

POLICY BRIEF ON SUSTAINABLE MINING

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I. Introduction on Sustainable Mining

A. Definition

- **The Brundtland Commission** defines “sustainability, as the ability of the current generation to meet their own needs without compromising the ability of the future generations to meet their own needs”.

This definition places much importance on the ability of the future generation to provide resources for themselves. This implies that there is a need for the present generation to put into consideration and that they have the obligation to think of the welfare and needs of the future generations. The future generations should be included in the present's decision- making.

- Sustainability is also defined as a “participatory process that creates and pursues a vision of community that respects and makes prudent use of all its resources- natural, human, human- created, social, cultural, scientific, etc”. It ensures that the present generations enjoy a high degree of economic security, being able to realize democracy and popular participation in the control of their respective communities, while maintaining the integrity of the ecological systems, and while assuming responsibility to future generations to provide them with the where-with-all for their visions, hoping that they have the wisdom and intelligence to use what is provided in an appropriate manner”.¹
- Dr. Patrick Moore, a former advocate for Greenpeace poses a seemingly similar definition. “Sustainability is not finding the ideal state that will last forever. It is about managing through the inevitable change so as to satisfy present day environmental, economic and social priorities while not foreclosing the options of future generations to do the same”.
- There are three overarching goals of sustainability in general. They are economic prosperity; environmental health; and social equity.

These definitions of sustainability provides for a long- term view on sustainability in general. It puts stress and emphasis on the ability of the future generations to have access and utilize what the current generations are enjoying

Furthermore, these definitions did not call for preservation of natural resources, rather it is for a more responsible and sustainable use of them.

B. Characteristics of Sustainable Mining in General

- Sustainable mining can be characterized as one wherein the “benefits derived from the extraction of minerals is continuously reinvested in other sustainable undertakings and in community support such as health services, education, cultures promotion, etc”²
- This means that profits derived from the mining industries be channeled or used in developmental programmes or projects whose beneficiaries would be the future generation. Furthermore, the “minerals industry can contribute to Sustainable Development for as long as mineral resources development is undertaken with the primary objective of maximizing environmental, economic and social benefits”.³
- John Strongman, a Mining Advisor of the World Bank Group provides five key elements on sustainable mining development. He says that for mining to be sustainable it has to be **financially viable; environmentally sound; socially responsible; implemented with sound governance; and it must bring lasting benefits especially for local communities**. This is very important if the mining company really wants to help in the effective and lasting poverty reduction and economic development at the local and regional levels.⁴

¹ A. Warhurst. Sustainability indicators and sustainability performance management. March 2002. No. 43. p. 12.

² Statement of the Mines and GeoSciences Bureau. DENR. www.mgb.gov.ph

³ Ibid.

⁴ John Strongman. Sustainable Mining Development: From Concept to Action: A presentation made in the mining and the community 2. madang, papua New Guinea. September 2002.

- In Australia, the Ecologically Sustainable Development Working Group on Mining has defined sustainable development for the mining sector as:

"...ensuring that the mineral raw materials needs of society are met, without compromising the ability either of future societies to meet their needs, or of the natural environment to sustain indefinitely the quality of environmental services (such as climate systems), biological diversity and ecological integrity". From the 'Ecologically Sustainable Development Working Group (ESDWG), Final Report - Mining', Australian Government Publishing Service, November, 1991.

- In Canada, Natural Resources Canada (NRCan) has defined sustainable development for the mining sector as: "...finding, extracting, producing, adding-value to, using, re-using, recycling and, when necessary, disposing of mineral and metal products in the most efficient, competitive and environmentally responsible manner possible. NRCan recognizes that these activities must be carried out in consultation with, and respecting the needs and values of, other resource users and maintaining or improving environmental quality for present and future generations."
- In the Philippines, the minerals industry, through RA 7942 or the Philippine Mining Act of 1995 adheres to the Brundtland Commission's definition of sustainable development. Furthermore, it is envisioned that the minerals industry "shall alleviate rather than depress the economic conditions in the countryside; increase rather than decrease our mineral base through continuing mineral exploration; enhance rather than degrade the environment by managing the impacts of mining activities and the rehabilitation of mining affected lands to a productive state after mining and lengthen, through recycling and substitution, the usable life of mineral resources".⁵
- Mining, in addition plays different roles in sustainable development.
 - It creates new wealth in terms of jobs and employment opportunities; government income in terms of taxes and it [may] serve[s] as a mechanism for economic development.
 - It serves as a provider for mineral- based resources to meet the society's basic material and energy needs and demands.
 - It has proven itself to be an indispensable tool for the advancement of civilization.

C. Actors Involved

The issues on the sustainability of mining may be considered to be disputed on by four major actors.

