

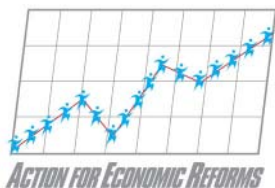
# Transparency Issues in the Philippine Mining Industry

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## Towards Tax Justice

*Policy Research Paper*

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The international community has recently seen progress in promoting transparency in extractive industries. The Dodd-Frank Act, passed by the American legislature in July 2010, required US-listed energy and mining companies to regularly disclose payments made to the governments of the countries in which resources were extracted. Applications and membership to the Extractive Industries Transparency Initiative (EITI) have increased, with Indonesia as the first ASEAN nation to subscribe to the process. Recently, French President Nicolas Sarkozy expressed his intention to support an EU-wide legislation obliging oil, gas and mining companies to publish payments made in countries where they operate.

In the Philippines, the advocacy for transparency in mining has taken root and an awareness of this issue has begun to grow – within civil society as well as in government. However, the advocacy for transparency operates in a context of increased opposition to mining.

Against the backdrop of an international clamor for greater transparency in extractives; amidst a vigorous national debate on the benefits and problems caused by current mining policy, this paper seeks to initiate an examination of revenue transparency issues in the Philippine mining industry.

Other transparency controversies are related to the implementation of mining policy in the country. These revolve around the implementation, or, as claimed by those who oppose mining, the manipulation of the consent process that is required by law; the ineffective regulation of the industry particularly in terms of its damage to local environments and the perception that the rewards of mining operations largely accrue only to mining companies while the costs, including human rights violations, are borne by local populations. However, this paper focuses on revenue transparency, although other issues are taken up as part of the context in which revenue transparency issues exist.

## Introduction

This study is focused on a subsector of the industry, referred to as “large-scale metallic mining”<sup>1</sup>—around which the above-mentioned controversies have revolved. Small-scale mining actually comprises a significant amount of the sector’s output, but it is governed by another law and regulated by another set of government agencies/offices. Thus, inclusion of small-scale mining revenue issues in this paper would be impractical.

Given the complexity of transparency issues—which range from data gathering and availability to bureaucratic processes across a number of government agencies, this paper is not able to tackle the transparency question comprehensively. The objective is to present a preliminary study, one which will identify the more striking gaps in information and to identify areas for further study in the future.

Primary information for this paper was sourced from a series of Focused Group Discussions (FGDs) with community members and civil society leaders in eight localities where mining operations have located. These were conducted by Bantay Kita<sup>2</sup> from November 2010 to January 2011. The FGD results were enhanced by Key Informant Interviews and exchanges (formal and informal) with industry stakeholders who were willing to cooperate with the inquiry.

Secondary data was sourced from government agencies and other studies. Disaggregated data was available for some categories, e.g., value of production for large-scale, small-scale and non-metallic mining. But this was not the case for other data, such as taxes. The lack of disaggregation presented an obstacle to making certain evaluations, for example, on the contribution by large-scale mining operations to government revenues.

## The Mining Controversy in the Philippines

The revitalization of mining, under RA 7942, the Mining Act of 1995, has bred many questions and much opposition, almost everywhere large-scale mining operators have located. Depending on one’s perspective, diametrically opposed realities surround the Philippine mining industry. One view is that of its advocates and beneficiaries, who are wont to enumerate the industry’s contributions and describe its activities as “sustainable or responsible mining.” An opposite view comes from localities that have found themselves “host” to mining operations.

*The Official Paradigm.* In 1995, the Philippine Legislature passed Republic Act (RA) 7942, “An Act Instituting a New System of Mineral Resources Exploitation, Development, Utilization and Conservation”. It defined the government’s intent to promote the “rational exploration, development, utilization and conservation” of the country’s rich mineral resources through public-private partnerships. In the official view, the country’s rich mineral resources were an underutilized source of economic growth. The provisions of RA 7942 purported to “enhance national growth in a way that effectively safeguards the environment and protects the rights of affected communities”<sup>3</sup>

<sup>1</sup>Unless otherwise specified, the term “mining” in this paper refers to sub-sector, large-scale mining. The term “mining industry” is used to refer to the industry as a whole.

<sup>2</sup>Bantay Kita is a national network of civil society organizations advocating greater transparency in the extractive industries. The author participated in a number of these field work activities.

<sup>3</sup> RA 7942, Section 2.

The Arroyo government (2000–2010) was intent on promoting investments in mining and had serious plans for its role in the Philippine economy.

*In her declaration of a policy shift in mining “from tolerance to promotion”, minerals development was elevated among the priority economic activities in the country during her presidential tenure.... Minerals development is now an important component of the Medium Term Philippine Development Plan 2004–2010.<sup>4</sup>*

During that administration, the mining industry was promoted in order to attract foreign investment, contribute to exports, employment, economic growth and to boost government revenues, i.e., generate resources to reduce poverty and promote local development.

*Coupled with boosting mining investments, the Government pursues a vigorous campaign to protect the environment and the rights of affected communities. This ensures that the industry will develop with – not against – the environment and the local communities.*

*We envision not just attracting new investors, but also making certain that they will stay and, at the opportune time, look beyond mining, towards our country’s other investment opportunities, not the least of which is ecotourism. The same areas opened for mining, once rehabilitated, will become productive habitats for healthy new communities—living proofs that responsible mining is worth investing in and promoting.<sup>5</sup>*

Executive Orders (EOs) 270 and 270-A issued by Arroyo, defined the so-called “sustainable/responsible mining” paradigm that her government sought to popularize:

- f) Protection of the environment shall be of paramount consideration in every stage of a mining operation; mitigation and progressive rehabilitation measures shall be integral components of mining operations.
- g) The ecological integrity of areas affected by mining operation, including biodiversity resources and small island ecosystem, shall be upheld in order to protect public welfare, safety and environmental quality.
- h) Mining operations shall be pursued within the framework of multiple land use and sustainable utilization of mineralized areas.
- i) Remediation and rehabilitation of abandoned mines shall be accorded top priority to address the negative impacts of past mining projects.
- j) The economic and social benefits derived from mining shall be equitably shared by and among various units of government, as well as the affected communities.
- k) Sustained information, education and communication campaign shall be vigorously pursued, jointly with the industry and other stakeholders, about the minerals industry for the purposes of enhancing public awareness and respect for the rights of communities, and reaching informed decisions on mining and related projects both at the national and local levels.
- l) Continuous and meaningful consultation process with the industry and all other stakeholders shall be instituted, to integrate concerns on minerals in resource management policy and planning.<sup>6</sup>.... The foundations for good governance based on transparency, accountability, partnership, equity, efficiency, and sustainability shall be adopted in the implementation of this Executive Order.<sup>7</sup>

<sup>4</sup> Mines and Geosciences Bureau (MGB), Briefing Kit on the Philippine Minerals Sector, Dec. 2004, p.1

<sup>5</sup> Reyes, Angelo T., Former Secretary of the Department of Environment and Natural Resources, [Investor’s Prospectus on Philippine Mining](#), 2007, p.5.

