold accounts for 26% of total value, exceeding the shares of copper and nickel.

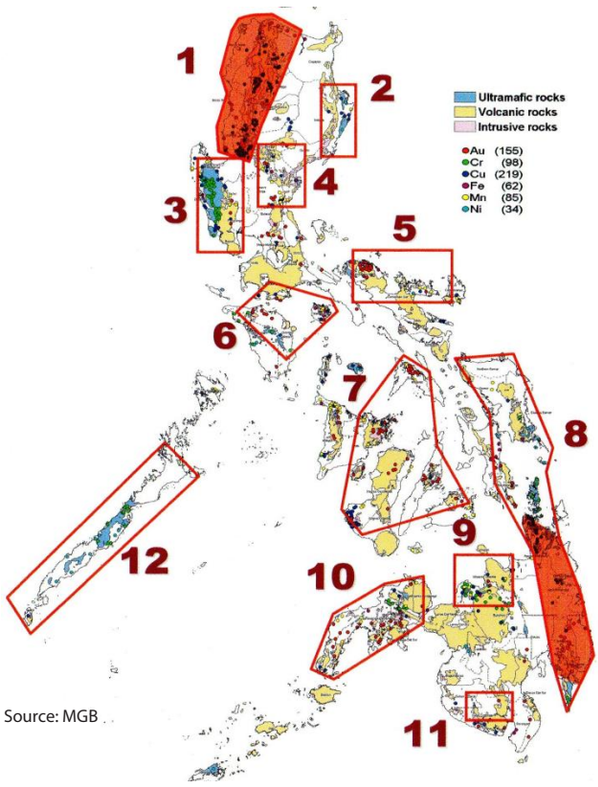
[1] Full text of this chapter was written by Dr. Ramon Clarete, Karlo Adriano, Anton Ragos, and Emmanuel Genesis Andal.

Table 1. Estimated Reserves and Quality of Selected Metals in the Philippines, by Region, in 2010

Region	Gold		Copper		Nickel		Chromite		Zinc	
	Tonnage	Ave. Grade g/t Au	Tonnage	Ave. Grade % Cu	Tonnage	Ave. Grade % Ni	Tonnage	Ave. Grade % Cr2O3	Tonnage	Ave. Grade % Zn
I	861,000	0.46	11,714,540	0.8	0	0	135,210	39.6	n/a	n/a
II	34,820,000	1.51	34,820,000	0.56	6,881,100	1.87	92,180	39.66	n/a	n/a
III	34,820	1.92	79,449,000	0.36	200,719,571	1.29	8,356,255	18.1	n/a	n/a
IV A	6,551,280	1.93	0	0	0	0	0	0	n/a	n/a
IV B	n/a	n/a	178,000,000	0.44	218,600,800	1.17	7,821,150	33.1	n/a	n/a
V	121,355,850	2.43	5,755,890	0.85	2,500,000	0.6	2,339,890	21.65	11,217,248	2.68
VI	338,400,000	2.53	440,910,000	0.41	0	0	0	0	n/a	n/a
VII	n/a	n/a	897,953,000	0.36	0	0	150,000	48	n/a	n/a
VIII	132,800	11.4	34,525,000	0.67	1,160,000	2.36	4,763,009	21.78	n/a	n/a
IX	25,097,238	1.05	2,203,954	0.8	0	0	1,653,244	40.21	2,097,238	1.26
X	1,073,000	5.28	0	0	0	0	2,713,750	16.75	n/a	n/a
XI	893,439,300	1.5	528,362,689	0.38	200,000,000	1.3	842,300	43.54	n/a	n/a
XII	2,180,000,000	0.24	4,181,381,801	1.15	0	0	0	0	n/a	n/a
XIII	330,428,747	1.12	300,000,000	3.9	181,899,952	1.26	10,792,025	13.75	n/a	n/a
CAR	982,718,194	3.31	1,339,791,801	0.46	0	0	0	0	n/a	n/a
Total	**4,914,912,229**	**1.37**	**8,034,867,675**	**0.93**	**811,761,423**	**1.26**	**39,659,013**	**22.13**	**13,314,486**	**2.46**

Source: MGB, as reported by Virola, R. (2012)

Illustration 1. Map of Areas with Potential Mineral Deposits



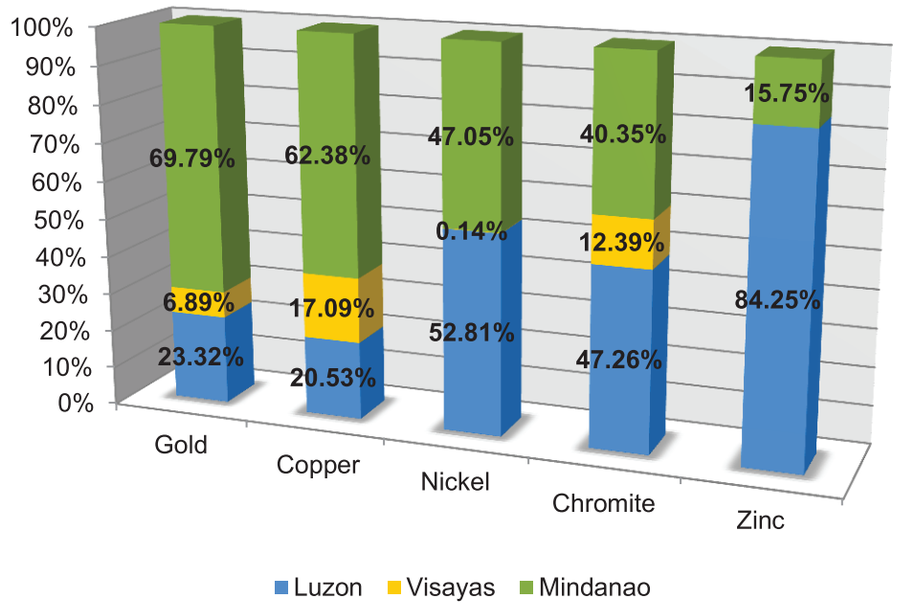
Source: MGB

Potential Areas and Deposits

1. LUZON CENTRAL CORDILLERA
   Au, Cu, Fe, Mn
3. NORTHER SIERRA MADRE
   Cr, Ni, Cu
5. Zambales
   Cr, Ni, Co, Pt, Cu, Au
7. Vizcaya - Aurora
   Cu, Au
9. Bicol
   Au, Fe, Cu
11. Southern Tagalog
    Cu, Au, Mn
13. Central Visayas
    Cu, Au, Ni, Co
15. Samar-Eastern Mindanao
    Au, Cu, Fe, Cr, Ni, Co, Pt, Mn
17. North Central Mindanao
    Cr, Cu, Au
19. Zamboanga Peninsula
    Au, Cu,Cr, Fe
21. Southern Mindanao
    Cu, Au
23. Palawan
    Cr, Ni, Co, PT, Au, Rare Earth Elements

Most of these reserves are located on the islands of Mindanao and Luzon as shown in Figure 1. Of the top three metals, Mindanao has 70% of gold reserves and 62% of copper. Because of the island of Palawan being part of the Luzon group of islands, Luzon has 53% of the country's reserves in nickel. The Luzon group has also the bulk of zinc and chromite reserves.

Figure 1. Selected Mineral Reserves of the Philippines, by Island Group as of 2010 (in %)



Source: MGB, as reported by Virola (2012)

Table 2. Estimated Value of Philippine Mineral Reserves

Mineral	Quantity (in mln. mt.)	Average Grade	Value (US$ Billion)
Gold	3,869	2.68	367.0
Copper	5,051	0.90	318.0
Nickel	783	2.62	328.0
Chromite	38	24.55	1.0
Iron	483	42.05	103.0
Manganese	3	45.31	0.1
Aluminum	434	27.50	263.0
Zinc	11	2.66	1.0
Molybdenum	306	0.08	6.0
TOTAL			**1,387.1**

Source: Australian-New Zealand Chamber of Commerce Philippines

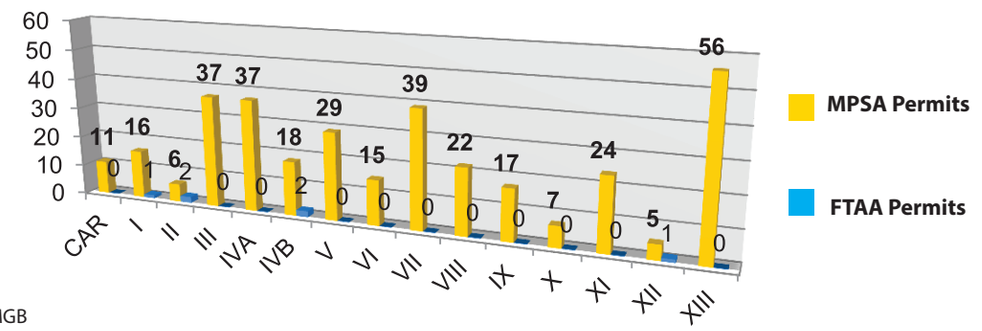
With its abundant mineral wealth, the Philippines has the potential to become one of the biggest players in the global metallic resource sector. The mining industry can significantly contribute to the country's economic growth, especially in Mindanao, where majority of these reserves are located and which is the least developed of the country's top three island groups.

These reserves need to be tapped first before the Philippines can realize this potential. There is evidence, however, that mining activities in the country lag behind their potential for significantly contributing to economic growth. Citing data from the MGB, the Senate Economic Planning Office reported that at least US$ 840 billion worth of metallic minerals remain untapped. The amount is more than half of what Gozum et al. (2014) estimated to be the total value of mineral reserves of the country. It is three times larger than the Philippine gross domestic product (GDP) estimated at US$ 272 billion in 2013. [4] The list of the less than fully tapped reserves includes gold, copper, nickel, chromite, manganese, silver and iron. [5]

Out of the total area known to be geologically prospective for metallic minerals, only 7.9 % or 710,884 hectares were covered by mining permits as of July 2014. Some of these mines, however, may already have closed, or are not yet operating.

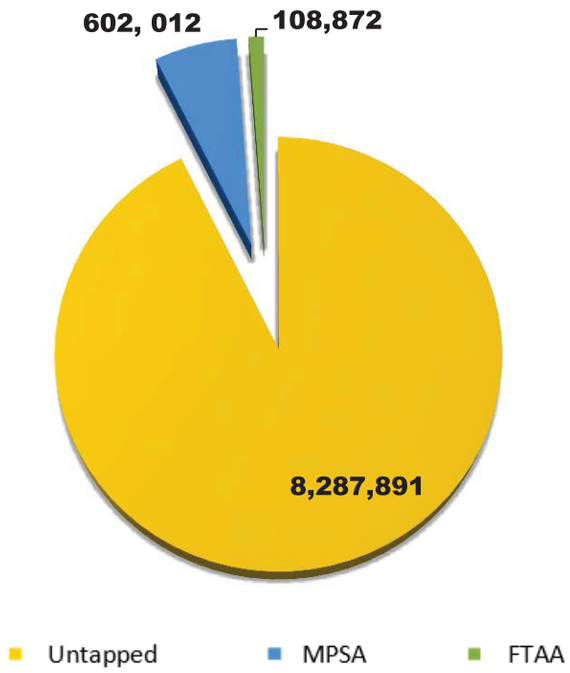
In the Philippines, mining activities are conducted either under a mineral production sharing agreement (MPSA) or a financial or technical assistance agreement (FTAA). These agreements are between the mining firm and the government to conduct mining exploration, operation, and related activities. To date, the country has 339 MPSAs covering a total land area of 602,012 hectares, and 6 FTAAs operating on a land area of 108,872 hectares (See Figures 2 and 3). 46% of the mining permits had been issued on mining activities in Luzon, while 32% and 22% were issued in Visayas and Mindanao, respectively.

Figure 2. Number of Mineral Production Sharing Agreements (MPSA) and Financial or Technical Assistance Agreements (FTAA) as of July 2014, by Region



Source: MGB

Figure 3. Mining Areas Covered by Mining Permits as of July 2014 (in hectares)



Source: MGB

In 2013, there are 38 mining projects in the Philippines, up from 23 in 2009. Only 1 of these projects are undertaken under an FTAA, while the rest are MPSA projects. Fifty eight percent of all the projects are mining nickel. Twenty nine percent are into copper, gold, silver and/or zinc. There are three chromite projects, while two were mining iron, compared to none in 2009. More than half of these mines are located in Mindanao, particularly in Northeastern Mindanao or Region XIII, where 17 nickel mines are operating. Luzon has 14 mining projects, most of which are into gold and/or copper. Visayas has only 4 operating mines.

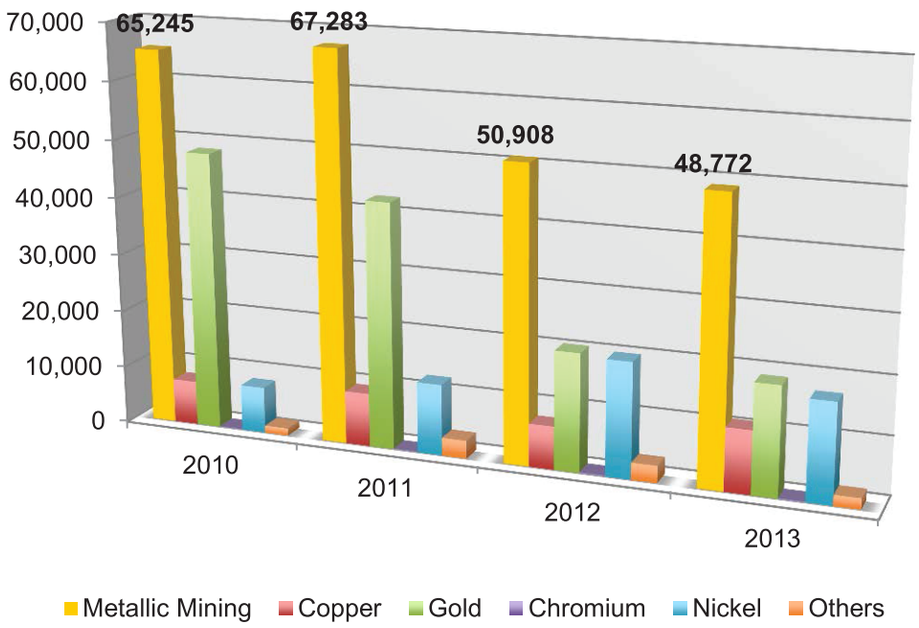
B. Contribution to the Economy

1. Gross Value Added and Gross Domestic Product

The average contribution of the mining industry to the economy has been low relative to its potential. Its average gross value added (GVA) at current prices in the period from 2010 to 2013 was PhP 58,052 million. This amounts to 0.58 % of the gross domestic product (GDP) of the Philippines. The contribution is even 14% lower than its peak contribution in 2011 amounting to PhP 67,283 million as shown in Figure 4. Gold mining has contributed the most, accounting for 0.33% of the country's GDP for the same period. Nickel comes second with a 0.14% contribution, followed by copper with 0.09% (see Figure 5).

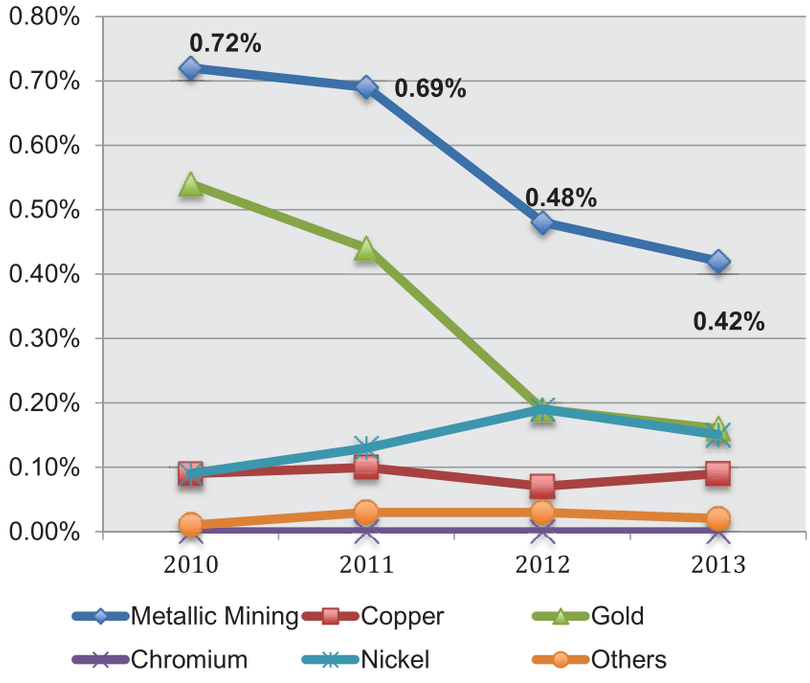
It is important to note that the GVA by gold mining sharply dropped starting in 2012, from an average of PhP 45,352 million a year to PhP 20,412 million in 2012. This followed the stricter enforcement by the Bureau of Internal Revenue of a 7% tax on gold. The base of this 5% creditable withholding tax plus a 2% excise tax is the sale of gold by small-scale mining firms to the Bangko Sentral ng Pilipinas (BSP) in the third quarter of 2011. As the statistics for gold in Figures 4 and 5 show, the GVA of gold mining had significantly declined in 2012, and appeared to stabilize at this lower figure, about more than half of what it used to be.

Figure 4. Gross Value Added from Selected Metallic Mining Activities, 2010 to 2013 (in mln. PhP at current prices)



Source: Philippine Statistical Authority (PSA)

Figure 5. Share of Metallic Mining to Philippine GDP, 2010 to 2013 (in %)



Source: PSA

2. Exports

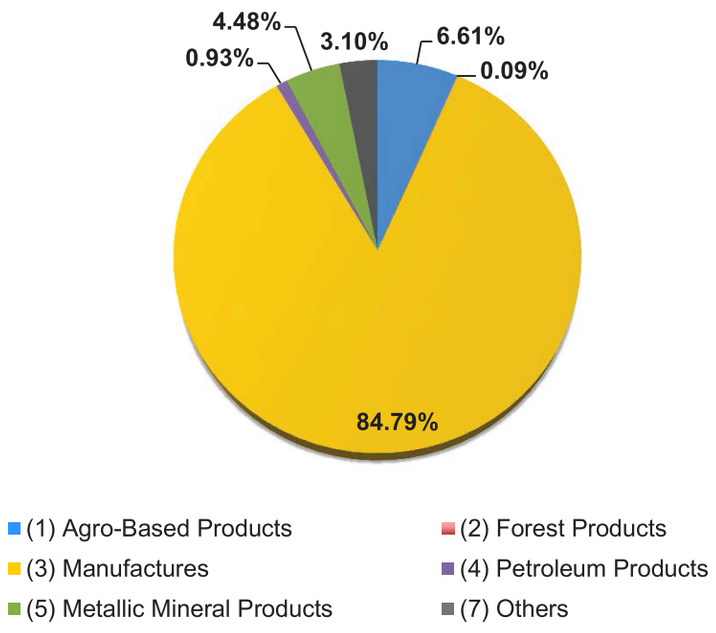
The contribution of metallic mining to the country's total exports is larger than what the industry contributes to the country's GDP. The average contribution of metallic mineral products to total exports is 4.48% in the period from 2009 to 2012. In the same period, the industry exported the average value of US$ 2,144 million. Metallic mining exports increased from 2009 to 2012 by about 46%. Copper contributed the largest, followed by copper concentrates, gold, iron ore agglomerates, and chromium ore. (See Table 3 and Figure 6)

Table 3. Philippine Metallic Mineral Exports from 2009 to 2012 (F.O.B. value in million US dollars)

Commodity Group	2009	2010	2011	2012	Average
(1) Agro-Based Products	2,141	2,922	4,015	3,579	3,164
(2) Forest Products	33	28	50	58	42
(3) Manufactures	33,058	44,694	39,320	44,260	40,333
(4) Petroleum Products	293	371	648	465	444
(5) Metallic Mineral Products	1,470	1,929	2,840	2,337	2,144
a. Copper Concentrates	150	261	337	244	248
b. Copper Metal	688	805	1,212	505	803
c. Gold	116	128	214	108	142
d. Iron ore agglomerates	92	110	63	86	88
e. Chromium ore	11	10	8	8	9
f. Nickel	0	0	0	0	0
g. Other Metallic Products	415	616	1,005	1,368	851
(7) Others	1,440	1,553	1,432	1,401	1,457
TOTAL EXPORTS	**38,435**	**51,497**	**48,305**	**52,100**	**47,584**

Source: PSA

Figure 6. Average Share of Metallic Mineral Products to Total Exports, 2009 to 2012 (in %)

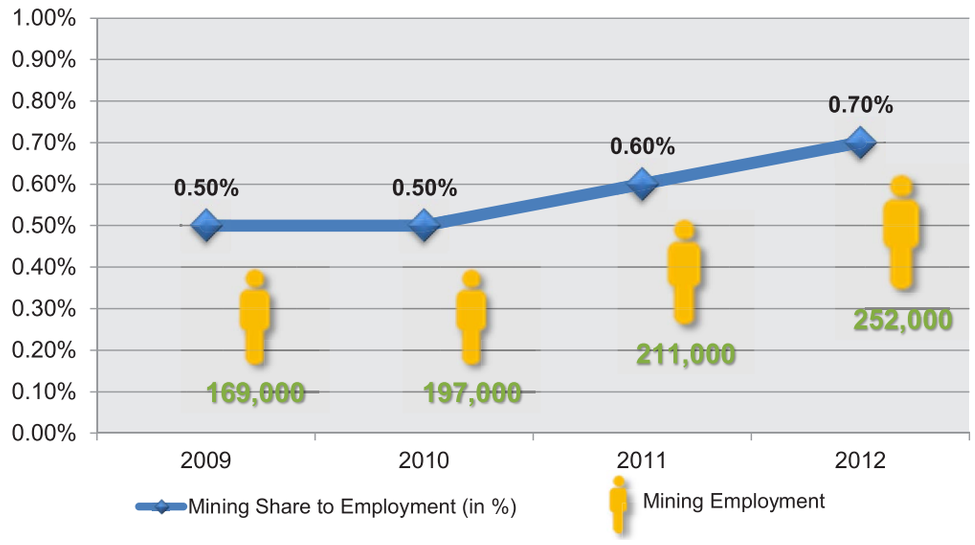


Source: PSA

3. Employment

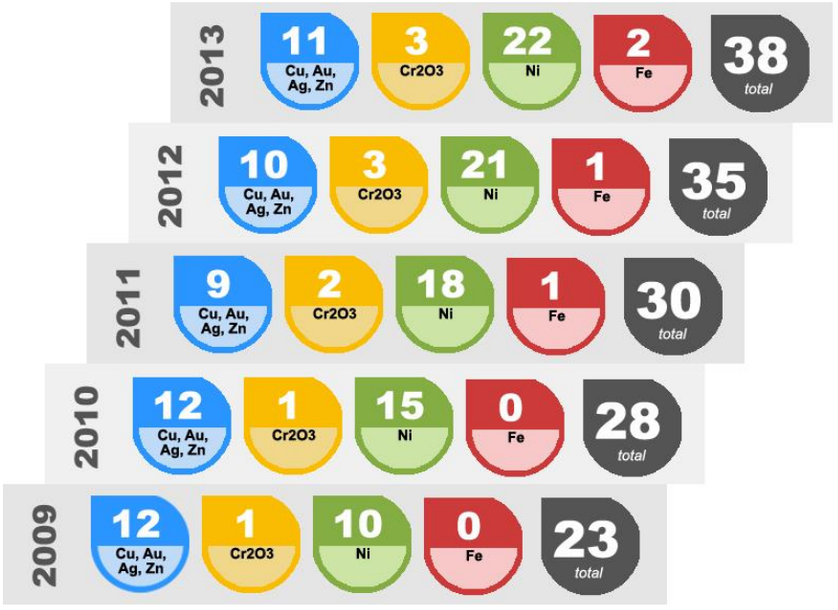
The contribution of the metallic mining industry to job creation is small, which apparently reflects its relatively low contribution to the GDP of the country. In 2009, the mining industry employed around 169,000 out of the total 33 million individuals in the work force. This accounted for 0.5% of total employment, as shown in Figure 7. However, the number of direct jobs created by the industry increased in 2012. Out of the 36 million workers, 252,000 were employed by the industry, which corresponds to a 49% increase in employment from 2009 to 2012. This can be associated to a significant increase in the number of operating metallic mines, from 23 operating mines in 2009 to 35 in 2012 as shown in Figure 8.

Figure 7. Contribution of the Mining Industry to Employment, 2009-2012



Source: MGB

Figure 8. Number of Operating Metallic Mines from 2009 to 2013, by Mineral



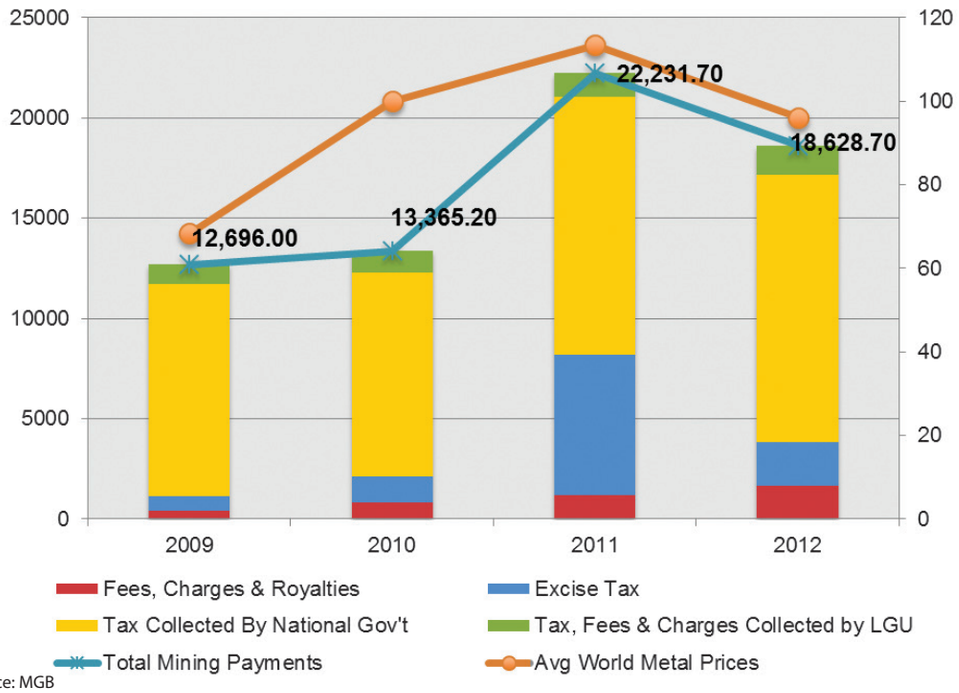
Source: MGB

4. Revenues

Tax revenues from the mining industry had increased since 2009. The mining industry paid the government PhP 12,696 million in that year as shown in Figure 9. The amount doubled in 2011, reaching PhP 22,237.1 million. From 2009 to 2011, the average rate of increase of tax payments by the industry is 75%. The growth is attributed to an increase of total industry output, which in turn is due to rising world metal prices since 2009. However, when metal prices declined in 2012, tax payments dropped by 16% to PhP 18,628.7 million. In addition to falling metal prices in the world, the industry's future became uncertain with the issuance of Executive Order No. 79. Among other things, the government had initiated a tax reform process aimed at increasing the share of the government from mining activities.

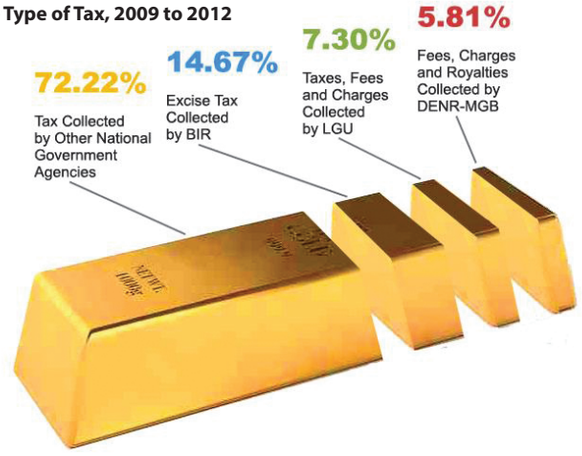
The National Government (NG) collects the bulk of tax payments by the industry. From 2009 to 2012, the NG collected 93% of industry taxes as shown in Figure 10. The various LGUs in the areas where there are mining activities collected the remaining 7.3% of mining tax revenues. Of the taxes collected by the National Government, 18 % were excise tax receipts of the BIR, while fees, charges and royalties collected by Department of Environment and Natural Resources through its Mines and Geosciences Bureau accounted for 6.5% (see Figure 9).

Figure 9. Mining Tax Revenues (in million PHP) and Average World Metal Prices (2009 to 2012)



Source: MGB

Figure 10. Mining Taxes, by Type of Tax, 2009 to 2012



Source: MGB

Although mining tax revenues had increased since 2009, the contribution of mining to total government tax income remained low, averaging 1.18% of total government tax receipts, in the period from 2009 to 2012 (See Table 4). Mining taxes peaked in 2011, with a contribution of 1.51%. This was due to excise taxes, which rose by 400% from the preceding year, when world metal prices reached their highest levels in the same period. However, this was not sustained. The share went down to 1.12% in 2012 when excise tax revenues plummeted by 68.4%, this time due to falling metal prices and enforcement of the excise tax and withholding tax on gold sales by small-scale miners, as mentioned above.

Table 4. Share of Mining Tax Revenue to Total Government Receipts from 2009 to 2012

	2009	2010	2011	2012	Average
National Government Revenue (A)	1,123.2	1,207.9	1,359.9	1,534.9	1,306.48
Total LGU Revenue from Local Sources (B)	95.7	106	114.9	125.8	110.6
Total Revenue (A+B)	1,218.9	1,304.3	1,474.8	1,660.7	1,414.68
Total Revenue from Mining	12.7	13.4	22.2	18.6	16.73
Share of Mining Revenue to Total	**1.04%**	**1.03%**	**1.51%**	**1.12%**	**1.18%**

Source: MGB, Department of Finance (DOF), Bureau of Local Government Finance (BGLF)

C. Production Figures

The average value of metallic mining output reached PhP 512,227 million in the period from 2009 to 2013. Gold generates the largest value at PhP 251,581 million. Other metallic mineral products of the industry include nickel ore, copper concentrates, nickel sulfides, silver, iron ore, zinc, and chromite. About 87% of total value is accounted for by the top 3 mineral products, namely gold, nickel ore and copper concentrates.

Although gold has generated the highest value among selected metallic mineral products, its contribution had sharply dropped in 2012. Between 2010 and 2012, the value of gold output decreased by 53.6% as shown in Figure 11. Its value further declined in the following year from PHP 32,721 million in 2012 to PHP 32,441 million in 2013. The decline of gold output values may be attributed to the stricter enforcement of the 7% tax on the sale of gold by small-scale mines through BSP starting in the third quarter of 2011. The base of the tax, made up mostly of sales of gold by small-scale mines to BSP, simply disappeared. Small -scale mining is estimated to account for 61.8% of the total production volume of gold in 2010, according to the MGB.

Figure 11. Metallic Production by Value and No. of Projects from 2009 to 2013

	Chromite	Copper Concentrate	Gold	Iron Ore	Nickel Ore	Nickel Sulfides	Silver	Zinc	Total
2013	175	22,358	32,441	1,487	29,359	11,469	1,332	697	99,318
	2	6	14*	2*	19	2	12	2	59
2012	221	15,546	32,721	1,837	34,875	11,158	1,887	792	99,037
	2	4	10*	2*	20	1	9	2	50
2011	145	19,092	63,143	0	25,602	11,197	2,056	1,037	122,272
	2	4	10*	0	18	1	10	2	47
2010	117	15,776	70,508	0	14,081	9,765	1,190	503	111,940
	1	4	10*	0	13	1	9	1	39
2009	126	10,818	52,768	0	7,070	7,738	716	424	79,660
	1	4	11*	0	9	1	11	1	38
Ave. value	784	83,590	251,581	3,324	110,987	51,327	7,181	3,453	512,227

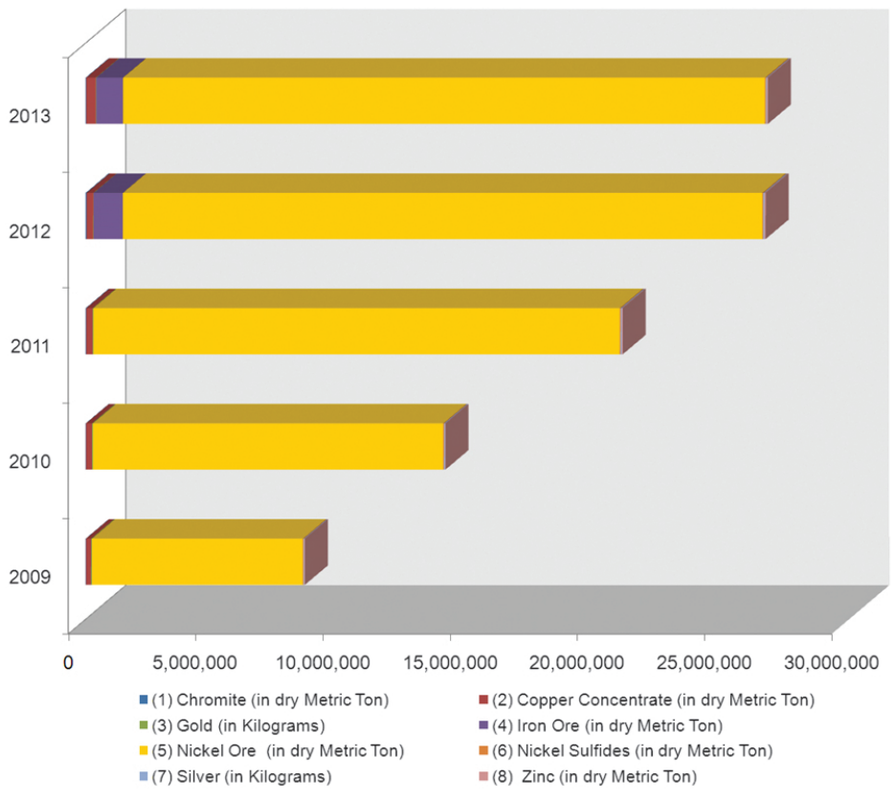
Value >> in million PhP

\# of Projects >> a mine can have more than one mineral products

* excluding small scale mines

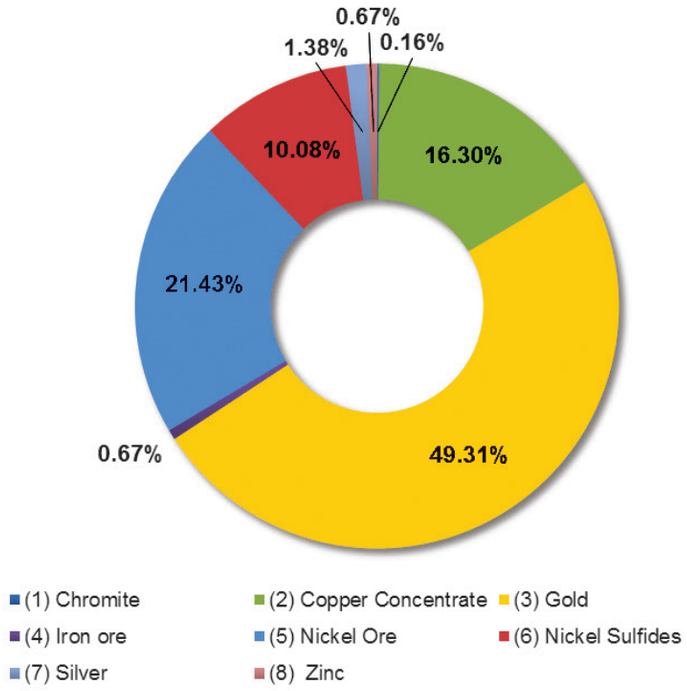
Source: MGB

Figure 12. Metallic Production by Volume from 2009 to 2013



Source: MGB

Figure 13. Average Contribution per Type of Metal to Total Metallic Production Value from 2009 to 2013 (in %)



Source: MGB

Owing to its untapped potential and capital intensive nature, the average contribution of the mining industry to the economy remains relatively small, both financially and with regard to employment. After an initial increase in revenue since 2009, which peaked in 2011, these revenues diminished afterwards due to decreasing world metal prices, uncertainty over mining policy, and a decline in taxes from small-scale miners.

D. Mining Operations

1. MPSA and FTAA

As of 2013, there are 38 operating metallic mines where 37 mines are covered by MPSAs and 1 operating mine (Oceana Gold) is covered by a FTAA. Out of these mines, more than half are located in the Mindanao region, which are mostly nickel producers. In fact, 17 mines or 44.74% of total operating mines are in Region XIII (CARAGA in the northeastern part) where 14 of these mines are nickel producers, while the other 3 mines in Mindanao are located in Region IX (Zamboanga Peninsula) and Region XI (Southern Mindanao). On the other hand, Luzon accounts for 36.8% or 14 out of the 38 operating mines followed by Visayas which only has 4 operating mines. The mines in Luzon are comprised mostly of gold and copper mines. (See Table 5)

Table 5. Operating Metallic Mines as of 2013

Mineral	Company	Project Name	Mine Location
Gold with Silver	(1) Lepanto Consolidated Mining Company	Victoria Gold	CAR
	(2) Lepanto Consodlidated Mining Company	Teresa Gold	CAR
	(3) Philippines Gold Processing and Refining Corporation	Masbate Gold	Region V
	(4) Johnson Gold Mining Corporation	Paracale Gold Project	Region V
	(5) Apex Mining Company Inc	Apex Maco Operation	Region XI
	(6) Philsaga Mining Corporation	Banahaw Gold Project	Region XIII
	(7) Benguet Corporation	Acupan Contract	Region I
	(8) Atok Gold Mining Co	Gumatdang Contrat Mining Project	CAR
	(9) Greenstone Resoures Corporation	Siana Gold Project	Region XIII
	(10) Oceana Gold Phil	Dipidio Copper Gold Project	Region II
Copper with Gold and Silver	(1) Philex Mining Corporation	Padcal Copper-Gold Operation	CAR
	(2) Carmen Copper Corporation	Toledo Copper Project -Lutopan	Region VII
	(3) TVI Resources Development Philippines Inc	Canatuan Mining Project	Region IX
	(4) Carmen Copper Corporation	Toledo Copper Project -Carmen	Region VII
Chromite	(1) Krominco Inc	Dinagat Chromite Project	Region XIII
	(2) Cambayas Mining Corporation	Homonhon Chromite Project	Region VIII
Nickel	(1) Zambales Diversified Metals Corporation	Sta. Cruz Candelaria Project	Region III
	(2) Benquet Corporation	Sta. Cruz Nickel Project	Region III
	(3) Rio Tuba Mining Corporation	Rio Tuba nickel Project	Region IVB
	(4) Citinickel Mines and Development Corporation	Toronto and Pulot Nickel Projects	Region IVB
	(5) Berong Nickel Corporation	Berong Nickel Project	Region IVB
	(6) SR Metals, Incorporated	Tubay Nickel-Cobalt Mining Project	Region XIII
	(7) AAM-Phil Natural Resources Exploration Development Corporation	Dinagat Chromite-Nickel Project	Region XIII

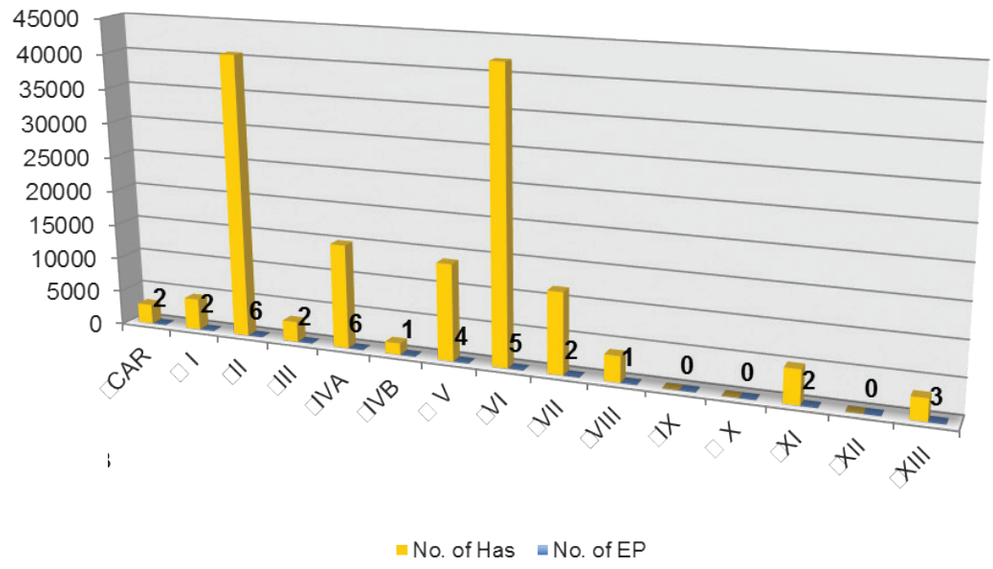
Mineral	Company	Project Name	Mine Location
	(8) Cagdianao Mining Corporation	Cagdianao Nickel Project	Region XIII
	(9) Hinatuan Mining Corporation	Tagana-an Nickel Project	Region XIII
	(10) Shuley Mine Incorporated	Nonoc Nickel	Region XIII
	(11) Platinum Group Metals Corporation	Cagdianao Nickel Project	Region XIII
	(12) Taganito Mining Corporation	Taganito Nickel Project	Region XIII
	(13) Shenzhou Mining Group Corporation	Tandawa Nickel Project	Region XIII
	(14) CTP Construction and Mining Corporation	Adlay Nickel Project	Region XIII
	(15) CTP Construction and Mining Corporation	Dahican Nickel Project	Region XIII
	(16) Carrascal Nickel Corporation	Carrascal Nickel Project	Region XIII
	(17) Marcventures Mining and Development	Cantilan Nickel Project	Region XIII
	(18) Oriental Synergy Mining Corporation	Moutaint Top Nickel Project	Region XIII
	(19) Adnamaa Mining Resources Incorporated	Urbiztondo Nickel Project	Region XIII
Copper, Gold, Silver and Zinc	(1) Rapu-Rapu Minerals, Inc.	Rapu-Rapu Polymetallic Project	Region V
Iron	(1) Leyte Iron Sand Corporation	Leyte Magnetite Project	Region VIII
	(2) Ore Asia Mining & Development Corporation	Camachin Iron Ore Mining Project	Region XI
Total	**38 Operating Mines**		

Source: MGB

2. Exploration Permits

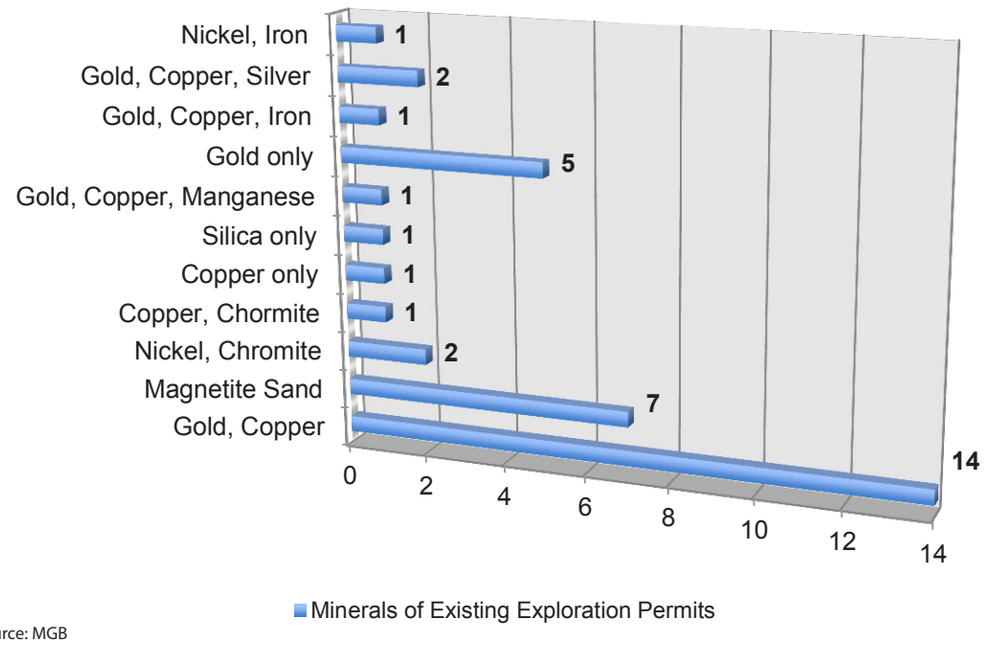
As of 2014, there are 36 existing exploration permits (EPs) covering a total land area of 147,050.44 hectares (See Figure 14). Except for three regions, the rest of the regions have existing EPs. Regions II (Cagayan Valley in Northern Luzon) and IV-A (CALABARZON in Southern Luzon) have the most number of EPs with 6 projects each. Further, majority of the EPs have gold and/or copper minerals as potential commodities. Out of the 36 existing EPs, 69.4% or 25 have either gold or copper as potential mineral products. Magnetite sand and nickel minerals with 7 and 3 existing EP projects, respectively, follow gold and copper. (See Figure 14)

Figure 14. Number of Existing Exploration Permits and Land Area (in hectares) Covered as of 2014



Source: MGB

Figure 15. Potential Mineral Products of Existing Exploration Permits as of 2014



Source: MGB

At present, 38 metallic mines operate in the Philippines, majority of which can be found in the Mindanao region. As of 2014, the government has issued 36 permits to explore an estimated total land area of 147,050 hectares.

For oil and gas, 29 petroleum service contracts are currently active, 22 of which are in the exploration stage while the rest are undertaking production. Most of these are offshore, while some are partly onshore. There are 11 more areas being offered to potential contractors for exploration in the latest energy contracting round.

Most of the country's coal reserves are located in Semirara Island in Antique province. The Semirara Mining Corporation, with its exclusive right to operate in the island, is the dominant player in local coal production. Coal production has constantly increased in the past three decades, especially in 2000.

Mining has contributed 1.12% of total government revenues in 2012; while oil and gas has put in 3% of the total revenue of government for the same period. The share of coal revenue is 12% of the country's GDP.

II. Oil and Gas Industry

A. Potential Deposits

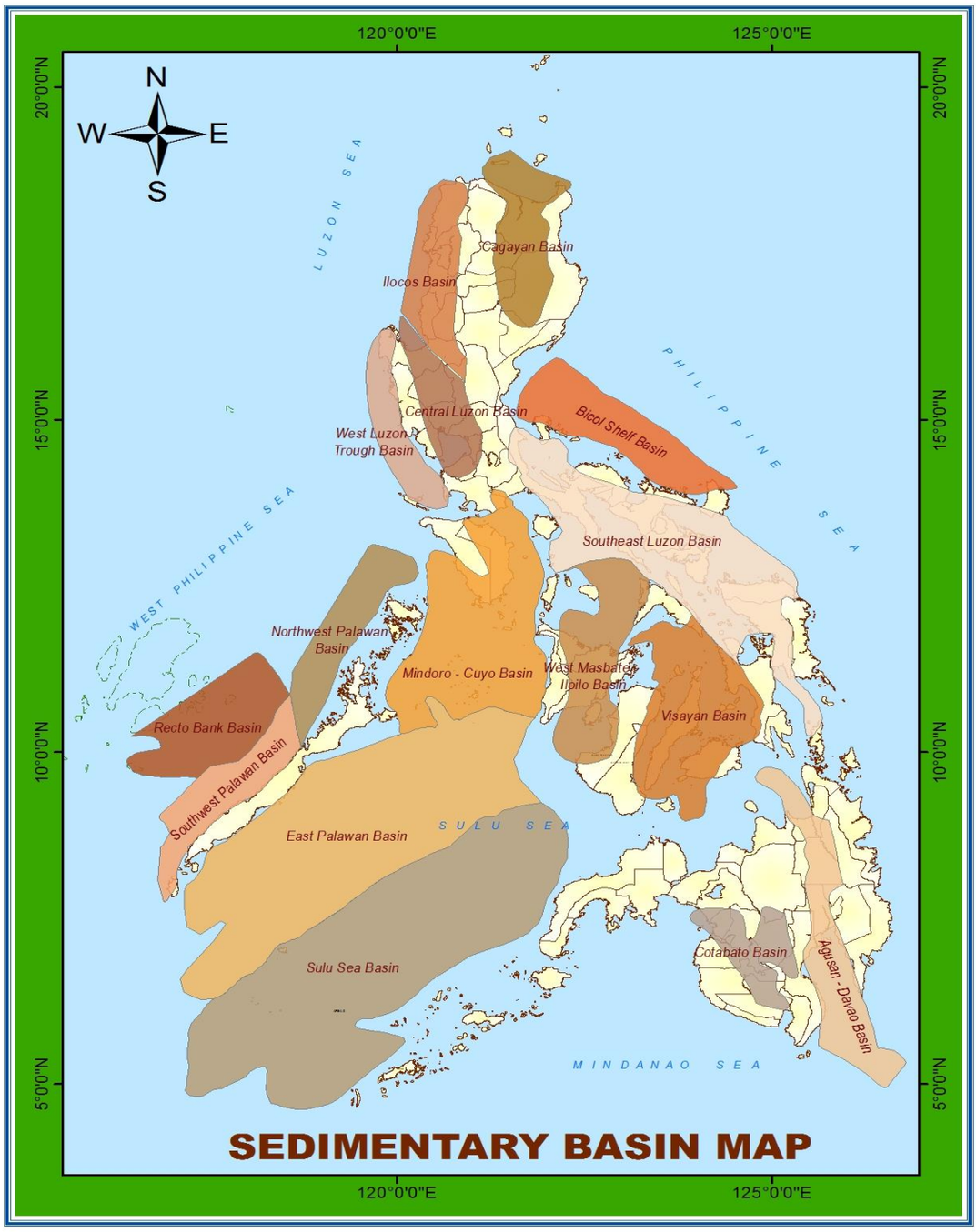
The Department of Energy (DOE) had identified areas in the Philippines with potential deposits of petroleum. As enumerated in Table 6, most of the areas are offshore. Some areas are partly onshore such as the Sulu Sea and the West Luzon Basins, with about 5% onshore deposits and the Mindoro-Cuyo Basin, 10%. Those in the Visayas and Luzon are mostly on-shore deposits: the Visayan Basin, 30% onshore; the Agusan-Davao, the Bicol Shelf, Ilocos Shelf, and the West Masbate-Iloilo Basins, 40%; the Southeast Luzon Basin, 45%; the Cagayan Basin, 80%; and the Central Luzon Basin, 95% onshore.