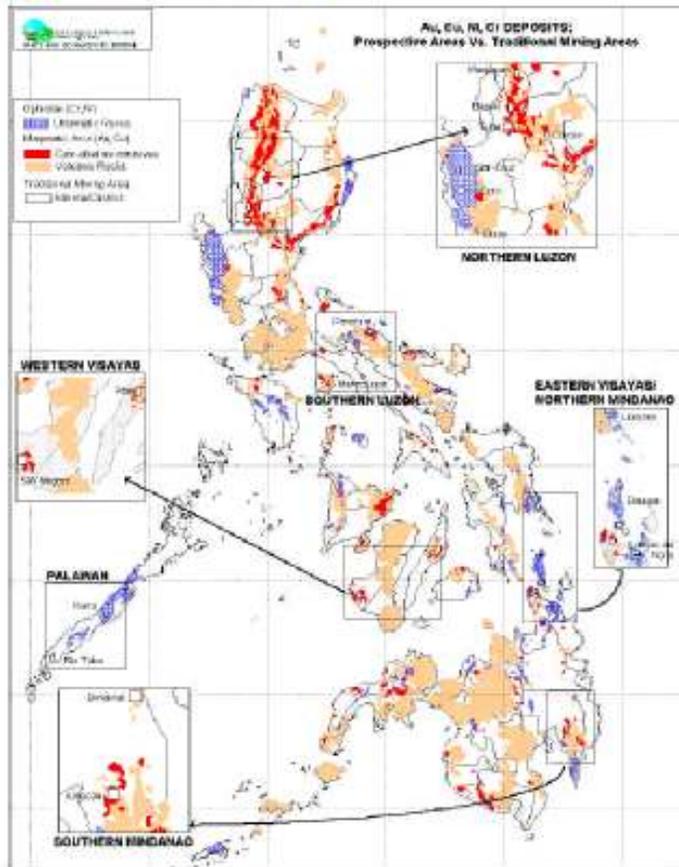
1. **Government**
2. **Mining Firms**
3. **Community living in or near the extraction site, indigenous peoples**
4. **Non- governmental organizations and civil society organizations**

II. Sustainable Mining: The Philippine Case

A. Backgrounder

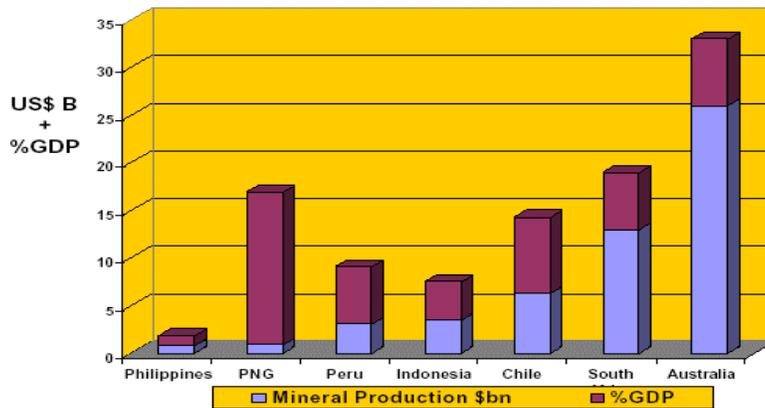
- Mining in the Philippines governed by the implementing rules and regulations (IRR) of RA 7942 more commonly called as the Philippine Mining Act of 1995. The Supreme Court ruling on the constitutionality of the Mining Act of 1995 has put a closure [legally] on this issue. Or has it?
- Senator Sergio Osmeña filed Senate Bill 295 which seeks to repeal RA 7942 in order to prevent large- scale mining companies to inflict further damage on the environment. Similarly, lawyers representing local/ indigenous people still continue their legal battles by filing motion for reconsideration on the constitutionality of the Supreme Court ruling last December of 2004.
- With the release of the Supreme Court ruling, came Executive Order 270 which placed mining as a flagship developmental program of the Arroyo administration. There was a policy shift from previous passive stance— tolerance of mining, it paved the way for a more active one— the promotion and placing of mining as one of the flagship programs aimed at serving as a mechanism for economic development.

⁵ Statement of the Mines and GeoSciences Bureau. DENR. www.mgb.gov.ph



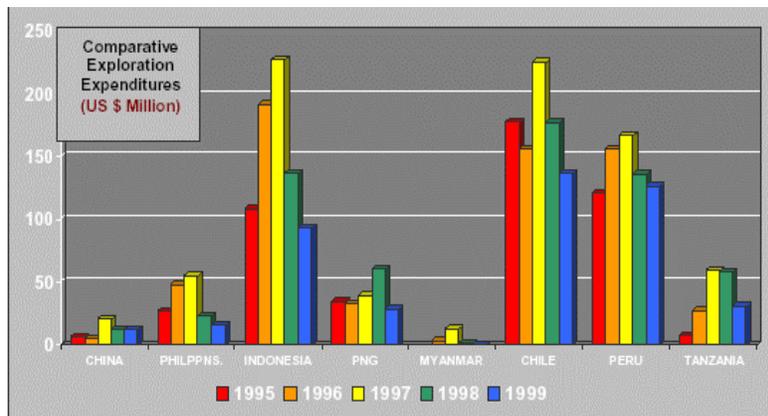
Areas in the Philippines with Potential for Metallic Mineralization

- The Philippines is a well-endowed country in terms of mineral resources. With its long history and experience in mining, it has demonstrated its very rich potential for copper, gold, nickel, chromite and other metallic minerals through the commercial operation of numerous mines. It is also abundant in non-metallic and industrial minerals such as marble, limestone, clays, feldspar, rock aggregates, dolomite, guano, and other quarry resources. In terms of endowment (minerals resources per unit area), the Philippines ranks 3rd in the world for gold, 4th for copper, 5th for nickel, 6th for chromite.