<sup>6</sup> President Gloria Macapagal-Arroyo, Executive Order (EO) 270-A, April 20, 2004, Section 1.

<sup>7</sup> EO 270-A, April 20, 2004, Section 3, Implementing Strategies.

The Arroyo Administration actively propagated the illusion that it was engaged in promoting “sustainable/responsible mining.” The mining industry was expected to deliver a slew of benefits, at best without costs to the environment and local communities and at worst, accompanied by adequate measures to compensate for or offset these costs.

Mineral resource exploration, development, utilization and conservation shall be governed by the principle of sustainable mining, which provides that the use of mineral wealth shall be pro-environment and pro-people in sustaining wealth creation and improved quality of life under the following terms:

1. Mining is a temporary land use for the creation of wealth which leads to an optimum land use in the post-mining stage as a result of progressive and engineered mine rehabilitation work done in cycle with mining operations;

2. Mining activities must always be guided by current best practices in environmental management committed to reducing the impacts of mining and effectively and efficiently protecting the environment;

3. The wealth accruing to the Government and communities as a result of mining should also lead to other wealth-generating opportunities for people and to other environment responsible endeavours;

4. Mining activities shall be undertaken with due and equal emphasis on economic and environmental considerations, as well as for health, safety, social and cultural concerns ...<sup>8</sup>

Ironically, the Department of Environment and Natural Resources (DENR) was tasked by law to promote the mining industry, to regulate it and to protect the environment that it encroaches upon as well as the biodiversity that it depletes.<sup>9</sup>

*Opposition from mining localities.* The experience of local communities has been that mining has not brought progress but dispossession and displacement; has threatened livelihoods; infringed on watershed areas, denuded forests and caused environmental vulnerability; has flagrantly disregarded indigenous and human rights. These communities and many local government officials have increasingly expressed their opposition to the presence of large-scale mining in their areas.

Conflicts have arisen from disagreements on how much displaced locals are compensated for their lost homes and livelihood sources. Other conflicts have arisen from charges of deception on the part of mining projects. Locals assert that the consent process was flawed and manipulated, that it did not adequately apprise them of the effects of mining; that the indigenous representatives who signed agreements with the companies were not their legitimate leaders; that legal shortcuts and even bribery were employed to secure local “consent.”<sup>10</sup>

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<sup>8</sup> Revised Implementing Rules and Regulations (IRR), DENR Administrative Order (DAO) No. 96-40, Section 3 Governing Principles. (Emphasis added)

<sup>9</sup> When asked about this apparent conflict of interest for the DENR, Acting Director of the Mines & Geosciences Bureau, Leo L. Jasareno, stated that it had been debated at the ASEAN level whether it was more effective to have separate agencies in charge of mining and protecting the environment and decided that one agency to do both would yield a more balanced approach to the two objectives. According to him, the Philippines, Thailand and Malaysia have adopted this organizational arrangement.

<sup>10</sup> For a more comprehensive discussion on these and related issues, see Bantay Kita’s National Report on Transparency in Philippine Mining.

According to the MGB, 7 out of 16 mining projects in the advanced exploration and feasibility financing stages and 25 out of 28 projects in the development and expansion stages are facing conflicts, i.e., opposition from local populations and/or local officials.<sup>11</sup>

. The promotion of mining by the national government appears to have failed in balancing its three supposedly non-conflicting objectives— 1) promoting mining investments, 2) achieving local development and 3) protecting the environment. In fact, it appears to have succeeded only in addressing the first at the expense of the latter two. Thus, opposition to the presence of mining ventures has grown out of the problems encountered by so-called “host” communities and local populations.

A number of local legislatures have declared mining moratoriums or banned mining operations. Civil society organizations have protested, filed legal cases against mining companies and/or government agencies that are perceived to have facilitated the operations of mining companies without exercising due diligence.

There is also concern that that the Law itself is defective and as a result three alternative mining bills have been filed in the Philippine Legislature. Guidelines for the Free, Prior and Informed Consent (FPIC) currently applied by the National Commission for Indigenous Peoples (NCIP) are also being reviewed by the Congressional Committee on Indigenous Cultural Communities.

Small-scale gold mining is also controversial in many respects. Local and national government units have different perspectives on the industry. For local governments, small-scale mining is a source of livelihood and revenue for local government units (LGUs). From the national level perspective, it is seen as a sector that lacks integration into the formal economy and is therefore less regulated—in terms of taxation as well as environment impact.

A new administration, headed by President Benigno Aquino III, came to power in 2011. It is widely believed to be more transparent and open to governance reforms. The recently drafted Medium-Term Philippine Development Plan (MTPDP) for 2011–2016, acknowledges the controversies that have plagued mining projects.

*... while the benefits of mining are foreseen as a driver for economic growth, we have also seen its negative impact not only on the environment to the communities as well especially the Indigenous People. There is also an existing conflict in the use of the land—mining versus conservation and protection. The mining industry is also plagued by several social issues that include health, human displacement and disrespect to indigenous people and cultures. There is a strong opposition of local government units to large scale mining....<sup>12</sup>*

<sup>11</sup> Mines and Geosciences Bureau, [www.mgb.gov.ph](http://www.mgb.gov.ph)

<sup>12</sup> National Economic Development Authority (NEDA), [Final Draft of MTPDP Report as of 3 December 2010](#), Theme Number 5, “Ensuring Ecological Integrity”, Chapter 9, Subheading: Minerals, p. 5.