Table 6. Areas in the Philippines with Potential Petroleum Reserves

Basin Located	Area (sq. km.)	Poten• al Oil Reserves (million BBOE)	Wells Drilled
Ilocos Shelf	19,500	19	1
West Luzon	24,000	23	0
Mindoro-Cuyo	58,000	832	15
Northwest Palawan	416,000	2,318	110
Recto Bank	71,000	440	7
Southwest Palawan	44,000	1,355	24
East Palawan	92,000	443	4
Central Luzon	16,500	902	23
Sulu Sea	115,000	203	26
Cagayan	24,000	396.4	37
Bicol Shelf	32,500	44	6
Southeast Luzon	66,000	301	52
West Masbate-Iloilo	25,000	5	10
Visayan	46,500	1,260	174
Agusan-Davao	33,000	196	3
Cotabato	14,000	158	14

Source: Castillo (2012)

Illustration 2. Map of Areas with Potential Deposits of Petroleum



Source: DOE, 2014

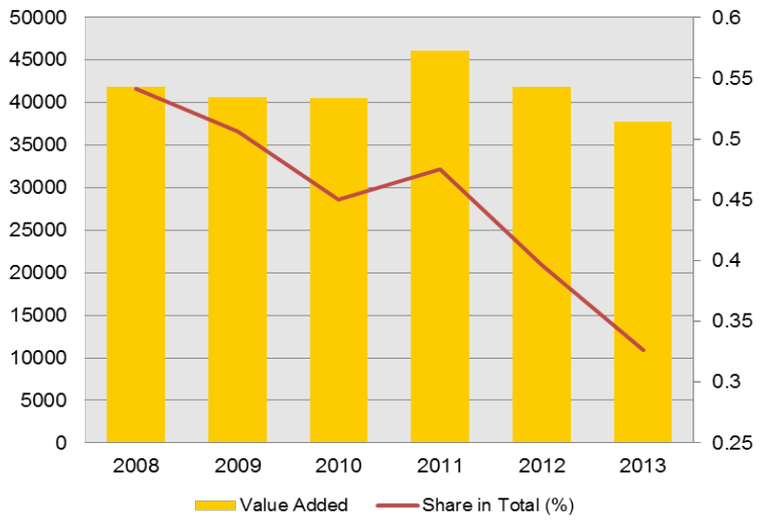
B. Contribution to the Economy

1. Gross Value Added, Gross Domestic Product and Exports

The value added and exports of the industry in current prices, and their respective shares to total are lower compared to those of the metallic mining industry. In Figure 16A, the respective growth trends of the industry's value added, and its corresponding share in the country's GDP are comparable.

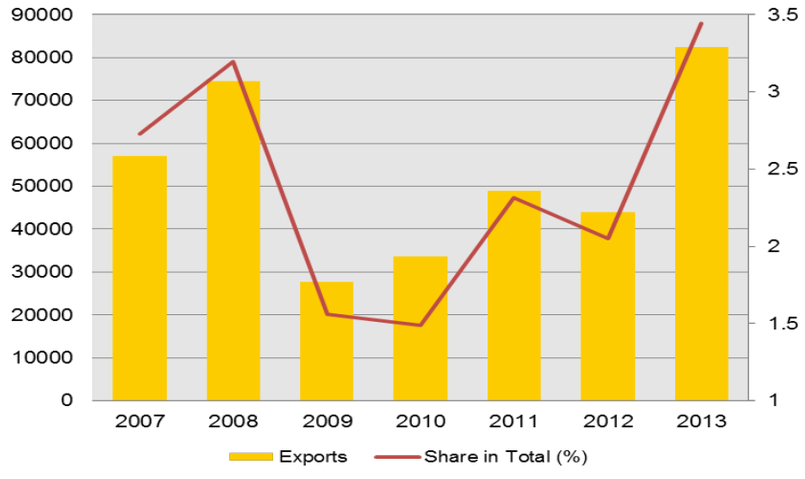
The level of petroleum exports and their share to total, shown in Figure 16B, moved in the same direction since 2010, peaking in 2013. The value of exports is notably larger than their contribution to GDP. This is mainly attributed to the fact that the country's petroleum industry is primarily engaged in downstream activities, comprising primarily importing, exporting, re-exporting, shipping, processing and marketing of petroleum products. [6] An industry's exports exceed its value added if a significant part of exports come from processing imported petroleum products for export markets.

Figure 16A. Oil and Gas Value Added and the Respective Shares in Total, 2008-2013 (in Million PhP)



Source: Philippine Statistical Yearbook, National Statistical Coordination Board-Philippine Statistical Authority (NSCB-PSA).

Figure 16B. Oil and Gas Exports and the Respective Shares in Total, 2007-2013 (in Million PhP)

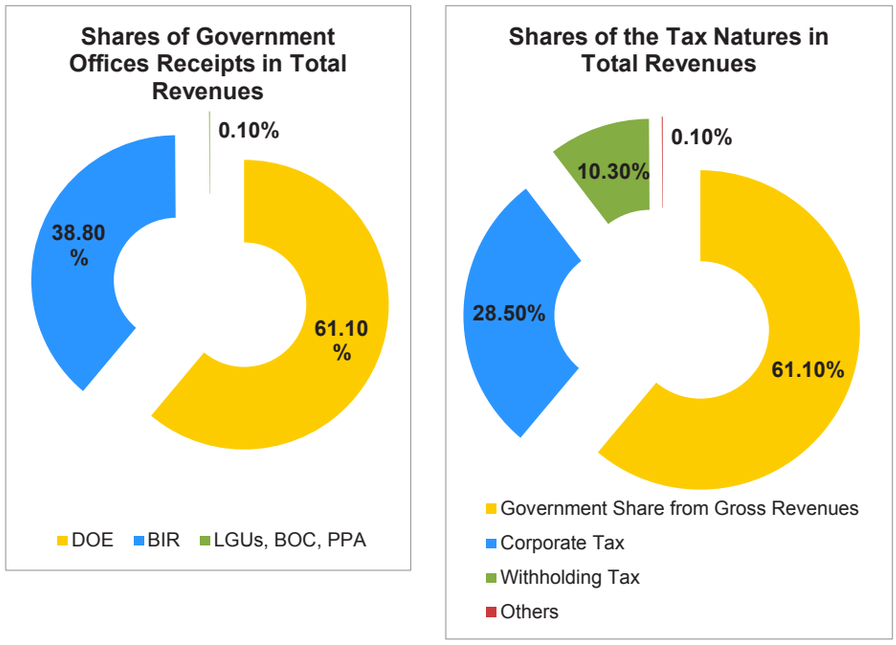


Source: UN Comtrade

2. Revenues

Oil and gas taxes make up about 3% of total government revenue in 2012. As shown in Figure 17, the government's share in total gross revenues from the industry makes up the bulk of the government's income from the industry's activities. The DOE and BIR receive the large part of what the industry contributes to the government's income. The national government share of the industry's gross sales and the corporate income tax top the revenues collected by the government from the industry. Overall, government income from the oil and gas industry account for 3% of total government receipts in 2012.

Figure 17. Shares of Government Offices Receipts and Tax Nature in Total Revenue Receipts [2] (2012)



Source: PH EITI Secretariat.

3. Revenue Sharing Regime

A contractor bears all the costs associated with exploration, development, and operation. In return, the contractor is allowed to recover operating expenses for up to 70% of the gross revenues. If the operating expenses exceed this amount, the excess will be carried over and recovered from the gross revenues in the succeeding year. These include, among others, surveys, test, and studies; setting up of equipment and facilities; administrative costs and home office overhead; transportation and handling costs related to the sale of production; and two-thirds of the interest payments for financing the operation . [7]

A Filipino Participation Incentive Allowance (FPIA) of up to 7.5 percent of gross revenues is also given, depending on the aggregate participation by Filipino citizens and corporations, to encourage indigenous participation in the petroleum sector. Table 7 gives the details of the available FPIA. Furthermore, the maximum 7.5% FPIA is also awarded if Filipino participation is at least 15% and the SC stipulated is at least 85% of SC area in depths more than 200 meters, or Filipino participation is at least 15% and the well drilled is in waters more than 200 meters deep, even if outside the deepwater area. [8]

[2] Data based on companies that submitted reporting template to the Independent Administrator of PH-EITI as of October 16, 2014

Table 7. Breakdown of the FPIA

Filipino Participation	Incentive Allowance
30% and above	7.5%
27.5% but less than 30%	6.5%
25% but less than 27.5%	5.5%
22.5% but less than 25%	4.5%
20% but less than 22.5%	3.5%
17.5% but less than 20%	2.5%
15% but less than 17.5%	1.5%
15% <	0%

Source: Quintero (2009)

The contractor gets a share of the net revenues realized from production, i.e. after deducting the FPIA and the availed cost recovery. The national government obtains 60% of the net revenues. The income tax liability of the contractor will be paid out of the government's share. The DOE pays the contractor's income tax to the Bureau of Internal Revenue (BIR). The income tax liability of the contractor is 30% of its grossed-up net revenues share. Lastly, 40% of what is left to the government after paying the income tax liability of the contractor goes to the relevant LGU. Table 8 gives a sample computation of the distribution of revenues from annual production, where we assume that the maximum FPIA and maximum cost reimbursement are availed.

Table 8. Sample Distribution of Revenues from Petroleum

Gross Revenues	100.00
Less: FPIA	7.50
Less: Cost Recovery	70.00
Net Revenues	22.50
Contractor's Share (22.5 x 0.4)	9.00
Government's Share (22.5 x 0.6)	13.50
Income Tax (Contractor's Share/0.7) x 0.3	3.86
Government Share, after deduction of income tax	9.64
National Government Share (9.64 x 0.6)	5.78
LGU Share (9.64 x 0.4)	3.86

Source: Quintero (2009)

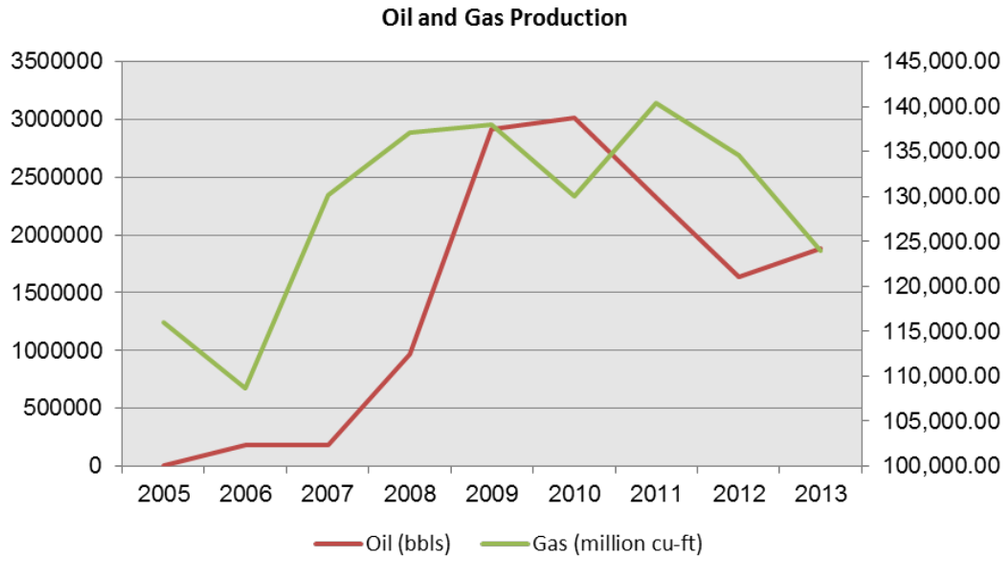
4. Employment

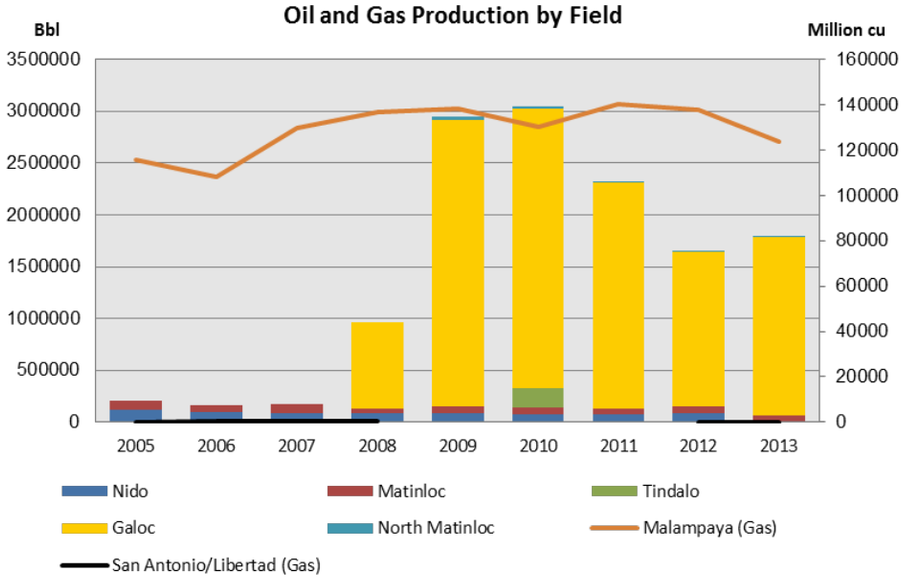
The industry employed about 1,000 people in 2012. The number fell to less than 500 jobs in 2013. Both these figures are less than 1% of the total number of persons employed in both years.

C. Production Figures

The provinces where oil and gas extraction activities are concentrated are adjacent to the areas with discovered petroleum deposits in commercial quantities. These include: Bohol (Visayan Basin), Cagayan (Cagayan Basin), Cebu (Visayan Basin), Isabela (Cagayan Basin), Leyte (Visayan Basin), Nueva Ecija (Central Luzon Basin), Occidental Mindoro (Mindoro--Cuyo Basin), Palawan (Northwest Palawan and Recto Bank Basins), Tarlac (Central Luzon Basin), and Tawi--tawi (Sulu Sea Basin). These provinces host the petroleum service contractors (SC). Figure 18 portray the country's oil and gas production by field. From 2008 onwards, the Galoc field is the country's top producer of petroleum oil. Nearly all the country's gas production comes from Malampaya. Figure 19 shows total production in value added by field.

Figure 18. Domestic Oil and Gas Production [3], Total and by Field (2005-2013)

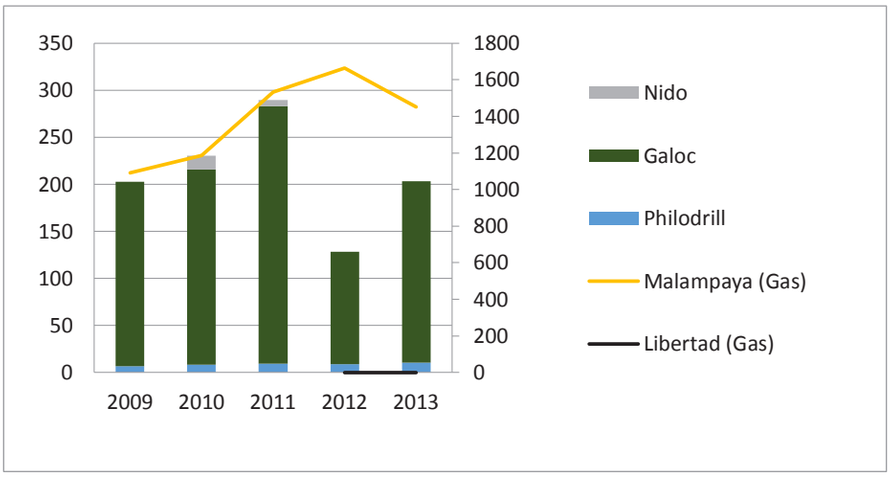




Source: Philippine Statistical Yearbook, NSCB-PSA; Petroleum Resources Development Division, DOE

[3] Left axis: bbl; Right axis: in million cu ft.

Figure 19. Value Added of Oil and Gas Industry, 2009 to 2013



Source: DOE

D. Significant Exploration Activities

There are currently 29 active petroleum SCs, 22 of which are in the exploration stage and the remaining 7 are in the production stage. [9] Of the 29 SCs, 18 are in the Northwest Palawan Basin. Beside these SCs, the DOE, through the current contracting round, the Philippine Energy Contracting Round 5, there is a total of 11 areas for offer to potential contractors for exploration. The description of these areas is in Table 9.

Table 9. List of Areas with Potential Petroleum Reserves

Code	Location	Area (has.)	Potential Reserves - Oil (million barrels)	Potential Reserves - Gas (billion cu. ft.)	Wells Drilled
1	Southeast Luzon	424,000	3,552.2	2,258.68	25
2	Onshore Panay	160,000	86.3	338.5	9
3	Offshore Panay	340,000	183.5	719.5	1
4	Northeast Palawan	416,000	1,230	2,062.75	0
5	Northeast Palawan	576,000	1,897	2,846.6	2
6	Southeast Palawan	480,000	1,693.5	2,395.4	0
7	Recto Bank	468,000	165	3,486	0
8	West Luzon	488,000			0
9	West Luzon	464,000		6,237.8 (total for	0
10	West Luzon	452,000		Areas 8-11)	0
11	West Luzon	480,000			0

Source: DOE

III. Coal Industry

A. Coal Resource Potential

The total volume of the country's coal resource potential is estimated at 2,386.70 million metric tons (mmt). [10] The volume of positive reserves [11] is assessed at 290.80 mmt. The volume of probable reserves [12] amounts to an estimated volume of 195.41 mmt. In-situ reserves, calculated by adding the total positive reserves to two-thirds of the probable reserves, amount to 421.07 mmt. The volume of mineable reserves [13] reaches to 311.21 mmt.

Most of the country's coal reserves are located on Semirara Island in Caluya, Antique. Assessed against the country's respective totals of the following variables as shown in Table 10, Semirara's total resource potential is 24%; its positive reserves is 31%; its in-situ reserves is 28%, and its mineable reserves amounts to 33%.

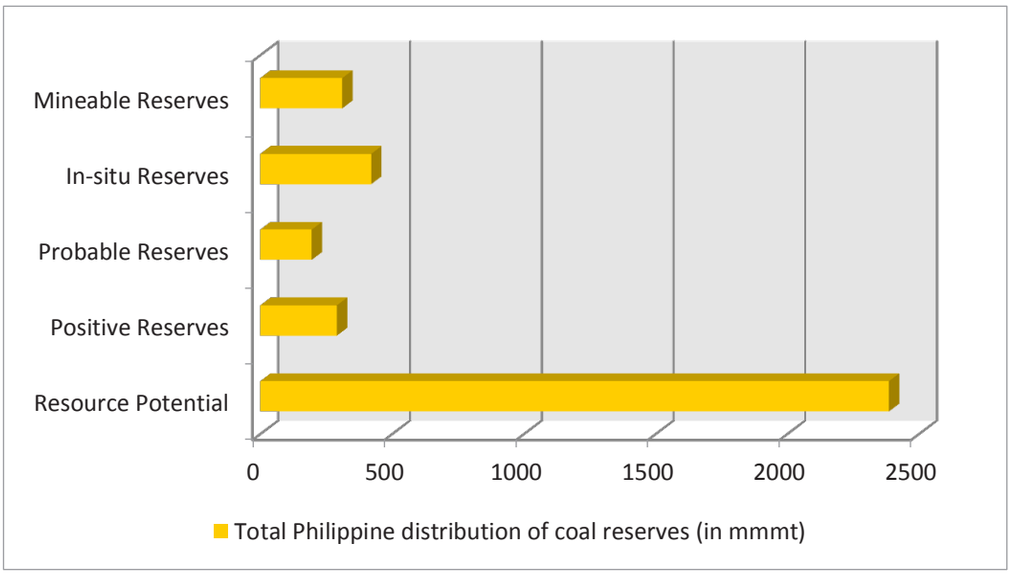
Table 10 shows that significant coal reserves were also discovered in Cagayan Valley, South Cotabato, Zamboanga, and Surigao. All four areas account for 34% of the country's total coal reserve potential, 61% of positive reserves, 71% of probable reserves, 64% of in-situ reserves, and 61% of mineable reserves.

Table 10: Philippine Regional Distribution of Coal Reserves, by Classification, as of December 2012

	Resource Potential		Positive Reserves		Probable Reserves		In-Situ Reserves		Mineable Reserves	
	mmt	%	mmt	%	mmt	%	mmt	%	mmt	%
Cagayan Valley	336.00	14.08	80.10	27.55	3.70	1.89	82.57	19.61	70.18	22.55
Central Cebu	40.00	1.68	3.35	1.15	4.76	2.44	6.53	1.55	3.92	1.26
Northern Cebu	75.00	3.14	2.23	0.77	0.66	0.34	2.67	0.63	1.60	0.51
Southern Cebu	50.00	2.09	1.16	0.40	1.87	0.96	2.41	0.57	1.45	0.46
Davao	100.00	4.19	0.21	0.07	-	-	0.21	0.05	0.12	0.04
Masbate	2.50	0.10	0.08	0.03	-	-	0.08	0.02	0.05	0.01
Mindoro	100.00	4.19	1.31	0.45	0.20	0.10	1.44	0.34	0.87	0.28
Negros	4.50	0.19	1.20	0.41	1.21	0.62	2.01	0.48	1.21	0.39
Polillo, Batan, & Catanduanes	17.00	0.71	4.95	1.70	1.61	0.82	6.02	1.43	3.61	1.16
Quezon	2.00	0.08	0.09	0.03	-	-	0.09	0.02	0.06	0.02
Samar	27.00	1.13	7.40	2.57	1.67	0.85	8.59	2.04	7.28	2.34
Semirara	570.00	23.88	90.67	31.18	43.82	22.42	119.89	28.47	101.91	32.74
Surigao	209.00	8.76	28.87	9.93	60.98	31.21	69.53	16.51	47.55	15.28
Zamboanga	45.00	1.89	33.99	11.69	5.98	3.06	37.98	9.02	22.79	7.32
Bukidnon	50.00	2.09	-	-	-	-	-	-	-	-
Maguindanao	108.00	4.53	-	-	-	-	-	-	-	-
Sarangani	120.00	5.03	-	-	-	-	-	-	-	-
South Cotabato	230.40	9.65	35.09	12.07	68.96	35.29	81.07	19.25	48.64	15.63
Sultan Kudarat	300.30	12.58	-	-	-	-	-	-	-	-
TOTAL	**2,386.70**	**100.00**	**290.80**	**100.00**	**195.41**	**100.00**	**421.072**	**100.00**	**311.212**	**100.00**

Source of basic data: Energy Resource Development Bureau, DOE

Figure 20: Philippine Regional Distribution of Coal Reserves, by Classification, as of December 2012



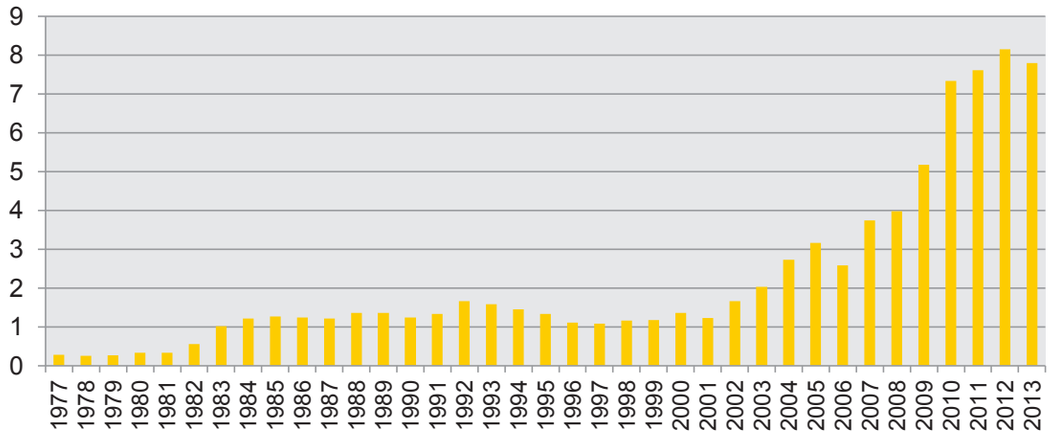
Source of basic data: Energy Resource Development Bureau, DOE

B. Contribution to the Economy

1. Coal Production

Local coal production has been rising in the past three decades, especially since the year 2000, as portrayed in Figure 21. From 2009 to 2013, total revenue from the sale of coal averaged at 0.19% of the country's GDP (Table 11).

Figure 21. Philippine Annual Volume of Production (in mmt), 1977-2013



Source: Energy Resource Development Bureau, DOE

Table 11. Coal Production and Revenues, 2009-2013

Year	Coal Production (in '000 mt)	Coal Revenues	
		Quantity (in '000 PhP)	Percent of Nominal GDP
2009	4,473.98	13,328,560.75	0.17%
2010	8,309.08	20,169,404.01	0.22%
2011	7,132.73	21,156,239.12	0.22%
2012	7,853.53	18,794,948.31	0.18%
2013	7,564.79	17,134,150.20	0.15%

Source of basic data: Energy Resource Development Bureau, DOE

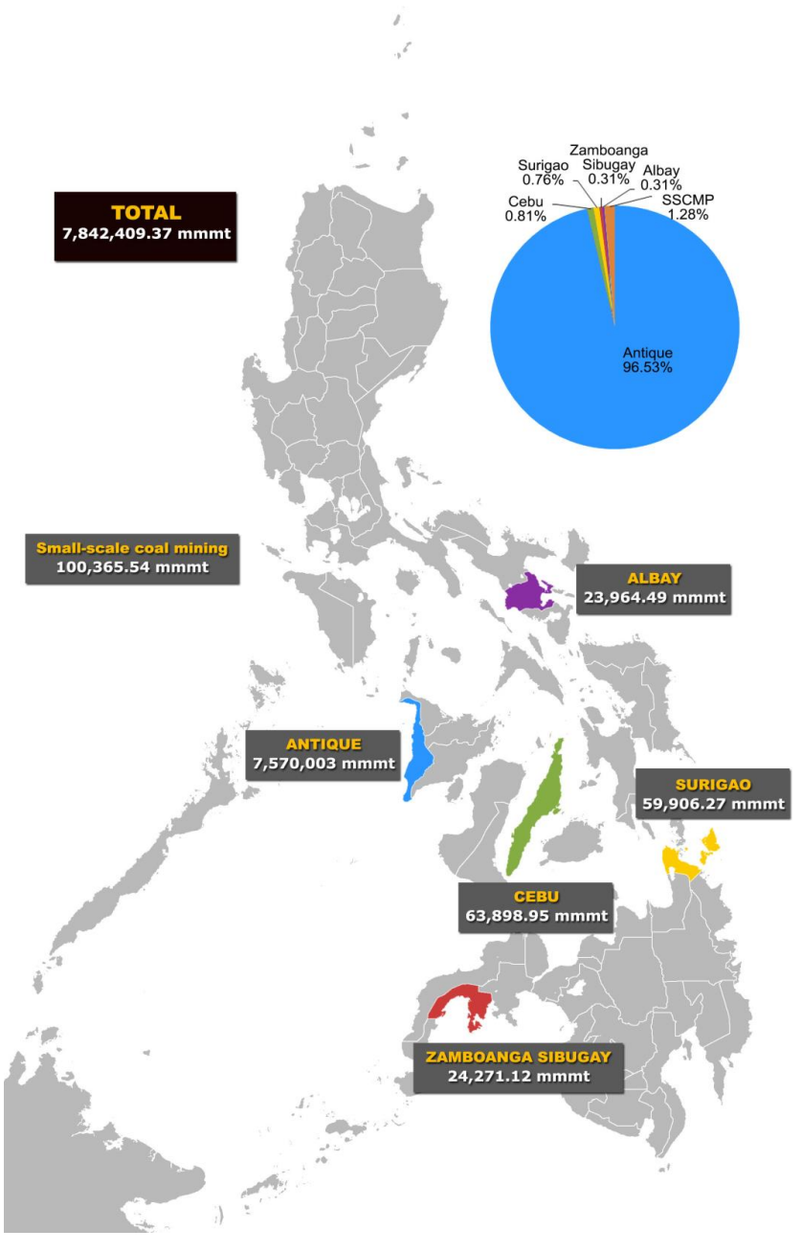
Semirara Island in the province of Antique hosts the largest coal mining operation in the country. Given the company's exclusive right to operate in the island, Semirara Mining Corp. dominates local coal production in the country, accounting for about 96% of total coal production of the country. Other operations located in numerous mining areas, including in the provinces of Cebu, Surigao, Zamboanga Sibugay, and Albay, account for 2.19 % of the country's total production in 2013 (Table 12). In the same year, individual holders of small--scale mining permits contributed 1.28 % of the country's total coal production.

Table 12. Coal Production, by Province and of Small-Scale Mining, 2013

Province	2013 COAL PRODUCTION	
	in mt	in %
Antique	7,570,003	96.53%
Cebu	63,898.95	0.81%
Surigao	59,906.27	0.76%
Zamboanga Sibugay	24,271.12	0.31%
Albay	23,964.49	0.31%
SSCMP	100,365.54	1.28%
TOTAL	7,842,409.37	100.00%

Source of basic data: Energy Resource Development Bureau, DOE

Figure 22. 2013 Volume of Coal Production among different Provinces



Source of basic data: Energy Resource Development Bureau, DOE

Coal exports of the country only began in 2007, but the export market for coal has since then taken up a considerable proportion of the country's total production. On the average, from 2004 to 2012, the annual volume of coal exported by Semirara Mining Corp. constituted 36.13 percent of the country's total annual production. In the same period, the value of coal exports by the company averaged at 0.17 percent of the value of the country's total exports.

Table 13. Semirara Mining Corporation Annual Volume of Coal Export (in mmt and as percentage of Philippine total production), and Value of Coal Export (in PHP and as percentage Philippine total exports), 2007-2012

Year	Volume of Exports (in mmt)	% of the country's total coal output	Value of coal export (in '000 PhP)	% of the country's total exports
2007	0.799	21.38	1,133,976	0.04
2008	0.993	24.97	1,841,465	0.06
2009	2.262	43.70	4,247,241	0.16
2010	4.099	55.87	8,926,588	0.28
2011	2.43	31.93	7,160,713	0.23
2012	3.173	38.92	7,010,021	0.22

Source of basic data: Energy Resource Development Bureau; and Semirara Mining Corp. Consolidated Financial Statements, 2006-2012

2. Coal Revenue and Incentives

Presidential Decree (PD) No. 972, as amended by PD 1174, defines how the government and the coal operators share in the total proceeds from coal mining. This law also sets out the incentives and privileges granted to coal mining operators.

Coal operators are allowed to recover a portion of the operating expenses not exceeding 90 percent of their respective gross revenue from the sale of coal. In addition, contractors are entitled to basic fee and special allowance equivalent to 40 and 30 percent, respectively, of the remaining amount after deductions have been made. In sum, the basic fee and special allowance is equivalent to at least 7% of the gross coal revenue.

After deducting the recoverable cost, and operator's fees and allowances, the national and local governments shall receive a combined share of at least 3% from the total sale of coal.

PD 972 as amended further provides that coal contractors are exempted from paying all taxes except income tax. The Model Contract provision on incentives suggests that the tax exemption set out in PD 972 pertains only to national taxes (including excise and value-added taxes).

The Guidelines for Coal Operations in the Philippines explicitly indicate that income tax payments of contract operators are chargeable components of their respective operating expense accounts, and are therefore recoverable from the gross proceeds.

Other fiscal incentives granted by the Contract include exemption from payment of duties and compensating tax on importation of machineries and equipment (and/or spare parts) to be used for coal operations. Non-fiscal incentives granted to coal contractors include the privilege to afford the entry of alien technical and specialized personnel, subject to approval of the DOE.

Additional privileges granted to operators not provided in the Contract but are specified in PD 972 as amended include accelerated depreciation of fixed assets and priority status in applications for financial assistance from government-owned financial institutions.

In the case of Semirara Mining Corp., the company also enjoys an exemption from local taxes. This is explained by the fact that its Operating Contract was enforced before the enactment of the 1991 Local Government Code, which allows LGUs to impose additional levies, such as business tax and real property tax. The company has also availed from the BOI a six-year income tax holiday that started in September 2008.

In 2012, the government's share from the total sale of coal amounted to PhP 1.56 billion. Semirara Mining Corporation accounted for 99.88% of the said collection. Table 14 enumerates the annual income taxes paid by Semirara Mining from 2004-2012. The company's income tax payment decreased from 2009 following the grant of the income tax holiday to it. From 2009 to 2012, the effective income tax rate paid by the company was reduced from 30 to 0.67 %. Table 15 shows the contributions paid by the 13 other contractors.

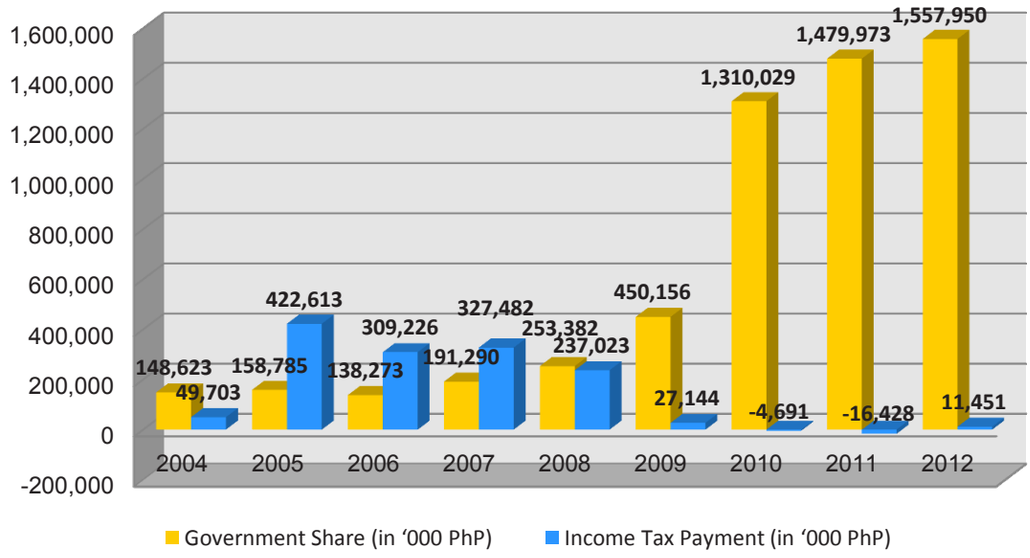
The Semirara Mining Corporation started to venture in coal power production in 2009. The income tax payments indicated in Table 14 are exclusive of the income tax provision for the company's sale of electricity.

Table 14. Semirara Mining Corporation Annual Remittance of Government Share from Coal Proceeds and Income Tax Payment, 2004-2012

Semirara Mining Corp.	Government Share (in '000 PhP)	Income Tax Payment (in '000 PhP)
2004	148,623	49,703
2005	158,785	422,613
2006	138,273	309,226
2007	191,290	327,482
2008	253,382	237,023
2009	450,156	27,144
2010	1,310,029	-4,691
2011	1,479,973	-16,428
2012	1,557,950	11,451

Source: Semirara Mining Corp. Consolidated Financial Statements, 2006-2012

Figure 23. Semirara Mining Corporation Annual Remittance of Government Share from Coal Proceeds and Income Tax Payment, 2007-2012



Source: Semirara Mining Corp. Consolidated Financial Statements, 2006-2012

Table 15. Remittance of Government Share from Coal Proceeds by Other Contractors, 2013

Coal Contractor	Government Share (in '000 PhP)
Bislig Venture Construction & Development Inc.	134.00
Ibalong Resources & Development	280.12
SAMAJU Corp.	92.78
Brixton Energy Mining Corp.	40.83
Forum Cebu Coal Corp.	28.98
First Asian Resources & Mining Corp.	100.00
SKI Energy Resources, Inc.	148.91
Batan Coal Resources Corp.	60.00
Bonanza Energy Resources, Inc.	120.00
Visayas Multi-mineral	80.00
Abacus Consolidated Resources & Holdings	128.00
DMC Construction Equipment Resources	50.00
Titan Exploration & Development Corp.	225.00
TOTAL	1,488.62

Source: Energy Resource Development Bureau, DOE

Other fees and levies charged to coal mining operators are summarized as follows:

Contracting Round Pre-qualification Review Fee	10,000
Coal Operating Contract application fee	50,000/coal block
Coal Operating Contract Processing Fee	30,000/coal block
Registration/Renewal of Safety Engineers/Inspectors	300/application
Blasting Foreman's License	300/application
Application to Possess Explosives	300/application
Explosives License/Amendments to License	300/application
Application to Purchase/Move Explosives	300/application

In terms of employment, the coal mining industry accounts for 2% of the country's total employment in the mining and quarrying industry. [14]

3. Monitoring and Distribution of Coal Mining Revenues

The regulatory framework and revenue sharing scheme for the coal industry are discussed in detail in the succeeding chapters of this report. To provide an overview, however, the DOE is the primary agency that monitors coal mining operations in the country. Together with the respective contractors, the DOE determines if the volume of coal is of quantity that allows economic development and production. The DOE and the contractor also establish the price at which coal exports are sold. Furthermore, the DOE is authorized to have access to accounts, books, and operation records of the coal contractors.

In addition, the DOE receives the payment of the government share from the coal revenue, and other payments relating to the contractor's application, fees, and penalties. The government share is then remitted to the Department of Budget and Management (DBM), and is incorporated in the General Fund.

As mandated in the Local Government Code, LGUs hosting the mining operations are entitled to a respective share of 40 percent of the total government share. The said amount is equivalent to at least 1.2 percent of the total coal revenue, based on the sharing mechanism stipulated in PD 972. The said amount is then divided among the concerned provinces, municipalities and barangays, based on the following sharing scheme defined in the Code: 20% for provinces, 45% for municipalities/component cities, and 35% for barangays.

The Code further mandates that LGUs shall earmark at least 80% of the said funds for reducing electricity cost in their respective areas, the remaining amount shall then be used for local livelihood projects. A detailed discussion on LGU shares from natural wealth may be found in the Chapter on Local Payments.

Finally, in contrast to the mining sector, there are no laws or policies specifically governing coal mining operations in the country that provide for the creation of special funds for environmental protection and rehabilitation, or social development.

CHAPTER 2
Legal Framework Governing the Extractive Industry and Transparency in the Philippines

CHAPTER 2

Legal Framework Governing the Extractive Industry and Transparency in the Philippines [4]

As the owner of all mineral, oil and gas, and coal resources of the country, the State may allow individuals and corporations to explore, develop, and utilize these resources. It can also seek the financial or technical assistance of foreign-owned companies in undertaking these activities on a large scale.

This chapter presents the legal framework and policy governing mineral, oil and gas, and coal resources, including the role of various government agencies in regulating the exploration, development, and use of these resources. By performing their legal mandate, agencies led by the DENR-MGB and DOE ensure that extractive activities spur national growth and generate revenues in a manner that safeguard the environment and benefit the Filipinos, especially those that host these activities.

Further, this chapter discusses the following:

- Laws governing transparency, specifically those that deal with public disclosure, public information, and public participation, in general and per sector
- Payments made by the extractive industry
- Revenue-sharing arrangements between the government and the extractive industry, per sector, and
- Standard stipulations in mining agreements, financial or technical assistance agreements, petroleum service contracts, and coal operating contracts, including incentives and privileges granted to the contractors.

A full text of this chapter is available at http://ph-eiti.org/#/Papers/Legal-Framework

I. Natural Resource Governance

A. 1987 Constitution

The 1987 Constitution is the fundamental legal basis of Philippine law and policy. Legislative acts, executive orders, administrative issuances, and judicial decisions need to be consistent with the Constitution.

The Constitution describes the structure of natural resources governance in the country. It adopts the Regalian Doctrine, which declares that the State is the owner of all lands of the public domain and natural resources of the country. Natural resources include waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna. [15]

Lands of the public domain may be agricultural, forest or timber, mineral lands, and natural parks. [16] Except for agricultural lands, the State's ownership of all other natural resources cannot be conveyed to other persons. [17]

Under its full control and supervision, the State may allow the exploration, development, and utilization of natural resources. The State may directly undertake these activities. It may also enter into co-production, joint venture, or production-sharing agreements with Filipino citizens or corporations at least 60% of whose capital is owned by Filipinos. Such agreements may last for a maximum of 25 years, and may be renewed for another period of not more than 25 years. [18]

As an exception to the 60-40% ownership rule, the President may agree with foreign-owned corporations on technical or financial assistance for the *large scale* exploration, development and use of minerals, petroleum, and mineral oils. Such agreements must be in accordance with law and must be based on real contributions to the country's economic growth and general welfare. [19]

Congress may, by law, allow small-scale use of natural resources by Filipino citizens. [20] In 1991, it has passed a law on small-scale mining. [21]

[4] Full text of this chapter was written by Atty. Brenda Jay Angeles Mendoza.

In allowing such use of natural resources, two constitutional rights are considered:

1. *Article XII, Section 5* on protecting the indigenous peoples' rights to ancestral lands; and
2. *Article II, Sections 15* and *16* on protecting the people's health and environmental rights.

B. Laws Governing the Mining Sector

The Philippine Mining Act of 1995 (Mining Act) governs the exploration, development, use, and processing of mineral resources in the country. [22] The Act promotes mining as a means to enhance national growth in a way that safeguards the environment and protects the rights of communities. Together with its Implementing Rules and Regulations (IRR), the Mining Act defines the agreements for mineral resources development, provides the requirements for acquiring mining rights, and outlines the responsibilities of the parties. [23]

In 2012, the President issued Executive Order (EO) 79 to improve environmental standards and increase revenue in mining as a means to promote sustainable economic development and social growth. Among other reforms, the EO added No Go Zones for mining and imposed a moratorium on new mining agreements until such time that a revised revenue sharing scheme is legislated by Congress.

C. Laws Governing the Oil and Gas Sector

Presidential Decree (PD) 87 is the governing law for oil and gas. [24] The decree aims to hasten the discovery and production of indigenous petroleum under agreements that would benefit the Filipinos, generate government revenues, and assure reasonable returns to companies that render financial and technical services. PD 87 was later amended to grant new incentives to petroleum service contractors. [25]

D. Laws Governing the Coal Sector

PD 972 or the Coal Development Act governs the country's coal resources. [26] It introduced the coal operating contract system and issued guidelines for coal operations in the country. Under the contract system, the government retains ownership of the resource, while the operator is assigned the right to explore, develop, and market coal.

II. Agencies Regulating the Extractive Sector

A. Mining Sector

The Department of Environment and Natural Resources (DENR) is the primary government agency with mandate over the country's environment and natural resources. [27]

Within the DENR, the Mines and Geosciences Bureau (MGB) administers the mineral lands and resources. It also advises the DENR Secretary on all mining-related matters. [28] In 1995, MGB became a line bureau, effectively giving it the power to directly implement mining programs. The MGB Director now exercises direct supervision over all units, including the regional offices of the Bureau, and issues rules and regulations to carry out its functions. [29]

The Environmental Management Bureau (EMB) of the DENR administers the Philippine Environmental Impact Statement (EIS) System. The EIS system requires all environmentally critical projects and those in environmentally critical areas to secure an environmental compliance certificate (ECC) before starting operations. [30] Petroleum (oil and gas), and major power and mining projects are environmentally critical projects that require an ECC. [31]

B. Oil, Gas and Coal

The Department of Energy (DOE) is the government agency with mandate over energy resources. [32] Subject to the President's approval, the DOE Secretary may enter into petroleum service contracts, and coal operating contracts [33] looking at the government's share and the technical and financial capability of petroleum operators and coal operators. The DOE Secretary consults with the Finance Secretary on all matters involving revenue.

C. Specific Areas Governed by Other Agencies

Other government agencies are also involved in regulating the extractives industry. These agencies include the Department of Finance (DOF and its bureaus) which is in charge of all revenue-related issues; Philippine Ports Authority (PPA) which regulates the transportation of extractives; Board of Investments (BOI) which exercises authority over the grant of incentives; and National Commission on Indigenous Peoples (NCIP) which attends to the rights of indigenous peoples affected by extractive operations. The specific mandates and roles of these agencies are found in Annex A.

The role of local government units (LGUs) in regulating extractive operations is discussed in the Chapter on Subnational Payments.

III. Laws Governing Transparency

The Constitution guarantees full public disclosure of transactions involving public interest, access to public information, and public participation in decision-making. Except for EO 79, there is no legislation as yet that commits transparency in the extractive industry. However, the government's involvement in the EITI process is expected to encourage greater transparency in the sector.

The laws on mining, oil, gas, and coal, as well as relevant revenue, investments, and local governance policies specify the matters that are confidential, those that may be disclosed to the broader public, and those that are allowed some degree of disclosure and accessibility.

A. Constitutional Provisions

The 1987 Constitution does not have a straightforward provision on *transparency*. But it has Sections that deal with the associated concepts of public disclosure, information, and participation.

1. Public Disclosure

The Constitution lays down the State's policy of full public disclosure of all its transactions involving public interest, subject only to conditions set by law. [34]

2. Public information and access to information

The Constitution recognizes the people's right to information on matters of public concern. Filipino citizens are also afforded access to official records, and to documents pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for developing policy. [35] This is only subject to legal limits, such as the need to file an appropriate request.

3. Public participation

The Constitution guarantees the people's right to participate in all levels of decision-making. It directs the government to create adequate consultation mechanisms. [36]

4. Transparency in local government budget and finances

The *Local Government Code* [37] directs LGUs to regularly post a summary of all revenues collected and disbursed in publicly accessible and conspicuous places in the LGU. Based on this provision, and in line with the government procurement reform law, the Department of the Interior and Local Government (DILG) has

directed all LGU chiefs to facilitate full disclosure and public access to local government budget and spending, [38] including to share such documents with civil society organizations and the private sector. [39]

B. Transparency in the Extractives Industry (Revenue and Investments)

Except for a reference in EO 79 about the country's commitment to EITI, there is yet no overarching law that governs transparency in the extractive industries. However, its involvement in the EITI process and the creation of the PH-EITI [40] should pave the way for more transparency in the sector.

The laws on mining, oil and gas, coal, revenue, and investments provide the scope of information that are protected by confidentiality clauses, allowed to be disclosed to the public, or are given some degree of disclosure and availability.

1. Public disclosure under the Mining Law

One of the investment guarantees given to mining contractors relates to the confidentiality of information that they provide to the government. This information broadly refers to those that they agreed upon in the negotiation as confidential. This means that the information must be treated as confidential by the government during the term of the project. [41]

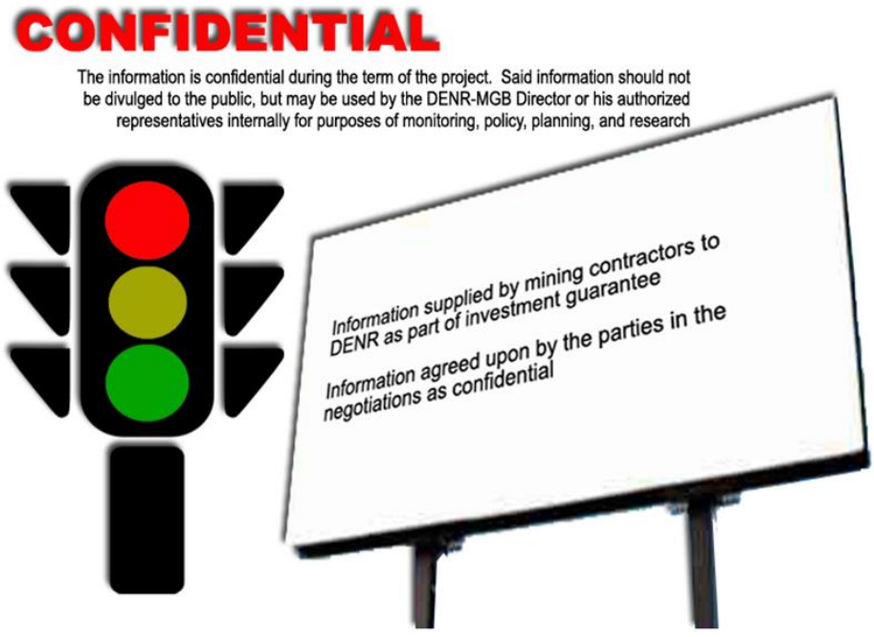
However, the following information is classified as *not* confidential: [42] (a) production and sales of minerals; (b) employment; (c) royalty and tax payments; (d) metallic and non-metallic reserves; (e) operational parameters, such as mining and milling capacities; and (f) other data as may be agreed upon by the parties.