Value of mineral production and GP

❖ The Philippine minerals industry is currently an industry below US\$ 1 Billion in annual sales (Figure 1) similar to Malaysia and Papua New Guinea, but lagging behind Indonesia (US\$ 3.6 Billion), Chile (US\$ 13 Billion) and Western Australia (US\$ 26 Billion). To make them useful to the economy, the rich mineral resources of the Philippines have to be explored and developed into commercial mines. However, there is not much local funds available for exploration investments.



Comparative Exploration Expenditures (In US \$ Million)

❖ Over the past decade, and despite stiff competition with other countries for exploration funds, the Philippines has progressively expanded in exploration resulting in the discovery of a new generation of world-class high-profit potential deposits of gold and copper (about 1.5% copper equivalent) such as the Tampakan Copper Deposit, Far Southeast Copper Deposit, Boyungan Copper Prospect and many others. These deposits can be differentiated from previous discoveries which are low-grade and shallow-seated. They are relatively higher in value hence they can better absorb the social and environmental costs of mining.

Current Trends and Practices of Mining in the Philippines

- There are three major modes of mining rights granted to mining companies: Exploration Permit (EP), Mineral Production Sharing Agreement (MPSA) and Financial or Technical Assistance Agreements (FTAA).

Major Modes of Mining Rights in the Philippine Mining Act of 1995

- **Co-Production Agreement (CA)** - an agreement between the Government and the Contractor wherein the Government shall provide inputs to the mining operations other than the mineral resources; and.
- **Joint Venture Agreement (JVA)** - an agreement where the Government and the Contractor organize a joint venture company with both parties having equity shares. Aside from earnings in equity, the Government shall be entitled to a share in the gross output.
- **Sand and Gravel Permits** - are issued for the extraction, removal and disposition of sand and gravel and other loose or unconsolidated materials. Permits with areas not exceeding 5 hectares are issued by the Provincial Governor/City Mayor while those exceeding 5 hectares but not more than 20 hectares are issued by the MGB Regional Director. A Sand and Gravel Permit has a term of 5 years and renewable for like terms.
- **Quarry Resources Permits** - In accordance with the Local Government Code of 1991, mining permits with areas not more than 5 hectares have been devolved to the Provincial Governor or the City Mayor for approval upon recommendation of the Provincial/City Mining Regulatory Board. These include the Quarry Permit, Guano Permit, Gratuitous Permit and Gemstone Gathering Permit.
- **Small-Scale Mining Permits** - In consonance with the Local Government Code and RA No. 7076, small-scale mining permits are approved and issued by the City Mayor/Provincial Governor, upon recommendation of the Provincial/City Mining Regulatory Board.
- **Mineral Processing Permit** – a permit granting the right to process minerals. It is issued by the DENR Secretary with a term of 5 years and renewable for like terms.
- **Ore Transport Permit** – no minerals, mineral products and by-products shall be transported unless accompanied by an Ore Transport Permit. The OTP is issued by the MGB Regional Director concerned.

- The granting of mining rights are subject to certain qualifications and selection criteria.
 - **Qualified Person** - The Mining Act and its IRR specifically state that a mining permit or contract can only be granted to a **Qualified Person**, meaning, one must possess, among others, proofs of financial and technical capability as well as a satisfactory environmental management and community relation track record.
 - **Land Use Priorities** – Areas classified as closed to mining are automatically excluded from mining applications while applied areas in conflict with other land uses and not covered by the required area clearance are automatically excluded. Thus, the applied area is either reduced or in some cases, denied; and
 - **Economic Feasibility** – It is not automatic that a mining contractor shall proceed immediately to development and commercial operation after it has completed exploration. The Mining Project Feasibility Study shall consider market, financial and technical factors relevant to the project as well as all the minimum expenditures for social and environmental

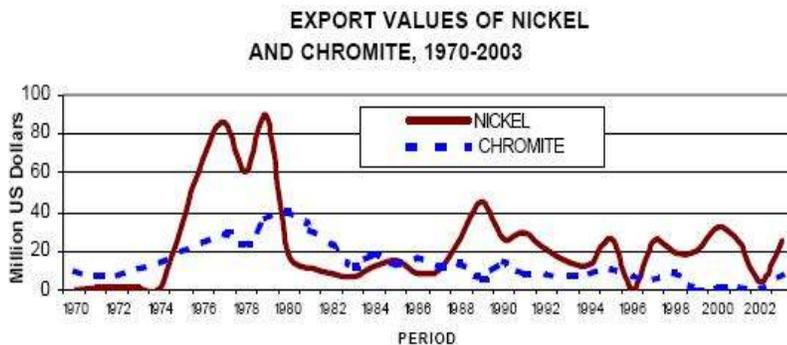
TYPE OF MINING RIGHT	MAXIMUM AREA (has.)	TERM	QUALIFIED PERSON	BENEFIT SHARING
Exploration Permit	32,000 onshore 81,000 offshore	2 years; renewable to a maximum of 8 years	Individuals or Filipino or foreign corporations	none (research data collection)
Mineral Production Sharing Agreement	16,200 onshore 40,500 offshore	25 years; renewable for a like period	Individuals or Filipino corporations	40% company; 60% Govt.
Financial or Technical Assistance Agreement	81,000 onshore 324,000 offshore	25 years; renewable for a like period	Filipino or foreign corporations	40% company; 60% Govt. (to start after recovery of initial pre-operating expenses)