## **Structure of the Industry and Contribution to the Economy**

### ***Contractual agreements for large-scale mining projects.***

Following the exploration<sup>13</sup> period, large-scale mining enterprises may enter into any one of four types of mineral agreements. RA 7942 defines three contractual arrangements for enterprises that are 60 percent owned by Filipino citizens. In Mineral Production Sharing Agreements (MPSAs), the private contractor provides funds, technology, management, and personnel and government participation is its ownership of the mineral resources. In Co-production Agreements (CA) and Joint Venture Agreements (JVAs), the government provides additional inputs and its shares from production are negotiated with the private contractor. A fourth type of agreement, the Financial and Technical Assistance Agreement (FTAA)<sup>14</sup> is similar to the MPSA but applicable to non-Filipino owned enterprises.

The number of approved and registered MPSAs has steadily increased over the past decade, from 162 in 2001 to 275 in 2009. In 2009, there were only three FTAAAs and no Joint Venture and Co-production Agreements.

However, the number of applications for Exploration Permits, MPSAs and FTAAAs is much greater than the current number of registered/approved permits/agreements. In 2009, there were 39 registered Exploration Permits but 1575 pending applications. Similarly, there were 275 registered MPSAs but close to four times as many applications and while there were only three FTAAAs in existence, there were 52 pending applications for FTAAAs.

In 2010, the national government (DENR-MGB) embarked on a program to filter these applications more carefully and have eliminated some 1200 applications for lack of merit and/or viability.<sup>15</sup>

### ***Composition of the industry.***

The mining industry in the country is composed of large-scale metallic mining which is undertaken by large local and foreign corporations that employ sophisticated technology; small-scale gold mining practiced largely by marginalized local communities who employ labor-intensive traditional technology and non-metallic mining or quarrying of non-metallic resources, such as sand and gravel.

Notwithstanding the large number of approved and registered contractual agreements, many large-scale mining contractors are still in the

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<sup>13</sup> Exploration permits grant the "right to enter, occupy and explore the area" <sup>12</sup>. They are valid for two-year periods after which they may be renewed or relinquished.

<sup>14</sup> The FTAA became controversial as the Philippine Constitution does not allow foreign exploitation of the country's natural resources. In December 2004, the Supreme Court declared it unconstitutional but later in the year, reversed itself with the argument that government has the prerogative to enter into financial and technical assistance arrangements with foreign entities in order to pursue development objectives.

<sup>15</sup> Interview with Leo L. Jasareno, Acting Director, Mines and Geosciences Bureau, June 9, 2011.

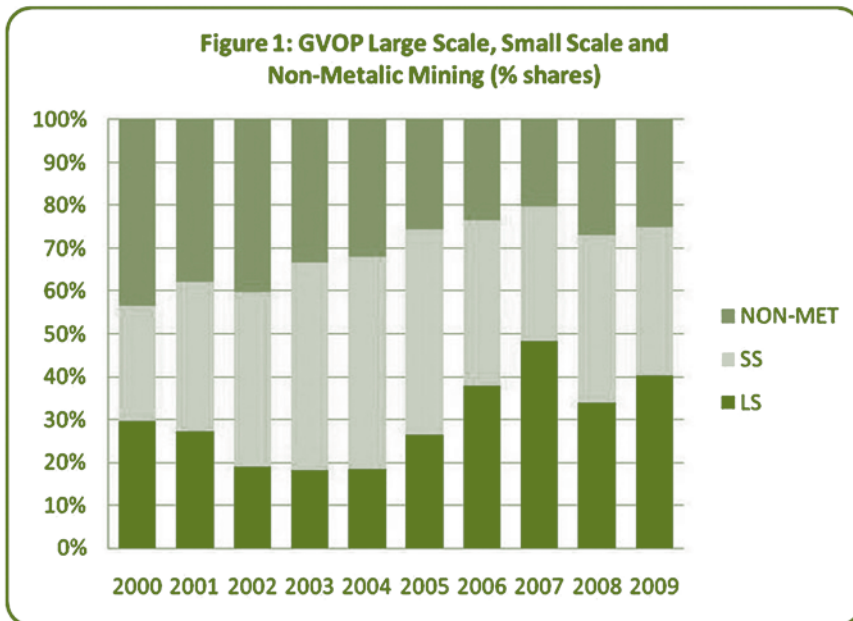


stage of pre-commercial operations. As of 2009, there were only 22 operating mines—eight gold mines, three copper mines, one poly-metallic mine, one chromite mine and 10 nickel mines in operation. Most of the production of these mines is exported since only one copper smelting and one nickel processing plant operate in the country.

The MGB admits to have no more than a rough estimate of the number of small-scale gold miners in the country. The Acting MGB Director estimates that there must be about 300,000 small-scale mining operations throughout the country. He admitted that the MGB does not have accurate data on small-scale mining because they are under the jurisdiction of local governments units (LGUs). He stated that the MGB has repeatedly asked LGUs to supply them with information but only a few cooperate.<sup>16</sup> The MGB has embarked on a pilot project that will apply to 15 regions. The project involves an agreement between the national government and these regions on uniform rules and reporting requirements on small-scale mining operations.<sup>17</sup>

MGB data show that in 2009, there were 2359 non-metallic mines. The number fluctuates but has remained at approximately 2500 since the beginning of the decade. The number of operating non-metallic mines has decreased only slightly, from 2666 in 2000 to 2359 in 2009. In addition, there were 16 cement plants.<sup>18</sup>

At the start of the decade, in 2000 and 2001, the biggest share in production value was from non-metallic mining. By 2002 up to 2006, small-scale miners were the biggest producers. Production value of large-scale mining only outstripped the two other categories in 2007 and 2009. Unless world prices for minerals other than gold take a dive, preliminary figures for 2010 and 2011 indicate that this may represent a future trend.



Source: MGB, Mining Industry Statistics released on February 10, 2010, November 15, 2010 and May 6, 2011

<sup>16</sup> The MGB has regional offices which in the absence of LGU cooperation could secure better estimates of small-scale mining activity unless they have acquired reasons to lack forthrightness.