The IRR used confidentiality in the context of "divulging publicly any information classified as such." The DENR-MGB may therefore use the confidential data internally within the Bureau for monitoring, policy, planning, and research purposes. [43]

For documents not agreed by the parties as confidential, the DENR-MGB should make the data available to the public when there is a proper request approved by an authorized officer. These documents may also be reproduced after showing an approved written request and payment of fees. [44] In order to show compliance and to avail incentives, mining contractors are obliged to allow the MGB representatives to examine their books of accounts and other pertinent documents. [45]

The rules on confidentiality for the mining sector are summarized in the following figure:

Figure 24. Rules on Confidentiality for the Mining Sector





Matters that are required to be reported to the DENR-MGB are enumerated in Annex B.

2. Public disclosure under the oil and gas law

In petroleum service contracts, the contractor is also obliged to give the examiners of the Bureau of Internal Revenue (BIR) and the DOE full access to their financial records for tax and other fiscal purposes. [46]

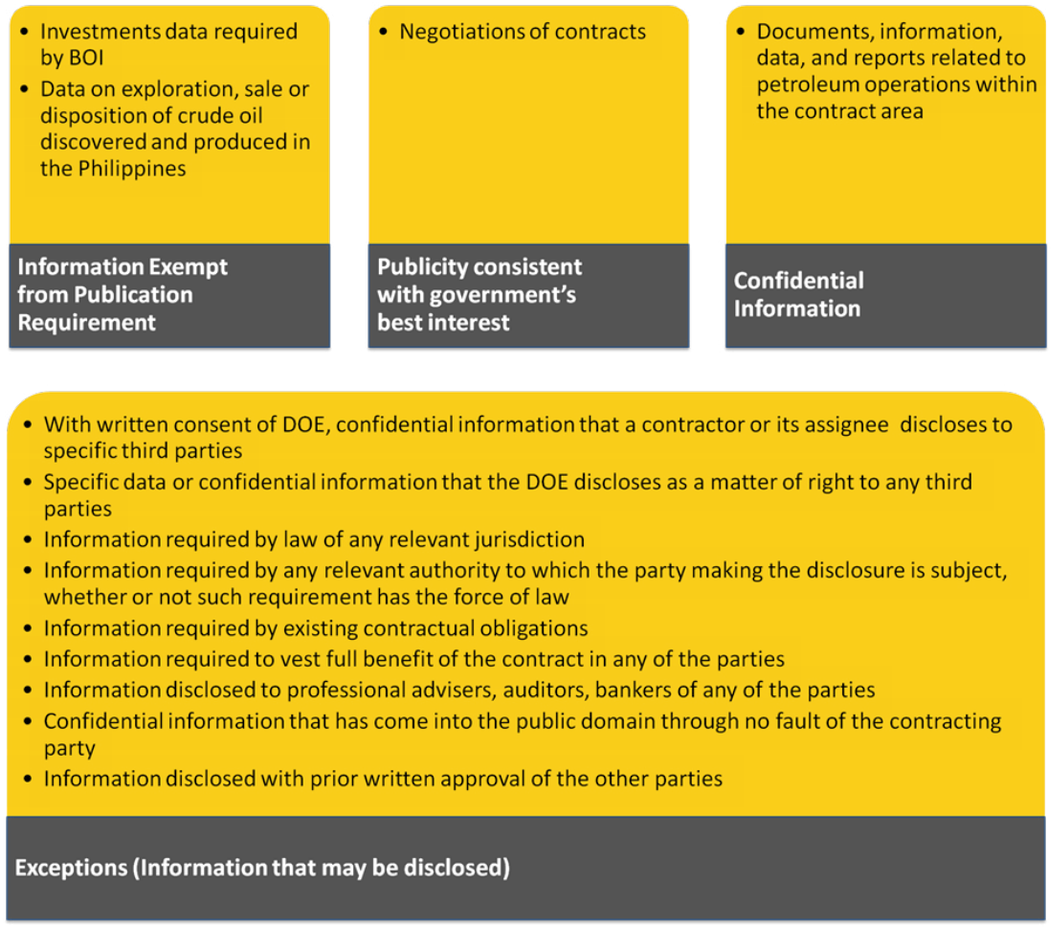
The DOE Secretary (or his representative) may visit oil and gas contractors and examine their contracts to determine the government's share in its revenue; and to check whether all funds due to the government have been collected. The contractor is obliged to produce all the documents that may be required during the examination. [47]

One of the privileges that may be given to service contractors is the exemption from the publication requirements under Republic Act (RA) 5455 [48] and RA 6173 on the exploration and sale of crude oil discovered and produced in the country. [49] RA 5455 requires the BOI to publish and post notices of foreign investment applications, which contain the applicant's investments data, before issuing approval or certificates of investment. [50]

Negotiations of oil and gas contracts are required to be given publicity that is consistent with the government's best interest. [51] At present, the DOE Circular DC2014-02-005 is the basis for the competitive bidding of service contracts for the exploration of potential coal and petroleum areas in the country under the Philippine Energy Contracting Round 5 (PECR-5). [52] The requirement applies as government determines the legal, technical, and financial qualifications of applicants, evaluates applications, and awards the corresponding contracts. [53]

The standards of confidentiality and disclosure for oil and gas are summarized below:

Figure 25. Standards of Confidentiality and Disclosure for Oil and Gas



3. Coal resources law

Like oil and gas contracts, coal operators are obliged to allow DOE representatives full access to their financial records for tax and other fiscal purposes. They are also obliged to furnish the DOE with all information, data, and reports that may be required. [54]

4. Revenue law

Section 270 of the Tax Code provides the rule on transparency and divulgence of tax-related information. [55] Generally, it is unlawful for a BIR officer or employee to divulge information about the business or income of any taxpayer, as well as the work and operations of any producer. The knowledge of such data must have been acquired by the officer or employee in the discharge of official duties. [56]

There are exceptions to this confidentiality rule:

(1) When the BIR Commissioner inquires into bank deposit accounts and related information held by financial institutions of: (a) a decedent to determine his gross estate; (b) a taxpayer who has applied for compromise of tax liability; and (c) a request for tax information from a foreign tax authority, on which basis the BIR may use the information obtained for tax assessment, verification, audit, and enforcement purposes. [57]

(2) Income tax returns filed with the BIR constitute public records and are open to inspection as such upon order of the President and according to DOF rules. Every year, the BIR Commissioner may also publish

the lists of names and addresses of persons who have filed income tax returns. [58]

(3) An individual who files candidacy for an electoral post is required to provide income tax information for the last two years before the election. [59]

5. Investments law

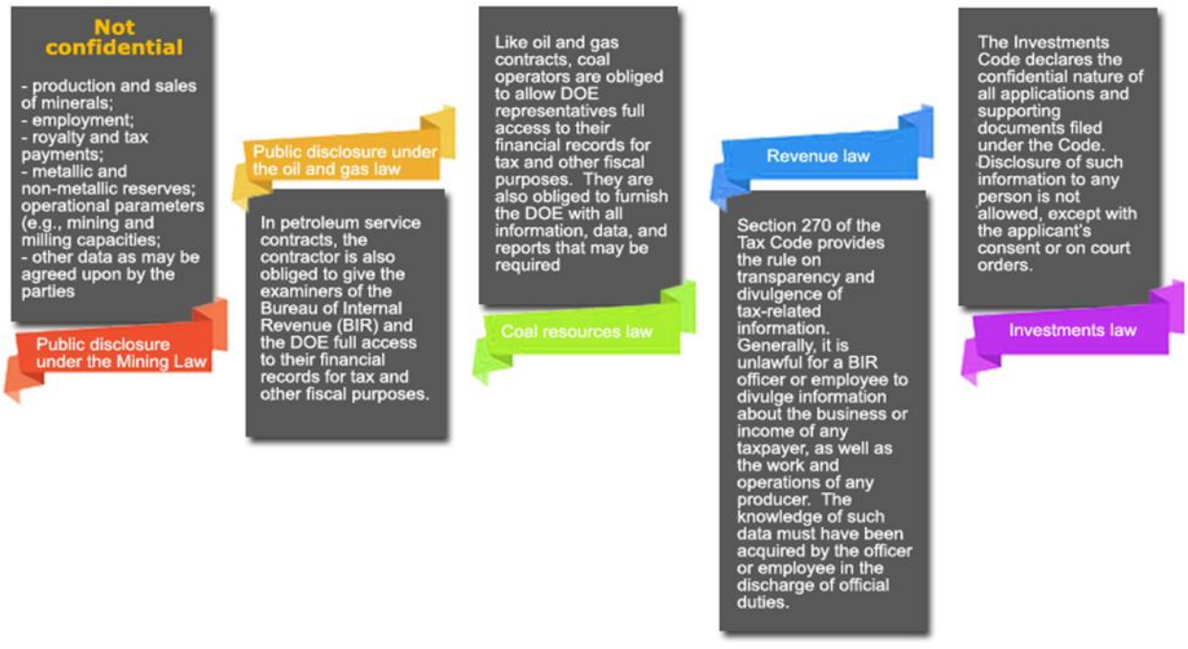
The Investments Code declares the confidential nature of all applications and supporting documents filed under the Code. Disclosure of such information to any person is not allowed, except with the applicant's consent or on court orders. [60]

Applications filed under the Code include those that relate to the registration of enterprises with the BOI. These are evaluated according to data submitted on the extent of ownership and control of the enterprise by Filipinos, economic rates of return, measured capacity, foreign exchange earned, used or saved in operations, and use of labor, among others. [61]

Once an application is approved, the enterprise is issued a Certificate of Registration stating, among other matters, the enterprise name, the investment area, nature of its activity, its capacity, and other terms and conditions of such registration. [62] These may include details about the scope, limits, and process of availing incentives, performance guaranties, and other terms and conditions. [63]

While applications and supporting documents filed with the BOI are clearly confidential, the Code is silent about the nature of the documents that are issued once the applications are approved, such as those information stated in the Certificate of Registration.

Figure 26. Summary of Pertinent Laws Regarding Confidentiality in the Extractive Industry



C. Public Information and Access to Information

The MGB is tasked to establish a national and regional filing and recording system, including a mineral resource database system. It is mandated to publish, at least annually, a national mineral gazette containing a list of mineral rights, their location, mining regulations, official acts affecting mining, and other mineral resources development data. [64]

To increase public information and encourage public participation, the MGB Director has the duty to hold public hearings in setting up and changing boundaries of mineral reservations. These public hearings are announced through publication or by posting in affected localities. [65]

Transparency measures in the publication of notices for mining activities are also guaranteed by the Mining Act. A more detailed discussion may be found in the Chapter on License Processes. The mechanisms for transparency in obtaining the free and prior informed consent of indigenous people's are discussed in the Chapter on Indigenous Peoples' Processes.

IV. Payments

The extractive industry makes payments to the government in the form of taxes, fees, royalties and charges, and to concerned indigenous peoples communities in the form of royalty payments. The industry, particularly the mining sector, also creates special funds to implement social development and environmental management programs. These payments and fund mechanisms are made in consideration of the government's agreement to have its mineral, oil and gas, and coal resources explored, developed, and used.

In allowing the exploration, development, and use of the country's natural resources, the government looks at the extractives sector to make certain payments as a means to generate wealth in terms of taxes, promote fair sharing of its benefits, and enhance national growth in a way that safeguards the environment and protects the rights of affected communities. [66]

In a broad sense, mining, coal, oil, and gas companies are required to make payments to the national government and to relevant LGUs in the form of national internal revenue taxes (taxes, fees, and charges); and to concerned indigenous cultural communities/indigenous peoples (IPs/ICCs) in the form of royalty payments.

Mechanisms required by law to be set up with funds coming from the companies, or expenditures that need to be allocated, spent, and reported by them for specific use, such as for environmental protection, enhancement, and rehabilitation, or for social development and management purposes are discussed in the chapter on SDMPs as well as in the Reconciliation Report (Volume 2).

Below is a list of all payments made by the extractive companies per sector. A detailed explanation of these payments will be discussed in Volume 2 of this Report. Payments to LGUs are extensively discussed in the Chapter on Subnational Payments, while royalty payments to IPs/ICCs are explained in the Chapter on Indigenous Peoples' Processes.

Figure 27. List of Payments made by the Extractive Companies



V. Revenue Sharing Scheme

It is important for the government to receive its fair and equitable share from extractive industry operations, as its proceeds can be used to transform economic and social conditions at the national and local levels.

Across the sector, the government's share is often negotiated by the government and the contractor, with the law merely providing the minimum sharing standards and the factors that should be considered in getting into an extractives agreement.

A. Mineral Resources

The Mining Act provides that the government share in a Mineral Production Sharing Agreement (MPSA) shall be the excise tax on mineral products. [67] However, it is worthy to note that mining companies pay other taxes and fees to other government agencies such as custom duties, income taxes, withholding taxes and wharfage fees in addition to payments impose by local government units.

For other mineral agreements, the government's share is negotiated by the government and the contractor. In the negotiations, the parties consider the project's capital investment, risks involved, economic contribution, and other factors that would ensure fair and equitable sharing. [68] In addition, the government is entitled to compensation for its other contributions which shall be agreed upon by the parties. This consists of the contractor's income tax, excise tax, special allowance, withholding tax due from its foreign stockholders, and other taxes, duties, and fees under existing laws. [69]

In FTAA, the government's share is likewise negotiated. Apart from the factors considered in mineral agreements, the parties also take into account the technical complexity of the project. At the minimum, the government's share in FTAA consists of the contractor's income tax, excise tax, special allowance, withholding tax due from its foreign stockholders, and other taxes, duties, and fees under existing laws. [70]

However, the collection of the government's share in FTAA begins only after the contractor has fully recovered its pre-operating, exploration, and development expenses. The recovery period, counted from the start of commercial operation, shall not exceed 5 years or at a date when the aggregate of the net cash flows from the operations is equal to the aggregate of its pre-operating expenses, whichever comes earlier. This period may be extended upon further negotiations and DENR's approval in projects with huge investments, high production rate, and extensive mine life. After the recovery period, the contractor pays an additional share to the government. [71]

For mineral agreements and FTAAs within mineral reservations, the government share is on top of the royalties payable to government. [72] This adds to the royalty of at least 5% of the market value of the gross output of the minerals from the mineral reservations exclusive of all other taxes. [73] Ten percent of this royalty and 10% of other revenues derived by the government from mining in mineral reservations accrues to the MGB as a trust fund and allotted for special projects and administrative expenses related to the exploration, development, and environmental management of minerals in said reservations. [74]

In most cases, the government share is paid to the nearest BIR office where the contract area is located and in accordance with BIR regulations. For those derived from mining operations within mineral reservations, the government share is paid directly to the MGB in addition to the royalty payment. The share of the MGB from the royalty is paid separately and directly to the MGB. On the other hand, the additional government share is paid to MGB within 30 days after paying the final income tax to BIR. [75]

The government share from mineral resources use is allocated according to the provisions of the Local Government Code, which ensures equitable sharing among LGUs of the proceeds within their areas, including sharing the same with their inhabitants by way of direct benefits. [76] See Chapter on Subnational Payments for a more detailed discussion on the LGU shares.

B. Revenue Sharing Scheme (Petroleum and Coal)

One of the key conditions that the DOE Secretary needs to consider in negotiating a petroleum service contract is that the government share, including all taxes, should not be less than 60% of the difference between the gross income and the sum of operating expenses and such allowances as the DOE Secretary deems proper to grant.[77] By implication, the income tax (and any other applicable taxes) forms part of the government share in oil and gas.

Figure 28. Production Sharing- Service Contract

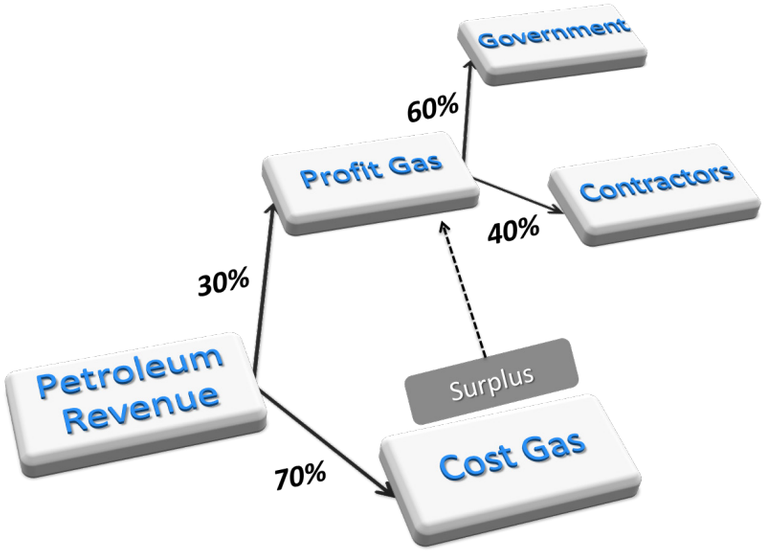


Figure 29. Production Sharing- Service Contract (FPIA)

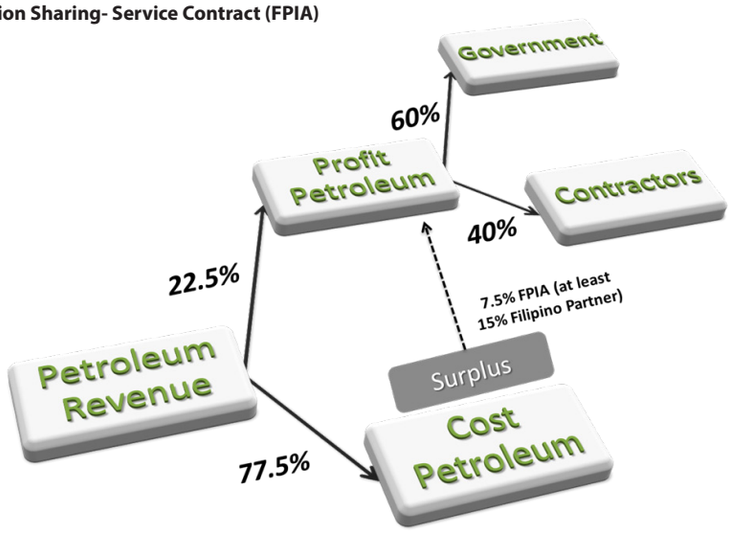
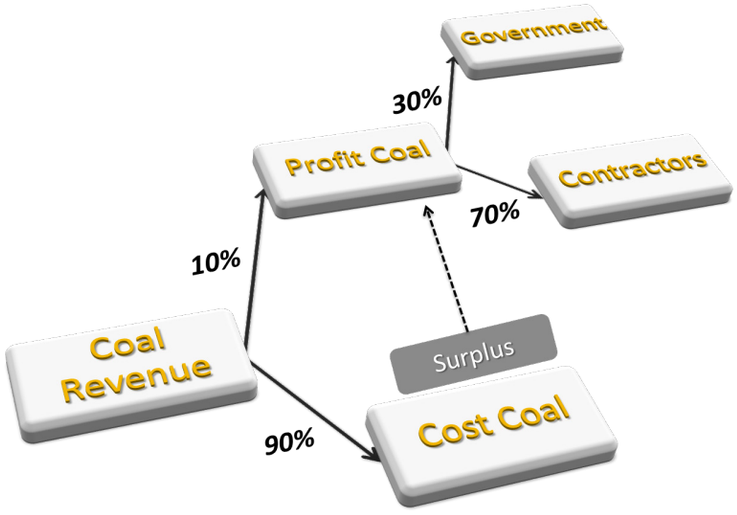


Figure 30. Production Sharing- Coal Operating Contract



VI. Sanctions

This part discusses the sanctions related to disclosure and payment under the governing laws.

A. Under the Mining Act

The following constitutes grounds for suspending, canceling, or terminating mining agreements:

- Failure to comply with the requirements of the Mining Act or its IRR without a valid reason. [78]
- Violation of the terms and conditions of the agreement. [79]
- Non-payment of taxes and fees due to the government for two consecutive years. [80]
- Failure to abide by the terms and conditions of tax incentives and credits. [81]

The Mining Act also provides civil penalties under the following circumstances:

- Knowingly presenting any false application, declaration, or evidence to the government or publishing or causing to be published any prospectus or other information containing any false statement relating to mines, mining operations or mineral agreements, FTAAs and permits. [82]
- Any other violation of the Mining Act and its IRR. [83]
- Late submission or non-submission of reports. [84]

There are no equivalent provisions under PD 87 and PD 972 on coal, oil, and gas.

B. Under the National Internal Revenue Code

The payment of fine and/or imprisonment may be imposed on the following grounds:

- Procuring *unlawful divulgence of trade secrets* – for causing or procuring a BIR officer or employee to divulge confidential information regarding the business or income of any taxpayer, knowledge of which was acquired by him in the discharge of official duties, and which it is unlawful for him to reveal, and for unlawful publication of any financial data appearing in an income tax return. [85]
- *Civil penalties* – for failure to file return and pay tax due on time, or to pay the deficiency tax within prescribed time, or to pay full or part of the amount in the return. [86]
- *Criminal liability* - for tax evasion and failure to file return, or to supply correct data. [87]

C. Under the Tariff and Customs Code

The following are punishable under the Tariff and Customs Code:

- Concealment or destruction of evidence of fraud on any invoice, book or paper relating to any article liable to duty. [88]
- Violation of tariff and customs law and regulations. [89]

D. Under EO 513 (Philippine Ports Authority)

- Any person who violates this law or the rules of the PPA rules may also be punished by imprisonment or imposed a fine. [90]

E. Under the Joint DOE-DILG Circulars (Guidelines on the LGU Use of Proceeds from Energy Sources)

- In case of violation or non-compliance with the Joint DILG-DOE Circular 95-01, 98-01, and other relevant issuances, the DILG may direct the project proponent through DOE not to remit the royalty payment to the concerned LGU until the investigation is completed. The unremitted funds shall be deposited in a government bank. [91]

VII. Incentives (Fiscal and Non-Fiscal)

The activities of the extractive industry often require significant technical and financial capabilities. Moreover, even in areas identified with potential mineral, oil, gas, and coal resources, extractive companies must be able to manage the risks associated with exploring or developing such resources, as its venture may or may not yield the desired production volume and value.

For these reasons, contractors in the extractive industry are given incentives and other privileges by the government. These usually take the form of tax holidays and other exemptions, but may also refer to non-fiscal incentives like foreign employment privileges, loan preferences, or simplification of import procedures. The enjoyment of these incentives is further guided by the government's investment policies and priorities.

A. Mining Investments Incentives

Mining contractors enjoy several incentives under the Investments Code, [92] which are made available upon registration with the BOI and compliance with its requirements. [93] The incentives accrue upon approval of the mineral agreement or FTAA and/or date of BOI registration. [94] Its continued enjoyment is governed by investments rules and the Investment Priorities Plan. [95]

In 2012, however, the BOI suspended the grant of mining income tax holiday for new mining projects. The 2013 Investment Priorities Plan (IPP) was more explicit in stating that the incentives for mining are now limited to zero-duty on importation of capital equipment, spare parts, and accessories. [96]

Under the Investments Code, a BOI-registered enterprise is entitled to the following incentives (see Table 16): [97]

B. Oil, Gas and Coal Investments Incentives

Service contracts and coal operating contracts executed under PD 87 and the Coal Development Act may provide the operator with the incentives shown in Table 17.

Table 16. Mining Investments Incentives (Fiscal and Non-Fiscal Incentives)

Mining Investments Incentives *Under the Investments Code, a BOI-registered enterprise is entitled to the following incentives:*[5]		
BOI		
Fiscal Incentives	**Non-fiscal incentives**	**Incentives under the Mining Act** *Aside from the BOI incentives, the Mining Act makes available the following incentives:*[6]
a. Income Tax Holiday BOI-registered enterprises are exempt from paying income taxes from the start of commercial operations. New projects with pioneer status, such as mining, were exempt for 6 years, those of non-pioneer firms for 4 years, and expanding firms for 3 years. Subject to BOI guidelines, this exemption may be extended for another year.[7] Pioneer firms may not avail of this incentive for more than 8 years. Any further extension of this incentive is not allowed.[8] As mentioned, the income tax holiday for mining projects (new and renewal) has been suspended in 2012 and is no longer included under the 2013 *Investment Priorities Plan.*[9] **b. Tax and duty exemption on imported capital equipment, spare parts, and accessories** zero percent duty with corresponding 12% VAT until 2011 or until the Investments Code is amended.[10] This incentive was retained under the 2013 Investment Priorities Plan.[11]	**a. Employment of foreign nationals** allowed in supervisory, technical or advisory positions within 5 years from a project's registration and may be extended for limited periods; if majority of the capital stock is foreign-owned, foreigners may hold key management posts beyond the specified term.[13] **b. Simplification of customs procedures** for importing equipment, spare parts, raw materials, and supplies and exporting processed products in the operations of their bonded warehouses.[14] **c. Unrestricted use of consigned equipment.**[15] d. **Access to bonded manufacturing or trading warehouse system**	**a. Incentives for pollution control devices** **b. Income tax–carry forward of losses** **c. Income Tax-Accelerated Depreciation** *To avail of these incentives, mining contractors are subjected to some conditions. They must comply with all its obligations under the law and with all the MGB's directives. They must also allow MGB to examine its books and other pertinent records to determine compliance with the Mining Act, IRR, and the terms of the mineral agreement.*[16] *Despite the grant of incentives, the payment of the government share is guaranteed under the rules.*[17]

[5] As amended by Rep. Act No. 7918 (1995).
[6] Rep. Act No. 7942 (1995) Secs. 91, 92 and 93; DENR Adm. O. No. 2010-21 (2010) Secs. 22, 224 – 226.
[7] This is done when (a) the project meets the prescribed ratio of capital equipment to number of workers set by BOI; (b) use of indigenous raw materials at rates set by the BOI; and (c) net foreign exchange savings of at least USD 500,000 annually during the first 3 years of operation.
[8] Exec. Order No. 226, as amended, Art. 39 (a).
[9] See, 2013 Investments Priorities Plan, http://www.gov.ph/downloads/2013/11nov/20131113-MO-0059-2013-IPP.pdf. Accessed: October 20, 2014.
[10] Exec. Order No. 528 (2006), reducing duty on capital equipment, spare parts, and accessories imported by BOI-registered new and expanding enterprises.
[11] See Note 81.

c. Exemption from taxes and duties on imported spare parts
for export producers with customs bounded warehouse exporting at least 70% of production.

d. Tax credit on domestic capital equipment
100% of the value of tax and customs duties that would have been waived had these items been imported.[12]

e. Exemption from wharfage dues, export tax, duty, impost and fees
limited to export of non-traditional export products

f. Tax and duty free importation on breeding stocks and genetic materials

g. Tax credit
on portion of domestic breeding stocks and genetic materials, and for taxes on raw materials

h. Additional deductions from taxable income
(a) for labor expense, available for the first 5 years from registration, equivalent to 50% of the wages of additional skilled and unskilled workers in the direct labor force. Deduction is doubled when the activity is located in a less developed area; and (b) for necessary and major infrastructure work.

[12]Exec. Order No. 226, as amended, Art. 39.
[13]Id., Art.. 39 (g).
[14]Id., Art.. 39 (e).
[15]Id., Art.. 39 (f).
[16]Id., Sec. 228.
[17]Id., Secs. 38 and 52.

Table 17. Oil, Gas and Coal Investments Incentives

Oil and Gas Investments Incentives Service contracts executed under PD 87 *may* provide the contractor with the following privileges:	Coal Investments Incentives Coal operators are provided with considerable incentives to be able to lend its technical and financial service capabilities. A coal operating contract executed under the Coal Development Act *may* provide the operator with the following incentives:[18]
• Exemption from all taxes except income tax; • Exemption from tariff duties and compensating tax on the import of equipment and materials required for petroleum operations subject to the conditions; • Exemption from laws, rules, and ordinances restricting the (a) construction and operation of power plant for its exclusive use if no local firm can provide such power; and (b) export of machinery and equipment imported for its operations when such is no longer needed; • Exemption from publication requirements under RA 5455 on investments by foreign-owned companies and RA 6173 on sale of crude oil discovered or produced in the country; • Export of petroleum subject to the prior filing pro-rata of domestic needs; • Entry of foreign technical and specialized personnel; • Exemption from the investment requirements of foreign corporations under the Corporation Code, which deals with corporate information that must be specified in their application for license to transact business in the Philippines.[19]	1. Exemption from all taxes except income tax; 2. Exemption from payment of tariff duties and compensating tax on importation of machinery, equipment, spare parts, and materials required for coal operations subject to conditions; 3. Accelerated depreciation - contractor may opt that its fixed assets in performing its contract would be: (a) depreciated to the extent of not more than twice as fast as normal rate of depreciation if expected life is 10 years or less; or (b) depreciated over any number of years between 5 years and expected life if the latter is more than 10 years, and such depreciation is allowed as a deduction from taxable income; 4. Foreign loans and contracts - the right to remit such sum as may be needed to cover principal and interest of foreign loans arising from technological assistance contracts relating to the performance of the contract; 5. Preference in grant of government loans - government financial institutions shall accord high priority to financial assistance applications from coal contractors, and shall facilitate the processing and release of the funds for such purpose. This is extended only to operators which are nationals of the country; and 6. Entry upon DOE's approval of foreign technical and specialized personnel (including their immediate family members) who may exercise their profession during the term of its contract.

[18]Pres. Decree No. 972 (1976), Sec. 16, referring to Sections 125 and 148 of the Corporation Code of the Philippines.
[19]Pres. Decree No. 1857 (1983).

VIII. Contracts

Mining is undertaken on the basis of contracts negotiated by the government with permit holders or mining contractors. Predominant mining contracts include the Exploration Permit (EP), Mineral Production Sharing Agreement (MPSA), and the Financial or Technical Assistance Agreement (FTAA).

On the other hand, Service Contracts for oil and gas as well as Operating Contracts for coal resources are executed by the government through competitive bidding and negotiations.

All contracts contain standard provisions that specify the obligations of the parties, terms and conditions, and any additional privileges. In the case of oil, gas, and coal contracts, where the contractor provides the service, technology, and finance, the government pays the contractor fixed service or operator's fees and reimbursement of operating expenses.

A. Types of Mining Contracts

The Mining Act provides for the various modes of acquiring mining rights:

1 Exploration Permit - gives the holder the right to explore mineral resources in specified areas. To explore is to search for mineral resources through varied means in order to determine its existence, extent, quality and quantity and the feasibility of mining them for profit.

2 Mineral Agreement - a contract involving an MPSA, co-production agreement, or joint venture.

3 FTAA - involves financial or technical assistance for large-scale exploration, development and use of mineral resources. It may be entered with foreign-owned corporations or firms where less than 50% of the capital is owned by Filipino citizens.

B. Standard Contractual Stipulations

For purposes of this Report, only the standard stipulations in mineral agreements and FTAA are discussed.

1. Mineral Agreements

A mineral agreement essentially contains the following terms and conditions:

a) Non-acquisition of title over contract or mining area
b) Financial and technical capability and technology
c) Qualifications of the applicant
d) Relinquishment of contract area
e) Size of mining area
f) Conduct of mining operations
g) Preference for Filipino goods and services
h) Preference to Filipinos in employment
i) Women workers' rights and provisions against gender discrimination.
j) Anti-pollution measures
k) Annual reports
l) Sale of minerals
m) Consultation and arbitration
n) Payment of taxes, fees, royalties and other obligations
o) Alien employment
p) Understudies' Training
q) Labor, safety, and health standards
r) Mining operations
s) Indigenous people's rights
t) Development of host and neighboring communi... local geo-sciences and mining technology
u) Environmental programs
v) Mining and processing technologies
w) Exploration work program
x) Progress reports of exploration
y) Cancellation, revocation or termination of agreement.
z) Withdrawal from the agreement
aa) Designation of assignee.
bb) General Information Sheet
cc) LGU endorsement
dd) Assumption of risks
ee) Inspection and audit of financial records
ff) Beneficial ownership of minerals
gg) Minimum ground expenditure
hh) Other terms and conditions



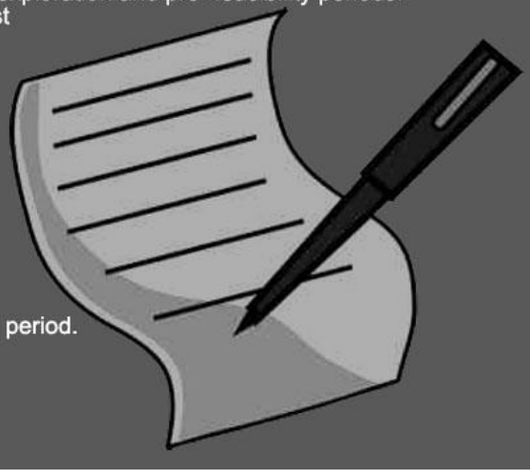
A standard Mining Agreement is attached as Annex C.

2. Financial or Technical Assistance Agreement

The stipulations in FTAAs are almost the same as those in mineral agreements. FTAA similarly contains provisions related to its operations, preference for Philippine goods and services, women and gender, anti-pollution, taxes and fees, employment of foreigners, indigenous people's rights, community development, environmental programs, LGU endorsement, and reporting requirements. Notably, FTAA does not have equivalent provisions on labor, safety, and health, assumption of risks, and inspections and audits which mineral agreements have.

Among the distinctive provisions of FTAA contracts are as follows:

a. Minimum ground expenditures during the exploration and pre- feasibility periods.
b. Relinquishment of contract area, of at least 25% of the original area during the first 2 years of exploration and at least 10% of the remaining area annually during the extended exploration and pre-feasibility period. Generally, the mining area after final relinquishment shall not be more than 5,000 hectares.
c. Financing of mining operations. With few exceptions, the contractor should not raise any form of financing from domestic sources to fund its mining operations.
d. Performance of activities within an agreed period.
e. Designation of assignee in case of loan default.



3. Oil and Gas Contracts

Subject to the President's approval, oil and gas contracts are executed by the DOE, after public notice, pre-qualification, and public bidding processes are concluded, through negotiations. [98] DOE Circular DC2014-02-005 is the basis for the competitive bidding of service contracts for the exploration of potential petroleum areas in the country under the 5th Philippine Energy Contracting Round (PECR-5).

In general, the service contractor furnishes the service and technology, while the government provides the financing to which all petroleum produced belongs. In return, it is entitled to a stipulated service fee. [99] However, if the government is not able to finance the exploration operations, the service contract must state that the contractor shall furnish services, technology and financing, and the proceeds of sale of the petroleum produced under the contract would be the source of funds for paying the contractor's service fee and operation expenses. [100]

The obligations of the contractor (which may be a consortium) are stated in the contract. Overall, it manages the petroleum operations and may be authorized to market and dispose the petroleum produced domestically in the country or for export, subject to supplying the country's needs. The government, on the other hand, oversees the management of the operations and requires the contractor to: [101]

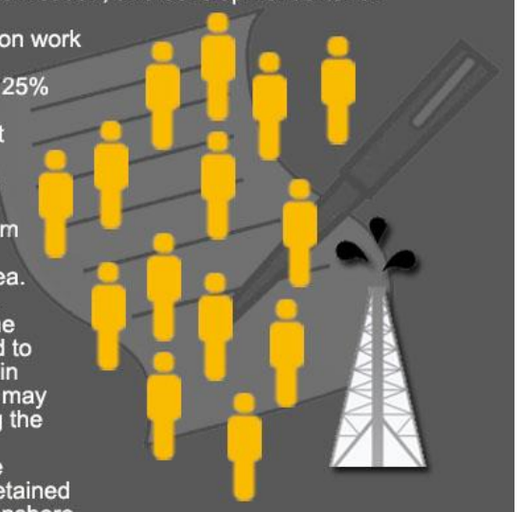
- Provide all necessary services and technology;
- Provide the requisite financing;
- Perform exploration work obligations and program;
- Operate the field once petroleum in commercial quantity is discovered;
- Assume all exploration risks (no reimbursement if no petroleum in commercial quantity is discovered and produced);
- Furnish the DOE with geological information and other required data;
- Maintain detailed technical records and accounts of its operations;
- Conform to regulations on safety, demarcation of work areas, non-interference with rights of other natural resources operations;
- Maintain all meters and measuring equipment and allow access to these and to the sites to DOE inspectors;
- Allow BIR and DOE examiners and representatives full access to their financial records for tax and other fiscal purposes; and
- Be subject to Philippine income tax.

The contract also states the obligations of the DOE, on behalf of the government: [102]

- Reimburse the contractor for all operating expenses (not exceeding 70% of the gross proceeds from production in any year);
- Pay the contractor a service fee (net amount shall not exceed 40% of the balance of the gross income after deducting the Filipino participation incentive, if any, and all operating expenses recovered);
- Reimburse operating expenses and pay service fee.

Every service contract must also contain the following minimum terms and conditions:

a. Spend for prosecution of exploration work, delineation, and development after oil in commercial quantity is found.
b. Penalty in case of abandonment of exploration work within 2 years from effective date.
c. Compulsory relinquishment of area; At least 25% of the initial area at the end of 5 years from effective date and should there be a contract extension; an additional relinquishment of at least 25% percent of the initial area at the end of 7 years from its effective date.
d. Delineation of production area after petroleum in commercial quantity is discovered.
e. Exploration period and rental on retained area. The exploration period is from 7 to 10 years. If petroleum has been found by the end of the 10th year, a 1-year extension may be granted to gauge its commercial quantity. If petroleum in commercial quantity is found, the contractor may retain after the exploration period and during the contract 12-1/2% of the initial area plus the delineated production area. In this case, the contractor should pay annual rent on such retained area (not less than PHP 10 per hectare for onshore and not less than PHP 20 per hectare for offshore areas). The payment of the retention is also on a case to case basis.
f. Production period. Where petroleum of commercial quantity is discovered during the exploration period, the contract continues for production purposes during the balance of the 10-year exploration period and for an additional 25 years.
g. Properties of contractor. All movable properties placed on the exploration or production area by the contractor are its properties and shall remain so unless it is not removed within a year from end of contract. These properties pertain to those properties that are not yet cost recovered from the revenue generated.
h. Labor, health, safety, and ecology. The contractor is subject to the laws on these matters.
i. Discovery, production, sale, and disposal of natural gas and casinghead petroleum spirit must be in line with crude oil rules and must prioritize the supply of prospective demand in the country after meeting the requirements in secondary recovery operations.



In addition, a service contract may provide privileges to the contractor. [103] (Discussed under Incentives section) From its language, the contractor's privileges are not absolutely granted by virtue of the decree alone, but must be expressly stated in every service contract.

A standard Service Contract is attached as Annex D.

4. Coal Contracts

Like oil and gas contracts, a coal operating contract is executed by the DOE, subject to the approval of the President. As the operator provides the service, technology, and financing, it is entitled to the stipulated fee and reimbursement of operating expenses. Technical competence and financial capability to undertake coal operation is thus required in the contract. [104]

As discussed, DOE Circular DC2014-02-005 is the basis for the competitive bidding of service contracts for the exploration of potential coal areas in the country under PECR-5. The PECR-5 process determines the legal, technical, and financial qualification of applicants, the evaluation of their applications, and the award of corresponding service and operating contracts for coal resources.

Coal operating contracts specify the obligations of the operator, which include examining lands supposed to contain coal, undertaking steps to reach the coal deposits so these can be mined, and utilizing coal deposits. In overseeing the management of the coal development operations, the government typically requires the operator to: [105]

- Provide all the necessary service and technology;

- Provide the requisite financing;
- Perform the work obligations and program prescribed in the contract;
- Operate the area on behalf of the government in accordance with good coal mining practices;
- Furnish the DOE promptly with all required information, data and reports;
- Maintain detailed technical records of its expenditures; maintain detailed account of safety demarcation of work areas, non-interference with the rights of other natural resources operators; maintain all equipment and allow DOE inspectors' access to these and the sites; and allow DOE representatives full access to their financial records for tax and other fiscal purposes.

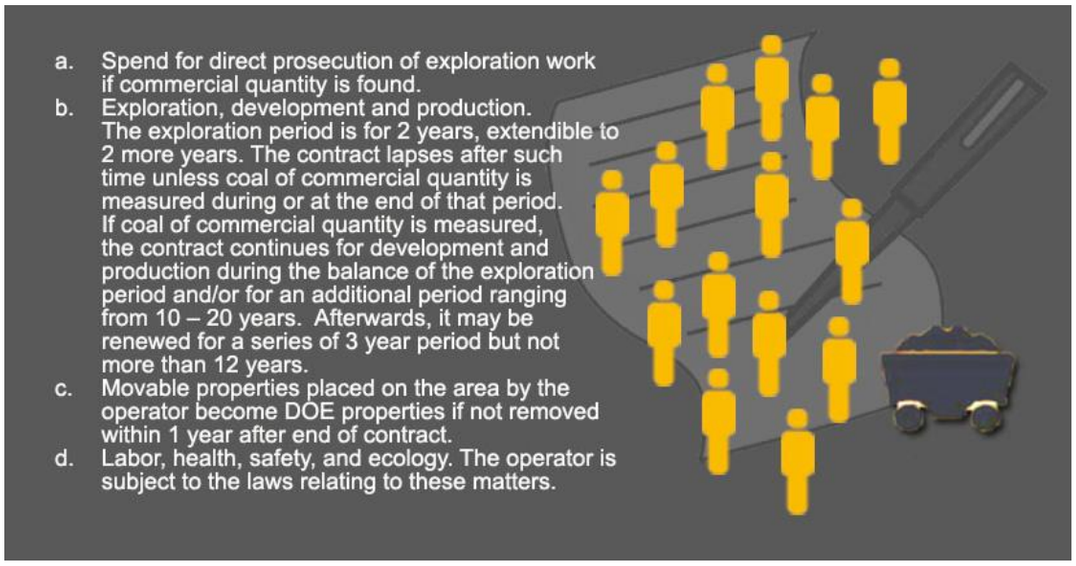
On the other hand, the DOE, on behalf of the government, performs the following: [106]

- Reimburse the operator for all operating expenses not exceeding 90% of the gross proceeds from production in any year, with a proviso that if in any year, the operating expenses exceed 90% of the gross proceeds from production, the unrecovered expenses may be recovered from the operation of succeeding years; [107] and
- Pay the operator a fee, in amount not exceeding 40% of the balance of the gross income after deducting all operating expenses. [108]

In addition to the operator's fee, and subject to other conditions, the DOE may grant valid coal permit holders who have organized their area into a coal unit a special allowance of a maximum of 40% of the balance of the gross income after deducting all operating expenses. [109]

Coal operating contracts with Filipino citizens or corporations not covered in the above paragraph shall be granted a special allowance, in amount not exceeding 30% of the balance of the gross income after deducting all operating expenses. Coal operating contracts in which Filipino individuals or corporations have a minimum participating interest of 40% in the contract area may also be given a special allowance not exceeding 20%of the balance of the gross income after deducting all operating expenses. [110]

Among the minimum terms and conditions of every coal operating contract are the following: [111]



Copies of oil, gas and mining contracts plus annexes of operating companies in 2012 may be accessed at http://data.gov.ph/infographics/eiti-dashboard.

IX. Social and Environmental Provisions

The law also provides for social and environmental funds that companies are required to set up for the benefit of communities. These are discussed in detail in the Reconciliation Report (Volume II).

X. Pending Bills and Cases on Mining

A. Reform Initiatives

During the 16th Congress, the Senate and House of Representatives filed a number of legislative measures proposing to institute reforms in the country's mining industry. Senate Bill Number (SBN) 43 proposes that the government's share should be equivalent to 10% of gross revenues from the development and use of mineral resources. SBN 457, in the same manner, seeks to increase tax on mineral resources from 2% to 7%, which it proposes to be equally divided between the government and the LGUs where the minerals are extracted. SBN 334, meanwhile, puts forward the creation of an independent health and environmental assessment for all mining projects. In the House of Representatives, House Bill Number (HBN) 171 seeks to ensure the highest industry development standards and equitable sharing of benefits between the government, indigenous peoples, and local communities. HBN 1173, on the other hand, proposes to set up a revised regulatory framework for the mining industry. [112]

A highlight of the reform initiatives is a bill approved by the Mining Industry Coordinating Council (MICC) – a joint committee of the Economic Development and Climate Change clusters created under EO 79 that was tasked to formulate a new revenue sharing scheme for the industry. Under the MICC bill, either a 10% tax on gross revenue or a 45-55% on adjusted mining revenues, [113] plus a share in the windfall profit will be imposed, whichever would give higher revenue to the government. The proposed taxes will replace all national and local taxes, except real property taxes, VAT, capital gains tax, stock transaction tax, documentary stamp tax, withholding tax on passive income, as well as other regulatory fees and charges. [114] The bill has been submitted to the Office of the President for approval and submission to Congress.

B. Mining Cases Awaiting the Supreme Court's Decision

It is worthy to note that petitions have been filed with the Supreme Court challenging the constitutionality of the provisions of the Mining Act and its implementing rules relating to the government's share in mineral agreements.[115] The petitions allege that the law and its implementing rules allow the inequitable sharing of natural wealth contrary to the Constitution. [116] The petitioners assert that a study must be done to clearly determine which fiscal arrangement shall result to an "equitable sharing of wealth" considering the other cultural, social, environmental and economic loss and risks that mining entails. Oral arguments have taken place before the Supreme Court *en banc*.

CHAPTER 3
Licensing Processes

CHAPTER 3

Licensing Processes [20]

Before any individual or corporation can proceed to explore, develop, and use the country's mineral, oil, gas, and coal resources, an appropriate license or permit from the government must first be obtained.

The DENR is in charge of the licensing and regulation of the country's natural resources. It regulates the development of mineral resources through the MGB. The law enumerates the areas that are open to mining. These areas may be covered by applications for a mining exploration permit, mineral agreement, or FTAA.

On the other hand, the DOE regulates private sector activities in projects relating to the exploration, development, and use of all forms of energy products and resources. Oil and gas service contracts and coal operating contracts are obtained through public bidding in the PECRs where areas with energy potential are made open to the public for possible exploration.

This chapter explains the requirements and procedures for obtaining these licenses from the government. It also provides a list of license holders in the country.

A full text of this chapter is available at http://ph-eiti.org/#/Papers/Licensing-Processes

I. Licensing System for Mining Operations

A. Mining Agreements and Permits

1. Areas open and closed to mining

The Mining Act and its IRR enumerate the areas that are open and not open to mining applications. A more comprehensive list of areas closed to mining, also called No Go Zones, is provided under EO 79 (2012). A summary of these areas is found in Figure 31:

Figure 31. Areas Open and Closed to Mining



[20] Full text of this chapter was written by Maria Althea M. Teves and Regina Marie Tumlos under the supervision of Atty. Jay Batongbacal.



Areas covered by valid and existing mining rights and mining applications.

Areas established under the National Integrated Protected Areas System (NIPAS) Act.[22]

Areas which the DENR Secretary may exclude based on an assessment of their environmental impacts and implications on sustainable land uses.[23]

Offshore areas within 500 meters from the mean low tide level, and onshore areas within 200 meters from the mean low tide level along the coast.

In seabed or marine aggregate quarrying, offshore areas less than 1,500 meters from the mean low tide level of land or island(s) and where the seabed depth is less than 30 meters measured at mean sea level.

Prime agricultural lands, in addition to those covered by the agrarian reform law,[24] including (a) plantations and areas devoted to valuable crops; (b) strategic agriculture and fisheries development zones (SAFDZ); and (c) fish refuge and sanctuaries declared by the Department of Agriculture.

Tourism development areas identified in the National Tourism Development Plan.

Other critical areas, island ecosystems, and impact areas of mining as determined by present mapping technologies that the DENR may later identify pursuant to laws, rules, and regulations

Military and other government reservations, with exception.[25]

Near or under public or private buildings, cemeteries, archeological and historic sites, bridges, highways, waterways, railroads, reservoirs, dams, other infrastructure projects, public or private works including plantations or valuable crops, with exception.[26]

Areas covered by small-scale miners as defined by law, with exception.[27]

Areas expressly prohibited by law.

[21] Rep. Act No. 7942 (1995), Section 18.
[22] Rep. Act No. 7586 (1992).
[23] An example cited are built-up areas and critical watersheds with appropriate LGU ordinances specifying the location and boundary of the area.
[24] Rep. Act No. 6657 or the Comprehensive Agrarian Reform Law of 1988.
[25] Except when there is prior written clearance by the concerned government agency.
[26] Except when there is written consent of the concerned government agency or private entity.
[27] Except when there is prior consent of the small-scale miners, in which case the parties shall agree on royalty payment upon use of minerals.