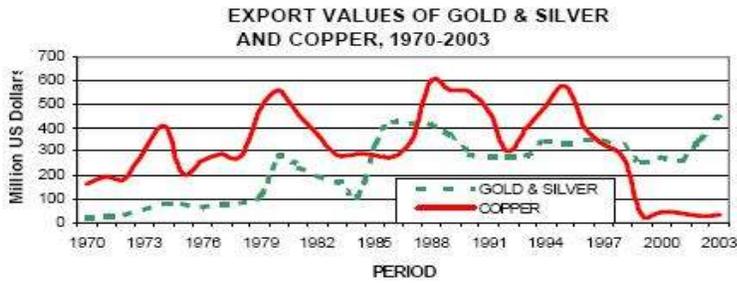
How Mining is conducted in the Philippines:

- ❖ Mining is a temporary land use for the creation of wealth, leading to an optimum land use in post-mining stage as consequence of progressive and engineered mine rehabilitation works done in cycle with mining operations;
 - Mining activities must always be guided by current Best Practices in environmental management committed to reducing the impacts of mining while efficiently and effectively protecting the environment.
 - Mining activities shall be undertaken with due and equal regard for economic and environmental considerations, as well as for health, safety, social and cultural concerns.
 - Conservation of minerals is effected not only through technological efficiencies of mining operations but also through the recycling of mineral-based products, to effectively lengthen the usable life of mineral commodities.
 - The granting of mining rights shall harmonize existing activities, policies and programs of the Government that directly or indirectly promote self-reliance, development and resource management. Activities, policies and programs that promote community-based, community-oriented and procedural development shall be encouraged, consistent with the principles of people empowerment and grassroots development.

B. Economic Benefits of Mining

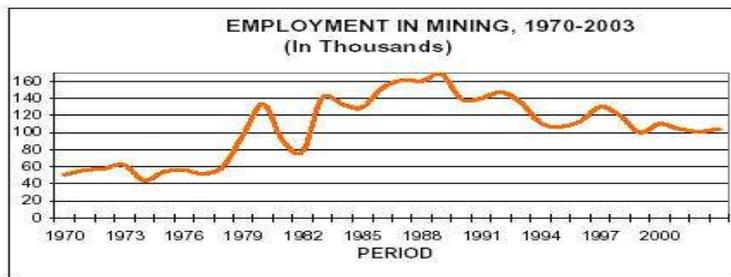
❖ Minerals Trading





❖ **Job Creation/ employment opportunities**

Mining is said to be not an employment intensive industry. This is attributed to its being dependent on large machineries especially for the big mining corporations. There are, however, still significant employment opportunities in mining. Local employment in the mining industry has been increasing in number since the revitalization of the mining industry. Furthermore, if its multiplier effect is taken into consideration, for every job generated in mining, four other jobs are also created outside it.



**Employed Persons by Major Industry Group
January 2003 -October 2004
(in thousands)**

Industry Group	Oct 2004	Jul 2004	Apr 2004	Jan 2004	Oct 2003	Jul 2003	Apr 2003	Jan 2003
Mining and Quarrying	96	114	138	123	101	112	105	99

**Employed Persons by Major Industry Group
January 2004 -April 2006
(in thousands)**

Industry Group	Apr 2006 /p	Jan 2006 /p	Oct 2005 /p	Jul 2005 /p	Apr 2005 /p	Jan 2005 /p
Total	33,024	32,384	32,876	32,521	32,217	31,634
Agriculture	11,420	11,834	12,175	11,990	10,992	11,359
Agriculture, Hunting and Forestry	9,992	10,428	10,767	10,595	9,629	9,949
Fishing	1,427	1,405	1,407	1,395	1,363	1,410
Industry	5,236	4,882	4,886	4,999	5,236	4,977
Mining and Quarrying	174	120	116	111	135	129
Manufacturing	3,177	2,977	3,046	3,068	3,201	2,995
Electricity, Gas and Water	145	133	108	111	119	128