<sup>17</sup> Interview with Acting MGB Director, Leo L. Jasareno, July 8, 2011

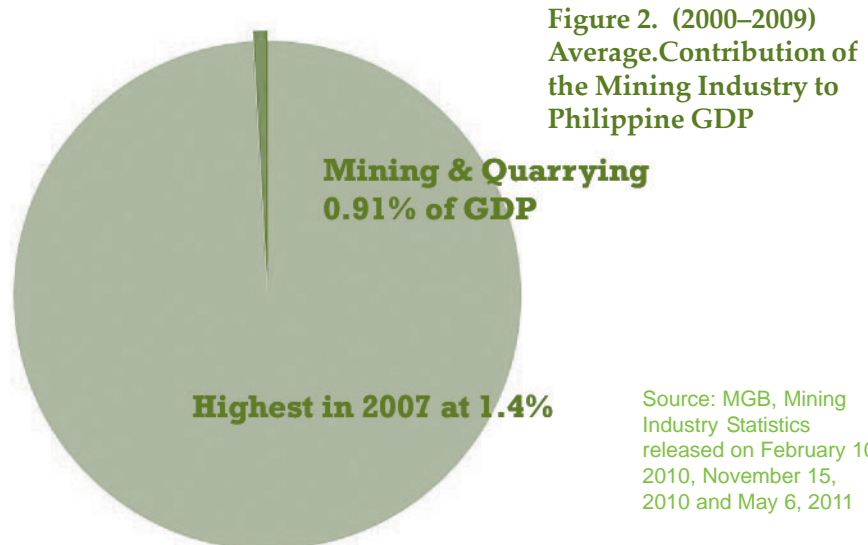
<sup>18</sup> Mines and Geosciences Bureau, "Mining Industry Statistics", May 6, 2011.

From 2000 to 2009, the value of production generated by large-scale mining increased by 365 percent. Growth in the production value for small-scale mining was 343 percent but non-metallic mining grew by only 242 percent over the same period. However, the relative smaller growth in the value of production of non-metallic mining may be explained not only by the increase in metallic mining activities but also by the relatively lower market prices fetched by non-metallic minerals.

### **Contributions to the Philippine Economy.**

The total contribution of the mining industry—metallic and non-metallic (quarrying)—to the Philippine economy has been, at best, modest.

Up to 2005, mining and quarrying accounted for less than one percent (from 0.6 percent to 0.9 percent) of GDP. From 2005 onwards, the mining industry's contribution increased to one percent and above. To date, its greatest contribution to Philippine GDP has been 1.4 percent in 2007. On the average, from 2000 to 2009, the mining industry accounted for no more than 0.91 percent of Philippine GDP.<sup>19</sup>



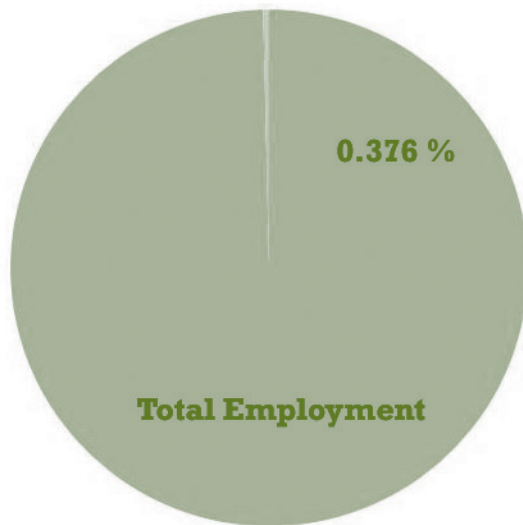
The industry's contribution to total Philippine employment is likewise modest, i.e., no more than 0.3 percent from 2000 to 2004, rising to 0.4 percent from 2005 to 2007, and to 0.5 percent in 2008 and 2009. On the average, the industry's contribution to total employment during the decade was no more than 0.376 percent.

Since the data are not disaggregated, it is not possible to identify the relative contributions of each mining sub-sector. However, it can be surmised that small-scale and non-metallic mining are more labor-intensive sub-sectors since they employ more primitive technology. Large-scale mining, which employs sophisticated machinery and technology, is less likely to employ as much labor.<sup>20</sup>

<sup>19</sup> MGB, Mining Industry Statistics, based on National Statistics and Coordination Board (NSCB) findings.

<sup>20</sup> Dialogue with community members in the Bantay Kita field work revealed that most of the employment provided by large-scale miners is in the early stages of operating—for clearing of the area to be mined.

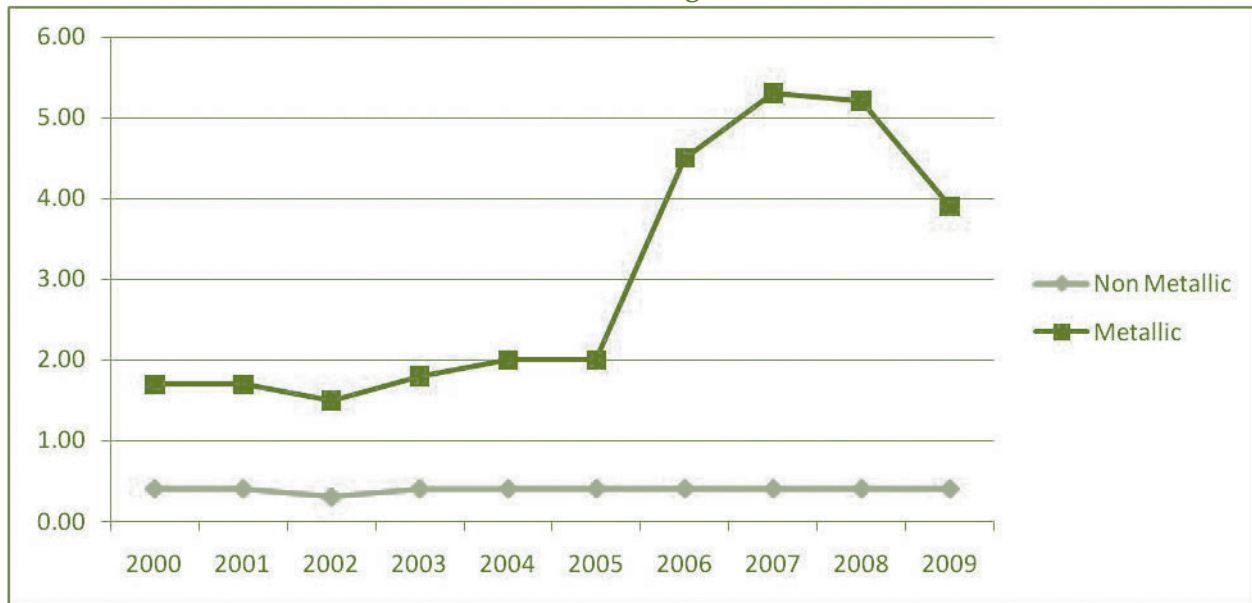
**Figure 3. Average Share of the Mining Industry in Total Employment, 2000-2009**



Source: MGB, Mining Industry Statistics released on February 10, 2010, November 15, 2010 and May 6, 2011

The more significant contribution of the industry is to Philippine exports. The export shares of metallic minerals and mineral products have more or less steadily increased from 1.7 percent of total exports in 2000, to two percent in 2004, to 4.5 percent in 2006 and over five percent by 2007. On the average, from 2000–2009, mineral exports accounted for approximately three percent of total Philippine exports. Non-metallic products contributed less than half of one percent to total exports and have demonstrated little or no growth.