2. Types of agreement, permits, and their specific requirements

Under the Mining Act and its IRR, mining agreements and permits include:

- Exploration Permit (EP);
- Mineral Agreements (MA), which can be a Mineral Production Sharing Agreement (MPSA), a Joint Venture Agreement (JVA), or a Co-Production Agreement (CA);
- Financial or Technical Assistance Agreement (FTAAs); and
- Mining Permits (MPs), such as quarry, sand and gravel, gratuitous, guano, gemstone, gathering, small-scale and mineral processing permits.

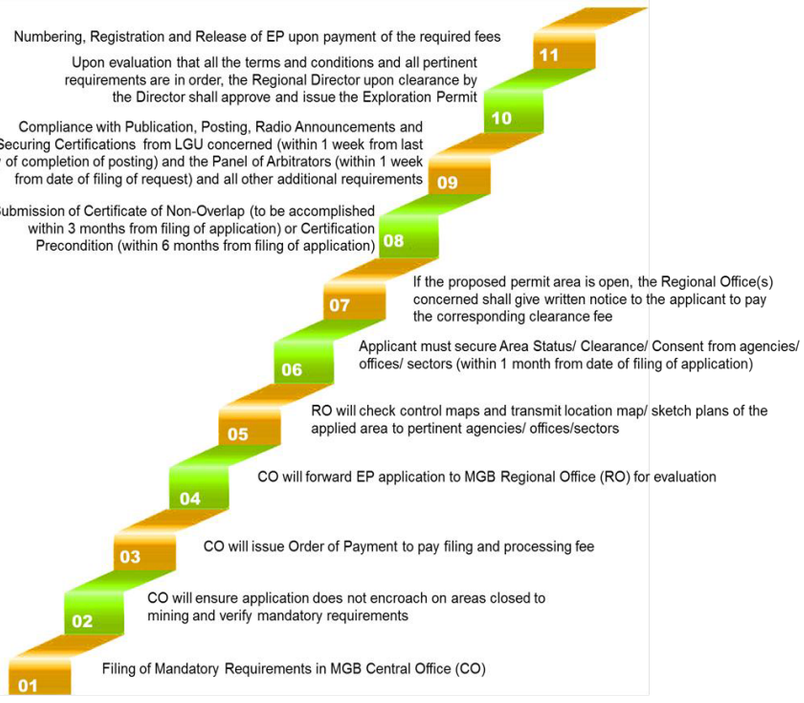
Exploration permits, mineral agreements, and FTAA are the types of permits and agreements that are relevant to large-scale metallic mining. A detailed explanation of each of these agreements was previously discussed in the Chapter on Legal Framework.

The requirements and procedures for obtaining the mine permits and agreements slightly vary depending on the type of permit or agreement applied for. In general, the applicant must be qualified to file such application. In doing so, it must specify the areas covered by the application, pay the corresponding fees, and submit all the necessary documents to support the application. These documents may include location maps, work programs, and proofs of corporate registration, technical competence, and financial capability. In addition, the applicant may be required to submit copies of its ECC, environmental programs, mining feasibility studies, proof of free and prior informed consent of concerned IPs/ICCs, or a certification that its area does not overlap with the ancestral domain of IPs/ICCs. An application goes through posting, publication, and registration then hearing process before it is approved by the issuing authority, which could either be the DENR Secretary, the MGB Director or Regional Director, or the President of the Philippines. A more detailed guidance on the requirements and procedures for obtaining these permits and agreements is found in Annex E.

3. Procedure for approval

a. Exploration Permits. The procedure for the approval of applications for exploration permits is as follows:

Figure 32. Exploration Permit Flowchart

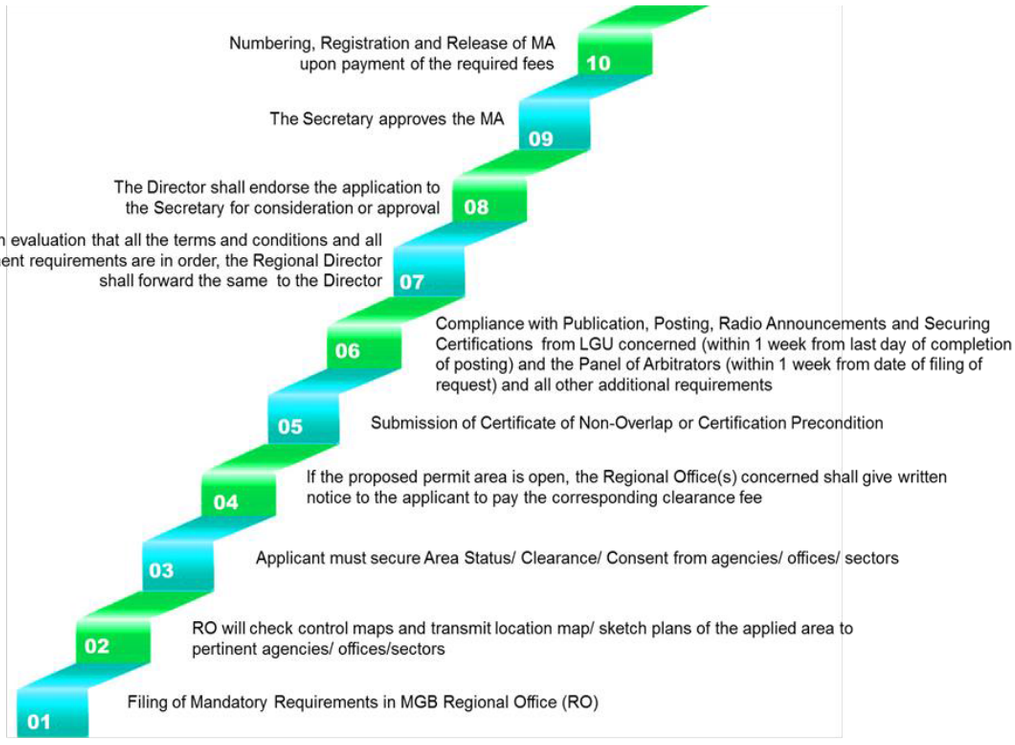


If the exploration activity reveals the presence of mineral deposits feasible for mining operations, the Exploration Permit holder may, within the term of the permit, file a Declaration of Mining Project Feasibility. Together with the Declaration, the permit holder should also file a Letter of Intent with the Regional Office concerned prior to the lapse of the Exploration Permit, copy furnished the MGB.

If the permit holder wants to convert the Exploration Permit into a Mineral Agreement or FTAA, he should submit the corresponding applications for those with the Regional Office within 30 days from filing the Letter of Intent. Failure to file the Mineral Agreement or FTAA application within the prescribed period would be construed to mean that the permit holder would rather continue operating until the expiration of its Exploration Permit. The approval of the Declaration of Mining Project Feasibility gives the permit holder the exclusive right to a Mineral Agreement or an FTAA over the permit area. [117]

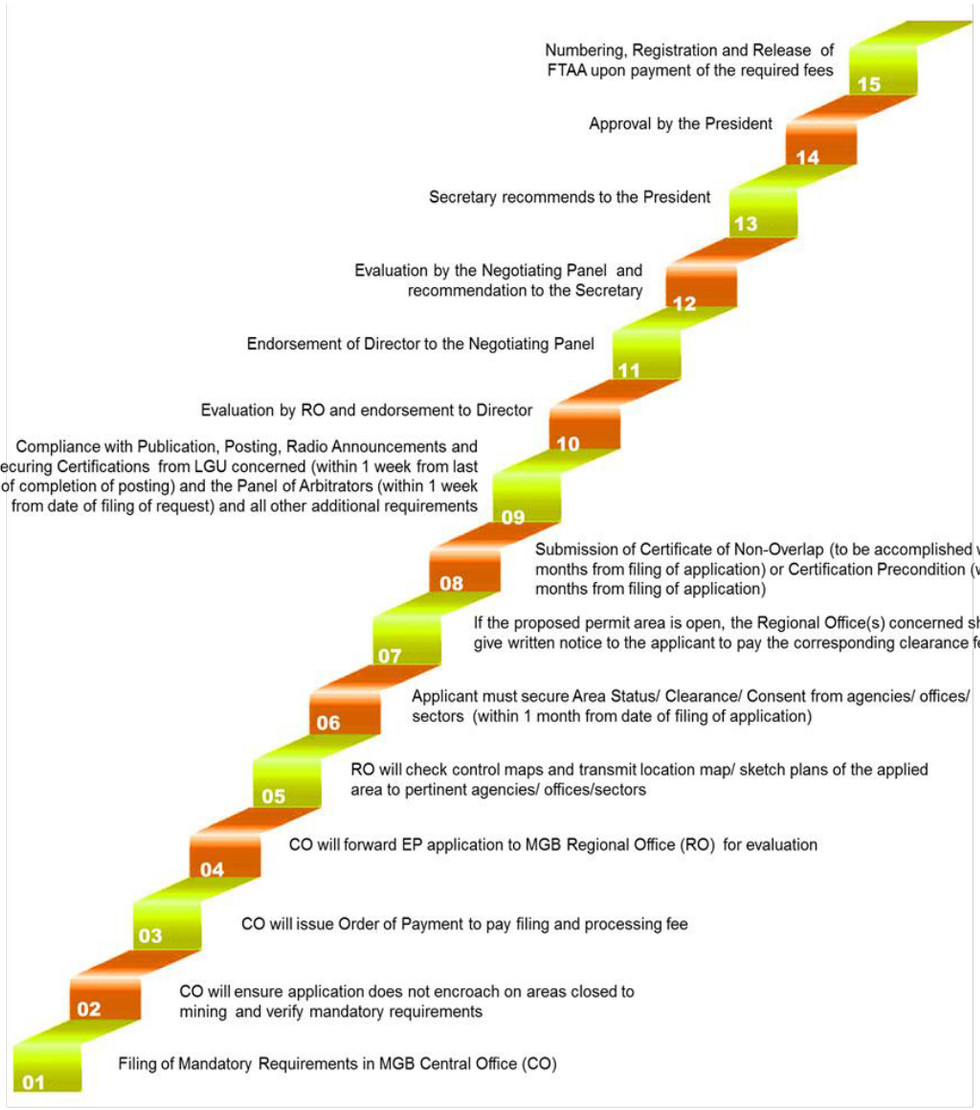
b. Mineral Agreements. These agreements are approved in accordance with the following procedure:

Figure 33. Mineral Agreement Flowchart



c. Financial or Technical Assistance Agreements. FTAAs are approved in accordance with the following procedure:

Figure 34. FTAA Flowchart



4. Mineral reservations

A slightly different procedure is observed when applications are made for mining activities in mineral reservations.

A Mineral Reservation is an area established and proclaimed as such by the President upon the recommendation of the MGB Director through the DENR Secretary. All submerged lands within the contiguous zone and Exclusive Economic Zone (EEZ) are included in a Mineral Reservation. [118] EO 79 expanded the coverage of mineral reservations when it included areas with known strategic mineral resources or reserves. These areas would be declared as Mineral Reservations after proper consultation with stakeholders. [119]

One of the duties of the DENR Secretary is to perform a periodic review of existing Mineral Reservations to determine if its coverage is still consistent with national interests. [120] The President, upon the recommendation of the MGB Director through the Secretary, can de-establish, alter, or modify a Mineral Reservation when such national interest so requires. [121]

Exploration activities in Mineral Reservations may be done by submitting an application for permits to the Regional Office concerned for its initial evaluation and endorsement to the MGB for final evaluation. [122] On the other hand, mining in Government Reservations may be undertaken by the DENR itself. If, however, it cannot, a Qualified Person may take over the right to explore, develop and utilize the minerals. [123] When such situation arises, a Memorandum of Agreement must be entered into by and between DENR and a qualified government corporation/entity authorizing the latter to explore, develop and/or use the mineral resources found in the area. Operations in Government Reservations must first be done through an Exploration Permit before the same is opened for Mineral Agreement or FTAA application or other mining applications. [124]

II. Licensing System for Oil and Gas

A. Applicable Laws and Reviewing Body

The Petroleum Act of 1949 gave the government the right to explore, develop, and utilize petroleum resources for itself, through its instrumentalities, or through competent persons qualified to perform such work as Independent Contractors under a Service Contract. The concept of service contracts was carried on in PD 87 - the subsequent legislation which governs the petroleum industry today. [125]

Service contracts for petroleum exploration and development are obtained through the Philippine Energy Contracting Rounds (PECRs) overseen by DOE's Review and Evaluation Committee (REC). The REC is a body established by Department Circular (DC) 2011-12-00010 and DC 2014-02-0005 issued by the DOE. It is in charge of preparing the guidelines for the documentation that would be submitted by the proponents, and facilitates the examination and evaluation of the capabilities of each proponent. The REC also recommends to the DOE Secretary who should be the winning proponent, and, in connection with this, answer any question that the Secretary may raise regarding the contracts endorsed, and the legal, technical and financial capabilities of applicants, including motions for reconsideration.

Moreover, the REC determines prospective petroleum areas found in the Philippine territory, including its maritime zones and continental shelf, for inclusion in the PECR, subject to nominations by proponents of areas that were not included in REC's map, as approved by the Secretary.

There were three Petroleum Service contracts granted out of 11 applications in PECR 4. [126] For the 5th PECR, DOE offered eleven blocks, covering a total area of approximately 47,840 kilometers, with the largest block covering 5,760 square kilometers in the east Palawan region. [127]

B. Documentary Requirements

According to DC 2014-02-0005 which governs PECR-5, applicants for the PECR for a Service Contract may be any local or foreign individual company or group of companies forming a joint venture or a consortium, organized or authorized for the purpose of engaging in petroleum exploration and development.

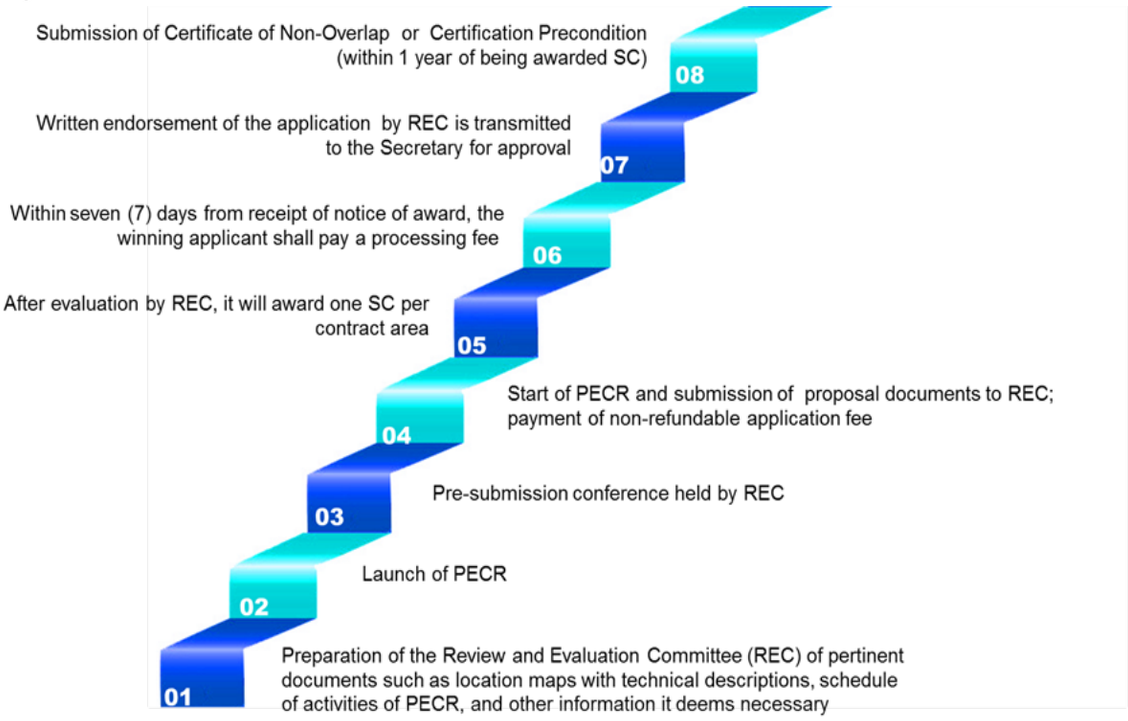
The DC specifies that should the applicant form a joint venture or a consortium, a copy of the joint venture agreement must be filed. Each member should be legally and financially qualified and the working capital of each member of the joint venture/consortium should be pro-rata based on its participating interest in the proposed work program and budget. Among the documents that the applicant should submit to the REC are as follows: legal, technical, and financial documents, non-refundable application fee of PHP200,000 (USD 4,735)

per area, information sheet showing a summary of the application, work program documentation, geological and geophysical evaluation of the contract area applied for, and economics and development concepts of possible petroleum discoveries. (See Annex F for the details of the application requirements)

C. Approval Procedure

Service Contracts for petroleum resources are reviewed and approved by the REC and DOE. The DOE will award one Petroleum Service Contract for each Contract Area. The winning applicant has 7 days from receipt of the notice of award to pay the processing fee of PHP 0.48 per hectare based on DOE's Schedule of Fees and Charges in compliance with EO 197 (2000). The review and approval goes through the following procedure:

Figure 35. Service Contract Flowchart



III. Licensing System for Coal Operations

A. Applicable Laws and Reviewing Body

PD 972, as amended, divided the country into coal regions where exploration and exploitation programs can be implemented. The DOE was tasked to establish these regions and to undertake the active exploration, development and utilization of coal resources, as well as enter into Coal Operating Contracts with private parties.[128]

Coal permits are granted through public bidding every time the DOE conducts a PECR where areas with energy resource potential are made open to the public for possible exploration.

Similar to oil and gas, Coal Operating Contracts are also obtained through PECRs overseen likewise by the DOE's Review Evaluation Committee (REC).

B. Documentary Requirements

Before the official open of a PECR, the REC must have already prepared the pertinent PECR documents which contain a description of available data and the prospect of petroleum and coal resources in each area including, among others:

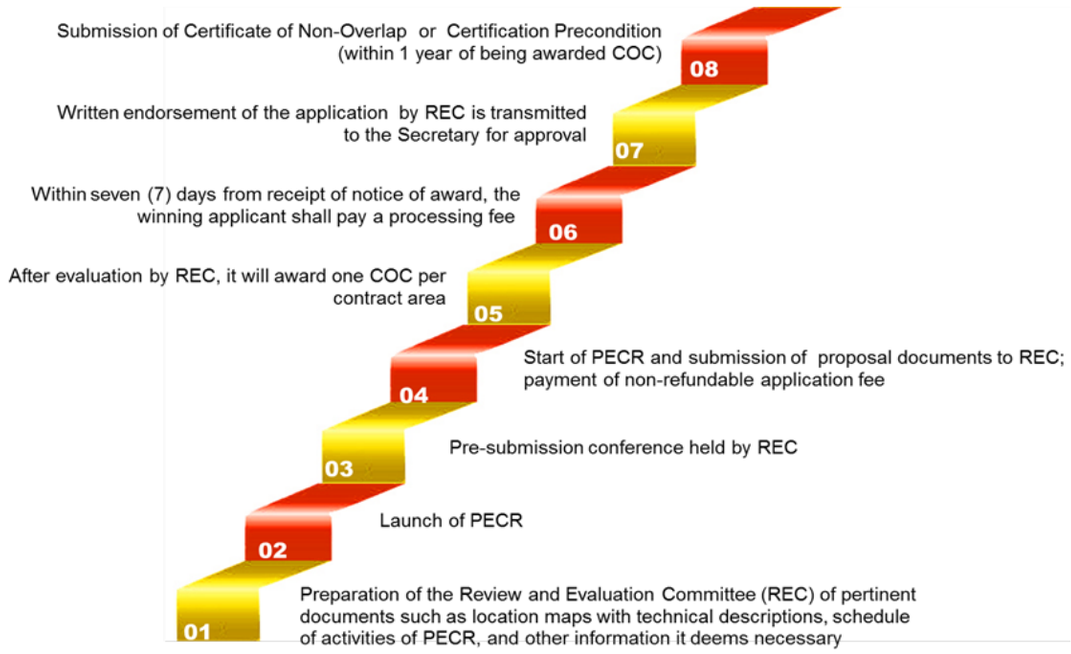
a. Location map and technical description of the areas being offered during the PECR;
b. Schedule of activities for the PECR; and
c. Such other information as the REC may deem appropriate.

The REC must then schedule a pre-submission conference to discuss relevant circulars and rules and entertain questions or clarifications from prospective applicants. It will also issue additional guidelines on the venue, set-up, and procedures in the opening of the PECR applications. (See Annex G for COC application requirements)

C. Approval Procedure

The same procedures of review and evaluation are observed by the REC and DOE for petroleum and coal resources. Coal Operating Contracts are approved in accordance with the following procedure:

Figure 36. Coal Operating Contract Flowchart



IV. List of License Holders in the Extractive Industries

A. Mining Sector

The latest license profile of the MGB was compiled on 31 July 2014. The data gathered by the MGB gives the total number of Exploration Permits, FTAA and MPSA licensees, and the areas covered.

1. Exploration Permits. To date, there are 36 existing permits covering approximately 147,050 hectares, and 6 applications with clearance to issue permits which cover about 13,050 hectares, or an estimated total of 160,100 hectares. This estimate is spread across the country as follows: 85,620 hectares in Luzon, 63,160 hectares in Visayas, and 11,320 in Mindanao. The complete list may be found in Annex H.

2. Mineral Agreements. There are 339 MPSAs currently operating in the Philippines with a total approximate area of 602,010 hectares: 226,950 hectares in Luzon; 110,100 in Visayas, and 264,960 in Mindanao.

3. For FTAAs, there are 6 existing FTAAs only one of which is operating, covering an estimated total of 108,870 hectares. Of this area, 85,300 hectares are in Luzon and 23,570 hectares are in Mindanao. The complete list may be found in Annex I.

Maps of mining tenements may be accessed at http://data.gov.ph/infographics/eiti-dashboard.

B. Petroleum and Coal Sector

Data from the DOE show that there are over 29 Service Contracts and 51 Coal Operating Contracts in the country as of 31 December 2013. The Philippine National Oil Company (PNOC) presently holds 8 Service Contracts and 7 Coal Operating Contracts. A list provided by MGB and DOE [129] is found in Annexes J-K.

V. Procedural and Substantive Relief for License Disputes and Rejected Mining Applications

Issues arising from license disputes or rejected applications are handled by a Panel of Arbitrators under the MGB.

A. Summary of Outcome/Status of Applications for Licenses and Permits

Data gathered from the MGB shows the number of endorsed applications to the DENR Secretary and those which have been approved subsequently. The limitations of the data, however, are that it covers only the denied, cancelled, endorsed, and approved applications as of 30 June 2011. It does not show how many applications were in fact filed per region since the enactment of the Mining Act in 1995.

Based on the latest data, out of the 458 endorsed applications filed with either the MGB Director or the DENR Secretary, only 72 were approved. Applications that are recommended for cancellation could be those which were considered as non-moving, pursuant to EO 79 and IRR . [130] Unfortunately, the data provided by MGB does not show the specific reasons for the cancellation of the applications from Regions V (Bicol region), XII (Central Mindanao), and XIII (CARAGA in northeast part of Mindanao). (See Annex L for details)

VI. License Transfers and Systems

A. Mining Sector

A holder of an application for or a granted exploration permit, mineral agreement, or FTAA may transfer or assign its rights to another entity, subject to the approval of either the MGB Director, DENR Secretary, or the President. In all instances, the transferee or assignee must likewise be qualified to hold the application or permit, with the same eligibility as its predecessor. For both applied and granted mineral agreements and FTAA, the transfer is not allowed in speculative cases. In granted agreements, the DENR requires that the transferee or assignee assumes the obligations of its predecessor under the existing agreement. It may also impose new conditions upon its approval.

The requirements and procedure for transfer of licenses are discussed in detail in Annex E.

B. Petroleum: Oil and Gas Sector

DOE's DC 2007-04-0003 lays down the guidelines and procedures for the transfer of rights and obligations in petroleum service contracts. Requests for transfer or assignment must be done in writing, signed by an authorized officer or representative of the Contractor, and filed with the DOE Undersecretary in charge of the Energy Resource Development Bureau

(ERDB), along with the following documents:

- History of the Service Contract;
- Proposal for Transfer or Assignment;
- Technical Justification for the Transfer or Assignment:
- Duly executed Deed of Transfer or Assignment;
- Documents evidencing financial, legal and technical qualifications of the transferee or assignee:
- DOE may also request the submission of additional information or documents. (See Annex M for the details of each item)

After the receipt of the documents, the DOE must evaluate the qualifications of the prospective assignee/transferee and issue a memorandum containing the results of such review to the ERDB Director. The ERDB Director must then issue a memorandum to the ERDB Undersecretary detailing the background of the Service Contract, the proposal and justification for the transfer or assignment, the results of the legal, financial, and technical evaluation, and his own recommendation for the approval or denial of the request. The Undersecretary then forwards his recommendation to the DOE Secretary who shall make the final decision on the application. The approval by the Secretary of the DOE will operate automatically [131]

C. Coal Sector

PD 972 requires that the transfer or assignment to a Qualified Person of any right or obligation under the Coal Operating Contract needs prior approval of the DOE and that the transferor has fulfilled all his obligations under the contract. This is reiterated in the Model Contract for PECR-5 which further requires that the DOE's prior approval must be in writing and that the transferee must be a qualified person with resources and capability to continue the coal operations. Transfers or assignments during the exploration, however, can only be done if the transferee or assignee is an affiliate of the operator, or is created for the special purpose of handling the project.

CHAPTER 4
Subnational Payments

CHAPTER 4

Subnational Payments [28]

Local government units (LGUs) play an important role in subnational EITI implementation as they host the mining sites, oil and gas fields, and principal offices of extractive industries. In addition, they are the recipients of revenues from extractive industries whether through direct or indirect payments. As they are directly impacted by extractive industry operations, the law requires national government agencies to conduct prior and periodic consultations with LGUs on any projects that impact on the environment and ecological balance of communities, which projects include the extraction of natural resources.

This chapter discusses the revenues collected by LGUs, their share in the revenues collected by the national government from extractive industries, and their role in monitoring extractive operations within their localities.

A full text of this chapter is available at http://ph-eiti.org/#/Papers/Subnational-Implementation

I. The National Government and the Local Government Units

The three main branches of the national government - executive, legislative, and judiciary - are granted fundamental powers by the Constitution. The executive branch exercises its powers through departments, bureaus, and administrative agencies.

The territorial and political subdivisions of the Philippines are the provinces, cities, municipalities, and barangays, [132] also known as Local Government Units (LGUs). The legislative power of the national government rests with Congress, which is composed of the Senate and the House of Representatives. [133] Legislative power includes the power to create LGUs [134] and the authority to abolish them. [135] As part of this power, Congress may also delegate to LGUs executive and legislative powers, including the power to tax. [136] This is based on the principle of devolution and decentralization of government. [137]

LGUs enjoy local autonomy, [138] even as the President of the Philippines exercises general supervision over them [139] to ensure that their acts are within the scope of their powers and functions. [140]

A. Political Subdivisions and Classifications of LGUs

Of these territorial and political subdivisions, the barangay is the smallest unit of government. A municipality is composed of several barangays, while a province can consist of municipalities and cities. The province, cities, and municipalities should ensure that the acts of their component units are within their powers and functions. [141]

Highly urbanized cities and independent component cities are independent of the province. [142] Highly urbanized cities are those with a minimum of 200,000 inhabitants and earn at least PHP 50,000 per year (USD 1,184). [143] Independent component cities do not need to meet the same requirements but their charters prohibit their residents from voting for provincial elective officials. [144] As a result, highly urbanized cities and independent component cities are outside the supervision of the province.

The Local Government Code devolves to the LGUs functions and powers on basic services in infrastructure, health and social, environmental management, agriculture and fisheries, tourism, and other regulatory functions. To meet the budgetary needs of these devolved functions, the LGUs receive Internal Revenue Allotment (IRA) from the national government. LGUs also share in national wealth from excise taxes and royalty payments by mining and a portion in the net profits of oil and gas companies as hosts of said extractive operations. Apart from these share from the national wealth and national tax collection, LGUs are expected to generate their own income and revenues in accordance with their local taxing powers.

[28] Full text of this chapter was written by Atty. Ma. Aletta Nunez, Atty. Julius M. Lotilla, and Atty. Jennifer Ramos.

B. National Government as the Main Regulator of the Extractive Industry

The LGUs' devolved functions in environmental management exclude the regulation of large-scale mining and oil and gas extraction. These extractive activities are managed and regulated by national government agencies, primarily the DENR and the DOE.

C. The Role of LGUs in Regulating the Extractive Industry

While the national government is the permitting and regulatory authority of the extractive industry, LGUs play an important role in large-scale mining operation and oil and gas extraction within their territorial jurisdiction. Based on the Code's general welfare clause [145] and requirement on prior consultation, [146] no project or program that would have environmental impact may be implemented in its territory without consulting the LGUs affected, non-government organizations (NGOs), and other concerned sectors. After consultation, proponents such as oil, gas and mining companies need to get the project approval from the Sanggunian (local legislative body) concerned. [147] Project proponents are also required to comply with local tax ordinances including the requirements for a mayor's permit or business permit before they can start their operations.

With respect to small-scale mining, the DENR-MGB, through the Provincial or City Mining and Regulatory Board (P/CMRB) as its implementing arm, regulates its operation. The LGU sits as a member of the P/CMRB, which board is supervised by the DENR Secretary. [148] Its functions include declaring lands as peoples' small-scale mining areas, awarding contracts, settling claims and disputes in the mining area, and crafting and implementing rules on small-scale mining. [149]

Quarrying in public or private land for building and construction materials, such as marble, basalt, clay, and other similar materials, requires permit from the Provincial Governor or City Mayor of highly urbanized cities and independent component cities. Prior to the issuance of such permit, an application must be lodged with the P/CMRB. [150]

II. Sources of Revenues of LGUS

LGUs benefit and receive shares from the proceeds of the country's national wealth and from internal revenue allocation (IRA) that are collected by the national government and transmitted to the LGUs based on the sharing percentage and schedule provided by law. The DOF, DBM, DILG, and the DENR are responsible in determining the shares and releasing these to the LGUs.

In addition, LGUs directly receive from extractive industry companies payments that are imposed by national laws, and from those that LGUs impose based on their own local revenue codes. Examples include local taxes on business and real property, community tax, and other taxes and fees.

LGUs should appropriate these revenues to finance their local development and livelihood projects. In some instances, its use is more defined by law, such as to lower electricity costs or to fund public education.

The LGUs' sources of revenues may be classified into indirect payments, such as shares in national wealth and in IRA, and direct payments such as those collected by LGUs themselves based on national laws and local tax codes.

A. LGUs' Share in the National Wealth (Excise Tax and Royalty Income)

As owner of the country's mineral, petroleum, and coal resources, the State exercises full control and supervision over its exploration, development, and utilization. [151] It is the State through the national government that regulates the activities of extractive industries involving the exploration and development of these resources. [152]

LGUs benefit and receive share from the proceeds of this national wealth. [153] The LGUs' share in the national wealth is 40% of the gross collections from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, including interests, or fines, and from its share in any co-production, joint venture or production sharing agreement within their territories. [154] Excise tax is 2% based on the actual market value of the annual gross output at the time of removal, [155] while royalty from mineral reservation is 5% of the market value of the gross output of the minerals and mineral products extracted or produced. [156]

This 40% is further distributed among the LGU units. [157] The percentage of allocation among the LGUs depends on whether the natural resources are located in the province; in two or more provinces, cities or municipalities, or barangays; or in a highly urbanized or independent component city.

By regulation, these shares are released automatically, with no further action needed, to the concerned provincial, city, municipal or barangay treasurer, on a quarterly basis within five days after the end of each quarter. [158] If the entity developing or utilizing the resource is a government agency or government-owned or controlled corporation, the share is remitted to the treasurer concerned within five days after the end of each quarter. [159]

LGUs must appropriate these shares to finance their local development and livelihood projects. [160] In the case of energy resources, such as hydro-thermal and geothermal energy projects, at least 80% of the LGU share must be applied solely to lower electricity cost in the LGU where the source of energy is located. [161]

B. LGUs' Internal Revenue Allotment (IRA)

LGUs also have a share in the national internal revenue taxes. [162] They receive this share, which is, however, not disaggregated, to reflect specific payments from the extractive industries. The share is 40% of the third fiscal year preceding the current fiscal year. [163] It is further allocated to the provinces, cities, municipalities, and barangays based on population, land area, and equal sharing.

Like their share in the national wealth, IRA shares should be automatically released directly to the provincial, city, municipal or barangay treasurer on a quarterly basis within five days after the end of each quarter. [164] LGUs must appropriate in their annual budget no less than 20% of the IRA for development plans [165] approved by their local development councils. [166]

C. LGUs' Direct Collections Based on National Laws and Local Tax Codes

The legislative power of Congress includes the power to raise revenue and provide spending for the government. [167] In the case of extractive industries, Congress can impose revenue, taxing and collection measures and at the same time delegate these powers to LGUs through legislation.

The LGUs' power to tax under the Constitution is given flesh in the Local Government Code. Under the Code, the LGUs through local ordinances may impose taxes on business and real property, community tax, and other taxes

and fees. The Mining Act also authorizes LGUs to impose occupation fees on companies operating in onshore mining areas within the LGU's jurisdiction. LGUs may also enact taxing ordinances imposing certain taxes and fees, such as environmental enhancement, soil depletion and hazard mitigation, among many other regulatory fees and taxes.

To summarize, these are the sources of revenues of local government units:

Table 18. LGUs' Sources of Revenues

Source	Percentage	Release	Allocation
Share in national wealth such as excise tax and royalties (Indirect payment)	40% of BIR's gross collection from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, including interests, or fines, and from its share in any co-production, joint venture or production sharing agreement within their territorial jurisdiction	Automatic release with no further action needed, to the concerned provincial, city, municipal or barangay treasurer, on a quarterly basis within five days after the end of each quarter.	Local development and livelihood projects. For energy resources e.g. hydrothermal, geothermal and other sources of energy, at least 80% of the LGU share must be applied solely to lower electricity cost in the LGU where the source of energy is located.
Internal Revenue Allotment (Indirect payment)	40% of the national internal revenue taxes of the third fiscal year preceding the current fiscal year	Automatic release with no further action needed, to the concerned provincial, city, municipal or barangay treasurer, on a quarterly basis within five days after the end of each quarter	Not less than 20% of IRA must be allocated for development plans approved by local development councils
Taxes and fees under LGC, Mining Act and local tax codes (Direct payments)		Directly collected by LGUs	As stated in the local tax codes

As mentioned, indirect payments to LGUs refer to their shares from IRA and national wealth that are collected by the BIR or the MGB and transmitted to the LGUs based on the sharing percentage and schedule mandated by law.

Direct payments to LGUs, on the other hand, refer to those imposed under national laws such as the Local Government Code and the Mining Act, and to those imposed by the LGUs based on their own local revenue codes.

Table 19. Direct Payments Made to LGUs by Mining Companies Provided under National Statutes and Local Tax Codes

Local Revenue	Applicable to	Legal Basis	
		National Statute	Rate under National Statute
Business Tax	C M	RA 7160, Sec. 143, Sec.146, Sec. 151	Schedule of Graduated Tax Rate
Real Property Tax (RPT) – Basic	P C M B	RA 7160, Sec. 200, 212, 215, 218,	Ceiling on the Assessment Based on a Schedule of Fair Market Value
RPT - Special Education Fund	P	RA 7160, Sec. 235	1% of Assessed Value of Property
Public Utility Charges [Owned and operated by LGU]	P C M	RA 7160, Sec. 154	
Toll Fees [Public Road, Pier, Wharf, Waterway, Bridge, Ferry, Telecommunication System]	P C M	RA 7160, Sec. 155	To be fixed by Sanggunian
Community Tax	C M	RA 7160, Sec. 157, 158	P5 + P1/P1000 income; P500 + P2/P500 income for Corporations and not exceeding P10,000
Tax on Sand, Gravel and other Quarry Resources	P C M B	RA 7160, Sec. 138; RA 7942 Sec. 44	Not more than 10% of FMV
Barangay Clearance	B	RA 7160, Sec. 152	Reasonable Fees
Fixed Tax for Delivery Trucks	P	RA 7160, Sec. 141	P500
Professional Tax	P	RA 7160, Sec 139	Not exceeding P300
Occupation Fees	P C M	RA 7942, Sec. 86	P5-P100/ hectare
Penalties, Surcharges and Interests	P C M	RA 7160, Sec. 169	P25 Surcharge; P2 Interest (maximum rates)

P - province; C city; M unicipality; B rangay

1. *Taxes and fees based on national laws*

a. Real Property Tax

An annual ad valorem tax on real property, such as land, building and machinery, may only be imposed by a province, city or municipality within the Metropolitan Manila Area. [168] All real property must be assessed at the current and fair market value prevailing in the locality where the property is situated. [169] In the case of brand new machineries, the fair market value is its acquisition cost. In all other cases, it is determined by dividing the remaining economic life of the machinery by its estimated economic life, multiplied by the replacement or reproduction cost. If the machinery is imported, the acquisition cost includes freight, insurance, bank charges, brokerage, arrastre and handling, duties and taxes, plus charges at the present site. [170]

When any person by whom real property is required to be declared under, refuses or fails for any reason to make such declaration within the time prescribed, the provincial, city or municipal assessor shall himself declare the property in the name of the owner. [171] For any unpaid taxes, surcharges and penalties may also be imposed. [172]

The uniform rate of basic real property tax applicable to their respective localities is as follows: [173]

(a) In the case of a province, at the rate not exceeding 1% of the assessed value of real property; and
(b) In the case of a city or a municipality within the Metropolitan Manila Area, at the rate not exceeding 2% of the assessed value of real property.

There is also an additional levy on real property for the Special Education Fund (SEF) of 1% on the assessed value of real property which shall be in addition to the basic real property tax. The proceeds of this additional levy exclusively accrue to the SEF. [174]

b. Annual Fixed Tax for Every Delivery Truck

This is levied by the province as an annual fixed tax for every truck, van or any vehicle used by manufacturers, producers, wholesalers, dealers or retailers in the delivery or distribution of commodities within the province in any amount not exceeding PHP 500.00. [175]

c. Tax on Sand, Gravel and Other Quarry Resources

The province may levy and collect not more than 10% of fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth, and other quarry resources that are extracted from public lands or from the beds of seas, lakes, rivers, streams, creeks, and other public waters within its territorial jurisdiction. [176]

d. Professional Tax

An annual professional tax is imposed on each person engaged in the practice of his profession requiring government examination. Corporations employing a person subject to professional tax shall require payment by that person of the tax on his profession before employment and annually thereafter. [177]

e. Business Tax

Cities and municipalities impose tax on business on large-scale mining companies either as manufacturer, exporter, or contractor. The rates are imposed based on local tax codes with the cap provided by the Local Government Code. [178] The rates of business taxes that the city may levy may exceed the maximum rates allowed for the

municipality by not more than 50% [179]

f. Community Tax

Cities or municipalities also levy a community tax. [180] Every corporation is charged an annual community tax of PHP 500.00 (USD 12) and an annual additional tax, which, in no case, shall exceed PHP 10,000 (USD 237). [181] A community tax certificate is issued to every person or corporation upon payment of the community tax.

g. Public Utility Charges

Local government units may fix the rates for the operation of public utilities owned, operated and maintained by them within their jurisdiction. [182]

h. Toll Fees or Charges

This is imposed for the use of any public road, pier, or wharf, waterway, bridges, ferry or telecommunication system funded and constructed by the LGU. However, the LGU may discontinue the collection of the tolls, in which case, the said facility shall be free and open for public use when public safety and welfare so requires. [183]

i. Barangay Clearance

No city or municipality may issue any license or permit for any business or activity unless a clearance is first obtained from the barangay where such business or activity is located or conducted. For such clearance, the sangguniang barangay may impose a reasonable fee. [184]

j. Occupation Fees

The Mining Act also authorizes the LGUs to impose occupation fees on companies operating in onshore mining areas. Under the law, the LGUs can collect these fees from any holder of a mineral agreement, FTAA, or exploration permit on public or private lands [185] in accordance with a schedule. [186]

k. Surcharges, Penalties and Interests

LGUs, through their local legislative bodies, may impose a surcharge not exceeding 25% of the amount of taxes, fees or charges not paid on time and an interest at the rate not exceeding 2% per month of the unpaid taxes, fees or charges including surcharges, until such amount is fully paid. [187] Furthermore, LGUs are allowed to collect interests on any unpaid revenues at the rate not exceeding 2% per month from the date it is due until it is paid.

l. Royalties for Indigenous Peoples and Fees for Surface Rights Owners

Other payments under national laws are royalties to indigenous peoples (IP) which are discussed in the chapter on IP processes, and compensation to surface rights owners which are paid when extractive operations require the use of private lands or when the operation may cause damage to the property of the surface owner, occupant, or concessionaire. [188] For this purpose, a surface owner, occupant or concessionaire and holders of mining rights enter into a voluntary agreement on entry and use the land for mining purposes.[189] This agreement will be the basis for compensation for any damage done to the property. [190]

2. Taxes and fees based on local tax codes

On the other hand, payments under local tax codes are shown in Table 20 below:

Table 20. Direct Payments Made to LGUs by Mining Companies Not Provided by National Statutes

Local Revenue	Applicable to	Specific LGUs Collecting and Receiving Revenue	Rate under Local Tax Codes (range)
Mayor's Permit/Business License [191]	C M	All	P200 – P60,500
Regulatory/ Administrative Fees/Application/ Verification Fees/ Governor's Permit/ Endorsement Fee	P M	Agusan Del Norte; Cebu; Jose Panganiban; Palawan; Zambales	P500 – P10,000 (mining) P25,000 (oil & gas)
Tax on Mining Operations[192]	P C M	Cebu Province; Davao City ; Pasig City; Aroroy; Bataraza; Cagdianao; Carrascal; Dona Remedios Trinidad; Daanbantayan; Guian; Kasibu; Loreto; Rapu-Rapu; Tuba; Tubay	1% - 2.2% of Gross Receipts (GR)
Environmental Enhancement Fees/ Extraction Fees	P	Agusan del Norte, Bulacan, Cebu, Dinagat Island Province, Zambales	P2 – P12 /cu.m.; P25/ metric ton
Soil Depletion Tax		Dinagat Province	1% / GR
Hazard Mitigation Fee	M	Sta. Cruz	P5 / cu.m.
Municipal Mining Clearance Fee	M	Narra; Quezon; Sofronio Espanola	P5/ cu.m
Provincial /Municipal Environmental Compliance Certificate + Verification and Inspection Fees/ Certificate of Non-Coverage Fee[193]	P M	Bulacan; Zambales; Daanbantayan	P600 – P5,000
Transport Fees	P	Zambales; Surigao del Norte	P10,000 – P60,000 / shipment
Delivery Receipts (including Printing Costs of Delivery Receipts)	P	Bulacan, Zambales	P5/ Delivery Receipt (DR) – P1,000/booklet of DR
Miscellaneous Regulatory Fees (Sanitary Inspection Fee, Locational Clearance, Garbage Disposal fee, etc)	C M	Bataraza, Daanbantayan; Dona Remedios Trinidad; Kasibu	P100 – P1,000 (sanitary fee) P500 – P6,000 (garbage disposal)
Donations/ Grants/ Other Assistance/ Benefits	P C M B		

P - province; C ity; M unicipality; B angay

a. Mayor's Permit and Other Regulatory Fees

One of the regulatory licenses and permits issued by the Municipal or City Mayor is commonly known as a Mayor's Permit or Business Permit/License, which is given to any entity engaging in any activity or doing business within the city or municipality. Such permit or license may be suspended or revoked for any violation of its terms and conditions, pursuant to law or ordinance. [194]

Regulatory fees range from environmental fees, inspection fees, assessment fees, extraction fees, trucking fees, hauling fees, among others. LGUs impose these fees in accordance with their local tax codes or special ordinances. Other miscellaneous regulatory fees that appear in local tax ordinances of cities and municipalities include sanitary inspection fee, locational clearance fee, and garbage collection fee.

b. Tax on Mining Operations

The tax on mining operations imposed by some cities and municipalities is not specifically provided under the Local Government Code. Some LGUs use as legal basis the Local Government Code provision on tax on any business not specifically enumerated under Section 143(h) of the Code. [195]

Under this provision, the tax on mining operations imposed by the LGUs may be considered a form of business tax. However, the tax on mining operations in most local tax codes appears to be separately imposed in addition to the business tax. If the LGU already imposes business tax and a tax on mining operations based on Sec. 143 (h) of the Code, then it may already appear to be a double taxation. Otherwise, if the LGU has a different basis for the tax on mining operations, then it appears to be in order.

c. Environmental and Extraction Fees

The environmental effects attributed to the extraction of minerals or petroleum to local communities explains why some LGUs impose this tax. The tax base is usually the gross output or value of the removal of minerals from its source. Hence, it carries different names, such as Municipal Inspection and Monitoring Clearance Fee, Soil Depletion Tax, and Hazard Mitigation Fee. The rates of imposition vary based on volume (per cubic meter) or weight (per metric ton) of minerals and use gross production output as the tax/fee base.

d. Transport/ Hauling Fees

The transport and hauling fees are also assessed by some LGUs for every transport of minerals outside of their local territory. The imposition and tax base is similar to environmental fees. However, the fees imposed on the minerals are on a per truck basis, and not on volume, weight or value.

e. Donations, Grants and Other Assistance

Both LGUs and extractive companies confirm the grant of donations and assistance to LGUs in varying amounts. However, most donations and assistance are not documented by the LGUs.

3. For oil and gas, below are the direct payments imposed by LGUs:

Table 21. Local Revenue Streams – Direct Payments from Oil & Gas Companies

Local Revenue: Payments Made to LGUs by Oil & Gas Companies	Legal Basis	
	National Statute	Local Tax Code
Mayor's/ Business Permit	RA 7160, Sec. 147, Sec. 151, Sec. 153, Sec. 444 (b)(3)(iv), Sec. 455 (b)(3)(iv)	✓
Regulatory/Administrative Fees/Application/ Verification Fees		✓
Environmental Fees		✓
Provincial Environmental Compliance Certificate		✓
Certificate of Non-Coverage Fee		✓
Miscellaneous Regulatory Fees (Sanitary Inspection Fee, Locational Clearance, Garbage Disposal fee, etc)		✓
Oil Exploration/ Drilling Regulatory Fee		✓
Donations/Grants/ Other Assistance/Benefits		

The specific rates of the taxes and fees and the specific LGUs that impose them pursuant to their local tax codes may be found in Annex N.

Copies of local tax codes may be accessed at http://ph-eiti.org/#/Laws/Local-Tax-Codes

4. Social expenditures and environmental funds

Aside from the above revenues, LGUs also benefit from social development programs of mining companies and from environmental and rehabilitation funds that the law mandate to be set aside for specific purposes. In addition, some LGUs are also the recipients of donations by companies and benefits related to company CSR programs. These funds and projects are further discussed under the Chapter on Social Expenditures and Special Funds and in the Reconciliation Report (Volume II).

III. Institutional Arrangements and Processes

A. Fiscal Arrangements: Local Collection and Actual Receipts

LGUs' specific taxing authority is provided either under statutes or tax ordinances pursuant to law or from its independent authority to raise revenues. Although the taxing authority may be granted by statute to one specific LGU, the collection and enforcement may be delegated to another. In the same manner that the authority to legislate, assess, and collect the tax is granted to one LGU, the other LGUs within the same unit may benefit from the proceeds of the tax imposed. In other words, the imposition, collection and share in the proceeds may be distributed among different LGUs according to law.

Below is a summary of LGUs' varying schemes of tax imposition, collection, and distribution.

Table 22. LGUs Tax Imposition, Collection and Distribution Scheme

	Imposing LGU	Collecting LGU	Distribution of Proceeds
Real property tax (RPT) on lands, buildings, and machineries	Province, City and Municipality within Metro Manila	City/ Municipality	1) Imposed by Province: Province – 35%, Municipality – 40%, Barangay – 20% 2) Imposed by City: City – 70%, Barangay – 30%
RPT - Special Education Fund	Province, City and Municipality within Metro Manila	City/ Municipality	Special Education Fund
Professional Tax	Province	Province	Province
Fixed Tax on Delivery Trucks	Province	Province	Province
Tax on Quarry, Sand & Gravel	Province	Province	Province – 30% City/Municipality-30% Barangay – 40%
Business Tax	City/Municipality	City/Municipality	70% by Host LGU; 30 by Head Office LGU
Community Tax	City/Municipality	City/Municipality or Barangay	Collected by City/Municipality:: City/Municipality – 100% Collected by Barangay: Barangay – 50% City/Municipality – 50%
Occupation Fees	MGB/Province	City/Municipality	Province 30% Municipality 70% Chartered City – 100%
Public utility charges	Province/City/Municipality	By the imposing LGU	By the imposing LGU
Toll fees or charges for the use of road, pier, and wharf constructed by the LGU	Province/City/Municipality	By the imposing LGU	By the imposing LGU
Barangay Clearance	Barangay	Barangay	Barangay

B. Actual Collections and Reporting Process

The collection process of LGUs on direct payments by extractive companies goes through a simple process of assessment, collection, and issuance of receipt. Local treasurers are required by the Bureau of Local Government Finance (BLGF) [196] to submit a quarterly report on actual tax collections. The BLGF maintains a Financial Data Modeling and Reporting though the Electronic Revenue and Expenditure System (eSRE) designed for collecting and maintaining financial information on, and to monitor the financial health of LGUs. This online system provides open access to reported data for the public, subject to security measure of registration. [197]

Using this system, the BLGF merely checks, records, and consolidates the data provided by the LGUs. Its data is dependent on LGUs' quarterly submission of reports. According to the BLGF, LGUs do not have 100% reporting compliance. [198] Thus, the BLGF does not have any data on local payments, unless reported by LGUs. The BLGF may impose sanctions on local treasurers for erroneous reports as validated by BLGF Regional Office, but provides no sanctions for failure to report.