➤ **Increase in National and Local Government Income [in terms of taxes]**

- Income tax – 32% of taxable income or minimum of 3% of sales
- Value-added tax – 10% of value added
- Royalty on mineral reservation – 5% of gross output of minerals
- Capital gains tax – 10 to 20% of value
- Customs duties – rate is set by the Tariff & Customs Code
- Tax on interest payments of foreign loans – 15% of interest
- Tax on foreign stockholders dividends – 15% of dividend
- Documentary stamp tax – rate depends on transaction
- Other national taxes & fees
- Business tax – Rates vary among local governments
- Real property tax – 2% of the fair market value of the property based on an assessment level set by the local govt during the year (plus a 1% special education levy)
- Registration fees – Rates depend on type and varies among local governments
- Occupation fees – P 50.00 per hectare per year. For mineral reservation areas, P 100.00 per hectare per year
- Community tax – Maximum of P 10,500.00 per year
- Other local taxes – Rate and type varies among local government

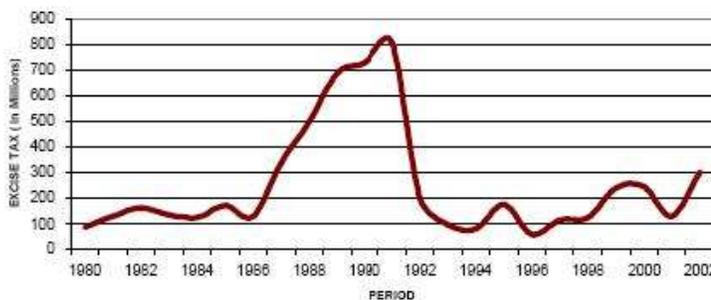
❖ Indirect taxes

- Fuel taxes
- Payments and fringe benefits of Filipinos directly employed
- Expenditures for development of host communities and for the development of geosciences and mining technology
- Withholding taxes on payroll, royalty payments to claim owners and surface owners and royalty payments for technology transfer

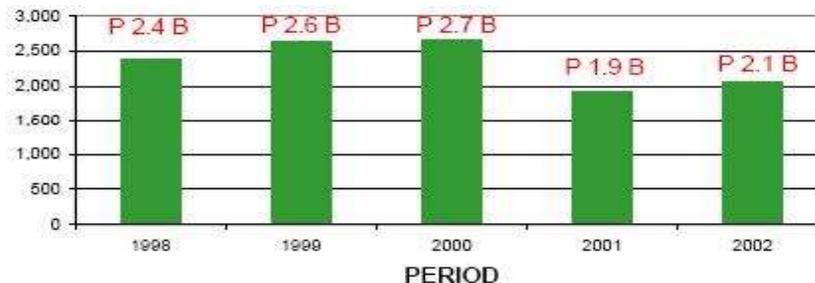
Payments to certain individuals or groups

- Special allowance as defined by the Mining Act – *one-time payment to surface / claim owners for the transition from PD 463 and EO 279 to the effectivity of the Mining Act*
- Royalties to indigenous cultural communities – *1% of the gross output of minerals*

EXCISE TAX ON MINERALS, 1980-2003



ESTIMATED TAXES & FEES FROM MINING



➤ Infrastructure development

It is said that the local mining communities are the ones who will greatly benefit from infrastructure development in mining projects. In order for the mining companies to efficiently extract and transport extracted minerals, they would have to create or improve road conditions in the area. Furthermore, the creation of health facilities, recreational facilities and other infrastructures for the companies' employees, can also be accessed by the affected local communities.

C. Negative effects of Mining to the society in general, and to the community in particular

- ❖ The negative effects of mining can be sub-divided into categories. These may be divided into three major divisions— **economic, environmental, and socio-cultural**. Each of these may have two or more sub-divisions.

Economic

- ❖ Contrary to claims that mining was the main driver for growth and industrialization, it was documented that the extraction and exploitation of minerals may lead or be the “cause of a lower-than-expected level in the economic growth of a country. Furthermore, natural resource exploitation can exacerbate conflict, corruption, weak governance and poverty. Furthermore, while investments in mining poured in, with an increase in more than 50% between 1995 and 2001, with equivalents of \$980 million to \$1.5 billion, mine production was still higher twenty years ago.⁶ It was even found out that countries who depended solely in their mineral industries are faring worse now than in the past.
- ❖ The inability of the mining industries to create jobs is also another reason why it is not a good driver for development. The increasing mechanization and improvements in the methods of mining brought about the decline in the use of manual labor in mining.
- ❖ Another issue being raised is the displacement of individuals who are engaged in farming, fishing and other local forms of employment. With the onset of mining operations, they are deprived of their former livelihood. Worse is that once the mines have stopped operating, they have nowhere to go back to. This is because the farmlands and fishing areas are polluted. This displacement alone is one of the reasons why mining was said to be detrimental to development.
- ❖ Infrastructure development that was earlier considered as a positive effect of mining also has negative dimensions to it. Infrastructural developments can bring certain problems:
 - Projects are very often heavily subsidized by the government and this causes the diversion of funds to from other areas
 - The facilities are often under the control of the mining firm and more often than not, local people are denied access to these
 - The infrastructures created lasts only as long as the mining companies last
 - The existing infrastructures can be destroyed by the mining companies themselves
 - The improvements in transportation [roads, bridges, pavements] can encourage unregulated migration, resulting in land-grabbing from local communities and uncontrolled deforestation⁷