**Figure 4. Comparative Contributions to Total Phil Exports, Metallic and Non-metallic Mining, 2000–2009, (%)**



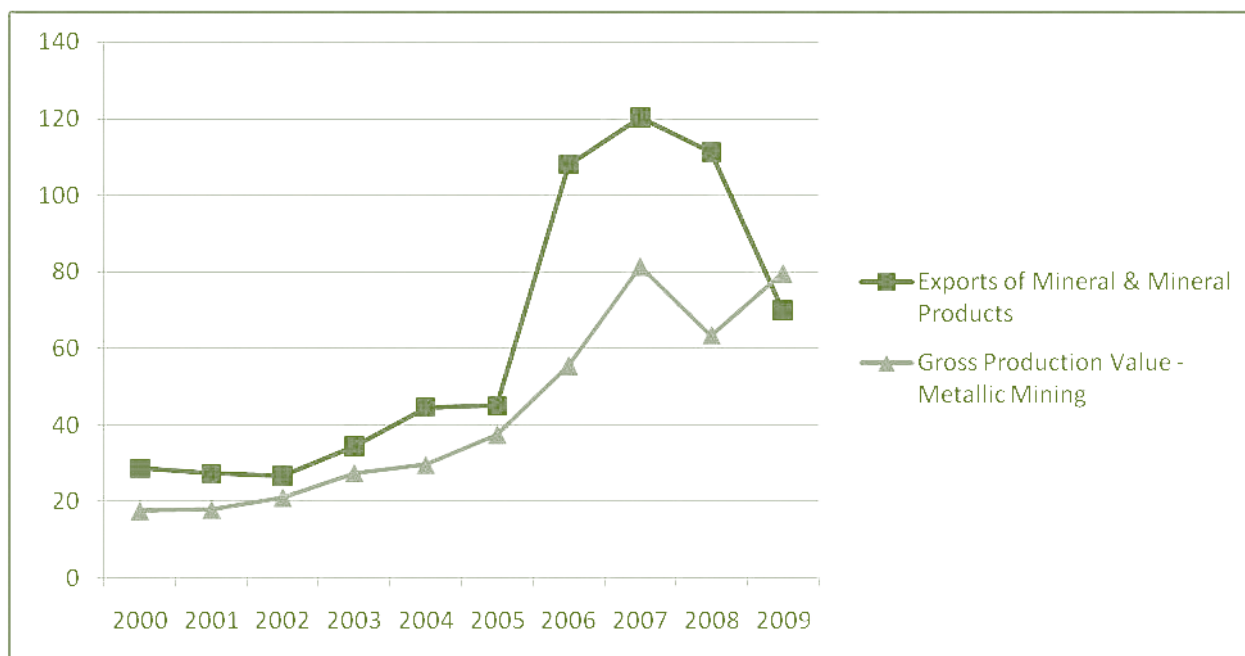
Source: MGB, Mining Industry Statistics released on February 10, 2010, November 15, 2010 and May 6, 2011

## A Discrepancy.

From 2000–2008, the value of metallic exports was substantially greater than the value of metallic mineral production. The data show that during that period, from 17 percent (2005) to 43 percent (2008) of minerals and mineral products exported were not reflected in mineral production data. Only in 2009 were export levels below production levels. But the trend was restored for 2010 data.<sup>21</sup>

A partial explanation for the discrepancy may be that production by the copper smelting and nickel processing plants are not included in production data of metallic mining but form part of exports. However, the sizeable gap and the consistent occurrence of the gap between mineral exports and production is too great to be explained by accounting errors or recording omissions and strongly suggests that mineral production was being grossly under-declared.

**Figure 5. Exports of Minerals and Mineral Products and Gross Value of Metallic Mineral Production, 2000–2009 (in B PhP)**



Source: MGB, Mining Industry Statistics released on February 10, 2010, November 15, 2010 and May 6, 2011

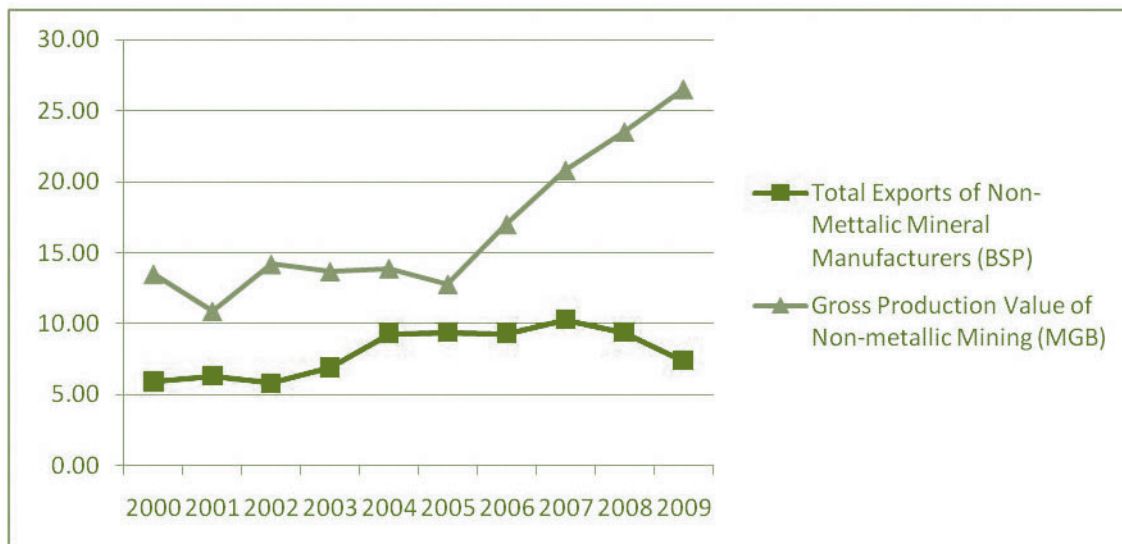
Regional offices of the MGB issue Ore Transport Permit (OTP) and/or Mineral Ore Export Permit (MOEP) upon field verification. The verification process includes a determination of the value of the product. This procedure should be a source of accurate data for both production and exports. Permits for small-scale and non-metallic miners are issued by the LGUs.