To encourage complete and accurate reporting by LGUs, there are current initiatives made by BLGF that may enhance reporting compliance such as the Iskor ng Bayan and the Performance Standards for Local Treasurers, which is yet to be rolled out.

IV. National Government Agencies' Collection and Transfers to LGUs

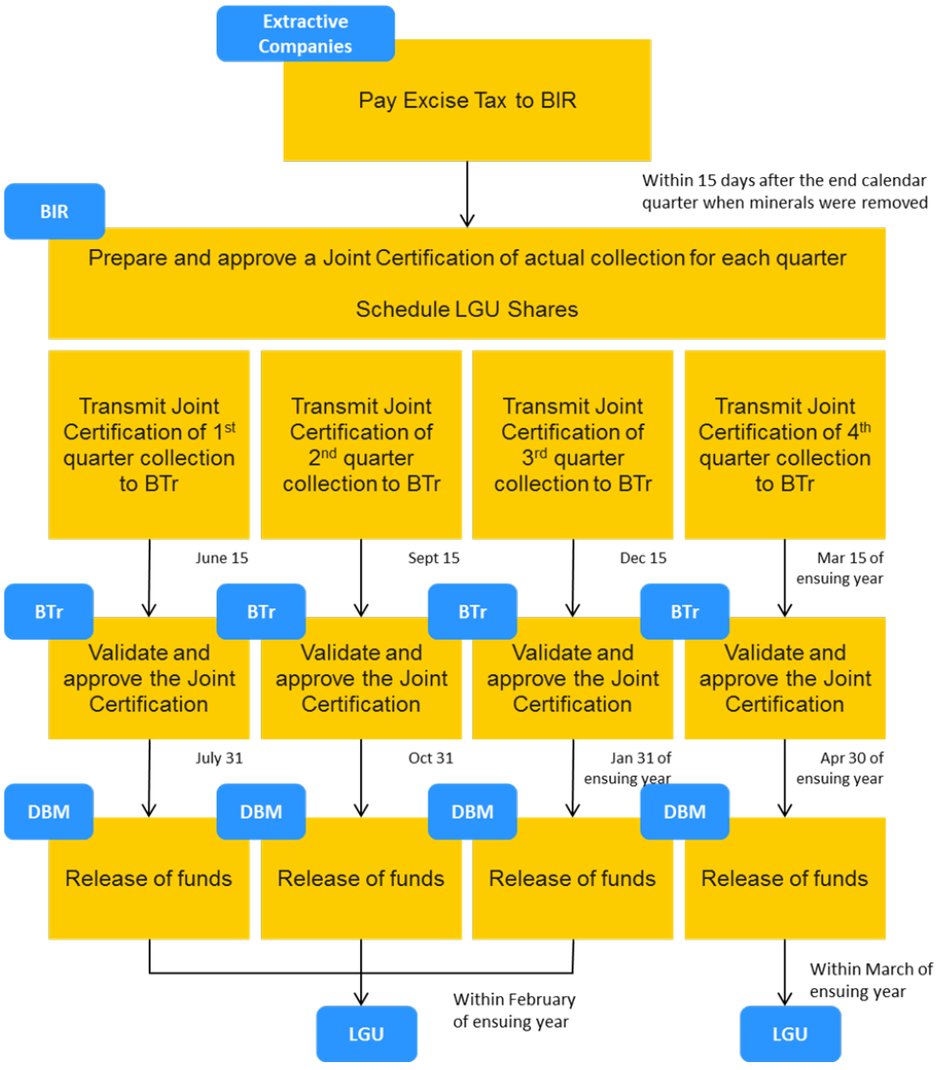
As discussed, the LGUs' share in the national wealth is 40% of gross collections of mining taxes, i.e., excise tax, and royalty income

from the preceding fiscal year. The DOF, DBM, DILG, and the DENR have their respective roles and responsibilities in determining the shares and releasing these to the LGUs. The procedures below illustrate this.

A. Excise Tax Collection and Transfer

DOF-DBM-DILG-DENR Joint Circular No. 2009-1 [199] (Annex O) outlines the roles and responsibilities of these departments in excise tax collection and release of funds to LGUs. It also provides for the procedure and the timelines for submission of documentation and release of the funds. A flowchart of the procedure based on the regulation is shown below.

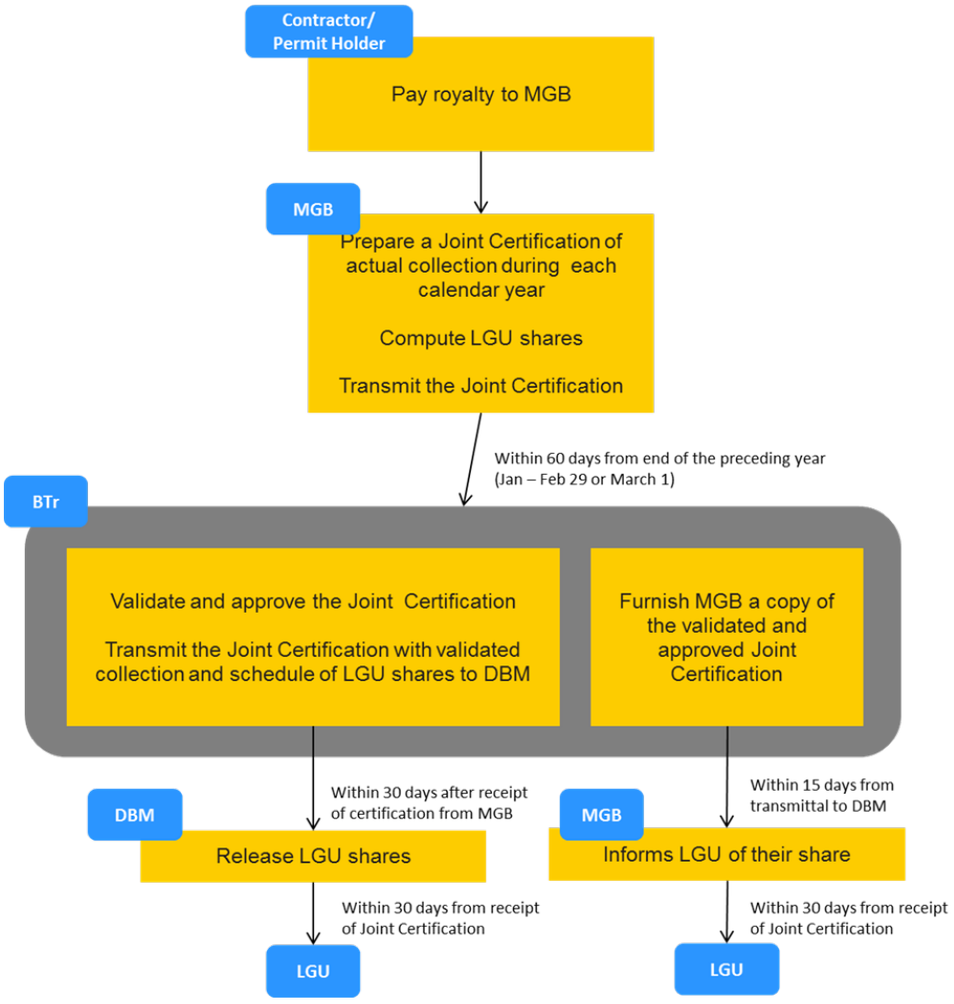
Figure 37. Procedure in Release of LGU Share in National Wealth: Excise Taxes



B. Royalty Income from Mineral Reservations: Collections and Transfer

DOF-DBM-DILG-DENR Joint Circular No. 2010-1 [200] (Annex O-1) outlines the roles and responsibilities of national government agencies in the collection and release of shares in royalty income to LGUs. It also provides for the procedure and the timelines for submission of documentation and release of the funds. The procedure showing the flow of royalty income from collection to its release as LGU share in the national wealth is shown below.

Figure 38. Release of Share in National Wealth: Royalty Income in Mineral Reservations



Information on the shares received by the LGUs for 2012, as well as findings on the timeliness of the distribution of these shares, is discussed in the Reconciliation Report (Volume II).

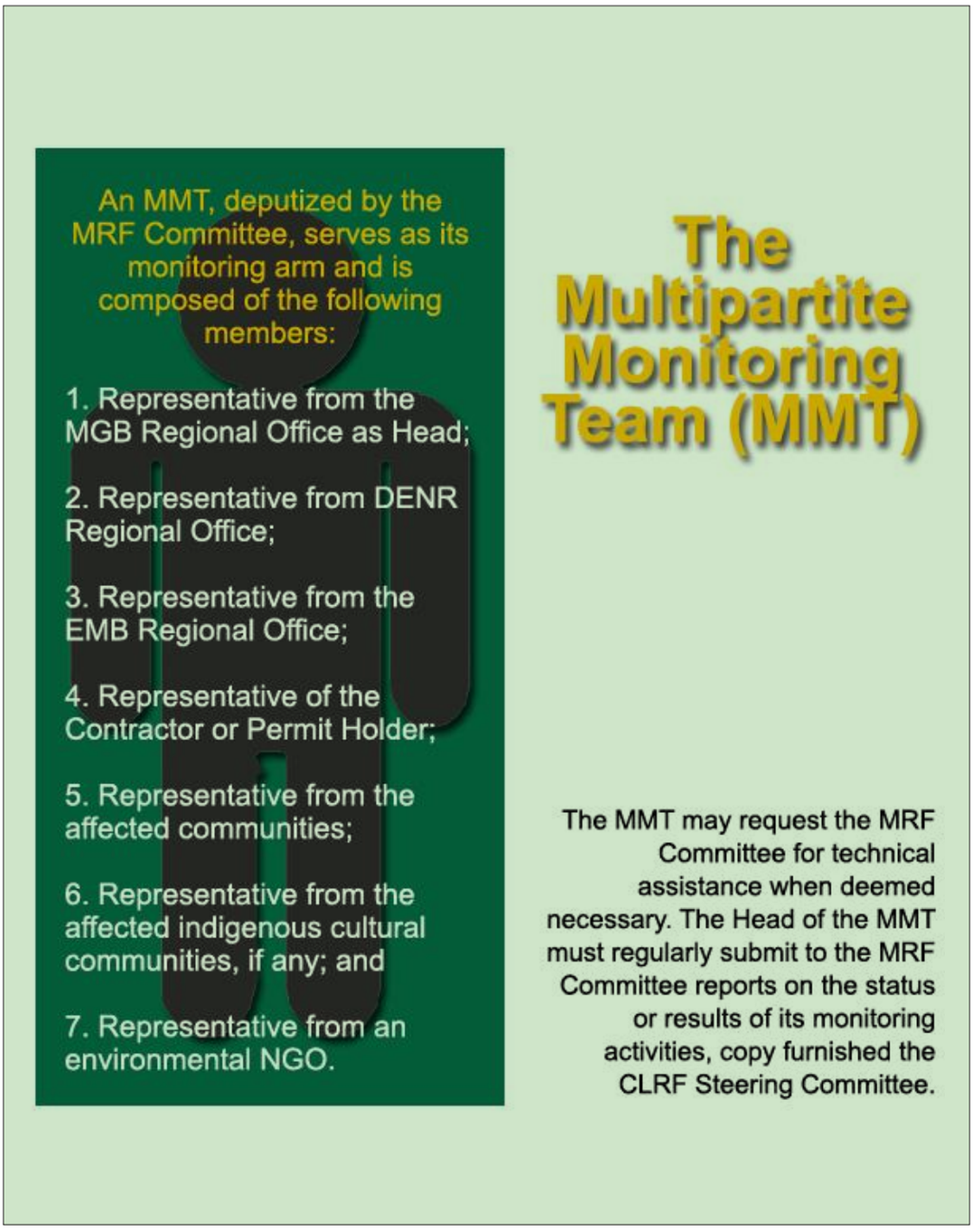
V. Local Bodies Exercising Oversight Functions on Mining Operations

Apart from the LGUs' Offices of the Assessors and the Treasurer that basically deal with assessment and collection of revenues from mining companies and the P/CMRB that implements small-scale mining activities, the LGU also sits in other multi-sectoral bodies created by law to oversee implementation and monitoring of mining operations. These are at Mine Rehabilitation Fund Committee (MRFC) organized at the regional level by the MGB Regional Office and its Multi-Partite Monitoring Team (MMT). The LGU, through its representation in the MRFC and the MMT, can also inform the decisions and processes of the Contingent Liability and Rehabilitation Fund (CLRF) Steering Committee organized at the national level.

Illustration 3: Mine Rehabilitation Fund Commitee

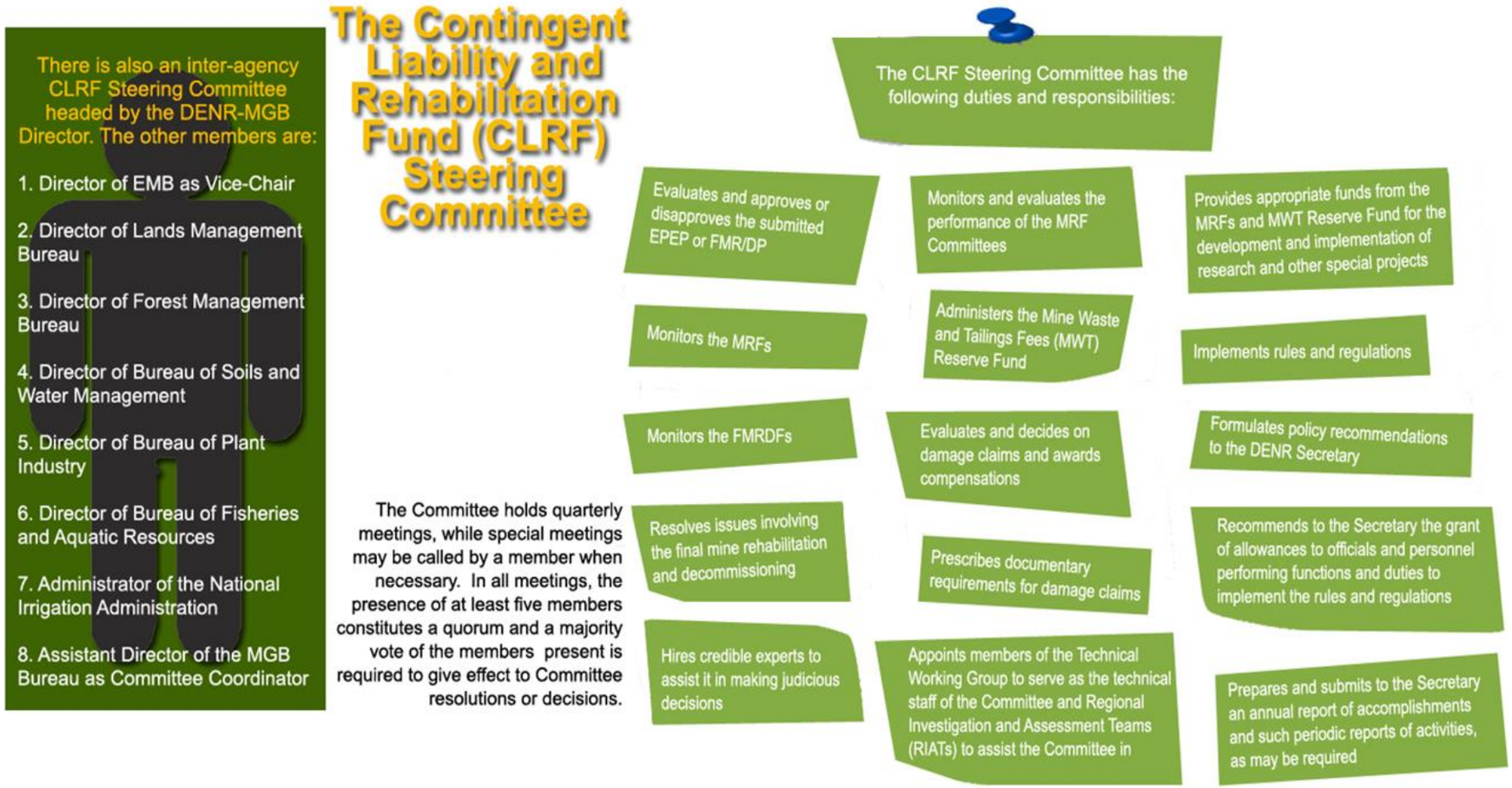


Illustration 4. Multipartite Monitoring Team



DENR Adm. O. No. 2010-21, Sec. 185

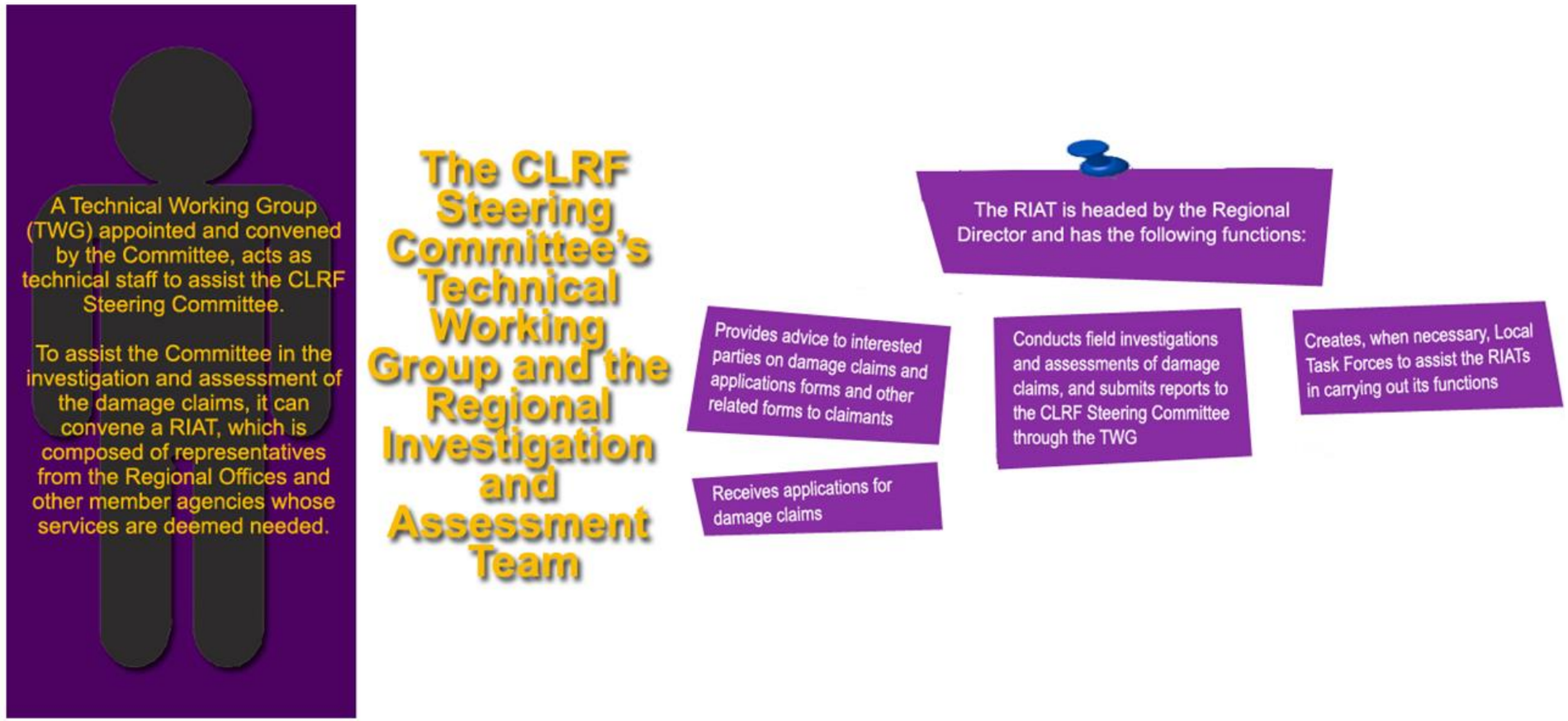
Illustration 5. Contingent Liability and Rehabilitation Fund Steering Committee



Note: The presiding officer of the meeting shall not vote in any matter brought before the Committee except in case of a tie.

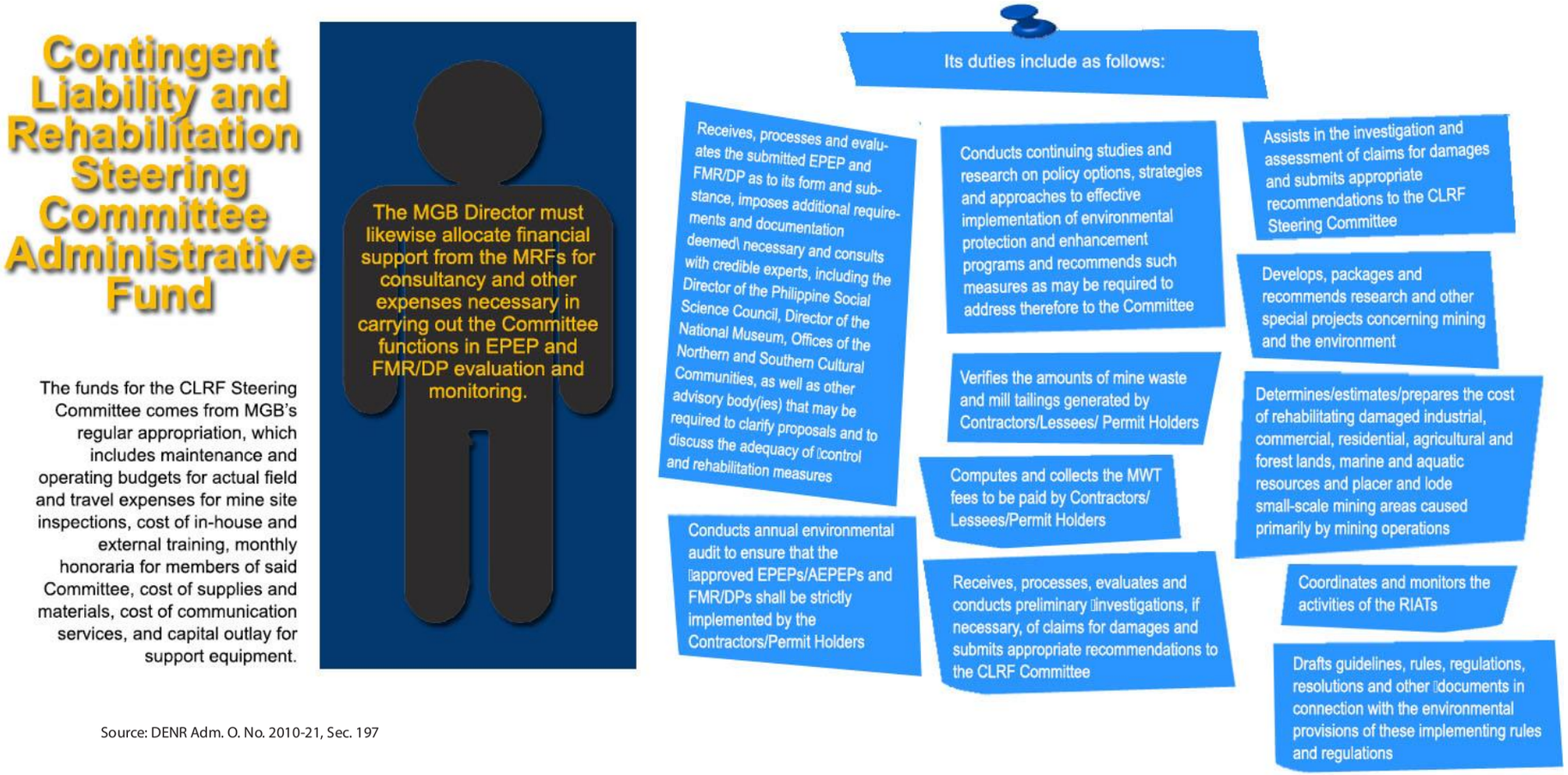
Source: DENR Adm. O. No. 2010-21, Secs. 193 and 195; Sec. 194. The other members are the EMB Director as Vice-Chair; and as members the respective Directors of the Lands Management Bureau, Forest Management Bureau, Bureau of Soils and Water Management, Bureau of Plant Industry, Bureau of Fisheries and Aquatic Resources, the Administrator of the National Irrigation Administration as Member; and the Assistant Director of the MGB as Committee Coordinator.

Illustration 6. CLRF Steering Committee's Technical Working Group and the Regional Investigation and Assessment Team



Source: DENR Adm. O. No. 2010-21, Secs. 196, 198 and 199

Illustration 7. Contingent Liability Rehabilitation Steering Committee Administrative Fund



Source: DENR Adm. O. No. 2010-21, Sec. 197

CHAPTER 5
State-Owned Extractive Enterprises: PMDC and PNOC

CHAPTER 5

State-Owned Extractive Enterprises: PMDC and PNOC [29]

The State also directly undertakes the exploration, development, and use of the country's natural resources through state-owned enterprises (government-owned or controlled corporations). In the mining, oil and gas, and coal sectors, these activities are carried out by the Philippine Mining Development Corporation (PMDC) and the Philippine National Oil Corporation (PNOC).

The PMDC manages a number of mining projects involving mineral reservations, privatized assets, and cancelled tenements. On the other hand, PNOC is engaged in the exploration, development, use, and marketing of oil and gas and other viable energy resources. Like private contractors, PMDC and PNOC share their net income or proceeds with the government.

This chapter discusses the legal basis for the creation of the PMDC and PNOC, their structure, powers and functions, extent of participation in extractive operations, and their fiscal arrangements. A full text of this chapter is available at http://ph-eiti.org/#/Papers/State-Owned-Enterprises

I. Legal Basis

As the owner of all minerals, coal, petroleum and other mineral oils, and all forces of potential energy and other natural resources in the country, the State may directly undertake the exploration, development, and utilization of these natural resources. [201] This serves as the basis for the establishment of State-Owned Enterprises (SOEs) for the mining, oil and gas, and coal sectors. In the Philippine context, SOEs are more commonly referred to as Government Owned and Controlled Corporations or GOCCs.

II. Philippine Mining Development Corporation

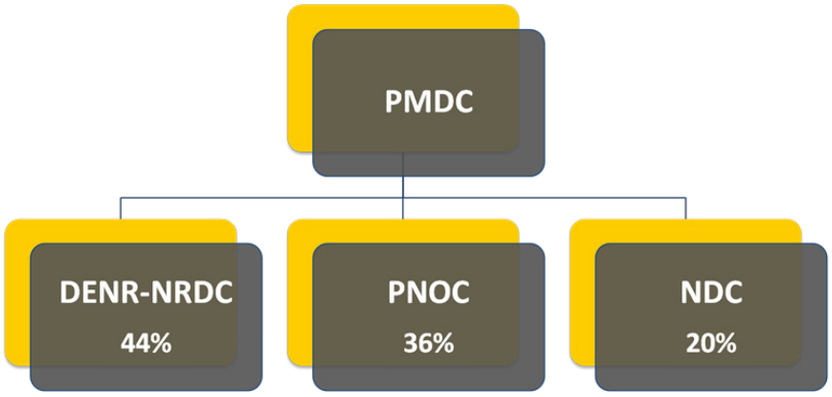
A. Creation, Ownership and Structure

The Philippine Mining Development Corporation (PMDC), formerly called Natural Resources Mining Development Corporation (NRMDC), is a wholly-owned and controlled government corporation. It was registered with the Securities and Exchange Commission in 2003 pursuant to an authority contained in a Memorandum of the President of the Philippines. [202] The PMDC was organized primarily to undertake extractive activities, specifically, "exploring, developing, mining, smelting, and producing, transporting, storing, distributing, exchanging, selling, disposing, importing, exporting, trading and promotion of gold, silver, copper, iron, and all kinds of mineral deposits and substances." [203]

The PMDC had an initial authorized capital stock of one hundred million pesos (PHP 100,000,000), 55% of the equity of which came from the NRDC, and 45% from the Philippine National Oil Corporation – Energy Development Corporation (PNOC-EDC). Right now, it is owned by NRDC (44%), PNOC (36%) and the EDC (20%). [204]

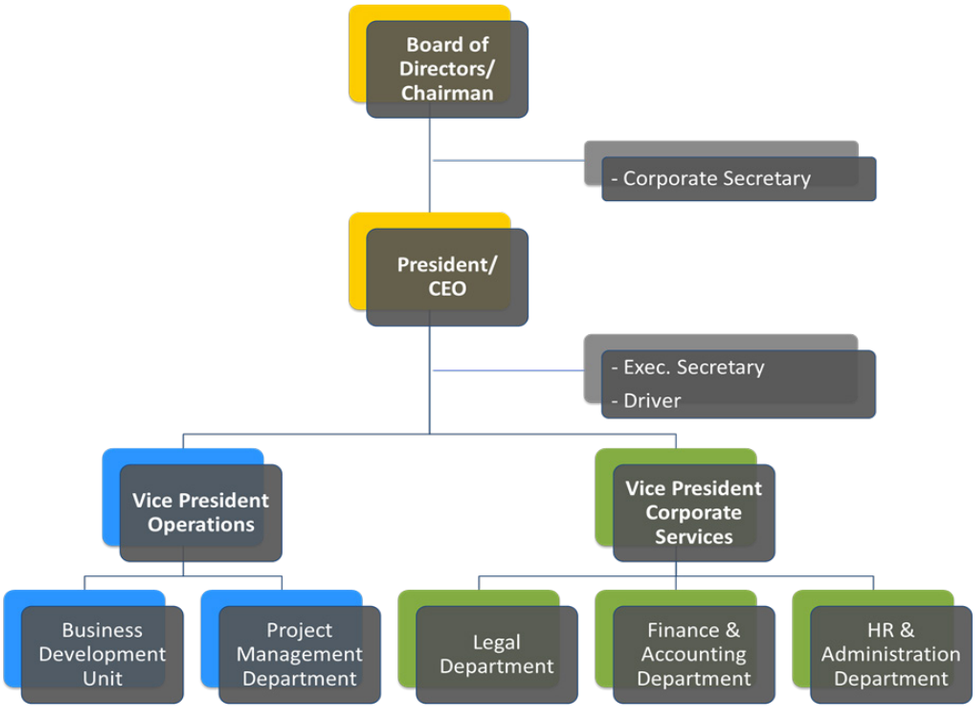
[29] Full text of this chapter was written by Maria Althea M. Teves and Regina Marie Tumlos under the supervision of Atty. Jay Batongbacal.

Figure 39. PMDC Ownership



Being a government corporation, the PMDC is attached to the Department of Environment and Natural Resources (DENR). [205] Below is PMDC's organizational structure:

Figure 40. Organizational Structure of PMDC



B. PMDC's Projects

The PMDC undertakes the development, promotion and management of various mining projects that are classified into Mineral Reservations, Privatization and Management Office (PMO) Assets, and Cancelled Tenements.

1. Mineral reservations

Mineral Reservations were formerly administered by the Mines and Geosciences Bureau (MGB) through the DENR. However, it was transferred to the PMDC to generate revenues from these activities. There are two Mineral Reservation projects under the PMDC: (a) the Diwalwal Gold Mining, and (b) the Dinagat Chromite-Nickel Mining Projects.

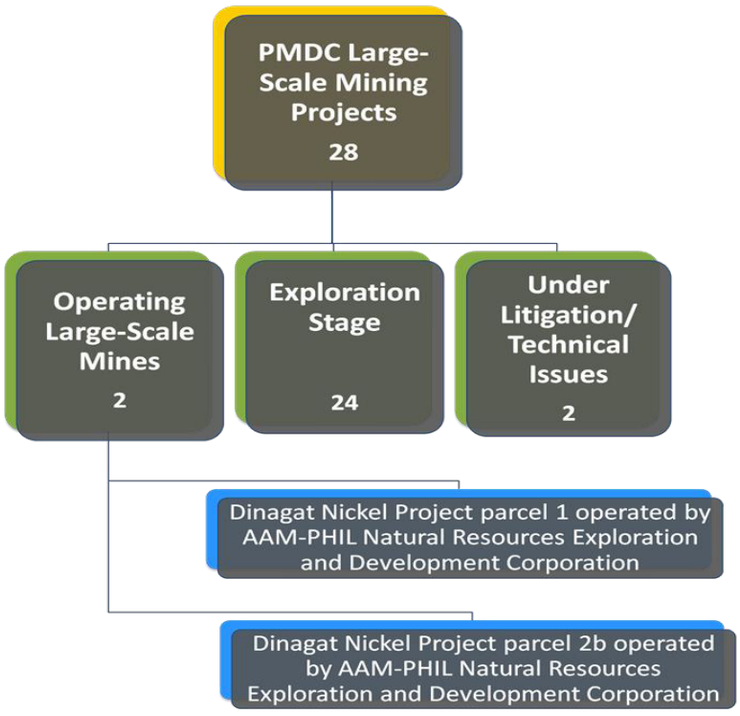
a. Diwalwal Gold Mining

In 2002, then President Gloria Arroyo proclaimed the 81,000-hectare Diwalwal Mining Reservation in the Municipality of Monkayo, Compostela Valley Province in Mindanao as a mineral reservation and an environmentally critical area. [206] The reservation covers the municipalities of Monkayo, in the Province of Compostela Valley and of Boston and Cateel, Davao Oriental Province. [207]

In 1983, gold deposits were found in the municipality. Since then, small to medium-scale mining operations were undertaken by different groups, which raised environmental, health, and peace and order issues in the area. [208] In order to address these issues, the DENR designated PMDC to undertake mining and mineral processing operations in certain identified areas within the mineral reservation. [209] As part of its authority, the PMDC was tasked to formulate and implement the exploration work program and mine management plan for the reservation; secure the necessary permits and licenses and comply with all requirements for mining and mineral processing operations; construct and operate mineral processing plants and mill tailings disposal systems; and initiate the clean-up of the mining areas, including the nearby river and other affected areas. In addition, the PMDC was tasked to pay the government's share from the utilization of the mineral resources in the reservation. [210]

To date, PMDC has 28 large-scale mining operations, 24 of which are in the exploration stage, 2 are under litigation, and another 2 are currently being operated by AAM-PHIL Natural Resources Exploration and Development Corporation. [211]

Figure 41. Mining Operations of PMDC



2. Privatization and Management Office (PMO) Assets

In 2000, the government constituted an Inter-Agency Privatization Council and created a Privatization and Management Office (PMO) under the Department of Finance in order to continue the privatization of government assets and corporations. [212] This refers to government corporations, assets, activities, and idle properties that have been identified as unnecessary and inappropriate for the government to maintain. [213]

The Privatization Council was created to coordinate all government efforts to privatize its assets and firms. [214] In line with these functions, the Privatization Council entrusted to the PMO, as a disposition entity, the Batong Buhay Gold Mines, Inc. and North Davao Mining Corporation.

In 2006, PMO's task over the two mining corporations ceased when the Privatization Council designated the PMDC as trustee and disposition entity for both mining corporations. This was in regard for PMDC's primarily role of engaging in the business of exploration and development of minerals and natural resources in the country. [215]

3. Cancelled tenements

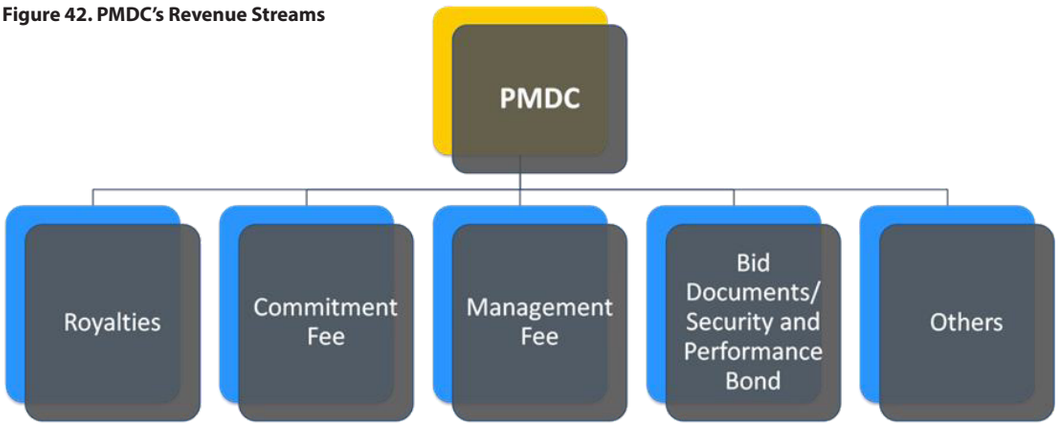
In 2005, then DENR Secretary Michael T. Defensor cancelled all non-performing mining tenements because of the mining contractors' failure to commence mining activities under their respective contracts. A total of 65 tenements were cancelled, covering 68,750 hectares of land. These tenements were initially transferred to the MGB. In 2007, these were transferred to the PMDC for public bidding of Joint Operating Agreements with interested local and foreign mining companies. [216] As of December 2007, the PMDC has awarded the cancelled mining tenements to the following mining firms:

1. Masada Resources and Mining Corporation: Hernani Chromite (503 hectares in Hernani, Eastern Samar)
2. Mt. Sinai Exploration and Development Corporation:
   a. Homonhon Chromite (286 hectares in Homonhon Island, Eastern Samar)
   b. Opol Chromite (27 hectares in Misamis Oriental) [217]

C. PMDC's Fiscal Arrangements

PMDC derives its revenue from the following items:

Figure 42. PMDC's Revenue Streams



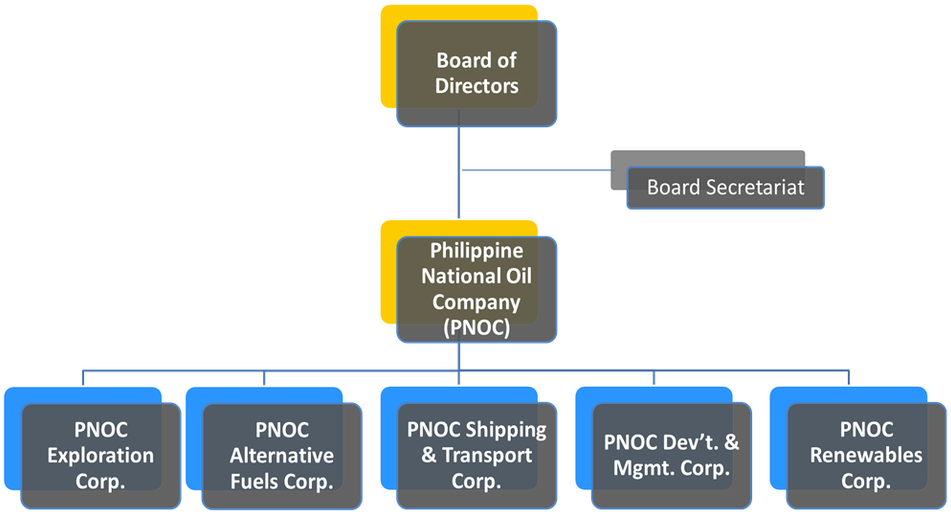
The rate of the royalties is determined (a) during the bidding process and (b) per mineral product. One factor that the PMDC looks into when evaluating bids is the amount of royalty that will be received, which is why the rate of the royalty ranges from 5% (for limestone) to 26% (nickel chromite) of gross sales. The royalty payment partakes of the nature of a rent which the contractors pay to them. PMDC operators pay the same taxes and fees a private contractor would under an MPSA. Fifty percent (50%) of the net income of PMDC is remitted to the government in the form of dividends.

III. Philippine National Oil Company

A. Creation, Ownership and Structure

The Philippine National Oil Company (PNOC) was created to answer the need for a stable supply of petroleum products. [218] It was tasked to undertake corporate business relating to petroleum operations and other energy resources exploitation. Petroleum operations means the actual exploration, production, refining, tankerage, and/or shipping, storage, transport, marketing, and related activities concerning oil and petroleum products. Energy resources exploitation, on the other hand, includes the exploration, discovery, development, extraction, utilization, refining, processing, transport, and marketing of all forms of energy resources.

Figure 43. Corporate Structure of PNOC



The PNOC has five subsidiaries: (1) PNOC Exploration Corporation (PNOC-EC); (2) PNOC Alternative Fuels Corporation; (3) PNOC Shipping and Transport Corporation; (4) PNOC Development and Management Corporation; and (5) PNOC Renewables Corporation.

Of these subsidiaries, it is the PNOC-EC which is responsible for the exploration, development, utilization, and marketing of oil and gas and other viable energy resources. It used to be the Exploration Department of the PNOC and was later incorporated as a subsidiary in 1976. The Philippine government, through the PNOC, owns 99.78% of the subsidiary's shares of stock. The remainder is held by public shareholders.

B. PNOC-EC's Projects

PNOC-EC initially focused its projects in frontier onshore areas in Cagayan Valley, Central Luzon, and Samar. Throughout years of exploration and discovery of gas wells, PNOC-EC became the key promoter of domestic petroleum exploration, together with the PNOC. Onshore exploration efforts expanded to different parts of the country: Mindoro, Isabela (San Antonio-1A gas well), Cagayan (Nassiping-2 gas well), Cebu (South Cebu-2 oil well), and Cotabato. Operations in the San Antonio Gas Power Plant in Isabela in Luzon region provided electricity to more than 10,000 households making PNOC-EC the first producer of indigenous natural gas in 1994. The PNOC-EC continued to expand its operations in Palawan and offshore Mindoro by way of joint ventures with local and foreign companies. Continued partnership efforts led to oil discovery in Antique (Maniguin-2), gas discovery (Tukanakuden-1), and 2 gas flowers (Sultan sa Barongis 1 and 2) in Maguindanao, and gas well shows in Tarlac (Victoria-3). [219]

A summary of PNOC-EC's projects for both petroleum and coal is provided below:

Table 23. Summary of PNOC-EC's Projects for both Petroleum and Coal

SC/COC	Description	Date Awarded	Stage/ Phase	Participating Interest	JV Partner		Remarks
SC 37	Cagayan	18-Jul-90	Exploration	100% *	-	-	
SC 38	Malampaya	2001	Production	10%	SPEX *	45%	
					Chevron	45%	
SC 47	Offshore Mindoro	10-Jan-05	Exploration	97% *	PetroEnergy	2%	
					Basic Energy	1%	
SC 57	Calamian	15-Sep-05	Exploration	28%	CNOOC *	51%	Awaiting approval from the Office of the President for the transfer of interests to CNOOC and Mitra Energy
					Mitra Energy	21%	
SC 58	West Calamian	12-Jan-06	Exploration	50%	Nido Petroleum *	50%	
SC 59	West Balabac	13-Jan-06	Exploration	25%	BHP Billiton *	75%	In late 2013, BHP withdrew from SC. PNOC EC now holds 100% interest.
SC 63	East Sabina	24-Nov-06	Exploration	50% *	Nido Petroleum	50%	
SC 75	Northwest Palawan	27-Dec-13	Exploration	35%	Philex *	50%	
					PetroEnergy	15%	
COC 41	Malangas	1-Jun-02	Production / Exploration	100% *			Transferred from PNOC Coal Corporation (PCC) when PCC was dissolved; COC was originally awarded on August 14, 1980
COC 140	Surigao	5-Jul-05	Exploration	100% *			Relinquished the COC in July 3, 2013
COC 122	Isabela Coal Mine-mouth Powerplant Project	1999	Development	100% *			
COC 141	Isabela (New Areas)	July 2005	Exploration	100% *			

* Operator

C. PNOC-EC's Fiscal Arrangements

PNOC EC is required to share its net proceeds with the government for all Service Contracts and Coal Operating Contracts entered into with the DOE on the exploration, development and utilization of the country's natural resources in consideration of the right granted. The government's share comprises of income taxes and royalty fees. The royalty fees are shared by the government through DOE and the LGUs. Royalty fee on coal is 3%, 60% of which goes to the DOE while 40% goes to the LGUs.

Service Contractors and Coal Operating Contractors, including PNOC EC, pay and remit to the DOE the following fees and funds:

1. Signature Bonus (one-time payment)

2. Discovery Bonus (one-time payment)

3. Production Bonus (one-time payment)

4. Training Fund (per year, cumulative)

5. Developmental Assistance (one-time payment)

6. Scholarship (per year, cumulative)

The amounts of the above fees and funds vary per Service Contract and Coal Operating Contract.

CHAPTER 6
Procedures for Obtaining Permits in Ancestral Domain Areas

CHAPTER 6

Procedures for Obtaining Permits in Ancestral Domain Areas [30]

Many areas covered by existing contracts for the exploration, development, and utilization of natural resources in the Philippines traverse or are within the ancestral lands and domains of the indigenous peoples/indigenous cultural communities (IP/ICC).

The rights of IPs/ICCs to their ancestral lands/domains are well recognized as a State policy. The extractive industry is enjoined to respect and understand these rights. Hence, before pursuing any activities that may affect the IPs/ICCs and their rights, it is important for the extractives sector to properly secure their free and prior informed consent (FPIC), which ideally ends with the signing of a Memorandum of Agreement (MOA) by the parties. Part of the terms of this agreement is the payment of royalties to the concerned IP/ICC - not less than 1% of gross output of the extractive operations – which must be managed to promote the socio-economic well-being of the IPs.

This chapter expounds on the range of rights of the IPs/ICCs to their ancestral lands/domains as well as the procedures for obtaining their FPIC. A full text of this chapter is available at http://ph-eiti.org/#/Papers/IPs

Out of the 39 large scale metallic mining operations covered by this Report, 28 are within the ancestral lands of indigenous peoples. These are:

Illustration 8. List of Metallic Mining Operations within Ancestral Lands



[30] Full text of this chapter was written by Maria Althea M. Teves and Regina Marie Tumlos under the supervision of Atty. Jay Batongbacal.

A list of IPs and extractive operations in IP areas is found in Annex P.

Based on 2013 data, the NCIP reports a total of 194 mining operations within IP ancestral domains. It is therefore important that the processes in securing permits in IP areas be included in this Report as part of the discussion on the requirements and procedures that extractive companies should comply with.

I. Legal and Regulatory Framework Governing Extractive Operations in Ancestral Domains

A. Recognition and Protection of Indigenous Peoples' Rights under the Constitution

The 1987 Constitution recognizes the importance of Indigenous Peoples (IPs) and their rights over ancestral lands and domains. It is a policy of the state to recognize and promote the rights of indigenous cultural communities (ICCs) within the framework of national unity and development. [220] Under the Constitution, the State is mandated to protect their ancestral land rights and to ensure their economic, social, and cultural well-being. [221] The State is also enjoined to respect their rights to preserve and develop their cultures, traditions, and institutions. [222] Their rights must always be considered in the formulation of national plans and policies.

B. Philippine Mining Act of 1995

The Mining Act also recognizes the rights of ICCs over their ancestral land. Section 16 of the law requires the prior consent of the concerned ICC before an area could be opened for extractive operations.

C. Indigenous Peoples Rights Act of 1997 (IPRA)

The IPRA was enacted to specify the extent of IP rights in relation to the national legal system under the Constitution, especially with regard to ancestral lands and domains. [223] Under this law, property rights within the ancestral domains already existing and/or vested are recognized and respected. [224]

1. Ancestral lands and ancestral domains

The IPRA makes a distinction between ancestral lands and ancestral domains. The phrase ancestral domain is broader than ancestral land. While ancestral lands refer only to lands occupied, possessed and utilized by ICCs/IPs since time immemorial, ancestral domains include lands, inland waters, coastal areas, and natural resources held under a claim of ownership, occupied or possessed by the ICCs/IPs. Ancestral lands/ domains include such concept of territories which cover not only the physical environment but the total environment, including spiritual and cultural bonds to the areas which the ICCs/IPs possess, occupy and use and to which they have claims of ownership. [225] Ancestral domains need not be utilized, unlike ancestral lands.

2. Possession since time immemorial

The concept of possession since "time Immemorial" refers to a period of time as far back as memory can go, when certain ICCs/ IPs are known to have occupied, possessed in the concept of an owner, and utilized the territory devolved to them. Such devolution is by operation of their customary law or inherited from their ancestors in accordance with their customs and their traditions. [226]

3. IP rights over their ancestral domains and extraction of natural resources

The ICC/IPs have priority rights in the exploration, development, and use of any natural resources within the ancestral domains. Those who are not members of ICCs or are not IPs may be allowed to develop and utilize natural resources only if there is a formal and written agreement entered into with the ICCs/ IPs concerned or if allowed by them according to their own decision making processes. [227] No person or entity shall be allowed by the ICCs/IPs to develop or utilize their ancestral domains for more than 25 years, which may be renewed for another 25 years. [228]

This is consistent with the Mining Act with respect to securing prior consent of the IPs before any exploration, development, and use of natural resources is undertaken in their ancestral domains. [229]

The indigenous concept of ownership is peculiar. The rights of the IPs over the ancestral domains and all resources found in the area are private but at the same time community property. Under Section 5 of the IPRA, ancestral domains belong to all generations and are not allowed to be sold, disposed, or destroyed. Included here are traditional resource rights. Section 3 (o) of the IPRA refer to their rights to sustainably use, manage, protect and conserve (a) land, air, water, and minerals; (b) plants, animals and other organisms; (c) collecting, fishing and hunting grounds; (d) sacred sites; and (e) other areas of economic, ceremonial, and aesthetic value in accordance with their indigenous knowledge, beliefs, systems and practices.