Environmental

- ❖ Mining is a highly extractive industry. Tons of earth have to be moved, treated and processed in order to get a small quantity of the mineral. Because of this, mountains and hills have been quarried and were destroyed. Furthermore, for cases wherein mineral deposits are found in mountains, forests have to be cleared first before mining operations can commence.
- ❖ In order to extract the minerals, in the ores, certain chemicals are being used. Cyanide, and mercury are the most often used chemicals. These chemicals are highly dangerous and toxic.
- ❖ A practice of mining companies in order to cut and defray costs is to improperly dispose of their waste. This has caused siltation and further destruction of farmlands. Also, the dumping of wastes in the sea or other river systems in or near the mining area causes pollution
- ❖ There is also a channeling that takes place in the water reservoir. Water reserves are being used to clean mineral ores. For cases where there is a water scarcity, this reserve water instead of being used by farmers for their irrigations, it is channeled to for the use of mining operations.
- ❖ After mines have stopped operation, what is usually left behind are grim images and landscapes of the abandoned mine sites. Old mines can become reservoir of acidic mine water. So, even after the mining company has stopped its operation, they may still be a cause for environmental hazards.

⁶ Christian Aid and Piplinks. Breaking promises, making profits: Mining in the Philippines. December 2004.

⁷ Ibid.

Socio cultural

- ❖ There is an increasing tendency of mining companies to by- pass the indigenous peoples in their mining decisions. At times the free prior and informed consent principle is not taken into consideration. Mining operations often leads to direct assaults on the cultures of the indigenous peoples. Although there are legislations and laws clearly stating that there is a need to consider the welfare of any indigenous community. At times, mining corporations' actions are opposing those that are in the Indigenous People's Rights Act.
- ❖ There are also certain nuisances in the implementation of the free prior and informed consent principle. At times, indigenous peoples are taken advantage of when it comes to this provision. Christian Aid and Piplinks have documented instances and cases where this principle is said to be violated by mining corporations.
- ❖ In relation to the issue of indigenous peoples, their cultures are under assault. They are tied to their land, and removing them from their domains is taking something very important to them, not just because of its economic value, but also the age- old traditions and customs tied to it.
- ❖ In cases where there is resistance by the indigenous peoples concerned, they are being dealt with using the government's own instrumentalities— the police and the military. This further gives them or causes them insecurity.
- ❖ The increase in military presence in mining areas is also a cause for concern among many local inhabitants, both indigenous and not. There is always a looming threat making them unable to exert and push for the exercise of their rights.
- ❖ In Theodore Downing's study, he cites the World Bank's findings that "involuntary resettlement under development projects, if unmitigated, often gives rise to severe economic, social and environmental risks: productive systems are dismantled; people face impoverishment when their productive assets or income sources are lost; people are relocated to environments where their productive skills may be less applicable and the competition for resources greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost".⁸

⁸ Theodore E. Downing. Avoiding new poverty: Mining- induced displacement and resettlement. (58). April 2002.IIED and WBCSD.

SOCIAL, ECONOMIC, AND CULTURAL IMPACTS OF LARGE-SCALE MINING	
POTENTIAL IMPACT	AFFECTED SECTOR(S)
Communities and their sectors directly dependent on natural resources:	<ul style="list-style-type: none"> • Farming Sector • Forestry Sector • Fisheries Sector • Small-Scale Mining Sector • Indigenous Peoples
Social and cultural repercussions of integrating the offices and operational units of a corporation owned and managed by people from urban centers as well as its labor force	<ul style="list-style-type: none"> • Host Communities and adjacent ones • Indigenous Peoples
Forced or involuntary relocation and many forms of social disruption caused by mining projects	<ul style="list-style-type: none"> • Host Communities and adjacent ones • Indigenous Peoples
Threatened indigenous political systems of indigenous communities as the management of their traditional domains are effectively turned over to the mining contractor	<ul style="list-style-type: none"> • Indigenous communities
Commercial mining operations impact on ancestral domain rights – mining interests enjoy unrestricted access & exploitation rights over mineral resources found in ancestral domain areas	<ul style="list-style-type: none"> • Indigenous communities
Original Source: Leonen, Marvic and Begonia Francelyn, Mining Legal Notes and Materials (1995)	