Whatever the origin, the gap between mineral exports and production reflects negatively on the efficiency with which the industry is being regulated and has direct implications for tax and revenue generation by the government.

In contrast, no such inconsistency is present in data for non-metallic mining. A comparison of non-metallic exports and production data shows that over the last decade, production is greater than exports, implying that a substantial portion of production, from 33 percent to 72 percent, was absorbed by the domestic economy.

<sup>21</sup> MGB data for 2010 is preliminary.

**Figure 6. Exports of Non-Metallic Minerals vs. Gross Production Value of Non-metallic Mining, 2000–2009 (in B PhP)**



Source: MGB, Mining Industry Statistics released on February 10, 2010, November 15, 2010 and May 6, 2011

## Philippine taxes.

Unless they are eligible for exemptions, Philippine enterprises pay taxes on net income (30 percent), customs duties on imported capital equipment and spare parts, 12 percent value-added taxes on imported and locally acquired goods and services, withholding taxes on interest earnings in local banks and when applicable, documentary stamp and capital gains taxes. In addition, excise taxes are imposed on some industries, particularly alcohol, tobacco, petroleum and mining. All mining — metallic and non-metallic—is subject to a two percent excise tax based on the actual market value of gross output.<sup>22</sup>

Like other Philippine enterprises, mining companies are also required to deduct and remit income taxes from salaries paid to their personnel, and withholding taxes— from payments made to suppliers, from royalties paid to other parties for surface rights<sup>23</sup>, on interest payments for foreign loans, from dividend payments made to foreign stockholders, etc.<sup>24</sup>

<sup>22</sup> DENR, Department Administrative Order(DAO) 96-40, Section 217,

<sup>23</sup> RA 7942 requires that contractors pay a minimum of one percent of the value gross production output to indigenous peoples' in whose territories they operate in.

<sup>24</sup> The Mining Act states that indigenous peoples are to be paid at least one percent of gross output

## Fiscal Issues

All these taxes are paid to the national government and collected by the Bureau of Internal Revenue (BIR).

Enterprises are also liable for a number of tax obligations to local government units—business taxes, real property taxes and community taxes among others. The payment of business taxes allows enterprises to secure a business permit to operate in the area. Real property taxes are imposed on land, machinery and other equipment and improvements on real property. The rates for these taxes are imposed according to locally legislated tax codes and collected by the treasurers of the local governments concerned.

Unless they own the land, mining companies pay occupation fees in lieu of real property taxes on land.<sup>25</sup> The DENR has set occupation fees at PhP75 per hectare for non-mineral reservations and PhP100 for mineral reservation areas.<sup>26</sup> One fiscal issue that relates to these fees is their relatively low rates. In several localities, small farmers stated that the real property tax rates imposed on agricultural land were as much if not more than occupation fee rates.<sup>27</sup> However, it is difficult to assess how widespread this situation is because each LGU has its own tax code.

### ***Fees and Charges.***

In 1995, fees for the processing of applications for Exploration Permits and Mineral Agreements were set at PhP 50,000 with an additional PhP 5,000 for registration. This applied to each initial application or subsequent renewal of an application. Considering that the maximum area for exploration for a corporation is 32,400 hectares<sup>28</sup>, the application fee translated to a mere PhP 1.70 per hectare. Fortunately, application fees were raised in 2005 to PhP60 per hectare. In the case of mineral agreements (MPSAs, Co-PA, JVs), there was an additional condition that the total fee be not less than PhP50,000 per application; for FTAAAs, the minimum was set at PhP 100,000.<sup>29</sup>

In addition to the above, mining companies that operate in mineral reservations<sup>30</sup> are obliged to pay five percent of the market value of gross output as royalties to the national government.<sup>31</sup> Royalties for mineral reservation areas are paid to and collected by the Mines and Geosciences Bureau (MGB).

In quest of increasing government revenues from the industry, the DENR-MGB recently recommended to the President that all mining areas be declared as mineral reservation areas in order to subject companies to the five percent royalty. Mining companies are vigorously objecting to this proposal.

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<sup>25</sup> Taxes enumerated in this and the previous paragraphs are those commonly imposed but is not a complete list of tax liabilities.

<sup>26</sup> DENR, DAO 2005-08

<sup>27</sup> Comments of some farmer participants in Bantay Kita FGD fieldwork.

<sup>28</sup> DAO 96-40, Revised IRR of the Mining Act, 1995.

<sup>29</sup> DAO 05-08

<sup>30</sup> DAO 96-40 (section 5), defines mineral reservations as “areas established and proclaimed as such by the President upon the recommendation of the Director through the Secretary...”

<sup>31</sup> DAO 96-40, Section 13.



## ***Environmental Protection.***

Additional fees and expenditures are required of large-scale mining contractors for the purpose of environmental protection. These enterprises submit Environmental Protection and Enhancement Programs (EPEPs) that are approved by the DENR and further broken down into annual programs (AEPEP). Contractors are required to allocate three to five percent of direct mining and milling costs to the implementation of their approved Annual Environmental Protection and Enhancement Programs.<sup>32</sup>

To ensure the availability of funds for compliance with the environmental commitments stated in the EPEPs, contractors are also required to establish a Mine Rehabilitation Fund.

An amount of not less than PhP50,000, replenishable on a monthly basis, is to be used for the expenses incurred by the monitoring team<sup>33</sup>. Specifically, these expenses are described as for the “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 monitoring team.”<sup>34</sup>

On an annual basis, contractors are required to deposit 10 percent of the total amount needed to implement the EPEP or Five Million Pesos whichever is lower.<sup>35</sup> This Rehabilitation Cash Fund (RCF) is meant to “ensure compliance with the approved rehabilitation activities and schedules for the mining project as defined in the EPEP/AEPEP”.