The IPRA recognizes the different rights that attach to the rights of ownership and possession of the ICCs/IPs with respect to their ancestral domains.

The ICCs/IPs also have the right to develop, control, and use lands and territories traditionally occupied, owned, or used by them. Such right includes the right to manage and conserve natural resources within the territories and uphold the responsibilities for future generations. They are given the right to benefit from and share the profits from the allocation and utilization of resources found in these areas. In relation to such right, ICCs/IPs are given the power to negotiate the terms and conditions for the exploration of the natural resources in their areas to ensure that environmental protection is considered.

Since they are given these rights, ICCs/IPs must be informed and be given a chance for intelligent participation in the formulation and implementation of any project that will affect the ancestral domains. They are entitled to receive just and fair compensation for any damages which they may sustain as a result of such project. They also have the right to effective measures by the government to prevent any interference with these rights. [230]

Aside from their priority rights to natural resources within their ancestral domains under Section 57, they also have the right to suspend or stop projects under Section 59 of the law should they find that a requirement under the consultation process has been violated.

With respect to their ancestral lands, the law protects their right of ownership and possession over them. [231] This right includes the right to transfer such land or property among members of the same ICCs/IPs, subject to their customary laws and traditions. They also have the right to redemption in case the land has been transferred because of an agreement with or devise to a non-IP/ICC member that is tainted by the vitiated consent of such ICCs/IPs, or the transfer was for unreasonable consideration. The transferor ICC/IP may redeem the land within 15 years from the date of the transfer.[232] They cannot be removed or relocated from their territories without free prior and informed consent (FPIC), nor through any means other than by expropriation. [233]

In recognizing the rights of the ICCs/IPs over their ancestral domains, a Native Title in the form of a Certificate of Ancestral Domain Title (CADT) is issued in proper cases. The title also covers the territories identified and delineated as their ancestral domains.[234]

4. The National Commission on Indigenous Peoples (NCIP)

The NCIP was established under the IPRA. It is the primary government agency responsible for the formulation and implementation of the policies, plans, and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains. [235]

After the ancestral domains have been officially delineated and determined by the NCIP, they shall be issued a CADT in the name of the community concerned, containing the list of all the IPs identified in the census. [236] The NCIP shall register issued CADTs and certificates of ancestral land titles (CALT) before the Register of Deeds in the place where the property is situated. [237]

II. Free and Prior Informed Consent

A. The Concept of FPIC

1. FPIC under IPRA.

"Free Prior and Informed Consent" (FPIC) is defined under the IPRA as the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community. [238]

Under the IPRA, FPIC is needed in the following circumstances:

1. Section 7(c) – Whenever ICCs/IPs will be relocated from their territories as an exceptional measure.
2. Section 32 – Whenever community intellectual rights are taken from the ICCs/IPs.
3. Section 33 – When there is a need for to preserve, respect and protect indigenous sacred places, including burial sites: it is unlawful to explore, excavate or make diggings on archeological sites of the ICCs/IPs for the purpose of obtaining materials of cultural values without FPIC of the ICC concerned. It is also unlawful to deface, remove or otherwise destroy artifacts which are of great importance to the ICCs/IPs for the preservation of their cultural heritage.
4. Section 35 – Whenever there is a need to access biological and genetic resources and to indigenous knowledge related to the conservation, utilization and enhancement of such resources within the ADs of the ICCs/IPs.
5. Section 58: Whenever there are environmental considerations – Should ICCs/IPs decide to transfer the responsibility of managing ADs or portions thereof which are found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestation as determined by appropriate agencies.
6. Section 59: In the issuance of a Certification Precondition (CP) – All departments and other governmental agencies shall be strictly enjoined from issuing, renewing or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any AD.

2. FPIC under the Mining Act and its Implementing Rules and Regulations

While the primary law governing FPIC is the IPRA, the Mining Act and its Implementing Rules and Regulations (IRR) likewise contain provisions on this topic. Under the IRR, "prior consent" refers to prior informed consent obtained, as far as practicable, in accordance with the customary laws of the concerned ICC. Prior informed consent should meet the minimum requirements of public notice through various media. Notices should fully disclose the activity to be undertaken and the corresponding sector consultation. During consultations, the Contractor or Permit Holder should arrange for a community assembly through announcements or by posting notices in a conspicuous place in the area for at least a month before such assembly. The process of arriving at an informed consent should be free from fraud, external influence and manipulation.[239]

B. Process of Securing FPIC for Extractive Operations

1. Areas of extractive operations

As a general rule, extractive operations are allowed in ancestral domains as long as FPIC is properly obtained. However, although FPIC may be obtained by applicants, there are some areas which are excluded from any activity, except for the exclusive purposes the administrative order identifies, such as:

1. Sacred grounds and burial sites of indigenous communities.
2. Identified international and local cultural and heritage sites.
3. Critical areas identified or reserved by the ICCs/IPs for special purposes.
4. Other areas specifically identified by the ICCs/IPs in their Ancestral Domain Sustainable Development and Protection Plan (ADSDPP). [240]

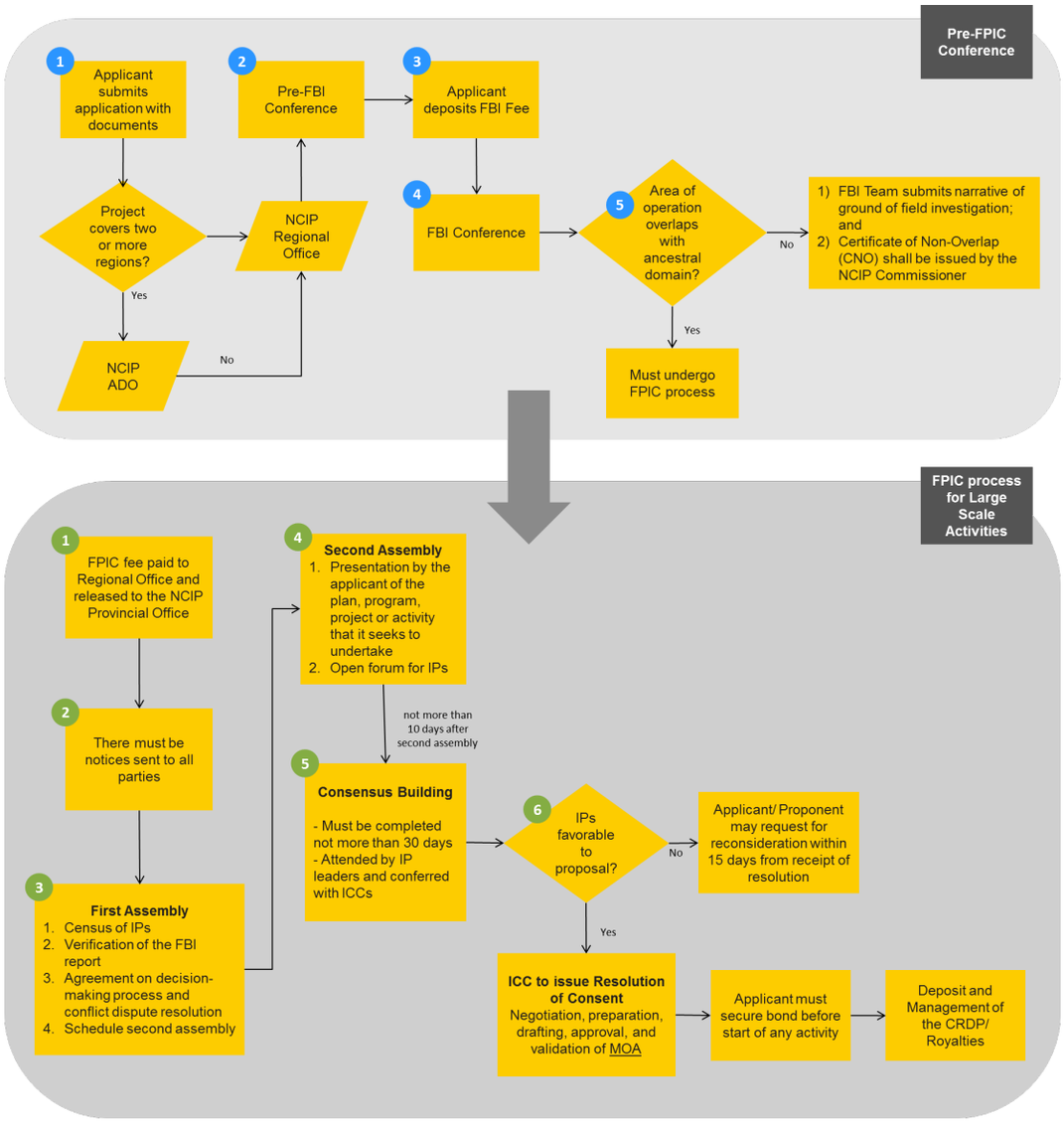
The ADSDPP refers to the consolidation of the plans of the ICCs/IPs within an ancestral domain for the sustainable management and development of their land and natural resources as well as the development of human and cultural resources based on their indigenous knowledge systems and practices. [241]

2. The process of securing FPIC

There are separate FPIC processes for large and small scale extractive operations, so it is important to identify whether an extractive activity is large-scale or small-scale. (See Annex Q for a list of plans, programs, and activities that are considered large scale, extractive, intrusive activities).

This chapter only focuses on the FPIC process for large scale activities, since that is the scope of this EITI Report. Below is an illustration of the entire FPIC process:

Figure 44. FPIC Process



III. Memorandum of Agreement

A. Preparation of the MOA

The process of securing an FPIC must end in the execution of a MOA containing the terms and conditions agreed upon during consultations. The FPIC Team shall prepare the MOA which must be in accordance with what has been agreed upon by the parties, written in the language or dialect of the ICCs/IPs concerned, and then translated into English and/or Filipino. The Legal Officer of the concerned provincial office has the primary task of drafting the MOA. [242]

The MOA signing shall be done within the affected AD by those duly authorized, during a general assembly called for the purpose, after its contents are fully read aloud and explained by the FPIC Team, and understood and affirmed by the community. Should there be a need to change the MOA provisions, the FPIC team shall make the proper revision to the satisfaction of the community assembly. [243]

B. MOA signing

The following are the signatories of the MOA: (1) the elders or leaders or their alternates who have been identified during the validation and authorized by the community to sign; (2) the authorized officers, representatives, or partners of corporations and similar entities. A board resolution should be provided in this case; and (3) the NCIP as represented by the Chairperson, signing as Third Party. For projects where the Regional Director is authorized to issue the corresponding certification precondition, the MOA shall be signed by the Regional Director in behalf of the NCIP as Third Party.[244]

Signing by those duly authorized may be done through actual writing/signing or the affixing of thumb marks. However, in case of the latter, a member of the community who is able to read and write shall sign as instrumental witness. Those authorized to sign in behalf of the community, including instrumental witnesses, shall present themselves before a notary for the appropriate acknowledgment. [245]

C. Salient Provisions of the MOA

The MOA shall include the following provisions, along with other stipulations that may be agreed upon by the parties:

Illustration 9. List of Salient Provisions and Stipulations of the MOA




13 Transparency mechanism on transfer and disbursement of funds
14 Detailed measures to protect IP rights and value systems
15 Detailed measures to conserve/protect any affected portion of the ancestral domain critical for watersheds, mangroves, wildlife sanctuaries, forest
16 Responsibilities of the applicant as well as the host IP community
17 The monitoring and evaluation system of the MOA, to include submission of reports and creation of monitoring teams
18 Remedies and penalties for non-compliance or violation of the terms and conditions which includes applicability of customary laws and imposition of sanction/s
19 Deposit of cash or surety bond mentioned
20 Provision to render assistance in the event of calamities/disasters in the community
21 Provision to undertake a new FPIC Process in case of mining activities, after the exploration stage
22 Provision on the effects of dormant Certification Precondition
23 Membership of proponent in organizations requiring ethical standards in a particular line of activity
24 Other requirements provided in the guidelines

D. Transfer of Rights under the MOA

As a general rule, the consent of the IP given to the original applicant may not be transferred except in cases of merger, reorganization, transfer of rights, or acquisition by another entity or join venture. Such condition shall be provided in the MOA. Should there be a valid transfer, the transferee shall assume the obligations of the transferor. Without such assumption of obligations, another FPIC would have to be obtained by the transferee. The transferor shall be responsible for informing the transferee of the existence of the MOA before the perfection of the new set-up or relation. It is then the transferee's responsibility to inform in writing the IPs concerned of the impending change in the set-up or relation. The transferee must submit the necessary documents required to accompany the application to the Ancestral Domain Office (ADO) and to the representative of the ICCs/IPs concerned. [246]

The transferee may improve the terms and conditions of the MOA by providing greater benefits for the ICCs/IPs other than those stated in the MOA, or may propose other terms and conditions that would uphold the interest and welfare of the concerned IP community. The change or improvement in the MOA shall bear the approval of the NCIP. The transferee is required to execute a formal undertaking, with notice to the representatives of the ICCs/IPs concerned that with the new set-up or relation, the transferee shall faithfully comply with the terms of the MOA and that it shall observe and assume all the obligations stipulated in the said MOA. [247] Corporate Social Responsibility (CSR) or Social Development and Management Projects (SDMP) required under existing laws are not considered as part of the benefits mentioned.[248]

The obligations and responsibilities of the transferor and transferee mentioned in case of a transfer do not apply when it is expressly provided in the original MOA that a new FPIC is required in the event of a merger, reorganization, transfer of rights, acquisition by another entity, or joint venture. [249]

E. Violations of the MOA

If there are any complaints involving the interpretation and implementation of the MOA, the community shall first resolve this using their traditional conflict resolution process. Any person who violates or fails to comply with this duty under the MOA may be held liable in accordance with the customary laws and practices of the concerned ICC/IPs. Sanctions may also be imposed in accordance with customary laws as long as they are not excessive, cruel and degrading. The NCIP is mandated to mediate and exercise its regulatory powers. Civil, criminal and administrative liability may also be imposed on the violator by the proper courts.[250]

F. Examination of Existing MOAs

The NCIP released to the PH-EITI Secretariat a total of 33 Memorandum of Agreements (MOAs) covering 18 companies, one of which is doing coal exploration (PNOC Exploration Corp). Majority (67%) of the companies are operating in Mindanao, particularly the CARAGA Region (see Table 24). The data in the MOA was crosschecked with the data from the NCIP database on the Compliance Certificates for each region. [251]

There were only five companies (31%) with MOAs that cover the actual area of the operating mines as follows: (1) Taganito Mining Corp & Taganito HPAL Nickel Corp, (2) Carrascal Nickel Corp; (3) Citinickel Mines & Dev Corp; (4) JCG Resources/Greenstone Resources Corp; and, (5) Marcventure Mining & Dev Corp.; all the other MOAs covered the companies' operations outside of the actual operating mines.

Table 24. Number of Companies and MOAs Provided by NCIP

	Province	No. of companies	Percentage	No. of MOAs
Luzon			33.33%	
Region 4b	Palawan	6		8
Region 5	Camarines Norte	1*		1
Mindanao			66.67%	
Region IX	Zamboanga del Norte	1		2
Region XI	Compostela Valley	1		1
Region XIII*	Agusan del Norte	1		1
	Agusan del Sur	3*		11
	Surigao del Norte	4		4
	Surigao del Sur	3*		3
TOTAL		18	100.00	33

Legend: * - there are companies operating in more than one province

Table 25. Number of MOAs by Company, by Operating Mines as of 2012

Name of Company	Operating mine	No. of MOAs	Remarks
Philsaga Mining Corp	Y	11	Area for operating mine not included in MOAs
Berong Nickel Corp	Y	3	Area for operating mine not included in MOAs
Platinum Group Metals Corp	Y	2	Area for operating mine not included in MOAs
TVI Resource Dev Phil, Inc	Y	2	Area for operating mine not included in MOAs
Atlas Consolidated Mining & Dev Corp (ACMDC)	N	1	Not included in 2012 list of operating mines
Oceana Gold (Phil) Inc	Y	1	Area for operating mine not included in MOA
Rio Tuba Nickel Corp	N	1	Limestone quarry project
Shenzou Mining Group Corp.	Y	1	Area for operating mine not included in MOAs
SR Metals Incorporated	Y	1	Area for operating mine not included in MOAs
Taganito Mining Corporation*	Y	1	Area for operating mine not included in MOAs
Apex Mining Company Inc	Y	1	Area for operating mine not included in MOAs
Oriental Synergy Mining Corp	Y	1	Area for operating mine not included in MOA
Shuley Mines	Y	1	Area for operating mine not included in MOA
PNOC Exploration Corp	N	1	Coal exploration
Taganito Mining Corp & Taganito HPAL Nickel Corp*	Y	1	MOA covers operating mine
Carrascal Nickel Corp	Y	1	MOA covers operating mine
Citinickel Mines & Dev Corp	Y	1	MOA covers operating mine
JCG Resources/Greenstone Resources Corp	Y	1	MOA covers operating mine
Marcventure Mining & Dev Corp	Y	1	MOA covers operating mine
TOTAL	16	33	

Legend: Y – yes N - no * - considered as one entity

It bears stressing that the MOAS evaluated for this study were executed prior to the current 2012 guidelines on Free and Prior Informed Consent. Thus, references are still made to the old rules to explain the provisions that governed the execution of these MOAs, such as the following:

1. Preparation of the MOA

Sec 8 of NCIP AO No. 1, series of 1998 states that the Memorandum of Agreement (MOAs) is a component of the process of securing free and prior informed consent of the IPs, in this case, for the exploration, development, exploitation and utilization of natural resources within ancestral domains/lands.

Prior to the preparation of the MOA, the proponent (mining company) should go through the process of consensus building for each affected IP community. Using the 2006 FPIC guidelines, the IPs, after consensus building and freedom period, discuss the project proposal. A decision meeting will be held for the IPs to formally convey their decision to the proponent. If decision is favorable, both parties shall proceed to finalize the terms and conditions of the MOA.

2. MOA signing

The MOA is prepared by the FPIC team which includes the Provincial Legal Officer. The first draft is translated into a language understood by the IPs. A meeting is called by the Provincial Officer at the Provincial or Service Office, to be attended by the Legal Officer and the Regional Review Team (RRT). The translated version and the English or Filipino version of the MOA is presented to the Council of Elders/Leaders. Once the contents of the MOA are acceptable and/or affirmed, the elders authorized to sign shall affix their signature/thumb mark and have the document notarized. The MOA is subjected to a final review by the Legal Affairs Office. The FPIC Report is endorsed to the Ancestral Domain Office (ADO) which will issue the Certificate of Precondition (CP).

The MOA is executed by and between the proponent (First Party), host ICC/IP community (Second Party), and the NCIP (Third Party), written in the dialect or language of the concerned ICCs/IPs, with corresponding English and Pilipino translation.

There were only six companies that prepared their MOAs in both Filipino and English: Citinickel, Philsaga (APSA-000022-XIII), Shuley Mines, ACMDC and Berong Nickel (AMA-IVB-038 & AMA-IVB-147). Oriental Synergy and JCG/Greenstone Resources Corp's MOA was translated in Cebuano.

The JGC MOA was the only handwritten MOA. All the other MOAs were word processed in English.

In many of the MOAs, it was stipulated that the English version was the official version that will govern all parties although, in the case of Berong Nickel and ACMDC, the official language for the MOA was Filipino. Both the Filipino and English translations were written one after the other in the MOA for the protection of the IPs. It is not clear, however, whether translated versions in local dialects exist, and NCIP merely failed to provide PH-EITI with copies of the same. Assuming, however, that there are no translations, this falls short of the requirement that the MOA be translated into a language understandable to the IPs and from which approval of the MOA is based.

In general, the signing of the MOA by the IPs indicate their willingness to accept the project and abide by the agreements therein. The MOA's importance lies in the fact that it is proof that a project can start operations within the IP/ICC areas.

3. Salient Provisions of the MOA

According to the AO #1, the MOA shall stipulate, among others –

1. Benefits due to the host ICCs/IP communities;

2. Measures to protect IP rights and value systems enumerated in the section on Free Prior an Informed Consent;
3. Responsibilities of the proponent as well as those of the host ICC/IP community and the NCIP;
4. In case of change of proponent as a result of partnerships, joint venture, reorganization, merger, acquisition, sale or transfer of the rights, the terms and conditions of the MOA shall bind the new proponent without necessarily executing another MOA; and
5. Penalties for non-compliance and/or violation of the terms and conditions

For validity of the MOA referred to above, the signatories thereto shall be: a) for corporations, partnerships or single proprietorship entities, the authorized officers, representatives, partners as per Board resolution; b) for the ICC/IP community, all the authorized community elders or traditional leaders, who are registered with the NCIP in accordance with Sec. 2, Part III, Rule IV; and c) NCIP or authorized representative. The NCIP shall keep a copy of the MOA for records and monitoring purposes.

The contents of the MOA can range from eight pages, as in the case of the handwritten MOA (kasabutan) of Greenstone Resources NL, to 35 pages, as in the case of the word processed document of Citinickel Mines & Dev Corp.

In general, the actual MOAs contain a section on the premises; a section on the terms and conditions stipulating the obligations of the company, the IP/ICC and the NCIP); effectivity, duration, non-transferability of consent, dispute resolution, utilization of funds, monitoring, official version of the MOA; penalties for non-compliance, separability clause; amendments, and effectivity.

Obligations of the company are disaggregated to clearly indicate obligations during the exploration and mineral production periods, respectively. During the exploration period, a fixed amount is agreed upon to be paid at specific intervals by the company. During the mineral production period, the company will pay a royalty fee of 1% of the monthly gross output of the mining operations in the area pursuant to mining laws and Administrative Order No. 1, series of 1998, Rule III, Part II, Section 2(a); funds for scholarships, health services such as the conduct of medical missions; provision of livelihood programs; opportunities for skilled and unskilled employment; among others.

The ICCs are expected to deliver the requisite FPIC certificate to the company upon the signing of the MOA; exert reasonable efforts to ensure that the exploration and eventual commercial mining production will be free from harassment and unlawful interference; resolve any conflicting claims within the ancestral domains with the assistance of the NCIP; manage their ancestral domain; be responsible and accountable for funds received from the company; submit monthly financial reports to NCIP, and other specific concerns that may be raised by the company.

The NCIP is responsible for monitoring compliance of both parties to the terms and conditions of the MOA. At the same time, it evaluates, monitors, inspects and scrutinizes the books of the company to determine the royalty due to the ICCs and, translate and explain the contents of the MOA in the language of the ICCs.

Going over the MOAs, a checklist of all the possible benefits found in the different MOAs was drawn (see Annex R and R-1). Provision of employment based on the skills and qualifications of the company and the provision of education benefits such as scholarships are the most commonly found benefits in the MOAs. Others include health benefits such as the conduct of regular medicals missions with free medicines, infrastructure such as school buildings, livelihood projects, financial assistance, provision of transportation such as motorcycles, ambulance and equipment such as camera, typewriter.

SR Metals agreed to provide a monthly honoraria of P5,000 for all accredited tribal leaders and head of Certificate of Ancestral Domain Title (CADT) claimant, and provision of one (1) sack of rice to all accredited tribal chieftains on a monthly basis. These entries are among the issues and concerns identified during the 2006 Tribal Consultative Meeting. On the other hand, ACMDC, Berong Nickel, and Oceanagold, have included in their respective MOAs an assistance package to the communities covered with a detailed list of projects specifying the requesting IP/ICC, amounts requested/ proposed budget, and year of implementation.

Three companies (Marcventure, Carrascal Nickel, and TVI) included a provision that they would relocate/resettle/reconstruct dwellings of those affected by their mining operations.

Philsaga has the following provision in its MOA:

"The FIRST PARTY (company) shall bind itself to provide THIRD PARTY (NCIP) the amount equivalent to ten (10%) of the one (1%) percent royalty share from the gross output and such amount shall be on top of the one (1%) percent Royalty Share of SECOND PARTY (IPS/ICCs) and such amount shall cover but not limited to the purchase of office equipment, office supplies and other administrative expenses of the (NCIP);

The same shall be deposited in the NCIP Regional Office having territorial jurisdiction of the Ancestral Domain involved in this Memorandum of Agreement;"

Taganito Mining and Taganito HPAL Nickel Corporation's MOA has a similar provision which states:

"5.6 Financial Assistance. THPAL shall provide financial assistance to the NCIP, to be exclusively used for their Socio-Economic Projects for the Indigenous Peoples of Surigao del Norte, for the duration of the project.

5.6.a Period. THPAL shall give the amount of Two Million Pesos (P2,000,000.00) every year to the NCIP, starting from the commencement date and every year thereafter, until the terminaton or cessation of the project".

In terms of duration or effectivity of the MOAs, this can range from two to five years to cover the exploration period of an MPSA as in the TVI MOA. It can also be for a period of 25 years for ongoing projects such as that of APEX Mining, or with extension for another 25 years as in the MOA of SR Metals. Other MOAs follow the termination or expiration of its MPSA, and renewable for another term of the MPSA as in the MOA of Marcventure.

4. Transfer of Rights under the MOA

Sec 9 of NCIP AO No.1, series of 1998 states that the FPIC granted by the ICC/IPS is shall not be transferable to any other party, except in case of merger, reorganization, transfer of rights, partnerships, acquisition by another entity, or joint venture, provided that there will be no changes in the original plan, program, project, or policy, and that the same shall not prejudice the interest, rights and welfare of the concerned ICC/IPs. Moreover, Section 30 of the NCIP AO No. 1, series of 2006 provides that the transferee shall assume the obligations of the transferor, otherwise another FPIC will be required. The transferee may improve the terms and conditions of the MOA.

The MOAs contain a provision on transferability, specifying that should such a transfer occur, the new entity will fulfill the obligations of the previous party as in the case of Citinickel when it assumed the obligations of its predecessor PGMC and, in addition, improved the terms and conditions of the MOA by providing for additional benefits.

The rules on transferability clause are present in all the MOAs. In addition, it was clearly stipulated, especially for exploration activities, that in case the company will continue with its operations, then another FPIC should be conducted.

5. Violations of the MOA

The study on "An assessment of the implementation of the FPIC in the Philippines [252] identified violations that may occur during the (a) field based investigation; (b) FPIC process; (c) MOA signing and post-FPIC activities.

Specific to the MOA signing, these issues were identified:

1. MOA presentation and signing conducted outside of the NCIP provincial office;
2. MOA is written in English only without any translation to the appropriate IP language;
3. The absence of the RRT during the presentation and signing;
4. MOA signatories are not those initially validated;
5. MOA signatories are not authorized by the community;
6. MOA does not include penalties for validation of terms;
7. MOA exculpates the proponent from future damage;
8. MOA prevents IPs from filing cases in courts;
9. MOA is not notarized

With regard to the MOAs provided for this report, it was noted that the NCIP copies of five (5) MOAs were not notarized, namely, the MOAs of Citinickel Mining Corporation, Berong Nickel Corporation (AMA-IV-B-047 and AMA-IV-B-147), SR Metals, and Apex Mining Company. The MOA of Taganito Mining Corporation and Taganito HPAL Nickel Corporation did not have any acknowledgement page.

Another observation was the absence of signatures in two MOAs by either the NCIP representative or the IPs. In the PGMC MOA, the NCIP representative did not have a signature; in the Citinickel MOA, the NCIP representative and four IP representatives had no signatures; Oriental Synergy's MOA did not have the signature of both the company and the NCIP representatives. This may simply be oversight but it also shows the need for NCIP to have a more effective record keeping and monitoring mechanism especially since it is tasked to keep these records for monitoring purposes.

An overview of the important information on the MOAs by company and IP recipient is in Annex S.

6. Royalties

a. Rate and Negotiation

When the ICCs give their written consent, a royalty payment shall be negotiated which shall not be less than 1% of the gross output of the mining operations in the area. The minimum 1% figure is common to all companies with applications or ongoing mineral production sharing agreements. The case of TVI Resource Development (Phil) is different in that its MOA commits to pay royalty equivalent to two (2.0%) of the gross output from commercial operations, less allowable deductions under the Mining Act.

In another instance, one company was required to pay the IPs in the form of "bun-al" (penalty) in accordance with the Mansakas' customs and traditions and an additional consideration of P 300,000.00 payable in three installments upon execution of the MOA, one month thereafter, and finally on the next month after.

A similar payment that may be cited as an example is the "bonae", a Manobo/Mamanwa customary practice wherein a penalty is imposed on any person who committed violations to any person or to the community. The payment of such penalty shall be based on the gravity of the offense and shall be made in the form of Manggad (gift). In this case, Carrascal Nickel is obliged to pay an additional amount of P500,000.00 to be used to defray the expenses to be incurred in the preparation and formulation of the Community Plan. The amount will be deposited in the joint account of the IP/ICC recipient and the NCIP.

b. Management

The royalty is part of a trust fund for the socio-economic well-being of the ICCs/ IPs in accordance with their Ancestral Domain Sustainable Development and Protection Plans (ADSDPP) formulated by the ICCs/IPs in the CADC/CALC area.

In general, the MOAs state that all funds received by the IP/ICC recipients shall be spent for the purpose for which they are allocated and intended.

In one specific case, (SR Metals), the royalty payment is to be applied to two (2) major obligations based on items that have already been identified and included in the MOA:

1. The thirty percent (30%) of the one percent (1%) share shall be applied to respond to all environmental and community development projects as pre-identified by all accredited tribal chieftains such as education and scholarship grants, provision for housing facilities, establishment of a mango plantation, among others;
2. The seventy percent (70%) of the one percent (1%) share shall be applied to all other related issues and concerns and other unforeseen development circumstances and situations such as provision of honoraria for all accredited tribal leaders and head of CADT claimant at P5,000/month; provision of one sack of rice to all accredited tribal chieftains, representation of at least two (2) IPs as members of the monitoring team.

To implement and administer the trust fund for the royalty payment, one company has included the formation of an ICC/IP trust fund governing board composed of accredited tribal chieftains of the domain as members of the Executive Committee.

c. Monitoring of Royalties

In the MOAs, a section on Monitoring and Evaluation Schemes is included. Some of the identified activities include regular financial audit with copies of the results provided to all parties; ocular inspection of projects implemented using the fund; creation of a joint monitoring team with representatives from all parties for the monitoring of the progress of projects and programs for the IP/ICCs, and also for the compliance of the mining company with the provisions of ECC; regular submission of reports by the company and the IP/ICCs; and, regular monitoring by the NCIP and use of its visitorial power.

This review was limited by the lack of relevant MOAs, that is, MOAs which covered the companies included in this first report. There were only five (27%) companies whose MOAs cover the operating mines. It is recommended that in the succeeding report, the MOAs of the companies included in the report should be prioritized and provided to the PH-EITI Secretariat.

On the whole, although there are similarities across benefits, there are also differences which indicate a need to for the NCIP, being the body charged to look for the welfare of the IP/ICCs communities, to formulate clearer provisions on royalties and benefit sharing schemes so that the IPs are assured of benefitting from the projects they allow into their ancestral domain. More importantly, they become empowered and learn to manage their funds so that sustainable development can be realized in their ancestral domains.

IV. Royalties

A. Rate and Negotiation

By nature, royalties are not treated only as economic benefits due to ICCs/IPs but is actually a social justice measure. ICCs are entitled to a royalty of not less than 1% of the gross output of the extractive operations. Said royalty shall form part of a Trust Fund for the socioeconomic well-being of the

ICCs in accordance with their ancestral land management plan. Representatives from the MGB or concerned Regional Office, Department offices, LGUs, relevant NGOs/POs and the Office of the Northern/Southern Cultural Communities may be requested to act as mediators between the concerned ICCs and the Contractor/Permit Holder in the negotiation for the royalty payment. [253]

B. Management

1. Responsible entities

The royalty payment should be managed by the concerned ICCs [254] through an indigenous people's organization (IPO) which is a private, nonprofit voluntary organization of members of an ICC/IP which is accepted as representative of such ICCs/IPs. [255]

Only the duly organized, NCIP-registered IPO of the concerned ICCs/IPs shall be authorized to receive and manage the royalties. Protection of the royalties that are received by it shall be provided in its by-laws and manual of operation.[256]

The ICC/IP receiving the royalties and similar fees must formulate a development plan for its management and use, called the Community Royalty Development Plan (CRDP). In the formulation of such plan, the ADSDPP must be considered, and the ICCs/IPs can engage the services of a reputable public or private agency to provide consultancy and/or technical services. The CRDP needs the confirmation of the NCIP's Commission En Banc after verification and validation by the concerned field office. [257] In case there is disagreement about the royalty due the concerned ICCs, the DENR is tasked to resolve the same.

2. Withdrawals

The release of the royalty fees shall not be allowed without the concurrence of the NCIP Commissioner from the Region and the NCIP Chairperson duly secured by such IPO. The concurrence is intended to be a check on the use of the funds based on the CRDP. The royalties may be released only: (a) directly to the account of the IPO of the ICCs/IPs; or (b) to a Trustee Bank agreed upon which shall, in turn, be responsible for releases to the IPO account. [258]

Expenses for community development may be credited to or charged against said royalty. The intergenerational rights of the ICCs/IPs must also be protected in managing the royalties. Royalties are entitlements of the ICCs/IPs as part of their guaranteed rights under domestic laws and international agreements, conventions or declarations. [259]

3. Allowed expenditures

The royalties may be used for programs and projects that will redound to the benefit of the ICCs/IPs entitled to it. It should have allocations for the following, but are not limited to:

1. Emergency concerns;
2. Investments which may be short, medium or long term;
3. Livelihood and social development projects, which must be allocated not less than 30% of each and every release;
4. Education and training of members, basic or professional;
5. Capitalization for cooperative development;
6. Credit facility;
7. Salaries and wages of persons engaged to perform professional services;
8. Mutual assistance. [260]

Royalties are not allowed to be used as payment for personal and property damages caused by the activities of extractive companies, as this is a distinct obligation of the company and not part of the royalties. [261]

C. Monitoring of Royalties

The IPO is obliged to prepare audited periodic financial reports and annual financial statements and furnish copies of the same to the NCIP. This must also be reported to the general

membership during the annual assembly that is convened to tackle financial and other community or IPO concerns. [262]

In the exercise of its mandate to protect the well-being and promote the rights of the ICCs/IPs, the NCIP may direct financial and management audits of the IPOs managing the royalties and other benefits or exercise its powers to inspect and examine its records. [263]

CHAPTER 7
Social Expenditures and Environmental Funds

CHAPTER 7

Social Expenditures and Environmental Funds [31]

The law also provides for social and environmental funds that companies are required to set up for the benefit of mining communities and for ensuring that the environmental protection measures for extractive industries are strictly complied with.

The primary objective of the Social Development Management Program (SDMP) is to help create responsible and self-reliant communities capable of developing, implementing and managing community development programs, projects and activities in a manner consistent with the principles of sustainable development. To this end, mining companies are required to allot one and a half percent (1.5%) of their operating cost to assist government, particularly the Local Government Units (LGUs) in the development of the host and neighboring communities to promote the general welfare of the inhabitants living therein.

This chapter discusses the nature of these social funds and how they are approved and monitored.

Environmental funds which are mandated under RA 7942 are also discussed.

A full text of this chapter is available at http://ph-eiti.org/#/Papers/Subnational-Implementation

I. Mining Companies: Social Development Management Programs (SDMP), Community Development Programs (CDP), Programs on Development of Mining Technology and Geosciences and the Program on Information, Education, and Communication

Apart from payments to national government and LGUs, mining companies are also required to spend for the development of its host communities and the promotion of their general welfare, and the development of geoscience and mining technology.[264] These social expenditures are not payments made to government, but are implemented directly by mining companies for the benefit of host community and neighboring community[265] and for the mining industry. They are implemented based on a (a) Social Development Management Program[266] or, at the exploration phase, through a Community Development Program,[267] (b) the Programs on Development of Mining Technology and Geosciences[268] and (c) the Program on IEC or the promotion of public awareness and education on mining technology and geosciences.[269] Credited activities for SDMP implementation are as follows:

[31] This chapter was culled from the paper on subnational implementation by Atty. Alett Nunez et.al., with additional inputs from Ms. Nelia Halcon of the Chamber of Mines of the Philippines and Assoc. Prof. Maria Aurora Teresita W. Tabada of the Visayas State University.

Table 26. Credited Activities for Social Expenditures

Credited activities for the development of host and neighboring communities	1. Human resource development and institutional building;[270]
	2. Enterprise development and networking;[271]
	3. Assistance to infrastructure development and support services;[272]
	4. Access to education and educational support programs.[273]
	5. Access to health services, health facilities and health professionals,[274]
	6. Protection and respect of socio-cultural values, use of facilities and services within the mine camp or plant site.[275]
Credited activities for development of mining technology and geosciences	1. Basic and applied research on mining technology, geosciences, and advanced studies related to mining, to be conducted by qualified researchers;[276]
	2. Expenditures for scholars, fellows and trainees, including grants for dissertations, on mining technology and geoscience and related subjects;
	3. Expenditures on equipment and capital outlay as assistance for research and educational institutions.
Credited activities for the promotion of public awareness and education on mining technology and geosciences	1. Establishment, enhancement, and maintenance of information and publicity centers where stakeholders can access information on the performance of a mining project;
	2. Publication of information, education, and communication (IEC) materials on social, environmental, and other issues relative to mineral resources development and responsible mining operations;
	3. Expenditures for continuing public awareness and education campaigns;[277]
	4. Expenditures on equipment and capital outlay as assistance to the institutionalizing public awareness and education on mining technology and geosciences.

A. SDMP Cost

The extractive company's budget for SDMP must be equivalent to an annual allocation of 1.50% of the company's operating cost.[278] This amount is allocated to SDMP activities on a 75% - 10% - 15% ratio for the development of the host and neighboring communities; for the development of mining technology and geosciences; and for the implementation of IEC program, respectively.[279]

Table 27. Allocation for Social Expenditures

SDMP [CDP, if at exploration stage]	ALLOCATION OUT OF TOTAL SDMP COST (1.5% of Operating Costs) [10% of EWP Budget, for CDP]
Development of Host and Neighboring Community	75%
Development of Mining Technology and Geosciences	10%
Information, Education and Communication Program	15%

Activities that may be credited as expenditure for development of mining communities and science and mining technology are:

(a) any activity or expenditure intended to enhance the development of the mining and neighboring communities of a mining operation other than those required or provided for under existing laws or collective bargaining agreements; and

(b) Any activity or expenditure directed towards the development of geosciences and mining technology such as institutional and manpower development, and basic and applied researches.[280]

In computing the SDMP cost, the expenditures for the mining companies' employees and their families are not included.[281] Neither are these social expenditures creditable as royalty payment for IPs or ICCs.[282] For holders of exploration permits, mineral agreement and Financial and Technical Assistance Agreements (FTAA) at the exploration stage, the CDP must be supported by a fund equivalent to a minimum of 10% of the budget of the approved two-year Exploration Work Program.[283]

Any unspent amount or savings, for any given year, allotted for the SDMP implementation will be added to the succeeding year's allotment and may be re-programmed after consultations with host and neighboring communities.[284]

B. Development, Approval, Implementation and Monitoring of SDMP and CDP

Before embarking on the program, the company undertakes a Social Impact Assessment (SIA) of the area and a Participatory Rapid Appraisal (PRA) to determine the scope of the operations' impacts, the capability of the community for engagement and empowerment, and to ascertain if there is a need to capacitate and train them or their community leaders. These initial activities help ensure that company funds allotted for SDMP are based on relevant, timely, and usable information, and that the projects fit the site conditions and culture of the communities.

The company prepares the SDMP in consultation and partnership with the host and neighboring communities. Indigenous peoples, civil society organizations, and local government agencies are also involved in the formulation and planning of the SDMP. A Community Relations Officer (CRO) tasked to oversee the program is designated by the company in dealing with the LGUs and the host and neighboring communities' concerns, and in facilitating the progress of the program. For companies that have made these kind of interventions long before it was mandated, planning is undertaken in partnership with LGUs and community leaders to complement LGU plans and programs in coming up with the 5-year priority program activities.

(Halcon, N.)

SDMP and CDP must be developed in consultation with the host and neighboring communities.[285] In implementing the SDMP, particularly on scholarships given to develop the mining industry and geosciences, concerned provincial and municipal governments must be consulted in the determination of beneficiaries of scholarships and trainings, as well as the subject of researches and training programs. [286]

SDMP, together with the Programs on Development of Mining Technology and Geosciences and on IEC, are submitted every five years to the MGB Regional Office for approval.[287] CDP is submitted to the MGB Regional Office for approval, within six months upon registration of the approved Exploration Permit, Mineral Agreement or FTAA.[288]

Within 30 days from the approval of the SDMP,[289] the mining company shall enter into a Memorandum of Agreement (MOA) with the host and neighboring communities as represented by concerned barangays or municipality or both. The MOA shall be registered in the MGB Regional Office, to ensure the implementation of the various programs, plans and activities.[290] The mining company is required to furnish each of the LGUs concerned and the host and neighboring communities with a copy of the approved programs within five days after the registration of the approved mining contract or permit or, in the case of exploration work, five days after receipt of the order approving the Declaration of Mining Project Feasibility.[291]

Based on the approved programs, the mining company submits Annual Programs to the MGB Regional Office for approval at least 30 days prior to the start of every calendar year. These programs will be implemented the following year. [292] The MGB has oversight function over the evaluation, approval and implementation of the programs.

In program implementation, the mining company is required to set up a Community Relations Office (CRO) that is primarily tasked to coordinate and facilitate the implementation of the SDMP, and the Programs on Development of Mining Technology and Geosciences and on IEC. The CRO's head, the Community Relations Officer, reports directly to the highest company on-site official.[293] During the Exploration Stage, the mining company may hire or designate community development professionals or community liaison officer to ensure the effective implementation of the CDP.[294]

To determine the level of implementation of these programs, the CRO and representatives of host and neighboring communities conducts monthly internal monitoring of the annual SDMP (ASDMP).[295] The CRO provides the MGB Regional Office with the quarterly and annual accomplishment reports[296] on the implementation of ASDMP, Annual Program on the Development of Mining Technology and Geosciences and Annual Program on IEC.[297]

The MGB Regional Office conducts semi-annual monitoring of program implementation and submits its monitoring reports to the MGB as basis for periodic audits.

On the initiative of any of the parties,[298] the approved SDMP and Programs on Development of Mining and Mineral Processing Technologies

The SDMP has a five-year budgetary life cycle and is continuously budgeted and undertaken depending on the life of the mines. Thus, the five-year budgetary requirement of the program is based on the company's forecast of operating expense during the said period which is reviewed and approved by the DENR/MGB Regional Office. The entire five-year fund is apportioned with 75% going for SDMP implementation; 10% for the development of Mining Technology and Geosciences Program and 15% for the implementation of the an information education and communications (IEC) program.

Being a five-year program, the expenditures for a one-year program activity will not give a complete picture of the entire SDMP priority program activities and the budget these require. Only a snap shot of a one-year activities and budget can be specified.

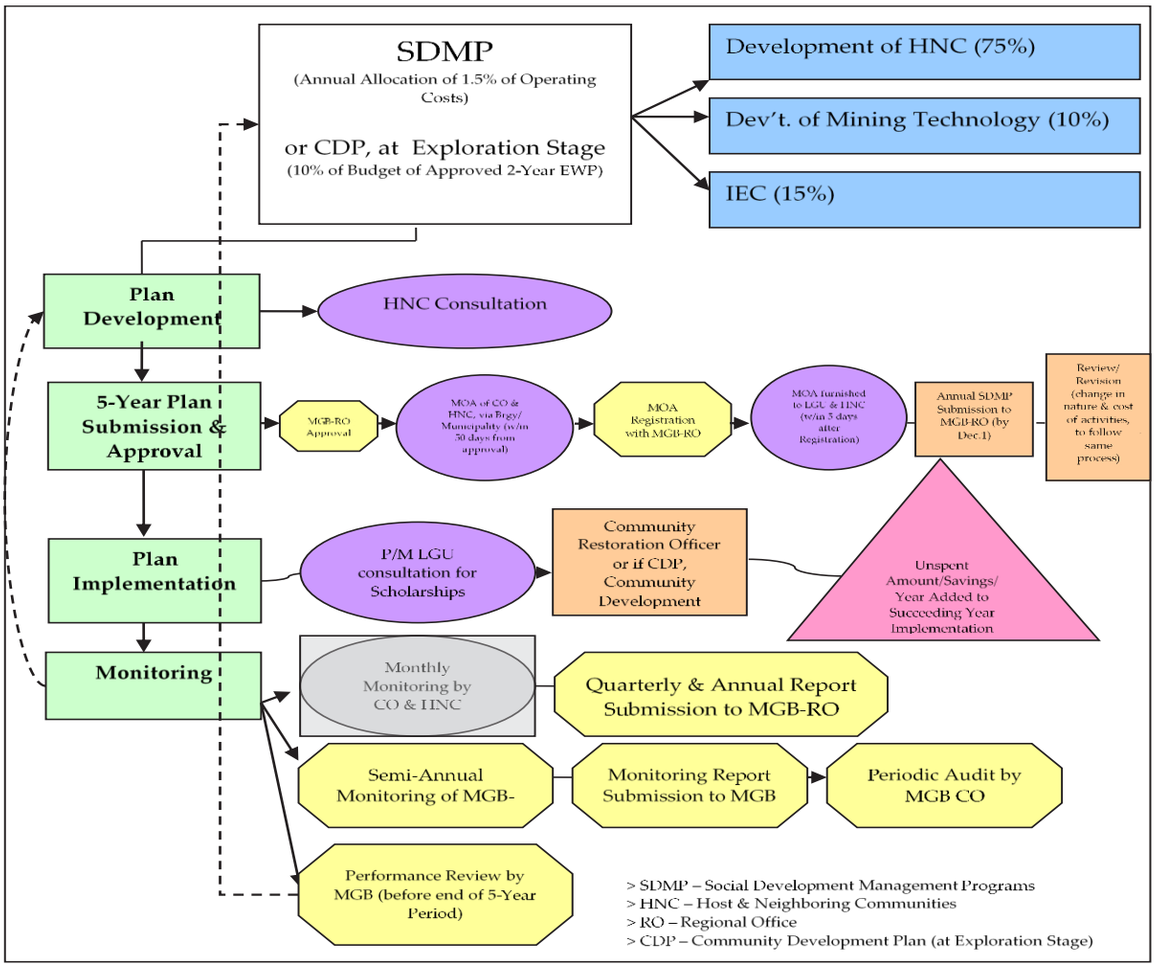
Companies together with the LGUs and communities have the flexibility to change whatever were planned and approved if these are justified to be in the best interest of the community and provided these are reported and considered by authorities.

(Halcon, N.)

and Geosciences and on IEC may be reviewed and/or revised during their period of coverage to account for changes in the nature and cost of activities.[299]

Prior to the end of the five-year term of the approved programs, the MGB conducts a performance review to determine and measure the impact of the various programs. The results serve as an integral guide in the preparation of new programs. The SMPM process, which shows the limited participation of LGUs, is illustrated below.

Figure 45. SDMP Development, Approval, Implementation and Monitoring



A mining company's failure to implement its approved SDMP and Programs on Development of Mining Technology and Geosciences and on IEC, or to operate without such programs is penalized by a fine not exceeding PhP5,000.00 at the first offense. A succeeding offense is a ground to suspend its mining or milling operations in the mining areas, in addition to a fine not exceeding PhP5,000.00.[300]

Based on submissions of the annual SDMP information detailing projects undertaken during 2012 assessed against the 5-year program and budget, fund utilization varies across all the entities. Some utilize foundations and organizations to assist the community relations officer in project implementation, hence a higher fund utilization and project outcome, while others rely on the LGU's submission of projects and costs to be funded by the mining entity. One entity collaborated with Gawad Kalinga in establishing housing facilities for the IP community as part of its SDMP. Donations which come from the SDMP funds are not included in the report as these are not considered part of the SDMP although some entities disclosed their donations. This, in a way distorts the effectiveness of the priority program activities affecting the disclosure of expenditures.

Overall, total SDMP expenditures by entities that submitted reports with accompanying fund utilization, amounted to over Php 1 billion for 2012. These expenditures benefited their entire community as it covers not only the provision of livelihood activities and enterprises that are self-sustaining but also the development of human capital thru the provision of free elementary and high school education; assistance to LGUs in infrastructure such as the establishment and maintenance of schools, health facilities and services, as well as roads, market facilities and other service industries catering to the communities.

Funds with respect to the development of mining technology and geo-sciences are normally spent for scholarships, fellowships and training and for dissertations on mining technology and geosciences; commissioning scientific research in established institutions and other advance studies related to mining.

Public awareness and education on mining technology and geo-sciences form part of the information education campaign programs of the SDMP including the publication of IEC materials and education campaigns thru tri-media and outreach programs in schools and universities.

For better evaluation of the impact of social projects, there should be a mechanism to assess whether the funds that flow from the entities to the local communities are translated to measurable indicators such as kilometers of roads and bridges built, number of classrooms and students subsidized and the value of these; number of patients/outpatients served in the hospitals; total payroll of enterprises established; value of free water, light and fuel provided in the communities and other measurable indicators. These, and the spill-over effects of mining would complement the value of taxes paid by the mining industry for the public's better appreciation of such benefits.