Government's Role

- ❖ The government's primary role is to balance things up. How can it tap the resources and revenues that the minerals sector can give, while at the same time, minimizing or removing the economic, socio-cultural and environmental costs tied to it? This role may seem to be difficult, but then again, it is the government's duty in the first place. It should act as the bridge linking the business community on one hand and the involved local people on the other.
- ❖ The government also plays a very important role in sustainable development. The government has the power and authority to make relevant laws. Because of this authority it may set the atmosphere in order for sustainability in mining to take place. Furthermore, it has the power to impose sanctions to those who do not follow state laws.
- ❖ Section 8 of the Philippine Mining Act of 1995 states that the Department of Environment and Natural Resources "shall be the primary government agency responsible for the conservation, management, development, and proper use of the State's mineral resources including those in reservations, watershed areas, and lands of the public domain."
- ❖ Sec. 67 of the Act further gives the government greater power. "The mines regional director shall, in consultation with the Environmental Management Bureau, forthwith or within such time as specified in his order, require the contractor to remedy any practice connected with mining or quarrying operations, which is not in accordance with safety and anti-pollution laws and regulations, which is not in accordance with safety and anti-pollution laws and regulations. In case of imminent danger to life or property, the mines regional director may summarily suspend the mining or quarrying operations until the danger is removed, or appropriate measures are taken by the contractor or permittee".
- ❖ The Executive Order 270 given by Pres. Gloria Arroyo made sustainability as a guiding principle of the Minerals Action Plan. It highlights protection of the environment, safeguard of the ecological integrity of areas affected by

mining including biodiversity and small-island ecosystem, multiple land use and sustainable utilization of minerals.

Civil society roles

- ❖ Civil society roles basically is to serve as watchdogs guarding whether the government and the mining sector are doing their share of promoting and observing sustainability in mining. They serve as interest aggregators and articulators demanding for tangible and effective mining policies that push for sustainability.

Mining Sector Roles

- ❖ The basic role that the mining sector should observe are the laws and rules spelled out in their agreements with the government and the other parties involved in mining i.e. indigenous peoples, mining communities, etc.
- ❖ To practice or promote sustainability for the mining sector, mining companies ought to police their own ranks, observing at least the minimum standard, if the best mining practice cannot be followed.
- ❖ The mining sector plays also a role in promoting development in the mining community. As such, it has the obligation to provide for alternatives to whatever damage or inconvenience it produces to the people in the community.
- ❖ The Mining industry has a potential role for poverty alleviation. Mining often constitutes a high percentage of foreign direct investments in developing countries.⁹ These investments if channeled properly to developmental projects may help the people directly or indirectly.
- ❖ Respect cultures, customs, and values of individuals and groups whose livelihoods may be affected by exploration, mining, and processing.
- ❖ Recognize local communities and other affected organizations and engage with them in an open, transparent, and effective process of consultation and communication, from exploration through production to closure.
- ❖ Assess the social, cultural, environmental, and economic impacts of proposed activities and engage with local communities and other affected organizations in the design of community development strategies.
- ❖ Contribute to and participate in the social, economic, and institutional development of the communities where operations are located, and encourage the establishment of sustainable local and regional business activities.
- ❖ Reduce to acceptable levels the adverse environmental and social impacts on communities of activities related to exploration, extraction, and closure of mining and processing facilities.
- ❖ Respect the authority of national and regional governments—take into account their development objectives, contribute information related to mining and metals processing activities, and support the sharing of the economic benefits generated by operations.

IV. Recommendations

(Most of the Recommendations were taken from “Breaking promises, making profits. Christian AID and PIPLinks Report. December 2004)

Recommendations for the Government

- ❖ The presence of indigenous populations should be assumed unless proven and independently verified otherwise. Where indigenous people occupy an area, the full recognition of their rights should be given priority over negotiation with outside bodies over those rights.
- ❖ Companies and the government should respect the structure of decision making, and the leaders of the community recognised by the legitimate local population and by neighboring communities.
- ❖ Where a mining proponent exists, clear procedures for public notification should be followed. Information about the project and consultation period should be posted widely and made available in local languages.

⁹ Striking a better balance. Annex #3. Industry's views. Vol 3. Extractive Industries Review Reports. World Bank.

- ❖ Adequate time should be allowed to determine local opinion. This should be sufficient to allow for information dissemination and discussion – say six months.
- ❖ Information sharing and consultation with a community or indigenous people should be conducted and concluded in public, in an accessible place within the affected area.
- ❖ Where companies are found to have deliberately divided communities, this should be sufficient grounds for the denial or cancellation of a license.
- ❖ A local decision to reject mining should stand for a significant minimum period, say five years. This would reduce the threat of persistent harassment.
 - ❖ The deployment of military or paramilitary forces in an area prior to or during consultation is unacceptable. It should constitute sufficient grounds for the termination of any negotiation or license.
 - ❖ To ensure that these provisions are satisfactorily complied with, a monitoring body which enjoys the confidence of all parties – especially the affected community – should report independently on the process. It is clearly unsatisfactory that the government agencies NCIP and DENR are the main arbiters in determining local opinion on controversial decisions in which central government has a clear vested interest.
 - ❖ Any legal contests to the granting of a Certificate of Ancestral Domain Title should be secondary and should not cause the displacement of the indigenous community while the suit is pending.
 - ❖ Government should decisively investigate and prosecute any reported human rights violations. As the UN Commission on Human Rights has no power to prosecute, a specific government agency should be given the power to do so in a permanent, rather than merely an ad-hoc, manner.
 - ❖ The government should ensure that Strategic Lawsuits Against Public Participation – SLAPP Suits – lodged against community members opposing the entry of mining are quickly disposed of by the lower courts.
 - ❖ It must ensure that environmentally critical areas – especially watershed areas – are closed to mining.
 - ❖ It must ensure that food security is prioritised. Agricultural and fishing resources from which the community directly sources its food should be protected.
 - ❖ It should pursue the findings and recommendations of UN special rapporteur Rodolfo Stavenhagen by making legal assistance and access to justice readily available to affected communities.
 - ❖ Countries that are home to transnational companies should enact legislation that will require those companies to operate to the same standards wherever they operate in the world. Home countries whose nationals and corporate entities inflict damage in developing countries should suffer some form of penalty. A system in the home countries should be created to allow complaints to be filed by affected communities – the result of which can be the basis for the revocation of licences in the home country.