Lastly, contractors are charged per metric ton of mine waste and tailings that are created by their operations. These fees are set at a ridiculously low rate—at PhP0.05 per metric ton of mine waste and PhP 0.10 per metric ton of tailings. Waste and tailings used as filling materials for mine openings are exempt from these charges. Mine waste and tailings fees are placed in a reserve fund to be used for payment of damages to life, property and infrastructure caused by mining operations.<sup>36</sup>

## ***Incentives.***

Listed as a preferred area of investment,<sup>37</sup> large-scale mining enterprises are entitled to various fiscal incentives under the Omnibus Investment Code of 1987<sup>38</sup>—provided that they register with the Board of Investments (BOI). Aside from income tax holidays, the Code allows the BOI to grant the deduction of 50 percent of labor expenditure from

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<sup>32</sup> DAO 96-40, Section 171

<sup>33</sup> The Law mandates the creation of a monitoring team that is composed of representatives of government, civil society and the mining enterprise.

<sup>34</sup> DAO 96-40, Section 181

<sup>35</sup> Ibid

<sup>36</sup> DAO 96-40, Section 85

<sup>37</sup> Article 17, Omnibus Investment Code of 1987

<sup>38</sup> Also referred to as Executive Order 226.



taxable income, tax and duty exemptions on imported capital equipment and spare parts, exemptions from wharfage fees, and additional incentives for enterprises that locate in less developed areas. Among the latter is the privilege to deduct 100 percent of expenditures on infrastructure from taxable income, over a period of 10 years.<sup>39</sup>

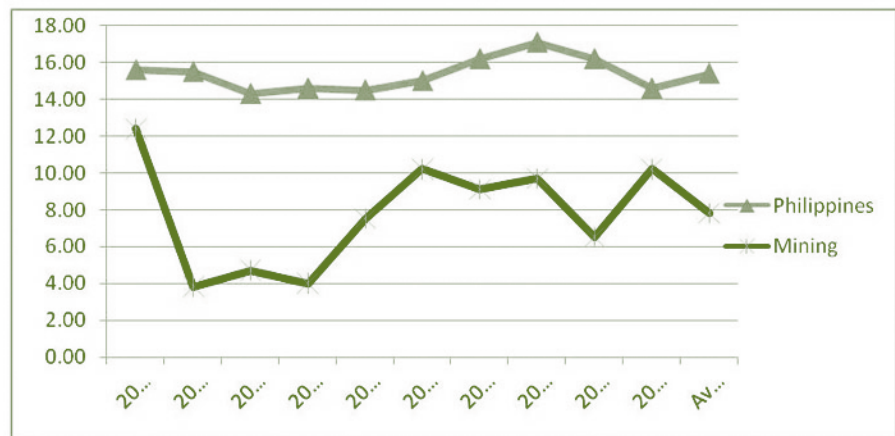
Even the Department of Finance’s latest data on foregone revenue is from a 2004 study written by a professor from the University of the Philippines (Recide 2006).<sup>40</sup> A comparison of the revenue foregone from an incomplete list of incentives and the national deficit shows that the former has the ability to wipe out the deficit completely. (Gomez 2007) Unfortunately, there is no current data on the revenue foregone due to the granting of tax incentives to large-scale mining.

During the exploration period, mining ventures are presumed to be at the investment or pre-operating phase and are not liable for income taxes. When they begin commercial operations, they are entitled to register with the Board of Investments for a five –year income tax holiday.

Additional incentives granted by the Mining Act are (a) exemption of pollution control devices from real property and other taxes<sup>41</sup>; (b) income-tax carry forward of net-operating losses incurred in the first 10 years, which may be deducted from taxable income over a five-year period; (c) accelerated depreciation of assets—at twice the normal rate<sup>42</sup> and (d) the option to deduct the cost of all exploration and development expenditures from taxable income over a four-year period from commencement of commercial operations.<sup>43</sup>

Despite the unavailability of data on revenue foregone from incentives to miners, it is possible to estimate the revenue effort of the industry and compare it to the national revenue effort. Dividing the figures

**Figure 7. Philippine and Mining Industry Revenue Efforts, 2000–2009**



Sources: Revenue Effort from Department of Finance, Revenue Effort of Mining Industry, calculated from MGB data

<sup>39</sup> Omnibus Investment Code. Articles 39-40. Note: This study is not in a position to state which of the various incentives granted by the BOI have been granted to mining ventures. Nor is it in a position to state whether these incentives are granted across the board to all mining ventures or selectively applied according to certain criteria or negotiations.

<sup>40</sup> Recide, Renato E. Jr., Fiscal Incentives and Investment in the Philippines, Draft Final Report, as of June 1, 2006.

<sup>41</sup> RA 7942, Section 91

<sup>42</sup> RA 7942, Section 93

<sup>43</sup> RA 7942, Section 92

for “Taxes, Fees and Royalties from Mining”<sup>44</sup> by “Gross Value Added in Mining at Current Prices”, published by the MGB, it is possible to estimate the revenue effort of the industry, over a period of time.<sup>work</sup>

At the beginning of the decade, the revenue effort of the mining industry was only a few percentage points below the national revenue effort. But as the decade progressed, the revenue effort from mining dipped to no more than one-third that of the national revenue effort. Some improvement in the revenue effort of the mining industry occurred in 2005. But in the succeeding years it decreased, until by 2008, it was approximately half of the national revenue effort. On average, for the period 2000–2009, the revenue effort for the mining industry was slightly more than half of the national figure<sup>45</sup>.

In contrast to large-scale mining contractors, registered cooperatives engaged in small-scale mining are exempt only from income taxes, VAT, but pay the two percent excise and a 10 percent Creditable Withholding Tax upon sale of their product to the Central Bank. The Central Bank is required to file a monthly tax return and remit deductions from purchases of gold.<sup>46</sup>

## The Share of Government.

As owner of the resources, the government is entitled to a share in the value created by the contractor’s extraction of mineral resources. The basis for a fair but liberal fiscal regime and share of government in the operations of mining contractors, is spelled out in a sample MPSA:

*....this Agreement shall be governed by the principle according to which the Government expects a reasonable return in economic value for the utilization of non-renewable resources under its national sovereignty while the Contractor expects a reasonable return on its investment with special account to be taken for the high risk of exploration, the terms and conditions prevailing elsewhere in the industry and any special efficiency to be gained by a particularly good performance of the Contractor.<sup>47</sup>*

Curiously in conflict with the above, the Law states that in the case of MPSAs “The total government share in a mineral production sharing agreement shall be the excise tax on mineral products.”<sup>48</sup> The curiosity lies in that the government, as legal owner of the resources, should be content with such a paltry share. In this case, it appears that

<sup>44</sup> Includes Fees and Charges Collected by the DENR-MGB, Excise Tax Collection by the BIR, Taxes Collected by National Government Agencies and Taxes and Fees collected by LGUs.