(Halcon, N.)

II. Mandatory Environment-Related Funds: Environmental Protection and Enhancement and Rehabilitation Funds

Given the extractive nature of its operations, mining companies are required by law to set aside funds for environmental protection, enhancement and rehabilitation.[301] These are legal obligations of mining companies to protect, enhance and rehabilitate the environment that have been affected by mining operations. This is consistent with the Constitution[302] and the policies of the State to protect the environment.[303]

As part of the application process for a mineral agreement or permit, a mining company must incorporate in its work program an Environmental Protection and Enhancement Program (EPEP) covering the period of the mineral agreement or permit. The work program must include not only plans relative to mining operations but also to rehabilitation, regeneration, re-vegetation and reforestation of mineralized areas, slope stabilization

of mined-out and tailings covered areas, aquaculture, watershed development and water conservation; and socioeconomic development.[304] Mining companies are also required to technically and biologically rehabilitate the excavated, mined-out, tailings covered and disturbed areas to the condition of environmental safety in accordance with a Final Mine Rehabilitation and Decommissioning Plan (FMRDP). [305]

For this purpose, a mine rehabilitation fund (MRF) is created, based on the company's approved work program, particularly its EPEP,[306] or at the exploration stage, its Environmental Work Program (EWP).[307] This is deposited as a trust fund in a government depository bank and used for physical and social rehabilitation of areas and communities affected by mining activities. It is also used for research on the social, technical and preventive aspects of rehabilitation. The failure to observe this obligation will result to suspension or closure of mining activities. [308]

To show proof of satisfactory environmental management and community relations in its past mineral resource use ventures and as a prerequisite in the approval of a mineral agreement and FTAA,[309] a mining company must obtain from the MGB Regional Office a Certificate of Environmental Management and Community Relations Record (CEMCRR).[310] This is issued upon payment of processing fee and the satisfactory environmental management and community relations record[311] from the MGB Regional Office and the Environmental Management Bureau.[312]

A. Environmental Work Program and Environmental Protection and Enhancement Program

As discussed above, applicant mining companies are required to submit to the MGB Regional Office an Environmental Protection and Enhancement Program (EPEP), or at the exploration stage, an Environmental Work Program (EWP)[313]

An EWP[314] details the environmental impact control and rehabilitation activities proposed during the exploration period. The plan includes the costs to enable sufficient financial resources to be allocated to meet the environmental and rehabilitation commitments, which costs are the basis for the lodging of the MRF.[315] It must also include implementation schedules, system of environmental compliance guarantees, monitoring, reporting and cost provisions.[316] This is submitted as part of the accompanying document to the application for a mining permit.[317]

An EPEP[318] provides the operational link between the environmental protection and enhancement commitments under the mining laws and regulations as well as those stipulated in the Environmental compliance Certificate (ECC) under P.D. 1586 and the company's plan of mining operation. [319] The submission of the EPEP must complement and does not substitute for the requirement for an ECC.[320]

Mining companies must submit an EPEP covering all areas to be affected by mining development, utilization and processing under their contracts. Apart from the environmental impact control and rehabilitation activities proposed during the life-of-mine, the program must allocate financial resources to meet the life-of-mine commitments, implementation schedules, system of environmental compliance guarantees, monitoring, reporting and cost provisions. The amount of the funds to be lodged as MRF is based on the financial requirements of the EPEP.[321]

The mining company must also allocate for its initial environment-related capital expenditures an amount that approximates 10% of the total project cost or such other amount depending on the environmental or geological condition, nature and scale of operations, and technology employed.[322]

B. EPEP Processing, Approval, Implementation, and Monitoring

For EWP, the applicant mining company is required to furnish the *Sangguniang Panlalawigan* (provincial legislative body) concerned with the EWP. Six months after the approval of the EWP, the company must also submit to the MGB and its Regional Office a status report on compliance with the EWP within 30 days, and every six (6) months thereafter.[323]

For EPEP, the mining company is required to submit them to the MRF Committee,[324] through the MGB Regional Office for review,[325] within 30 days

upon receipt of the ECC.[326] The MRF Committee then evaluates the EPEP as to its form and substance and may impose additional requirements and documentation.[327] After the MRF Committee's preliminary evaluations, the Contingent Liability and Rehabilitation Fund (CLRF) Steering Committee,[328] through the MGB, reviews the EPEP for final evaluation and approval, within 30 days from receipt of the EPEP from the MRF Committee.[329] After approval, the mining company is required to provide each of the LGUs concerned with a copy of the approved EPEP not later than 30 days prior to the start of mining operation.[330]

Any change in the approved environmental protection, enhancement and rehabilitation strategies, which entails a variance of minus 20% of the financial requirements, requires a submission of a revised EPEP by the mining company to the MRF Committee for preliminary evaluation and to the CLRF Steering Committee for final evaluation and approval. [331]

To implement the approved EPEP, the mining company is required to submit an Annual EPEP (AEPEP)[332] to the MGB and the Regional Office at least 30 calendar days prior to the beginning of every calendar year. The mining company must allocate for its annual environment-related expense a percentage based on the AEPEP which may approximate a minimum of 3-5% of its direct mining and milling costs depending on the environment/geologic condition, nature and scale of operations and technology employed.[333] The mining company is required to set up and maintain a Mine Environmental Protection and Enhancement Office (MEPEO). The MEPEO sets the level of priorities and marshal the resources needed to implement environmental management programs.[334]

The MMT[335] monitors the mining company's compliance with the approved EPEP and AEPEP every quarter or more frequently as may be needed.[336] The MMT prepares and submits the environmental monitoring reports to the MRF Committee, which forms part of the meeting agenda,[337] and to the CLRF Steering Committee. The latter uses the reports as one of the bases for their annual environmental audit.[338] The monitoring expenses of the MMT are chargeable against the Monitoring Trust Fund of the MRF. [339]

The mining company must also regularly conduct an independent environmental audit to identify environmental risks affecting mining operations to serve as a basis for the development of an effective environmental management system. It must furnish the MMT, MRF Committee and CLRF Steering Committee the results of the said audit.[340] The procedure for the EPEP development, approval, implementation and monitoring is illustrated below.

Figure 46. EPEP Development, Approval, Implementation and Monitoring

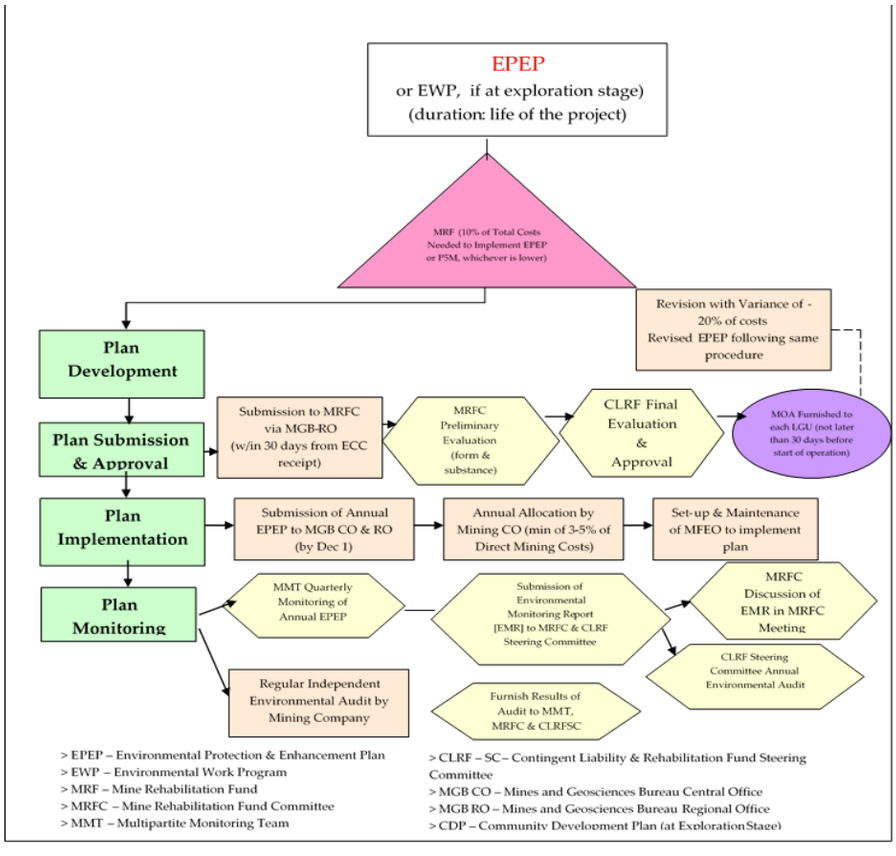


Table 28. EPEP Financial Requirements

Financial Requirements	Duration	Costs
EPEP Financial Requirements	Life of the Mine	based on Costs indicated in EPEP
Initial EPEP Financial Requirements	Initial Phase	10% of the total capital or project cost [or such other amount depending on the environmental/ geological condition, nature and scale of operations and technology employed]
Annual EPEP Financial Requirements	Yearly	minimum of 3-5% of direct mining and milling costs depending on the environment and geologic condition, nature and scale of operations and technology employed

C. Contingent Liability and Rehabilitation Fund: MRF – MTF and RCF, MWT, FMRDF

For purposes of implementing the rehabilitation duty of mining companies,[341] the law institutionalizes an environmental guarantee fund mechanism known collectively as the Contingent Liability and Rehabilitation Fund (CLRF).[342] This is to ensure the just and timely compensation for damages and progressive and sustainable rehabilitation for any adverse effect a mining operation may cause.[343]

The CLRF consists of the Mine Rehabilitation Fund (MRF), the Mine Waste and Tailing Reserve and the Final Mine Rehabilitation and Decommissioning Fund. The CLRF Steering Committee administers the CLRF.[344] Apart from the foregoing, there is also the Environmental Trust Fund (ETF) established to pay for mining related compensable damages other than those caused by mine waste and mill tailing. It is contained in the MOA entered into by and among the stakeholders. ETF is pegged at a minimum of PHP 50,000.00.

Table 29. Environmental Guarantee Fund Mechanism: Contingent Liability and Rehabilitation Fund

CLRF [Lodged as a Trust Fund with a Government Depository Bank]*	REQUIRED AMOUNT	PURPOSE
Mine Rehabilitation Fund: (a) Monitoring Trust Fund	minimum of P150,000, subject to quarterly replenishment	To pay for monitoring expenses of MMT/MRFC [maintenance and other operating budget for the transportation and travel expenses, cost of laboratory analysis, cost of supplies and materials, cost of communication services, cost of consultancy work]
Mine Rehabilitation Fund: (b) Rehabilitation Cash Fund	10% of the total amount needed to implement the EPEP or PhP5,000,000.00, whichever is lower	To ensure compliance with the approved rehabilitation activities and schedules, based on EPEP/AEPEP
Mine Waste and Tailing Reserve Fund	PhP0.05/MT of mine waste produced and PhP0.10/MT of mill tailings generated	To pay for compensation for damages caused by any mining operations
Environmental Trust Fund	minimum of P50,000	To pay for mining related compensable damages other than those caused by mine waste and mill tailing
Final Mine Rehabilitation and Decommissioning Fund	Annual Cash Provision based on a formula	To pay for the implementation of the FMR/DP

D. Mine Rehabilitation Fund: Monitoring Trust Fund and Rehabilitation Cash Fund

Each mining company must establish and maintain an MRF as environmental deposit to ensure funding for EPEP or AEPEP activities. The MRF is deposited as a Trust Fund in a government depository bank and is used for physical and social rehabilitation of areas and communities affected by mining activities and for research on the social, technical, and preventive aspects of rehabilitation.[345]

There are two kinds of MRF: Monitoring Trust Fund (MTF) and the Rehabilitation Cash Fund (RCF). The MTF is deposited by the mining company in a government depository bank[346] for the exclusive use in the monitoring program approved by the MRF Committee.

The MTF is in cash and in an amount determined by the MRF Committee, which must not be less than the amount of PhP150,000.00[347] to cover maintenance and other operating budget for the transportation and travel expenses, cost of laboratory analysis, cost of supplies and materials, cost of communication services, cost of consultancy work and other reasonable expenses incurred by the MMT. Consequently, the mining company must replenish the MTF every quarter. Only authorized representatives of both the MRF Committee and the mining company can disburse the MTF.[348]

The RCF, on the other hand, is set up by the mining company to ensure compliance with the approved rehabilitation activities and schedules, including research programs, as defined in the EPEP and AEPEP. The RCF is equivalent to 10% of the total amount needed to implement the EPEP or PhP5,000,000.00, whichever is lower.[349] The RCF is deposited as a Trust Fund in a government depository bank. Withdrawals from the RCF by the mining company is done via a request based on its EPEP or AEPEP, submitted to the MRF Committee for consideration and approval, and copy furnished the CLRF Steering Committee.[350]

At the end of the mining company's operation and upon written notice to the MRF Committee Chairperson, the RCF, after payment of all outstanding obligations, will be terminated and the remaining amount and interests will be returned to the mining company.

In lieu of the RCF, the Final Mine Rehabilitation and Decommissioning Fund (FMRDF)[351] is utilized to fund all decommissioning or rehabilitation activities contained in the approved Final Mine Rehabilitation (FMR) or Decommissioning Plan (DP) for the succeeding years until the objectives of mine closure have been achieved. For 2012, a summary of the MRF, including the environmental trust fund, lodged by the mining companies is found below:[352]

Table 30. 2012 MRF of Mining Companies and Environmental Trust Fund

Mining Companies	Monitoring Trust Fund	Rehabilitation Cash Fund	Envi'tal Trust Fund
Lepanto Consolidated Mining Company	153,673.14	428,299.90 + 4,590243.42	52,7199.03
Philsaga Mining Corporation	150,926.57	2,000,000.00	-
Philex Mining Corporation	176,095.77	5,512,302.47	507,840.12
TVI Resource Development Phil, Inc.	52,649.53	5,201,809.97	106,112.33
Krominco, Inc.	91,025.4	2,271681.94	-
Rapu-Rapu Minerals, Inc.	44,999.33	5,745,905.51	123,677.43
Marcventures Mining and Development	154,000	5,027,208.43	-
Eramen Minerals, Inc.	151,553.83	5,011,634.58	101,357.05
LNL Archipelago Minerals, Inc.	158,601.16	5231872.37	-
Zambales Diversified Metals Corporation	154,913.9	5,022,457.62	100,000.00
Benguet Nickel Mines, Inc.	161,281.86	5,052,832.32	-
Carmen Copper Corporation	152,425.78	5,053,000.00	50,816.94
Citinickel Mines & Dev't. Corp.	-	-	-
Hinatuan Mining Corporation	176,629.65	5,286,404.02	68,109.03
Taganito Mining Corporation	189,694.58	6,667,403.75	50,589.78
CTP Construction Mining Corporation – Adlay Nickel Project	154,509.23	5,157,977.39	154,509.23
Cagdianao Mining Corporation	152,183.84	5,993,534.58	67,531.42
Shuley Mine Incorporated	-	-	-
Platinum Group Metals Corporation	171,906.41	5,421,689.95	57,344.23
Shenzou Mining Group Corporation	150,390.33	5,006,896	-
CTP Construction and Mining Corporation – Dahican Nickel Project	154,509.23	5,147,832.36	154,509.23
Carrascal Nickel Corporation	154,296.87	5,035,261.33	-
Oriental Synergy Mining Corporation	153,478.12	5,003,847.22	-
SR Metals Incorporated	155,343.07	5,045,082.13	-
Sinosteel Phils. H.Y. Mining Corporation	150,441.23	5,019,350,17	-
Adnama Mining Resources, Inc.	150,000	5,005,171.42	-
Leyte Iron Sand Corporation	-	-	-
Ore Asia Mining and Dev't Corp.	-	-	-
Filminera Resources Corporation	188,245.95	5,982,358.83	52,829.67
Philippines Gold Processing & Refining Corp.	-	-	-
Johnson Gold Mining Corporation	-	5,982,358.83	-
Apex Mining Company, Inc.	-	-	-
Oceana Gold (Philippines), Inc.	155,587.26	5,844,691.63	10,7136.93
Greenstone Resources Corporation	150,333.73	5,027,564.35	

Mining Companies	Monitoring Trust Fund	Rehabilitation Cash Fund	Envi'tal Trust Fund
Cambayas Mining Corporation	100,437.22	1,738,972.58	
Berong Nickel Corporation	106,189.72	5,133,397.79	206,164.39
Mt. Sinai Mining Exploration and Dev't Corp.	-	-	-
Rio Tuba Nickel Mining Project	-	6,188,892.13	-
PMDC/AAM-PHIL Nat. Res. Expl & Dev't Corp.	152,695.20	5,028,757.90	-

Legend: - No Data

E. Final Mine Rehabilitation and Decommissioning Fund (FMRDF)

Mining companies are required to develop an FMRDP.[353] They are also required to put up a corresponding FMRDF[354] or a trust fund deposited with a government depository bank to be used solely for FMRDP the implementation. The mining companies provide annual cash provisions based on a formula[355] to the MRF Committee within 60 days from FMRDP's approval date[356] and every anniversary date thereafter.[357] The mining company's failure to establish an MRF and an FMRDF is sufficient ground to suspend or cancel the mining operations.[358]

The CLRF Committee approves the withdrawal from the FMRDF, upon recommendation by the MRFC based on the approved work and financial plan. The amounts incurred by the mining company for the rehabilitation and annual environmental and enhancement programs pursuant to its EPEP or AEPEP cannot be reimbursed or credited to the FMRDF.[359]

The mining company is required to submit a progress report with details of rehabilitation activities based on FMRDP implementation. The report is submitted to the MRF Committee for evaluation within 30 days from the end of the preceding work and financial plan's term, if applicable. The results of the MRF Committee's evaluation will be integrated in the succeeding year's work and financial plan.[360]

The FMRDP is reviewed or revised or both at a date not exceeding two years after its approval and every two years thereafter. The FMRDP may also be reviewed or revised whenever amendments are justified by changes in mining activities; the review or revision may be made on the mining company's initiative or at the request of the MGB Director or Regional Director. Based on this review, annual provisions to the FMRDF may be increased or decreased.[361]

Upon the mining company's assessment that the mine closure objectives are based on the approved FMRDP, it must prepare and submit a Final Rehabilitation Report with third party Environmental Audit (FRR with EA) for pre-evaluation by the MRF Committee and final approval by the CLRF Steering Committee.[362] The MRF Committee or CLRF Steering Committee may, after evaluation of the FRR with EA, conduct field validation of the reported accomplishments. The Committees may recommend revisions to the submitted report or require additional rehabilitation works to be done.[363]

If residual care is still needed, the mining company is required to submit a Site Management Plan detailing how to manage the identified residual rehabilitation commitments. The CLRF Steering Committee may then issue a Certificate of Final Relinquishment to the mining company signifying approval of the FRR with EA and freeing the mining company from any further obligations insofar as the rehabilitated areas are concerned. [364]

Thereafter, any remaining amount of the mining company's total FMRDF annual provisions as well as MWTF payments will be released back to them. The mining company shoulders any shortfall in the amount needed to achieve mine closure objectives pursuant to the approved FMR or DP and to implement the Site Management Plan.[365]

F. Mine Waste and Tailings Fees Reserve Fund

Mine Waste and Tailings (MWT) fees are collected semi-annually from each mining company based on the amounts of mine waste and mill tailings it generated for the period. The amount collected accrues to a MWT Reserve Fund deposited in a Government depository bank. This trust fund is used to compensate damages caused by any mining operations. The MWT Reserve Fund is utilized for research projects approved by the CLRF Steering

Committee.[366]

The basic fee is computed at PhP0.05/MT of mine waste produced and PhP0.10/MT of mill tailings generated from the mining operations, subject to exceptions,[367] and which rate may be increased by the DENR Secretary upon the recommendation of the MGB Director.[368] MWT fees are payable to the MGB within 45 days after the end of each semester. The fees are based on the sworn semi-annual report submitted to the MGB Central Office, copy furnished the MGB Regional Office. The semi-annual report states among others, the (a) amounts of mine waste and mill tailings produced or both, contained or utilized; and (b) the manner by which the mine waste or mill tailings produced or both was utilized.[369] Mining companies with no mine waste nor mill tailings generated are likewise required to submit sworn semi-annual reports stating that for the said period no such materials were generated from their operations.[370]

Mining companies are exempt from MWT fees when they utilize engineered and well-maintained mine waste and tailings disposal systems with zero-discharge of materials or effluent. Companies with wastewater treatment plants, which consistently meet Department standards are also exempted from MWT fees.[371] In case of damage, the exempt mining company is nonetheless duty bound to pay for damages incurred due to previously exempted mine waste and tailings.[372]

If the companies fail to submit the semi-annual reports, it cannot avail exemption from MWT fees and it can be penalized with a P5,000.00 fine. Failure to comply with MWT fees means 10% surcharge on the principal amount for every month of delay. The same surcharge is also imposed if the mining company fails pay[373] for the mine waste and tailings generated, which were previously requested for exemption from payment of fees but were denied based on the verification report. [374]

In 2012, a total of P1,170,743.00 representing payments from 6 companies was paid as MWTF. Of this amount, nothing was spent as compensation for damages incurred. Seven mining companies were deemed to have generated no waste and six mining companies were exempt from payment.

The MGB did not have complete nor any data on the 22 mining companies, which included 2 companies that made their payments late and 1 company that did not submit any report nor made any payment. This lack of information on MGB's part runs contrary to the regulation requiring mining companies to submit sworn semi-annual report to the MGB Central Office, copy furnished the MGB Regional Office. This indicates either a lack of compliance on the part of the mining companies and enforcement on MGB's part or a poor filing and recording system within the agency. A summary of the 2012 MWTR paid by mining companies is found below.[375]

Table 31. Summary of 2012 Mine Waste Tailings Reserve of Covered Mining Companies

6 Companies with Paid MWT	
Mining Companies	**Payment Made**
Lepanto Consolidated Mining Company	25,418
Philsaga Mining Corporation	14,811.2
Philex Mining Corporation	941,942.03
TVI Resource Development Phil, Inc.	117,868.70
Krominco, Inc.	23,832.75
Rapu-Rapu Minerals, Inc.	46,870.20
5 Mining Companies with No Waste Generated	
Marcventures Mining and Development	Zambales Diversified Metals Corporation
Eramen Minerals, Inc.	Benguet Nickel Mines, Inc.
LNL Archipelago Minerals, Inc.	
6 Mining Companies Exempt from Paying MWT	
Carmen Copper Corporation	Taganito Mining Corporation
Citinickel Mines and Development Corporation	CTP Construction and Mining Corporation – Adlay Nickel Project
Hinatuan Mining Corporation	
Carrascal Nickel Corporation	

22 Mining Companies with No or Incomplete MWT Data with MGB	
Cagdianao Mining Corporation	Filminera Resources Corporation
Shuley Mine Incorporated	Philippines Gold Processing and Refining Corporation
Platinum Group Metals Corporation	Johnson Gold Mining Corporation
Shenzou Mining Group Corporation	Apex Mining Company, Inc.
CTP Construction and Mining Corporation – Dahican Nickel Project	Oceana Gold (Philippines), Inc. **Payment was done on December 5, 2013*
Oriental Synergy Mining Corporation	Greenstone Resources Corporation
SR Metals Incorporated	Cambayas Mining Corporation
Sinosteel Phils. H.Y. Mining Corporation	Berong Nickel Corporation
Adnama Mining Resources, Inc. **No report sumbmitted nor payment made.*	Mt. Sinai Mining Exploration and Development Corporation
Leyte Iron Sand Corporation	Rio Tuba Nickel Mining Project
Ore Asia Mining and Development Corporation **Payment was done on January 25, 2013*	PMDC/AAM-PHIL Natural Resources Exploration and Development Corporation

1. Accessing MWT for Compensation for Damages

As discussed above, MWT are trust fund meant to answer for damages suffered by third parties due to mining company operations. These damages are those caused by any mining operations on lives and personal safety, lands, agricultural crops and forest products, marine life and aquatic resources, cultural and human resources, and infrastructure; and the revegetation and rehabilitation of silted farm lands and other areas devoted to agriculture and fishing.[376]

The following persons are qualified to claim for compensation:

a. Any individual for loss or damage to his or her life, personal safety or property;
b. Any private owners of damaged infrastructures, forest products, marine, aquatic and inland resources;
c. Any applicant or successor-in-interest for damage to private lands who holds title or any evidence of ownership;
d. Any applicant or successor-in-interest for damage to alienable and disposable lands;
e. Any agricultural lessors, lessees and share tenants for damage to crops; and
f. Any ICC in case of damage to burial grounds and cultural resources.

For any damage caused to the property of a surface owner, occupant or concessionaire, the regulations provide for a different process.[377] Applications for compensation for damages must be filed using a prescribed application form (MGB Form No. 18-2), together with supporting documents,[378] with the Regional Investigation and Assessment Team (RIAT) within 30 calendar days from the occurrence of the damage.[379] Compensation are in amounts equivalent to the following:

(a) Costs of rehabilitation for damaged agricultural land, industrial and residential lands or infrastructures;
(b) Loss of projected net income in case of damage to crops, forest products or inland aquatic resources;
(c) Compensation for damage to burial grounds and cultural resources of an ICC will be determined by said ICC, the LGU concerned or the National Museum or both.[380]

The CLRF Committee evaluates the application based prescribed guidelines[381] and renders a decision that is considered final and executory unless appealed to the DENR Secretary within 30 days from receipt of the decision.[382]

[38]By Assoc. Prof. Maria Aurora Teresita W. Tabada, Director of the Institute for Strategic Research and Development Studies (ISRDS), Visayas State University

G. Donations/Turn Over of Facilities upon Cessation of Mining Operations

Another benefit that government may potentially receive are donations and turn-over of all company facilities at the end of mining company's operations or in case it has withdrawn or abandoned its operations on public land.[383] The mining company may remove all improvements on mining premises found on public land that are no longer socially usable within a year from the end of its mining operations after consultation with the LGU and community,. [384] Otherwise, all the social infrastructure and facilities shall be turned over or donated tax-free to either the national or local government authorities to ensure that the facilities are continuously maintained and utilized by the host and neighboring communities.[385]

H. Mining Monitoring Reports[32]

The discussion for this portion was based on fifteen (15) monitoring reports provided by the MGB covering eleven (11) operating metallic mines or 30% of the 36 entities included in this report. An additional fourteen (14) annual/ semestral ASDMP reports were provided but these reports were prepared and submitted by nine (9) companies.

In general, the MMT reports provided can be classified into two: (1) validation reports of the ASDMP projects of a company and/or (2) monitoring of the stipulated EPEP/AEPEP activities of a company (see Table 32).

The report contents included a cover page (endorsement from the MGB Regional Director), general information on the company, methodology, matrix of the result of monitoring conducted (for ASDMP this includes both physical and financial accomplishments), findings/observations, conclusions, and recommendations.

In general, a review of the secondary data was done (accomplishment reports based on the monthly internal monitoring report, supporting documents (MOA, plans and estimates, post projects/activity reports, etc); observations and interviews; and, photodocumentation were the most common methods used in monitoring.

Table 32. Survey of Mining Monitoring Reports for 2012

Company Name	Content
Annual Report 2012	
Apex-Maco	ASDMP
Lepanto Consolidated Mining Company	ASDMP
Masbate Gold Project of Filminera Resources Corporation & Philippine Gold Processing and Refining Corporation	AEPEP & ASDMP
Rapu-Rapu Polymetallic Project	ASDMP
Philex Mining Corporation	
First Semester 2012	
Citinickel Mines and Development Corporation	ASDMP
Lepanto Consolidated Mining Company	ASDMP & Rehabilitation
Philex Mining Corporation	ASDMP
Rio Tuba Nickel Corporation	AEPEP
Coral Bay Nickel Corporation	AEPEP
Second Semester 2012	
Benguet-Acupan	ASDMP
Filminera Masbate Gold	ASDMP
Lepanto Consolidated Mining Company	ASDMP
Philex Mining Corporation	ASDMP

[32]By Assoc. Prof. Maria Aurora Teresita W. Tabada, Director of the Institute for Strategic Research and Development Studies (ISRDS), Visayas State University

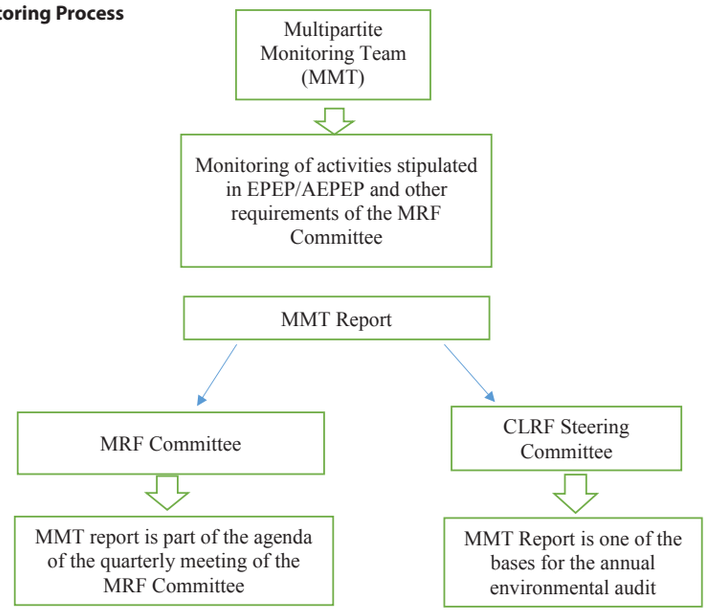
Almost three-fourths (73%) of the fifteen monitoring reports were validation reports of the ASDMP projects of nine companies (24%) while only four (11%) reports was on the monitoring of environmental concerns. On the one hand, the ASDMP validation reports included the physical accomplishment, financial accomplishment and recommendations. On the other hand, the environmental monitoring included among others, noise monitoring, vegetation and reforestation, soil erosion and siltation control, slope stability, water quality, air quality, progressive rehabilitation of waste dumps, etc. The MMT Report should be submitted to the MRF Committee and CLRF Steering Committee. From the reports, it is unclear if these were forwarded to the concerned committees (see Fig. 47).

A closer look at MMT reports that the primary function of the MMT is to serve as monitoring arm of the Regional Office concerned to monitor every quarter, or more frequently as may be deemed necessary, the activities stipulated in the EPEP/AEPEP. The data from the available reports show a preference for doing SDMP validation rather than environmental monitoring when the latter is the primary function of the MMT. The Regional Office concerned shall conduct semi-annual monitoring of the implementation of the approved programs (Annual SDMP and Annual Programs on Development of Mining Technology and Geosciences and on IEC and CDP) and submit monitoring report(s) to the Bureau as basis for periodic audits.

There is a seeming disconnect in terms of compliance with what is required by existing policies, i.e., non-submission of quarterly reports of accomplishment; numerous backlogs in the implementation of the SDMP that often spill over to the following year; some projects not within approved ASDMP while some projects targeted in ASDMP are not implemented. Compliance with these requirements is crucial for transparency as the implementation of the SDMP and EPEP directly impact on communities.

What emerges from the data or the seeming dearth of monitoring data is the need to review and strengthen the mechanisms within the DENR-MGB to do its oversight and monitoring functions. In addition to receiving all the accomplishment reports from the companies, it should make all these relevant data accessible and available to the various stakeholders especially affected communities as the latter can help the MGB monitor compliance by mining companies of the requirements and agreements by virtue of its being a permit holder. It is also suggested that the MMT monitoring reports should include physical and financial accomplishments of the AEPEP similar to what is done for the ASDMP

Figure 47. MMT Monitoring Process



I. Corporate Social Responsibility

As part of good corporate governance, mining, oil, and gas companies also have corporate social responsibility or CSR activities that go beyond compliance with the law. Rooted in philanthropy, and earlier perceived as a peripheral, an add-on or an almost apologetic activity or tactical response to potential crises, CSR is now adopted as a "best practice" absorbed into the core functions and value of systems of businesses.[386] In the mining sector, the increased awareness of environmental impacts, the socio-economic implications of mining, and a downturn in productivity have highlighted the need for mining companies to adjust their business management process.[387] The Chamber of Mines of the Philippines has taken the cudgels in leading this process consistent with its objective of developing CSR standards by which compliance and progress can be gauged and monitored.[388] In its CSR Guidebook, the Chamber of Mines spells out a clear definition of CSR that is acceptable to all mining stakeholders, as "commitment of business to contribute to sustainable economic development, working with employees, their families, local community and society at large to improve the quality of life, in ways that are both good for business and good for development." [389] CSR activities of mining companies revolve around the six themes of environmental management, community engagement and development, safety and health, security and human rights, labor, and management and governance.[390]

J. Actual Social Projects

1. SDMP: Carmen Copper [33]

Carmen Copper's Annual SDMP in 2012 was allocated the amount equivalent to one percent (1%) of the Direct Mining and Milling Cost (DMMC) or P35,776,773.35,[391] plus its 2011 ASDMP balance carried over to 2012 in the amount of 41,791,129.76, yielding a grand total of P76,210,967.49. A matrix of the allocation and expenditures is shown below:

Table 33. 2012 SDMP of Carmen Copper[34]

ACTIVITIES	2012 ASDMP	2012 FINANCIAL ACCOMPLISHMENT REPORT		
		ALLOCATED	EXPENDITURE	% OF USE
Livelihood	6,159,570.79	9,485,032.68	3,698,863.71	39%
Infrastructure	18,478,712.38	51,167,218.67	48,566,669.67	95%
Others-SDMP	6,159,570.79	9,177,444.93	11,663,656.30	95%
IEC	3,421,983.772	6,181,271.21	5,517,958.15	1.27%
Sub-Total	34,219,837.73	76,010,967.49	69,447,147.83	91%
2011 Carry-Over	41,791,129.76			
TOTAL	76,010,967.49	76,010,967.49	69,447,147.83	91%

As may be seen above, livelihood activities in direct support to host and neighboring communities are allocated a significantly small amount compared to infrastructure, other SDMP related activities, the bulk of which are donations, or even IEC activities. For 2014, the mining company adopts a problem-based Annual SDMP for a more sustainable and effective program.[392]

2. CSR: Malampaya [35]

The Malampaya Project was developed with the principles of Sustainable Development integrated into project design and execution. The Project aims to deliver cleaner energy without harm to people and the environment, while at the same time aiming to deliver benefit to the country and to local communities through local employment, local procurement of services and social investment programs. Through this, Malampaya hopes to create a positive presence and legacy in the communities and societies where it operates.

[33] Culled from the subnational study of Atty. Alett Nunez, et.al (2014)
[34] Based on ASDMP documents provided by Carmen Copper Corporation
[35] Contributed by the Malampaya Consortium

Malampaya's social development programs are implemented by the Malampaya Foundation, Inc. (MFI), Pilipinas Shell Foundation, Inc. (PSFI) and Mindoro Biodiversity Conservation Foundation, Inc. (MBCFI) in the Project's areas of operation: Palawan, Oriental Mindoro and Batangas.

Established in 1982 as the social arm of Shell in the Philippines, PSFI implements social investment programs throughout the country designed to help the disadvantaged become more productive and responsible members of society. In Palawan, site of the Malampaya offshore gas production platform, PSFI's flagship program is the *Kilusan Ligtas Malaria*, a community-based malaria control program that aims to eliminate malaria in Palawan through early case detection and prompt treatment, vector control, community organization, awareness campaigns, capacity-building, research, advocacy and networking. KLM began in 1999 and through PSFI's efforts together with the provincial government of Palawan and the Department of Health, mortality in Palawan has decreased by almost 97% and malaria cases by 92% in 2012.

In 2005, the Malampaya Joint Venture Partners established MFI to promote, foster and encourage sustainable social, environmental and economic development of communities in areas where the Malampaya Project operates. As the social arm of the Malampaya Joint Venture Partners, MFI's vision is to be the model and leading foundation in the Philippine upstream energy sector by enabling socio-economic development of communities and environmental protection. MFI implements programs on marine biodiversity conservation, skills training, health insurance, livelihood, sustainable farming, education and community safety.

Aside from PSFI and MFI, Malampaya also supports MBCFI to specifically implement conservation initiatives in Mindoro island, which is recognized as one of the global biodiversity conservation priority areas because of its richness in endemic species, diversity of habitats and degrees of threats.

The table below shows the amount of social investment by the Malampaya Project to PSFI, MFI and MBCFI in 2012.

Table 34. Malampaya Foundation, Inc. (MFI) Social Investment

MFI Programs	Amount
Coastal / Marine Biodiversity Conservation	Php 16,312,711
Industrial Vocational Skills Training (Vocational Scholarships)	Php 11,633,475
Lingap sa Kalusugan / Health	Php 10,748,082
Livelihood (Enterprise Building)	Php 2,151,509
Various / Malampaya 10	Php 2,072,900
Integrated Farming Bio-systems Program	Php 2,012,986
Calamity Assistance	Php 2,000,000
Adopt a School (Education)	Php 1,698,749
English / Technical Proficiency for Teachers (Education)	Php 1,115,300
Neighborhood Emergency Services Team / Road Safety (Community Safety)	Php 528,673
TOTAL	**Php 50,274,385**

Table 35. Pilipinas Shell Foundation, Inc. (PSFI) Social Investment

PSFI Program	Amount
Kilusan Ligtas Malaria	Php 5,500,000

Table 36. Mindoro Biodiversity Conservation Foundation, Inc. (MBCFI) Social Investment

MBCFI Program	Amount
Mount Halcon Management Plan Naujan Lake Management Plan Workshops Apo Reef Capacity-Building Teachers training and conservation events	Php 2,500,000

CHAPTER 8
Budget Process and Revenue Management

CHAPTER 8
Budget Process and Revenue Management[36]

I. National Government

The Philippine Constitution and various issuances by the President lay down the framework for budget processes and revenue management in the Philippines.

Under Executive Order No. 25, The Department of Budget and Management is mandated to promote the sound, efficient and effective management and utilization of government resources as instrument in the achievement of national socioeconomic and political development goals. This mandate extends to all national government agencies, local government units and government owned and controlled corporations.

On the other hand, the Department of Finance is primarily responsible for the sound and efficient management of the financial resources of the Government, its subdivisions, agencies and instrumentalities.[393] It is responsible for the formulation, institutionalization and administration of fiscal policies and for the generation and management of the financial resources of government, ensuring that said resources are generated and managed judiciously and in a manner supportive of development objectives. The Department is also responsible for the supervision of the revenue operations of all local government units.[394]

Section 22, Article VII of the 1987 Philippine Constitution states that "(t)he President shall submit to the Congress within 30 days from the opening of every regular session, as the basis of the general appropriation bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures." The Constitution further states that "(n)o money shall be paid by the Treasury except in pursuance of an appropriation made by law."[395]

Pursuant to the above provisions, the following is the mandated procedure[396] for budgeting observed by national agencies:

1. Individual agencies prepare their estimates of expenditures or proposed budgets for the succeeding year and submit these estimates or proposals contained in required budget forms to the DBM following baseline figures, guidelines and timetable earlier set;
2. Agencies justify details of their proposed budgets before DBM technical review panels;
3. DBM reviews and consolidates proposed budgets of all agencies for inclusion in the President's proposed budget for submission to Congress;
4. Agencies explain the details of their proposed budgets in separate hearings called by the House of Representatives and the Senate for inclusion in the General Appropriation Bill; and
5. The President signs the General Appropriation Bill into law or what is known as the General Appropriations Act (GAA).

The Philippines adheres to the one-fund concept, a policy embodied in Presidential Decree 1177[397] requiring that all income and revenues of the government must accrue to the general fund so that allocations and expenditures will be aligned with the government's priority projects and programs. On the basis of this one fund concept, all revenues from the extraction of natural resources are

[36] By Atty. Marie Gay Alessandra V. Ordenes with inputs from Asst. Sec. Ma. Teresa S. Habitan, Department of Finance

first remitted by the collecting agencies to the Bureau of Treasury where they form part of the general fund. Thus, payments collected by the Bureau of Internal Revenue in the form of excise taxes and by the Mines and Geosciences Bureau in the form of royalty payments in mineral reservations are remitted to the Bureau of Treasury. 40% of the amount is released through the budget process to local government units in accordance with a schedule of releases and procedures prescribed by the Local Government code and by the Department of Budget and Management, as discussed in the chapter of this report on subnational payments.

The Philippines has no natural resource fund or sovereign wealth fund. However, there are certain enactments that prescribe the rules on how funds coming from the utilization or extraction of natural resources should be spent. In essence, such funds are constituted into special funds within the general fund. To illustrate, Presidential Decree 910[398] mandates that the following shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government:

1. All fees, revenues, and receipts of the Board (now Department of Energy) from any and all sources including receipts from service contracts and agreements such as application and processing fees, signature bonus, discovery bonus, production bonus;
2. All money collected from concessionaires, representing unspent work obligations, fines and penalties under the Petroleum Act of 1949; and
3. Government share representing royalties, rentals, production share on service contracts, and similar payments on the exploration, development, and exploitation of energy resources.

One significant special fund in the extractive sector which is governed by PD 910 is the Malampaya fund generated from government shares and collections from Service Contract 38 or the Malampaya Natural Gas Project. It bears stressing that PD 910 contains a provision giving the President the discretion to use the special fund under PD 910 "for such other purposes" as may be determined by the President. This provision, however, was declared unconstitutional by the Supreme Court in the case of Greco Belgica v Hon. Paquito Ochoa[399] where the Court ruled that such provision constitutes undue delegation of legislative power as it fails to lay down a sufficient standard to adequately determine the limits of the President's authority with respect to the purpose for which the Malampaya Funds may be used. In the same case, the Court had occasion to rule that "the said phrase gives the President wide latitude to use the Malampaya Funds for any other purpose he may direct and, in effect, allows him to unilaterally appropriate public funds beyond the purview of the law."[400] There was likewise a factual finding in the said case that the Malampaya funds had been used for non-energy related purposes. Nonetheless, the Supreme Court noted the legality of the remaining provisions of PD 910 regarding the use of the funds to finance energy resource development and exploitation programs and projects of the government.

Supplementing PD 910 is PD 1234,[401] which lays down the rules for the appropriation of revenues falling under such special funds. Under this Decree, the amounts collected and accruing to Special or Fiduciary Funds shall be considered as being automatically appropriated for the purposes authorized by law creating the said Funds, except as may be otherwise provided in the General Appropriations decree.[402] Such amounts shall be released to the implementing agencies subject to the approval of the President and to the provisions under another enactment (Presidential Decree 1177.[403]) which governs the government's budget processes. The funds, once released, shall be administered by the government agency or corporations concerned and shall be utilized only for the purposes authorized in the law creating the said Special or Fiduciary Funds.[404]

A detailed discussion of the Malampaya fund and of how it is utilized and released is included in Volume 2 of this Report.

For the mining sector, Sec. 13 of the

Implementing Rules of the Mining Act provides that out of the 5% of royalties collected by the MGB from mineral reservations, 10% shall accrue to the Bureau as a Trust Fund and shall be deposited in a government depository bank to be allotted for special projects and other administrative expenses related to the exploration, development, and environmental management of minerals in government reservations. The details of such royalties and the 10% allocation for MGB are discussed in Volume 2 of this Report.

II. Local Government Units [37]

As previously discussed under the chapter on subnational payments, LGUs have two main sources of income: Transfers from national government and local taxation. The transfers, i.e., share in the national wealth, and IRA are reported by the BIR or MGB and then released by the DBM to the LGUs. Local revenues, on the other hand, are collected by the Treasurer's Office. Some revenues, such as real property tax, go through an assessment by the Assessor's Office to determine the tax payable to the LGU before these are paid to the treasurer's office.

These incomes are in turn allocated for various expenditure items to provide services for the LGUs' constituents and to operationalize the local development plan which is crafted by local development councils (in the barangay, municipality or city, and province) and approved by the *sanggunian*. Citizen's participation is institutionalized in setting economic and social development through the local development councils, which have NGO representations.[405]

To allocate these resources, the LGU goes through the process of budget preparation, authorization, and execution.

A. Budgeting and Expenditure

Budget preparation consists of four major activities by the heads of local departments and offices, Local Finance Committee, and the local chief executive.

The local treasurer, on or before July 15th of each year, submits to the local chief executive the following statements:[406]

1. Actual income and expenditures during the immediately preceding year;

2. Actual income and expenditures of the first two quarters of the current fiscal year; and

3. Estimated income and expenditures for the last two quarters of the current fiscal year.

The Local Finance Committee,[407] composed of the local planning and development officer, the local budget officer and the local treasurer, convenes to deliberate and submit to the local chief executive the following:[408]

1. Estimated income for the ensuing year;

2. Recommendations on tax and revenue measures or borrowing to support the budget;

3. Recommendations on the level of annual expenditures and the ceilings of spending for economic, social, and general services based on approved local development plan; and

4. Recommendations on the amount to be allocated for capital outlay under each development activity or infrastructure project.

The LGU's department heads prepare and submit their respective budget proposals for the ensuing year to the local chief executive. [409]

The local chief executive then prepares the executive budget for the ensuing year, and submitsto the *sanggunian* (local legislative council) not later than October 16th of the current year for approval.[410]

Upon receipt of the executive budget,

[37] Culled from the paper on subnational payments by Atty. Alett Nunez, et. al.

the *sanggunian* studies and deliberates on the proposed budget, and before the end of the current year, it must enact, through an appropriations ordinance, the annual budget of the LGU for the ensuing fiscal.[411] If it fails to pass the ordinance then the appropriations ordinance of the preceding year is deemed reenacted until the appropriation ordinance for the current year is passed.[412]

The appropriations ordinance passed by the *sanggunian* is subject to review depending on the nature of the LGU. The *sangguniang-panlalawigan* (provincial council) reviews the appropriations ordinance of component cities and municipalities to determine that the budgets prepared and approved by these LGUs are within the scope of their powers.[413]

As to the appropriation ordinance of provinces, highly urbanized cities, independent component cities, and municipalities within Metro Manila, these are reviewed by the DBM.[414]

After the budget has been approved by the *sanggunian*, it can already be used for programs, projects, activities identified in the approved budget. Disbursements go through the following process: The budget officer certifies the existence of funds, the local accountant obligates such funds, and the local treasurer certifies the availability of funds. Vouchers and payrolls can be certified to and approved by the department who has administrative control of such fund.[415] But all disbursements, except for those recurring administrative expenses, such as payrolls, light, water, etc., require the local chief executive's approval through an allotment.[416]

B. Budget Accountability

The Commission on Audit's New Government Accounting System (NGAS) provides guidelines for LGUs in accounting for all incomes and disbursements.[417] It simplifies government accounting that conforms to international accounting standards and requires LGUs to generate periodic financial statements for better monitoring of performance. More important, the COA examine and audits revenue, receipts and expenditures of LGUs and publish the audit reports on their website.

C. Allocations

The LGC provides that shares from the national wealth such as the excise taxes and royalties are to be appropriated for financing local development and livelihood projects of recipient LGUs.[418] In the case of energy resources, 80% of the LGU share must be applied solely to lower electricity cost in the LGU where the source of energy is located.[419]

LGUs appear to deviate from these rules. Based on responses from the LGUs, most of them put all their revenues, including local payments and NGA transfers, to the general fund that are then appropriated for all LGU expenses and projects. The Commission on Audit has called the attention of some of the LGUs with respect to this improper practice, requiring them to develop a separate budget for mining revenues.[420]

D. Bottom-Up Budgeting

In 2012, starting with the 2013 General Appropriations Act, the current Aquino Administration introduced Bottom-Up Budgeting, (BUB),[421] later on renamed as Grassroots Participatory Budgeting,[422] that also allowed an expanded engagement of civil society and people's group in the budget process. This is in line with the government's goal to reduce poverty and achieve the United Nations Millenium Development Goals and the Philippine Development Plans. The DBM Secretary refers to this as a "break-through" where "budget preparations will be guided by needs identified at the grassroots level, so that the 2013 budget will most decidedly be a people-centric budget, aimed not just at the proper allocation of resources, but also at the substantial reduction of poverty."[423]

This mandates the preparation of budget proposals of government agencies, taking into consideration the needs of poor cities and municipalities as identified in the LGUs' respective Local Poverty Reduction Action Plans. These plans contain programs and projects collectively drawn through a participatory

process by the LGU with the civil society organization and other stakeholders. From these plans, the identified priority poverty reduction projects by the focus and eligible LGUs through the BuB process are funded by the national budget.

Regulations set the eligibility criteria and standards for both LGUs and projects that may qualify for funding. Regulations also provide for a quarterly monitoring of these projects at the LGU level by a Local Poverty Reduction Action Team led by the Local Chief Executive of the LGU, composed of an equal number of government and non-government representatives, and reporting to a counterpart team at the regional level led by the DILG Regional Director.[424] This Grassroots Budgeting Process is also being integrated and harmonized into the processes of the local development planning, and with other government poverty reduction programs Kapit Bisig Laban sa Kahirapan, a Comprehensive and Integrated Delivery of Social Services or the National Community Driven Development Program.[425]

CHAPTER 9
Ongoing Reforms in the Mining Sector

CHAPTER 9
Ongoing Reforms in the Mining Sector[38]

I. Executive Order No. 79

The current reforms in the mining sector are being undertaken by the Philippine government pursuant to the policies enunciated in Executive Order No. 79.[426] The said EO is based on the following six point agenda adopted by the government to set the direction and lay the foundation for the implementation of responsible mining policies:

1. Ensure mining's contribution to the country's sustainable development (i.e. economic and social growth and environmental protection);
2. Adopt international best practices and promote good governance and integrity in the sector;
3. Ensure the protection of the environment by adopting technically and scientifically sound and generally accepted methods as well as indigenous best practices;
4. Ensure the consistency of local issuances with the Constitution and national laws;
5. Ensure fair, adequate and equitable shared economic benefit for the country and the people; and
6. Deliver efficient and effective management of the mining sector.