For the National Government

Capacity Building of Local Stakeholders*

- ❖ The MGB should take a lead in establishing a roll out of the capacity building workshop in regions where mining related issues are “explosive” and divisive”.
- ❖ The rollout activities should be incorporated as a major program in the drafting of the Minerals Action Plan for 2004.
- ❖ The MGB should partner with other stakeholders such as the Regional Development Council (RDC) and the Provincial/Municipal government.
- ❖ Efforts should be made to invite MGB personnel from the Mine Environment and Safety Department to attend the workshop, and to ensure that their reward and/or incentive systems for personnel behaviour are in accordance with the training’s.

Institutional Mechanism*

- ❖ The government should strengthen its roles as a facilitator, a partner and a demonstrator of best practices to encourage greater corporate social responsibility in the mining sector.

*Taken from “Strengthening Developing Country Government’s Engagement with Corporate Social Responsibility. Colin Hubo, Julia Lewis, Michael Warner. January 2004.

- ❖ The MGB and BOI should continue to engage in dialogues with mining companies to understand the drivers and constraints facing them in the execution of their CSR activities and with local stakeholders to understand their concerns.

Investment Promotion*

- ❖ The government should encourage increased transparency and reporting of CSR practices of firms operating in the Philippines.
- ❖ The BOI may also consider presenting information regarding the CSR enabling environment to potential investors.
- ❖ The government should keep a watching brief on the Extractive Industry Transparency Initiative.
- ❖ The MGB needs to achieve vertical coordination on mineral resources matters and horizontal coordination of the mineral-related agencies, as well as within the agencies themselves.
- ❖ The government may wish to consider the merits of a new initiative from the Global reporting Initiative which seeks to encourage greater public sector reporting.

For the Local Government

Stakeholders dialogue- Social Acceptance of mining projects**

- ❖ LGUs need to strengthen public communication and consultation procedures in all phases of mining stages.
- ❖ As a bridge between the community and the company, LGUs should develop standards to improve the method and quality of feedbacking information to all stakeholders concerned.
- ❖ LGUs should increase partnership agreements with mining companies during the Environmental Impact Assessment process.

Local Planning*

- ❖ LGUs should incorporate and integrate mining development plans in the development plans of local government units.
- ❖ LGUs should have enhanced capacity in land-use planning, zoning and mapping technologies through cross-fertilization and the transfer of best practices in environmental and social management of mining projects.

Recommendations to the mining industry

- Companies should support improved regulation at both national and international level. Companies that operate ethically will benefit from minimum standards that prevent other companies undercutting them by following poor practice.
- The mining industry cannot disown its historical responsibilities. Communities live with the consequence of mining many years after a mining company has gone. Where mining has negatively impacted communities, those responsible should make full reparations.
- As a matter of policy, mining companies should desist from the use of paramilitary troops.
- Mining companies should recognize and respect the right to free, prior informed consent and the right of communities to say no to a mining project.
- Companies should operate to the same standards in other countries as they do in their home countries, except where host countries have higher standards – these should be respected. Home country governments should enforce these standards.

Others

- International law should ensure that minimum environmental and social standards are made binding for all companies. This will prevent host countries lowering standards to attract investment.

* * taken from "Strengthening Developing Country Government's Engagement with Corporate Social Responsibility. Colin Hubo, Julia Lewis, Michael Warner. January 2004.

- There needs to be a radical shift in the investment regulation advice given to all developing countries. The international community, including the World Bank, is pressurising countries to reduce pro-poor regulations on foreign investment, such as legal requirements that foreign companies source goods and labour locally and reinvest a significant proportion of their profits. Individual countries find it very hard to resist this global trend.
- International norms exist regarding minimum labour, environmental and human rights standards. The international community should develop these norms into binding laws with effective monitoring and sanctions imposed on offending companies. The development of effective and credible monitoring is a vital component of such a regime. Free-trade agreements sometimes include clauses that make the lowest national standard the norm, but the opposite – the highest national standards – should apply. National and local governments should have the right to impose even higher environmental and social standards if they wish.
- Influential organizations, such as the World Bank and other donors, should stop putting pressure on client countries to attract investment by reducing protective regulation and offering incentives, thus encouraging a race-to-the-bottom. Rather they should persuade developing-country governments that without certain conditions in place, investment in mining and similar sectors will not lead to poverty alleviation, as the EIR indicates.

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Note: Tables, graphs, maps, and other graphics were taken from the Mines and Geosciences Bureau website, unless otherwise stated.