The reforms embodied under EO 79 are the following:

- Clarifying the Areas Closed to Mining Applications (Sec. 1)
- Full Enforcement of Environmental Standards (Sec. 2)
- Review of the Performance of Existing Mining Operations and Cleansing of Non-Moving Mining Rights Holders (Sec. 3)
- Moratorium on Grant of Mineral Agreements Pending New Legislation on Revenue Sharing (Sec. 4)
- Establishment of Mineral Reservations (Sec. 5)
- Grant of Mining Rights thru Competitive Public Bidding (Sec. 6)
- Disposition of Abandoned Ores and Valuable Metals in Mine Wastes and Mill Tailings and declaring Abandoned Ores and Tailings as Assets of the State for Bidding (Sec. 7)
- Development of Downstream Industries for the Mineral Sector (Sec. 8)
- Constituting the Cabinet-Level Mining Industry Coordinating Council (MICC) (Sec. 9)
- Rationalizing Small-Scale Mining Activities (Sec. 11)
- Addressing the Conflicts between Local Ordinances and the National Laws (Sec. 12)
- Creating a One-Stop Shop for All Mining Applications and Procedures (Sec. 13)
- Joining the Extractive Industries Transparency Initiative (Sec. 14)
- Creation of a Centralized Database for the Mining Industry (Sec. 15)
- Creation of an Integrated Map System for Mining (Sec. 16)
- Creation of an Anti-illegal Mining Task Force
- Use of the Programmatic Environmental Impact Assessment in Mining (Sec. 17)

[38] By Atty. Marie Gay Alessandra V. Ordenes with inputs from Secretary Elisea G. Gozun, MICC representative

II. Actions Taken Pursuant to EO No. 79

A. Creation of the Mining Industry Coordinating Council

The Mining Industry Coordinating Council (MICC) is an inter-agency council created primarily to "conduct an assessment and review of all mining-related laws, rules and regulations, issuances, and agreements with the view to formulating recommendations to improve the allocation of revenues and risk between the government and the mining sector, to enhance coordination between the National Government and LGUs to ensure implementation of mining laws and regulations, and to properly regulate small-scale mining operators and ensure that they are accountable to the same environmental and social obligations as large-scale mining companies."[427] It is co-chaired by the Department of Finance and the Department of Environment and Natural Resources and composed of agencies responsible for regulating the mining sector and addressing all mining-related issues, including the Union of Local Authorities of the Philippines representing local governments and the National Competitiveness Council representing the private sector. The MICC is the body tasked to operationalize the policies embodied in EO 79 and is thus responsible for overseeing the implementation of the reforms discussed below.

B. Review of the Performance of Existing Mining Operations and Cleansing of Non-Moving Mining Rights Holders

Recognizing the need to limit mining operations to legitimate exploration companies and true miners, the MGB started adopting a "use it or lose it policy", wherein the performance of mining rights holders are reviewed with the objective of canceling the mining rights of those that have failed to implement their exploration work programs for two consecutive years or whose exploration permits have already expired. For this purpose, the MGB created a multi stakeholder team (MST) chaired by regional directors of the Bureau. Thus far, the team has recommended the cancellation of 43 MPSAs.[428] In line with this policy, the MGB has since denied 75% of pending mining applications. Existing mining contracts are also being reviewed by the MST pursuant to EO 79's provision that mining contracts and agreements may be the subject of possible renegotiation as long as the terms are mutually acceptable to the government and the contractor.[429]

C. Moratorium on the Grant of Mineral Agreements Pending New Legislation on Revenue Sharing

Section 4 of EO 79 states that "no new mineral agreements except exploration permits shall be entered into until a legislation rationalizing existing revenue sharing schemes and mechanisms shall have taken effect. The DENR is allowed to continue to grant and exploration permits under existing laws, rules and regulations". At present, the moratorium on the grant of new mineral agreements continues to be in effect until the new legislation on revenue sharing is passed by Congress. It has, however, been lifted in March 2013 with respect to the grant of exploration permits. So far, the DENR/MGB has approved 136 Exploration Permit applications.[430]

With regard to the proposed legislation on revenue sharing, the MICC, in June 2014, sent a proposed bill to the Office of the President containing the following major provisions: a government share of 10% of the gross sale or 55% of the adjusted net mining revenue plus a share in windfall profit, whichever is higher, which shall be inclusive of national and local taxes; and placing mining areas in mining industry zones to be administered by the Philippine Mining Development Corporation.[431] Coordination is now being done with the Congress of the Philippines for the eventual filing of the bill.[432]

D. Clarifying the Areas Closed to Mining Applications and Creation of an Integrated Map System for Mining

Key to ensuring responsible mining is to make sure that mining is not allowed in areas prohibited by law like protected areas, critical watersheds and the like. Thus the MICC prioritized the preparation of the "Go and No-Go Zone map" delineating the areas that are closed to mining operations based on existing laws, rules and regulations. This map will be posted on the web for easy access and ready reference of all government agencies, LGUS as well as the private sector and NGOs. This was completed early this year. However, it is now subject to further review in view of concerns raised by some sectors that it significantly reduced the areas open for mining on account of the scale used for the mapping of the sub zones under the Strategic Agriculture and Fisheries Development Zones or SAFDZs identified pursuant to Republic Act No. 8435, the Agriculture and Fisheries Modernization Act of 1997. The re-evaluation and consultations are currently being done by the MICC thru the Technical Working Group on Environmental Protection and is expected to be finished by early next year and presented to the President for approval.[433]

On the part of NCIP, it is finalizing its cultural mapping activity to identify areas occupied by Indigenous Peoples (IPs) to ensure protection of the rights of IPs whose ancestral domains may be affected by mining operations.

E. Rationalizing Small-Scale Mining Activities

The MICC has taken measures to rationalize small-scale mining in the Philippines. Some of the challenges encountered in regulating this industry are the use of mercury, employment of child labor, and the proliferation of operations without mining permits.[434] Among the steps taken by the MICC to address the foregoing issues is the revision of the Implementing Rules and Regulations (IRR) of RA No. 7076 (Small-scale Mining Act). The revised IRR seeks to operationalize the following reforms: allowing small-scale mining only in areas designated as "Minahang Bayan", providing for centralized processing plants, banning the use of mercury, and transferring the authority to issue the permits for applications approved by the Provincial/City Mining Regulatory Board from the Provincial Governor/City Mayor to the Board. .[435] The revised IRR has been endorsed by the MICC to the DENR for approval and implementation and is awaiting the signature of the Secretary.

In addition, the government is going after illegal small scale mining operations with measures such as joint raid, confiscation of mining equipment and illegally mined minerals, dismantling of processing plants and other facilities, and filing of charges in the Prosecutor's Office against the perpetrators.[436]

F. Establishment of Mineral Reservations

The establishment of more mineral reservations is seen as a way of meeting the government's target of increasing revenues from the country's mineral wealth, such as the additional 5% royalty payment required from mining projects situated in mineral reservations.[437] In 2014 alone, the MGB targeted 15 areas that may be possibly declared as mineral reservations.[438]

G. Development of Downstream Industries for the Mineral Sector

Pursuant to Sec. 8 of EO 79, a multi stakeholder committee composed of the DENR, DTI, DOST and NEDA was created for the development of value-adding activities and downstream industries for strategic metallic ores. The Road Map for the downstream processing of Copper has been discussed with industry and has been adopted by the Department of Trade and Industry. The road maps for the other minerals are being drafted by consultants and will be subjected to consultations with the industry.

H. Creation of Anti-Illegal Mining Task Force

The MICC created an anti-illegal mining task force led by the Department of the Interior and Local Government and an inter-agency fact finding committee on illegal mining headed by the Department of Justice.

I. Full Enforcement of Environmental Standards

In observance of EO 79's policy of strictly enforcing environmental standards, the DENR has suspended several mining applications and has issued DENR Memorandum Order 2013-01 dated 13 February 2013 increasing the minimum capital requirement for the issuance of Exploration Permit (EP), MPSA and Financial or Technical Assistance Agreement with the end in view of imposing stringent requirements on qualified mining applicants. The MICC also imposed a moratorium on the acceptance of mining applications in Palawan.[439]

J. Creation of a Centralized Database for the Mining Industry

Having a centralized database for the mining industry will guide decision-making and planning, facilitate the processing of applications and the monitoring and evaluation of operations and, prevent or at least minimize overlaps/ conflicting claims. The MGB is now putting this together and will also include the outputs of the Wealth Accounting and Valuation of Ecosystem Services (WAVES) project as well as the National Climate Change Action Plan (NCCAP).

K. Joining the Extractive Industries Transparency Initiative

The government's firm commitment to transparency is illustrated by its participation in the EITI process. The publication of this EITI report, which was overseen by a multi stakeholder group, is a major step towards promoting accountability in the extractive sector. For the first time, disclosure and comparison of company and government figures were undertaken to show how much the country is getting from the sector in terms of revenues. EITI implementation is thus seen as an important reform that aligns with the government's agenda of ensuring mining's contribution to the country's sustainable development, promoting good governance and integrity in the sector, and ensuring fair, adequate and equitable shared economic benefit for the country.

End Notes

1. Department of Environment and Natural Resources (DENR) Website, http://www.denr.gov.ph/index.php/component/content/article/16.html Accessed: 20 November 2014.
2. DENR and MGB Data.
3. Gozum, G., Forbes, J. and Ridsdel, J. (2014). Responsible Mining: Realizing Its Potential. Arangkada Philippines: Policy Brief No. 3. September 2014.
4. See http://data.worldbank.org/country/philippines.
5. Senate Economic Planning Office (2013). "Realizing the Philippines' Mining Potentail. " Manila: Policy Brief 1302.
6. National Tax Research Center. "VAT on Petroleum Products." NTRC Tax Research Journal XXIV.2. NTRC, 2012.
7. Castillo, Fatima A. "Oil and Gas Production in the Philippines: Public Interest Issues." Bantay Kita Occasional Paper Series. 2012-01. Bantay Kita, 2012.
8. Quintero, Dennis A. "Philippine Mineral, Oil and Gas, and Coal Tenure Systems." Available at http://www.slideshare.net/no2mininginpalawan/philippine-mineral-oil-and-gas-and-coal-tenure-systems, accessed 21 October 2014.
9. Department of Energy. "Petroleum Areas for Offer." Accessed 21 October 2014. http://www.doe.gov.ph/pecr5/index.php/petroleum/petroleum-areas-for-offer-menu.
10. Resource potential is based on the 1977 evaluation by Robertson Research International Ltd.
11. Those sufficiently explored to warrant inclusion in a company's 5-year development and production program.
12. Those that need further exploration to confirm existence of coal resource.
13. Estimated by multiplying the total volume of in-situ reserves by a mining recovery factor of 60% (for underground areas) or 85 % (for open pit areas
14. Calculated using estimates from the 2012 Labor Force Survey
15. CONST. Art. XII, Sec. 2.
16. Id., Sec. 3.
17. Id., Sec. 2.
18. Id.
19. Id.
20. Id.
21. Rep. Act No. 7076 (1991).
22. Rep. Act No. 7942 (1995).
23. Id. DENR Adm. O. No. 2010-21 (2010).
24. Oil Exploration and Development Act of 1972. Its predecessor law, Rep. Act No. 387 (1949), continues to be the basis for determining auxiliary rights in petroleum projects.
25. Pres. Decree No. 1857 (1983).
26. Pres. Decree No. 972 (1976), as amended by Pres. Decree No. 1174 (1977).
27. Exec. Order No. 192 (1987).
28. Id., Sec. 15.
29. Rep. Act No. 7942 (1995) and Exec. Order No. 192 (1987).
30. Pres. Decree No. 1586 (1978).
31. Proc. No. 2146 (1981).
32. Rep. Act No. 7638 (1992).
33. Pres. Decree No. 1459 (1978).
34. CONST. Art. II, Sec. 28.
35. Id., Art. III, Sec. 7.
36. Id., Art. XIII, Sec. 16.
37. Rep. Act No. 7160 (1991).
38. DILG Memorandum Circular No. 2010-83 (2010).
39. DILG Memorandum Circular No. 2011-134 (2011).
40. Exec. Order No. 147 (2013).
41. Rep. Act No. 7942 (1995), Chap. XVI, Sec. 94 (f); DENR Adm. O. No. 2010-21 (2010).
42. Id.
43. DENR Adm. O. No. 2010-21, Sec. 229 (2010).
44. Id.
45. Id., Sec. 228.
46. Pres. Decree No. 87 (1973), Sec. 8(j).
47. Rep. Act No. 7638 (1992), Sec. 24.
48. Pres. Decree 87 (1973), Sec. 12 (d).
49. Id. Sec. 12.
50. Rep. Act No. 5455, Sec. 7. The applications are required to be published in the Official Gazette and in newspapers of general circulation, and to be posted in conspicuous places in the BOI office.
51. Pres. Decree No. 87 (1973), Sec. 29.
52. The Department Circular is entitled "Reiterating a Transparent and Competitive System of Awarding Service and Operating Contracts for Petroleum and Coal Prospective Areas, Repealing for this Purpose DC 2011-12-0010 and DC 2012-02-003." PECR-5 was launched in May 2014.
53. Id. A Review and Evaluation Committee (REC) is constituted to: (a) identify prospective petroleum and coal areas, including to notify LGUs of the offered areas within their territorial jurisdiction, prior to the inclusion to the PECR; (b) review the capabilities of the applicants and their applications; (c) recommend to the DOE Secretary the award of such contracts after evaluation; (d) address any questions that may be raised by the DOE Secretary; and resolve issues in relation to the capabilities of applicants, including motions for reconsideration.
54. Pres. Decree No. 972 (1976) Sec. 9 (i) and (e).
55. National Internal Revenue Code of 1997.
56. Rep. Act No. 8424, as amended by Rep. Act No. 10021 (2009).
57. Tax Code, Sec. 6 (f), as amended by Rep. Act. No. 10021 (2009).
58. Id., Sec. 71, as amended by Rep. Act No. 10021(2009).
59. Rep. Act No. 6388, Sec. 26.
60. Exec. Order No. 226 (1987), or the Omnibus Investment Code, Art. 81.
61. Id., Art. 33.
62. Id., Art. 37.
63. Id., Art. 7(3).
64. Rep. Act No. 7942 (1995), Sec. 14.
65. DENR Adm. O. No. 2010-21, Sec. 9 (2010).
66. Rep. Act No. 7942 (1995), Sec. 2; DENR Adm. O. No. 2010-21, Sec. 4 (2010).
67. Rep. Act No. 7942 (1995), Sec. 80, DENR Adm. O. No. 2010-21 (2010), Sec. 212; Rep. Act No. 7729, amending Sec. 151 (a) of the Tax Code.
68. Rep. Act No. 7942 (1995), Sec. 81; DENR Adm. O. No. 2010-21 (2010), Sec. 213.
69. Id.
70. Rep. Act No. 7942 (1995) sec, 81, DENR Adm. O. No. 2010-21 (2010) Secs. 213 and 214.

71. Rep. Act No. 7942 (1995) sec, 81, DENR Adm. O. No. 2010-21 (2010) Sec. 214.
72. s DENR Adm. O. No. 2010-21 (2010) Sec. 215.
73. Id., Sec. 13.
74. DENR Adm. O. No. 2010-21 (2010) Sec. 13.
75. Id., Sec. 216.
76. Rep. Act No. 7942 (1995), Sec. 82; DENR Adm. O. No. 2010-21 (2010), Sec. 216; Rep. Act No. 7160, (1991) Sec. 289.
77. Pres. Decree No. 1459 (1978).
78. Rep. Act No.7942 (1995), Sec. 95.
79. Id., Sec. 96.
80. Id., Sec.97.
81. Id., Sec. 98.
82. Id., Sec. 101.
83. Id., Sec. 110.
84. Id., Sec. 111.
85. Tax Code (1997) Sec. 278.
86. Id., Sec. 248.
87. Id., Sec. 254-255.
88. Tariff and Customs Code Sec. 3605.
89. Id., Sec. 3610.
90. Exec. Order No. 513 (1978), Sec. 43. An offense committed by a government official or employee is accompanied by disqualification for public office. If the offense is committed by a juridical person, the responsible manager, director, representative or employee suffers the penalty. Immediate deportation is imposed if the offender is a foreign national.
91. DOE-DILG Circular No. 98-01 (1998), Sec. 6.
92. Rep. Act No.7942 (1995), Sec. 90.
93. DENR Adm. O. No. 2010-21 (2010), Sec. 222-223.
94. Id., Sec. 223.
95. Rep. Act No. 7942 (1995) Sec. 90; DENR Adm. O. No. 2010-21 (2010), Sec. 223.
96. 2013 Investment Priorities Plan, http://www.gov.ph/downloads/2013/11nov/20131113-MO-0059-2013-IPP.pdf. Accessed: October 20, 2014.
97. As amended by Rep. Act No. 7918 (1995).
98. Pres. Decree No. 87 (1973), Sec. 5.
99. Id., Sec. 6.
100. Id., Sec. 7.
101. Id., Sec. 8.
102. Id.
103. Id., Sec. 12.
104. Pres. Decree No. 972 (1976), Sec. 8.
105. Id., Sec. 9.
106. Id.
107. Id. As amended by Pres. Decree No. 1174 (1977).
108. Id.
109. Id. Sec. 10, as amended.
110. Id.
111. Id, Sec.11, as amended.
112. Culled from the Senate of the Philippines Policy Brief, Senate Economic Planning Office, Realizing the Philippines' Mining Potential, December 2013
113. Adjusted mining revenues refer to the difference between gross sales and direct cost – direct mining cost and administrative expenses.
114. GMA News Online, MICC OKs 10% tax on mining revenues under draft bill, says MGB. 2 June 2014. http://www.gmanetwork.com/news/story/363747/economy/agricultureandmining/micc-oks-10-tax-on-mining-revenues-under-draft-bill-says-mgb; Rappler News, Draft bill for new mining tax regime finalized. 2 June 2014. http://www.rappler.com/business/special-report/whymining/whymining-latest-stories/59404-draft-bill-new-mining-tax-regime-finalized; Ronnel W. Domingo, Philippine Daily Inquirer, Miners air anxiety over proposed bill, 19 September 2014, http://business.inquirer.net/179005/miners-air-anxiety-over-proposed-bill. Accessed: December 17, 2014
115. Hontiveros-Baraquel, et.al. v. DENR Secretary, G.R. Nos. 181702 and 181703, April 2, 2011. Questions provisions are Sections 80-81 of Rep. Act No. 7942 (1995) and DENR Admin. Order No. 07-12.
116. Article XII, Section 1, par. 1 and Section 2, par. 1 and 4 of the 1987 Constitution.
117. DENR Adm. O. No. 2010-21, Sec. 23-A
118. Id. Sec. 5 .
119. DENR Adm. O. No. 2012-07, Sec. 8
120. "such as when there is a need to preserve strategic raw materials for industries critical to national development, or certain minerals for scientific, cultural or ecological value…"
121. DENR Adm. O. No 2010-21, Sec. 9.
122. Id. Sec. 11 .
123. Id. Sec. 10.
124. Id. Sec. 11.
125. Rep. Act No. 387 (1949).
126. Feliciano, Claire-Ann M. C. "Gov't aims to award new coal deals next month" Business World Online. 17 November 2014. http://www.bworldonline.com/content.php?section=TopStory&title=gov&8217t-aims-to-award-new-coal-deals-next-month&id=98074 Accessed: December 1, 2014.
127. Lectura, Lenie. "Number of applications for coal exploration plunges to 9 from 69" Business Mirror. n 28 September 2014 http://www.businessmirror.com.ph/number-of-applications-for-coal-exploration-plunges-to-9-from-69/ Accessed: December 1, 2014.
128. Rep. Act No. 7638, as amended.
129. Data from MGB were given by Engr. Rolando M. Fernandez, Chief, Mineral Rights Management System Section and data from DOE were downloaded from DOE's PECR 5 website.
130. DENR Adm. O. No 2012007, Sec. 6.
131. DOE DC 2007-04-0003.
132. CONST. Art. X, Sec. 2.
133. Id., Art. X, Sec.10 and 11.
134. Rep. Act No. 7160, Sec. 6.
135. Id. Sec. 9.
136. CONST. Art. X, Sec. 5.
137. Rep. Act No. 7160, Sec. 3.
138. CONST. Art. X, Sec. 2
139. Id., Art. X, Sec. 4
140. Rep. Act No. 7160. Sec. 25.
141. CONST. Art. X, Sec. 4.
142. Rep. Act No. 7160, Sec. 29.
143. Id., Sec. 452. The population must be certified by the National Statistics Office, while the city treasurer certifies the annual income of these cities.
144. Id., Sec. 451.
145. Id. Sec. 16.
146. See footnote 10.
147. Id.

148. Rep. Act No. 7076, Sec. 24.
149. Id.
150. R.A. 7942 (1995), Sec. 43.
151. CONST. Art. XII, Sec. 2.
152. Id.
153. Id. Art. X, Sec. 7.
154. Rep. Act No. 7160, Sec. 290.
155. Id. Sec. 289, 290.
156. DENR Adm. O. No. 2010-21, Sec. 13.
157. Id. Sec. 292.
158. Id. Sec. 286.
159. Id. Sec. 293.
160. Id. Sec. 294.
161. Id.
162. CONST., Art. X, Sec. 6.
163. Rep. Act No. 7160, Sec. 284.
164. Id, Sec. 286.
165. Id, Sec. 287.
166. Id. Sec. 457 (b)(5).
167. Id.. Art. VI, Sec. 24, 28, and 29.
168. Rep. Act No. 7160. Sec. 232.
169. Id. Sec. 201.
170. Id. Sec 224.
171. Id. Sec. 204.
172. Id. Sec. 168.
173. Id. Sec. 233.
174. Id. Sec. 235.
175. Rep. Act No. 7160, Sec. 141.
176. Id.
177. Id. Sec 139.
178. Id. Sec. 143.
179. Id., Sec. 151.
180. Id, Sec. 156.
181. Id. Sec. 158.
182. Id., Sec. 153.
183. Id., Sec. 154.
184. Rep. Act No. 7160, Sec. 152(c).
185. Id., Sec. 86.
186. Id.
187. Id., Sec. 168
188. Rep. Act No. 7942, Sec. 76.
189. DENR Adm. O. No. 2010-21, Sec. 106.
190. Id., Section 107.
191. Rep. Act No. 7160, Sec. 147, 151, 153, 444 (b)(3)(iv), and 455 (b)(3)(iv).
192. Some local tax codes base their impositions under Sec. 143 (h) of the Local Government Code which refers to business tax at rate of 2% maximum of gross receipts on other business not specifically enumerated under said law. However, most local tax codes provide the imposition as independent source of revenue without reference to Sec. 143(h) of the Code on top of their business tax impositions.
193. This is based on key informant interview with the Office of the Municipal Treasurer of Dona Remedios Trinidad, together with the Provincial Treasurer' Office of Bulacan. This requires verification of their Local Tax Code. This certificate is reportedly a pre-requisite for the issuance of business permit, which is allegedly provided under the Provincial Tax Code. If the fee is collected by the province, then the fee goes to the province completely. If collected by the municipality, the municipality has 15% share. Note that there may be legal issues if this certificate is in the nature of a Certificate of Non-Coverage under the EIS regulations. A CNC is statutorily issued by the DENR-EMB under EIA regulations, and mining activities are classified as Environmentally Critical Projects.
194. Rep. Act No. 7160, Sec. 444 (b)(3)(iv).
195. Id. Sec. 143.
196. As provided under the Local Government Code, the BLGF is mandated to assist the DOF in the performance of specific functions related to local taxation, real property tax assessments, and the conduct of financial affairs of the LGUs.
197. http://115.84.253.164:8080/SREWebComponent/jsp/login.jsp
198. Data provided by BLGF on official request. BLGF Consultation Meeting, August 2014.
199. DOF-DBM-DILG-DENR Joint Circular No. 2009-1. Updated Guidelines and Procedures on the Release of the Share of Local Government Units from the Collections derived by the National Government from Mining Taxes.
200. DOF-DBM-DILG-DENR Joint Circular No. 2010-1. 25 June 2010. Revised Guidelines and Procedures on the Release of the Share of Local Government Units Derived by the National Government from Royalty Income Collected from Mineral Reservations.
201. CONST. Art. 12, Sec. 2.
202. PHILIPPINE MINING DEVELOPMENT CORPORATION, 2014. Philippine Mining Development Corporation Mandate. [online] http://pmdc.com.ph/mandate.htm, Accessed: October 11, 2014.
203. Id.
204. Id.
205. Exec. Order No. 689 (2007).
206. Proclamation No. 297 (2002).
207. PHILIPPINE MINING DEVELOPMENT CORPORATION, 2014. Mineral Reservations of PMDC. [online] http://www.pmdc.com.ph/mineralreservations.htm. Accessed: October 18, 2014.
208. Proclamation No. 297.
209. DENR Adm. O. No. 2010-21, Sec. 7.
210. Id. at Sec. 7-9.
211. Minutes of the PH-EITI 13th MSG Meeting, Sections 4.47 and 4.48, 2 May 2014; PMDC Notes to Financial Statements for the Year Ended December 31, 2013 as submitted to the Commission on Audit, p. 10.
212. Exec. Order No. 323 (2000).
213. Id.
214. Id. at Art. 2, Sec. 3.
215. PHILIPPINE MINING DEVELOPMENT CORPORATION, 2014. PMO Assets of PMDC. [online], http://www.pmdc.com.ph/pmoassets.htm, Accessed: October 18, 2014.
216. PHILIPPINE MINING DEVELOPMENT CORPORATION, 2014. Cancelled mining tenements handled by PMDC. [online], http://www.pmdc.com.ph/cancelledtenements.htm, Accessed: October 18, 2014.
217. Id.
218. Pres. Decree No. 334 (1973).
219. PHILIPPINE NATIONAL OIL COMPANY, 2007. Philippine National Oil Company Exploration Corporation. [online],http://www.pnoc.com.ph/subsidiaries.php?sectionid=e4f3bb95-1514-11df-a7de-92d1637a39b1, Accessed: October 18, 2014.
220. CONST. Art. II, Sec. 22 II.

221. *Id. Art. XII, Sec. 5.*
222. *Id. Art. XIV, Sec. 17.*
223. *Rep. Act No. 8371 (2007).*
224. *Id. Sec. 56.*
225. *Id. Sec. 4.*
226. *Id. Sec. 3(p).*
227. *Id. Sec. 57.*
228. *Id.*
229. *Rep. Act No. 7942, Sec. 16.*
230. *Rep. Act No. 8371 , Sec. 7 (b).*
231. *Id. Sec. 8.*
232. *Id. Sec. 8 (b).*
233. *Id. Sec. 7 (c).*
234. *Id. Sec. 11.*
235. *Id. Sec. 38.*
236. *Id. Sec. 52 (j).*
237. *Id. Sec. 52 (k).*
238. *Id. Sec. 3 (g).*
239. *Rep. Act No. 7942, Sec. 16.*
240. *Id. Sec. 25.*
241. *Id. Sec. 5 (a).*
242. *Id. In case of the absence of the Legal Officer concerned, the Regional Director shall designate the Legal Officer of another province to assist the FPIC Team.*
243. *Id. Sec. 34.*
244. *Id. Sec. 33.*
245. *Id. Sec. 34.*
246. *Id. Sec. 36.*
247. *Id..*
248. *Id. Sec. 32.*
249. *Id..*
250. *Id. Sec. 37, 38.*
251. *www.ncip.gov.ph*
252. *Calde, Nimreh L., Alejandro N. Ciencia Jr. and Dr. Raymundo D. Rovillos. 2013. An assessment of the implementation of the Free and Prior Informed Consent (FPIC) in the Philippines. Volume I: Main Report. Manila, Philippines: Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH*
253. *Id. Sec. § 16.*
254. *Id.*
255. *Rep. Act No. 8371 , Sec. 3 (n).*
256. *Id. Sec. 59.*
257. *NCIP Administrative Order 3-2012, Sec. 61.*
258. *Id. Sec. 60.*
259. *Id. Sec. 58.*
260. *Id. Sec. 62.*
261. *Id.*
262. *Id. Sec. 63.*
263. *Id. Sec. 64.*
264. *Section 57, RA 7942.*
265. *Section 134.a, DAO 2010-21 defines host community to refer to the barangay(s) where the mining area is located, and neighboring community refers to the barangay(s) adjacent to the host community.*
266. *Section 58.a, RA 7942. Section 134, Section 136-A, DAO 2010-21*
267. *Section 136-A, DAO 2010-21*
268. *Section 58.b, RA 7942. Section 134.b, Section 136-B, DAO 2010-21*
269. *Section 134.c, Section 136-B, DAO 2010-21*
270. *This includes capacity- and capability-building on project management, organizational development, entrepreneurship, and skills development/training.*
271. *This includes providing members of the community access to capital. e. g. income generating activities, such as animal husbandry, provision of farm implements, establishment of small/micro- businesses, such as household-based food processing, horticulture and agronomy, traditional handicrafts, support to small local businesses through preferential procurement of goods and services from local sources, as well as cooperative development, market linkaging and networking, among others*
272. *This includes the development, construction, improvement, and/or maintenance of farm-to-market roads, water systems, post-harvest facilities, bridges, and electric power, among others;*
273. *This can be in the form of scholarships from primary to tertiary education, technical/vocational education, provision of apprenticeship programs, construction/ repair/improvement of school buildings and related facilities, provision of school furniture and fixtures, and subsidy to teachers, among others;*
274. *This includes provision of health facilities, access to health services, medicines and professionals, health education and preventive measures, training of health paraprofessionals, maternal-child health care and family planning, provision of health insurance, establishment of nutrition and immunization programs, access to clean and potable water, and provision of waste and sewage disposal facilities*
275. *These would include hospitals, schools, among others, by members of the host and neighboring communities.*
276. *This includes the cost of publication of studies in refereed technical journals or monographs accessible to the local scientific community.*
277. *This includes radio and web-based broadcasts, publications, and other forms of mass communication, on mining-related information, issues and concerns.*
278. *DAO 2010-21, Section 134.d defines operating cost to mean the specific costs of producing a saleable product on a commercial scale incurred in the calculation of the net income before tax, as confirmed by the Bureau/Regional Office. This includes all costs and expenditures related to mining/extraction and treatment/processing (inclusive of depreciation, depletion and amortization), exploration activities during operation stage, power, maintenance, administration, excise tax, royalties, transport and marketing, and annual progressive/environmental management.*
In the case of an operating mine, the contractor/ permit holder/lessee is required to submit to the MGB Regional Office a sworn statement of its previous year's operating costs within sixty (60) days after the end of each calendar year as basis for the SDMP implementation in the case of an operating mine. In the case of new mining operations, the basis for the initial SDMP implementation shall be the operating costs estimates contained in the approved Mining Project Feasibility Study. The contractor/permit holder/ lessee is required to submit to the MGB Regional Office a sworn statement of its previous year's operating costs within sixty (60) days after the end of each

calendar year as basis for the SDMP implementation in the case of an operating mine:

279. *Id.*
280. *Section 58, RA No. 7942.*
281. *DAO 2010-21, Section 135,*
282. *Id, Section 134.*
283. *Id, Section 136-A.*
284. *Id.*
285. *Id, Section 136, Section 136-A.*
286. *Ibid.*
287. *Id, Section 136-A, 136-B. Section 136-B further requires the mining company to submit at least three (3) copies and a complete electronic file of the Programs. The MGB Regional Office evaluates the Programs as to its form, substance, and completeness, and may require additional documents or information. A technical conference is held among the mining company, the MGB Regional Office and appropriate experts. Upon approval the MGB Regional Office issues a Certificate of Approval; and provides the MGB Central Office a copy of the approved SDMP and Programs on the Development of Mining Technology and Geosciences and on IEC, and the Certificates of Approval, within seven (7) days upon approval. If the Programs require some revisions/ additional information, the mining company is required to address the deficiencies within ten (10) days from the date of the technical conference. If it fails to do so, the Programs shall be returned to the proponent for revision/rectification and resubmission. The succeeding 5-year SDMP and the Programs on Development of Mining Technology and Geosciences and on IEC shall be submitted to the MGB Regional Office not later than thirty (30) days from the completion of the preceding five (5)- year Programs. A copy each of the succeeding approved Programs shall be provided to the LGUs concerned and the host and neighboring communities within five (5) days from its approval.*
288. *Id. The succeeding CDP are submitted to the Regional Office concerned not later than 30 days from the completion of the preceding CDP. A copy of the CDP is a mandatory requirement for the acceptance of the applications for Exploration Permit renewal, Mineral Agreement – renewal of Exploration Period, FTAA - renewal of the Exploration Period or application for Pre- Feasibility/Feasibility Period. An approved CDP is required prior to commencement of the implementation of the approved Exploration Work Program under the renewed Exploration Permit/ Exploration Period or approved Pre-Feasibility/ Feasibility Period.*
289. *Under Section 136-F, DAO 2010-21, the approved Programs shall be deemed revoked if the mining operation of the company is suspended or stopped for a period of at least two (2) consecutive years.*
290. *Section 136-B, DAO 2010-21.*
291. *Id.*
292. *Id. The MGB Regional Office then furnishes the MGB the approved Annual Programs within seven (7) days from its approval.*
293. *Id, Section 136-C.*
294. *Id.*
295. *Id, Section 136-D.*
296. *Under Section 136-D, DAO 2010-21, mining companies are required to furnish an annual report to the MGB Central Office. For CDPs, an annual status report on their implementation by the mining company must also be to the MGB Regional Office, subject to periodic monitoring/audit.*
297. *Id.*
298. *MGB Central Office, MGB Regional Office, mining company and/or host and neighboring communities*
299. *Section 136-E, DAO 2010-21.*
300. *Id, Section 136-F.*
301. *Section 69, Section 71, RA 7942.*
302. *1987 Philippine Constitution, Art. II, Section 12.*
303. *Sections 166, 167, DAO 2010-21.*
Section 166 provides: Consistent with the basic policy of the State to assure the availability, sustainability and equitable distribution of the country's natural resources, the Department adopts the policy that mining activities attendant to permits, agreements and leases shall be managed in a technically, financially, socially, culturally and environmentally responsible manner to promote the general welfare of the country and the sustainable development objectives and responsibilities as provided for in these implementing rules and regulations.
Section 167 further provides for the environmental protection objectives to include the following: (1) Maintenance of sustainable environmental conditions at every stage of the mining operation, to a condition prescribed in the ECC and/or EPEP; (2) Establishment of a functional post-disturbance land use capability, that is functional and proximate to the land use prior to the disturbance of the mine area, unless other more beneficial land uses are predetermined and agreed in partnership with local communities and LGUs; (3) Preservation of downstream freshwater quality; (4) Preservation of sea water quality and natural habitats for marine life; (5) Prevention of air and noise pollution; and (6) Respect for the traditional and/ or sustainable management strategies concerning natural resources of ICCs and other communities.
304. *Section 69, RA 7942.*
305. *Id.*
306. *Section 169, DAO 2010-21.*
307. *Id, Section 168.*
308. *Section 71, RA 7942.*
309. *This is also a perquisite for the approval of a Quarry or Commercial/ Industrial Sand and Gravel Permit and MPP.*
310. *Section 167-A, DAO 2010-21. A Certificate of Exemption (COE) will be issued by the Regional Director concerned, in lieu of the CEMCRR, to an applicant with no past mineral resource use or mining related ventures.*
311. *Under Section 167-A, the failure on the part of office/s concerned to act on the request for environmental management and community relations record within fifteen (15) working days from the date of receipt of a request, without justifiable reasons, will not prevent the issuance of a CEMCRR by the Regional Office concerned.*
312. *Id.*
313. *Section 168, DAO 2010-21.*
314. *MGB Form No. 16-1 or MGB Form No. 16-1A.*

315. *Section 168, DAO 2010-21. The EWP shall provide a description of the expected and considered acceptable impacts and shall set out the environmental protection and enhancement strategies based on best practice in environmental management in mineral exploration. It shall include a statement on post-exploration land use potential for various types of disturbed land and extend to the completion of the commitments in the rehabilitation of the disturbed land in a technically, socially and environmentally competent manner. The program shall be based on acceptable, practical and achievable options and demonstrated practice. Finally, the program shall include implementation schedules, system of environmental compliance guarantees, monitoring, reporting and cost provisions. Where proposed practices are unproven, a research program to prove the impact control and rehabilitation technology shall be required.*
316. *Id.*
317. *Sec. 69, RA 7942.*
318. *MGB Form No. 16-2*
319. *Section 169, DAO 2010-21.The EPEP provides a description of the expected and considered acceptable impacts and shall set out the life-of-mine environmental protection and enhancement strategies based on best practice in environmental management in mining. It includes a statement on post-mining land use potential for various types of disturbed land (inter alia, pits, waste dumps, tailings-impounding structures and infrastructure sites) and extend to the completion of the commitments in the rehabilitation of the disturbed land in a technically, socially and environmentally competent manner. The program shall be based on practical and achievable options and demonstrated practice. Where proposed practices are unproven, a research program to prove the impact control and rehabilitation technology shall be required.*
320. *Id.*
321. *Id.*
322. *Id, Section 169. Initial environment- related capital expenditures may include environmental studies and design cost, waste area preparation, tailings/slime containment/disposal system, mine waste disposal system, wastewater/acid mine drainage treatment plants, dust control equipment, air pollution control facilities, drainage system and other environment-related mitigating measures and capital expenditures.*
323. *Id, Section 168.*
324. *Id, Sections 182, 183.*
325. *Id, Section 170. A mining company is required to submit at least ten (10) legible copies of the EPEP and a complete electronic file in computer diskettes.*
326. *Id, Section 169.*
327. *Id. The MRF Committee is given 30 days from receipt to complete the evaluation and processing of the EPEP. The EPEP of Industrial Sand and Gravel Permit and Quarry Permit holders/applicants are evaluated and approved/disapproved by the MRF Committee in the MGB Regional Office.*
328. *Id, Sections 193 and 194.*
329. *Id, Section 170.*
330. *Id.*
331. *Id.*
332. *MGB Form No. 16-3*
333. *Section 171, DAO 2010-21.*
334. *Id, Section 173.*
335. *Id, Section 185.*
336. *Id, Section 174.*
337. *Id, Section 184.*
338. *Id, Section 174.*
339. *Id, Sections 174 and 181.*
340. *Id.*
341. *Sec. 71, RA 7942.*
342. *Section 180, DAO 2010-21.*
343. *Ibid.*
344. *Ibid. Section 193, DAO 2010-21.*
345. *Section 181, DAO 2010-21.*
346. *Upon deposit, the mining company shall notify the Chair or the Co-Chair of the MRF Committee of its compliance with the deposit requirement through a certification from the bank.*
347. *Under Section 181, DAO 2010-21, the DENR Secretary is authorized to increase the said amount when national interest and public welfare so require, upon the recommendation of the MGB Director.*
348. *Id. See also Section 186, DAO 2010-21 that provides: Withdrawal from the MRF shall be made by the Contractor/Permit Holder only with the written instruction to the bank issued by the MRF Committee authorizing the Contractor/Permit Holder to withdraw the amount from the MRF. The amount to be withdrawn shall be in accordance with the AEPEP and shall be approved by the MRF Committee, copy furnished the CLRF Steering Committee.*
Any one of the following shall be authorized to issue the instruction to the bank on behalf of the MRF Committee:
    a. The Chair,
    b The Co-Chair or
    c. The designated representative of either (a) or (b).
349. *In the event that none of the above-mentioned persons issues the instruction to the bank after the lapse of thirty (30) calendar days from the time the written request for instruction is received by them, the Contractor/Permit Holder shall have the authority to sign the instruction on behalf of the MRF Committee and to withdraw the amount in accordance with the approved AEPEP.*
The said amount is required to be deposited in four (4) equal quarterly deposits within fifteen (15) calendar days from the beginning of each quarter of the first year following the approval of the EPEP. In the event of withdrawals from the RCF, the mining company is required to annually replenish the RCF so as to maintain the minimum required amount thereof.
350. *Section 181, DAO 2010-21.*
351. *Id, Section 187-B.*
352. *Based on the responses of MGB to the PWC EITI Reporting Template on Environmental Funds.*
353. *Section 187, DAO 2010-21. The FMR/DP or Mine Closure Plan shall be integrated in the EPEP submitted by Contractors/Permit Holders to the MRF Committee through the Regional Office and to the CLRF Steering Committee through the Bureau. Using risk-based methodologies/approaches, the FMR/DP shall consider all mine closure scenarios and shall contain cost estimates for the implementation of the FMR/*

DP, taking in consideration expected inflation, technological advances, the unique circumstances faced by the mining operation, among others: Provided, That such estimates shall be based on the cost of having the decommissioning and/or rehabilitation works done by third party contractors: Provided, further, That the estimates, on a per year basis, shall cover the full extent of work necessary to achieve the objectives of mine closure such as, but shall not be limited to, decommissioning, rehabilitation, maintenance and monitoring and employee and other social costs, including residual care, if necessary, over a ten-year period. The FMR/DP shall be subject to pre-evaluation by the MRF Committee and to final approval by the CLRF Steering Committee.

tSection 187-A further provides that the submission and approval of a FMR/DP, in lieu of the Abandonment/ Decommissioning Plan under Section 9.4 of Department Administrative Order No. 2003-30, shall be incorporated as a mandatory requirement in the ECC being issued by the DENR Secretary, EMB Director, or EMB Regional Director to Contractors/ Permit Holders.

354. Section 71, RA No. 7942; Item f, Section 1 of Executive Order No. 270-A
355. Annual Provision = Cost of Implementing the Approved FMR/DP x Percentage Required Per Table 1
356. On application by the mining company, the MRF Committee may allow a later date for the payment of the first annual provision.
357. Section 187-B, DAO 2010-21.
358. Id, Section 188.
359. Id, Section 187-C.
360. Id. Section 187-D.
361. Id. Section 187-E. Factors to be considered are (a) To credit progressive rehabilitation works undertaken by the Contractor/Permit Holder; and (b) To account for changes in the nature or cost of work to be done pursuant to the approved FMR/DP.
362. Id, Section 187-F.
363. Id.
364. Id.
365. Id.
366. Id. Section 189.
367. Id. Section 190. Exceptions are where such mine waste and mill tailings were utilized in the following manner:
    a. Filling materials for underground mine openings;
    b. Filling materials for surface mine openings: Provided, That such materials shall not affect natural drainage systems as may be determined by the Committee or its duly authorized representative;
    c. Filling materials for engineered tailings dams, roads and housing areas: Provided, That such areas shall not affect natural drainage systems as may be so determined by the Committee or his/her duly authorized representative: Provided, further, That those with tailings impoundment/disposal system that were found to have discharged and/or to be discharging solid fractions of tailings into areas other than the approved tailings disposal area shall pay PhP50.00/MT without prejudice to other penalties and liabilities the Contractor/Lessee/Permit Holder shall be subject to under other existing laws, rules and regulations: Provided, finally, That said amount shall accrue to the MWT Reserve Fund;
    d. Concreting and manufacture of concrete products; and
    e. Mine waste impounded for future use: Provided, That a two-year work program on the utilization of the said materials shall be submitted together with the semiannual report: Provided, further, That said materials shall be utilized for its beneficial use within a period of two (2) years. Mine waste materials, which are not utilized within the two-year period, shall be charged the corresponding fee of PhP0.05/MT. Non-submission of the work program shall mean disqualification from exemption from payment of fees.
368. Section 190, DAO 2010-21.
369. Id, Section 191.
370. Id.
371. Id, Section 190
372. Id, Section 192.
373. within sixty (60) calendar days upon receipt of notice
374. Section 192, DAO 2010-21.
375. Based on the responses of MGB to the PWC 2014 EITI Reporting Template on Environmental Funds.
376. Id, Section 199.
377. Ibid.
378. Applications should be supported by the following documents:
    a. Proof of ownership, such as tax declaration, perfected land titles, homestead and free patent. It should be understood, however, that tax declarations shall be honored as proof of ownership only for the purposes of compensation under these implementing rules and regulations;
    b. Receipt of expenditures for improvements made in the affected property(ies); and
    c. Other requirements that may be required by the CLRF Committee.
379. Section 199, DAO 2010-21.
380. Id. Section 201.
381. Id. Section 200.
382. Id. Section 201. Damages compensated by the operating mining company(ies) shall no longer be considered compensable under these provision, subject to certain conditions
383. Section 61, RA 7942. Prior to cessation of mining operations occasioned by abandonment or withdrawal of operations, on public lands by the contractor, the latter shall have a period of one (1) year therefrom within which to remove his improvements; otherwise, all the social infrastructure and facilities shall be turned over or donated tax-free to the proper government authorities, national or local, to ensure that said infrastructure and facilities are continuously maintained and utilized by the host and neighboring

communities. See also Section 139, DAO 2010-21.
384. Under Section 139, DAO 2010-21, the end of operations may be due to abandonment, cancellation or termination of the Agreement/Permit/Lease. The removal must be consistent with the social aspect of the Final Mine Rehabilitation and/or Decommissioning Plan.
385. Section 61, RA 7942. Section 139, DAO 2010-21.
386. Corporate Social Responsibility in the APEC Region: Current Status and Implications, Economy Paper: Philippines - Corporate Social Responsibility in the Philippines, prepared by the Asian Institute of Management RVR Center for Corporate Responsibility, p. 1. Accessible at http://publications.apec.org/filedownload.php?filename=Philippines_05_hrd_CSR.pdf&id=341_toc
387. Colin Legarde Hubo. Profiles of the Corporate Social Responsibility (CSR) Practices of Philippine Mining Firms. Mines and Geosciences Bureau.2003, p. 1. Accessible at http://siteresources.worldbank.org/INTPSD/Resources/Philippines/phil_CSR_Case_Studies.pdf
388. CSR Guidebook, Philippine Chamber of Mines, 2010, p.9.
389. Ibid.
390. Id, p. 16.
391. Based on DAO 2010-21, SDMP allocation is 1.5% of the operating costs; and not 1% of DMMC.
392. Problem-Based Annual Social Development and Management Program, January-December 2014, Annex D.
393. EO 292 Sec 1, Book 4 Title 2
394. Id., Sec. 2
395. Sec. 29, Art. VI, Sec. 29, 1987 Constitution
396. Basic Concepts in Budgeting, http://www.dbm.gov.ph/wp-content/uploads/2012/03/PGB-B1.pdf. Accessed December 16, 2014)
397. Revising the Budget Process in order to institutionalize the budgetary innovations of the new society
398. Creating an Energy Development Board, Defining its Powers and Functions, Providing Funds therefor and for Other Purposes)
399. G.R. No. 208566 (November 19, 2013)
400. Supra
401. Instituting a procedure for the management of special and fiduciary funds earmarked or administered by departments, bureaus, offices and agencies of the national government, including GOCCs
402. Id., Sec. 2
403. Id., Sec. 3
404. Id., Sec. 4
405. The Local Government Code of 1991, Sec. 106
406. Id., Section 315
407. Id., Section 316
408. Id.
409. Id., Section 317
410. Id. Sec. 318
411. Id., Sec. 319
412. Id., Sec. 323
413. Id., Sec. 327
414. Id., Sec. 326.
415. Id., Sec. 344
416. Id.
417. COA Circular No. 2001-005, 1 January 2002.
418. Id., Section 294.
419. Id.
420. KII. 15 August 2014, Tubay and Agusan del Norte.
421. DBM-DILG-DSWD-NAPC Joint Memorandum Circular (JMC) No. 1, Series of 2012 dated March 8, 2012.
422. DBM-DILG-DSWD-NAPC Joint Memorandum Circular (JMC) No. 4, Series of 2013 dated November 26, 2013.
423. DBM, January 19, 2012.
424. DBM-DILG-DSWD-NAPC Joint Memorandum Circular (JMC) No. 4, Series of 2013 dated November 26, 2013. DBM National Budget Memorandum No. 121, dated March 18, 2014.
425. DBM-DILG-DSWD-NAPC Joint Memorandum Circular (JMC) No. 4, Series of 2013 dated November 26, 2013.
426. Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Natural Resources.
427. Id., Sec. 10 (d)
428. Source: MGB website http://www.mgb.gov.ph/art.aspx?artid=570. Acessed: December 17, 2104.
429. Sec. 4
430. Id.
431. Id.
432. Id.
433. EO 79 Updates provided by the MICC Secretariat, 16 December 2014.
434. Speech delivered by Sec. Ramon P. Paje, Department of Environment and Natural Resources on the occasion of Mining Philippines 2014 held on October 13, 2014.
435. Id.
436. Id.
437. http://www.denr.gov.ph/news-and-features/features/15-mining-reforms-in-the-philippines.html Accessed: Dec. 16, 2014
438. Based on the presentation of Dir. Leo Jasareno, Director of the Mines and Geosciences Bureau during the CSO National Conference on EITI conducted by Bantay Kita in March 2014.
439. Id.