<sup>45</sup> The Philippines’ revenue effort is lower than other Asian countries, like Indonesia, Malaysia and Thailand.

<sup>46</sup> Revenue Regulation 7-2008 (on taxation on the sale to the Bangko Sentral ng Pilipinas of gold and other metallic minerals by small-scale miners)

<sup>47</sup> Article 6, Sample “generic” MPSA, [www.mgb.gov.ph](http://www.mgb.gov.ph).

<sup>48</sup> Section 80, Mining Act. In the case of Joint Venture and Co-production Agreements, additional shares for government are to be negotiated according to value of additional contributions of government (apart from ownership of the resources) to the venture. (Section 81) There are no CP and JV agreements at the present time. (Underscoring added).

the government has abdicated its right to a fair share in production gains, and furthermore, confused this right with its power to tax the producer which has, in this case, been drastically reduced.

With respect to FTAA's, the Mining Act states that "The Government share.... shall consist of, among other things<sup>49</sup>, the contractor's corporate income tax, excise tax, special allowance, withholding tax due from the contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholder in case of a foreign national and all such other taxes, duties and fees as provided for under existing laws."

In quest of measures to increase revenues from mining, the executive branch of government found that it could not get around the Law with respect to the government's share in MPSAs. The Law explicitly states that the two percent excise tax is equivalent to the total share of government. But, in the case of FTAA's, the DENR-MGB used the phrase, "among other things" (underlined above) to improve its fiscal position vis-a vis FTAA's.<sup>50</sup>

In 2007, the DENR issued an Administrative Order<sup>51</sup> that defined the government's share as consisting of two portions—a basic and an additional government share. The Administrative Order mandates an additional share whenever the basic government share is less than 50 percent of net mining revenue. In this case, the contractor is obliged to pay the difference between 50 percent of net mining revenue and basic government share as additional government share.

However, the Mining Act, goes on to state that, "The collection of Government share in financial or technical assistance agreements shall commence after the financial or technical assistance agreement contractor has fully recovered its pre-operating expenses, exploration, and development expenditures, inclusive."<sup>52</sup> Thus, FTAA's are allowed to recover all their tax and operating expenses before they begin to pay either the basic or the additional shares of government.

The components of the basic government share include all taxes paid to the national and local government agencies/offices and even other taxes remitted by mining companies but deducted from their payments to other parties. These are "(a) contractor's income tax; (b) customs duties and fees on imported capital equipment; (c) value-added tax on imported goods and services; (d) withholding tax from interest payments on foreign loans; (e) withholding tax on dividends to foreign stockholders; (f) documentary stamp taxes; (g) capital gains tax; (h) excise tax on minerals; (i) royalties for mineral reservations and to indigenous peoples, if applicable; (j) local business tax; (k) real property tax; (l) community tax; (m) occupation fees; (n) registration and permit fees; and (o) all other national and local taxes, royalties and fees as of effective date of the FTAA."<sup>53</sup> Thus FTAA's do not begin to pay a share to government until they have recovered all their tax expenditures and then some. They are allowed to recover expenditures not made to government (e.g., royalties to indigenous peoples) and taxes that they remitted but collected from other parties.

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<sup>49</sup> Underscoring provided by author

<sup>50</sup> Interview with Acting MGB Director Leo L. Jasareno

<sup>51</sup> DAO 07-12, Revised Guidelines Establishing the Fiscal Regime of Financial or Technical Assistance Agreements (FTAA)

<sup>52</sup> Section 81, Mining Act. (Underscoring added)

<sup>53</sup> Section 4, DAO -07-12

## Excise Taxes.

All sub-sectors of the mining industry are liable to pay two percent excise tax based on the value of their production. From 2000–2009, excise taxes accounted for an average of 11.7 percent of total BIR collections. But, the average share of mining excise taxes to total collections, in the same period, was a mere 0.07 percent (See Table1).

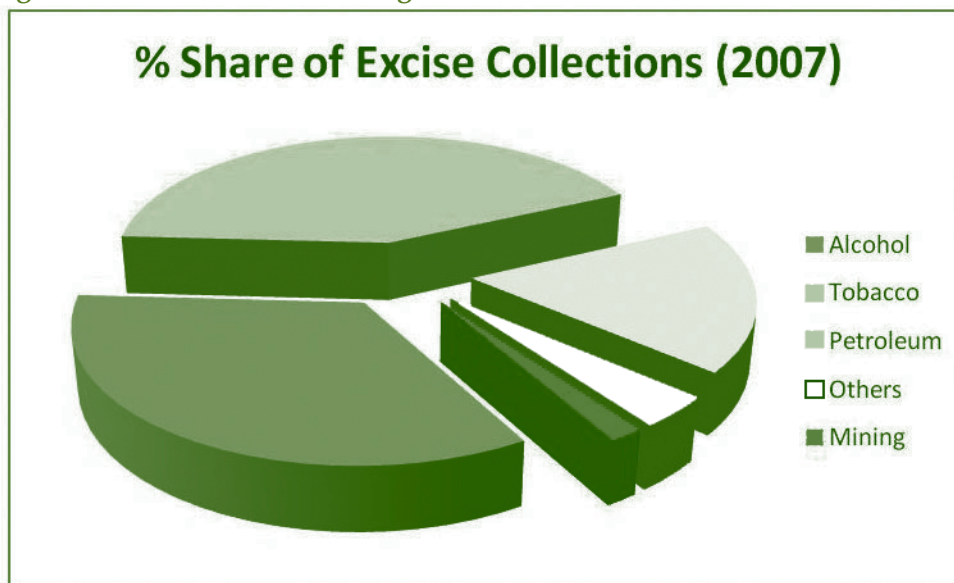
**Table 1. Excise Tax Collections and Mining Excise Taxes**

Year	Share of excise taxes in total BIR collections	Share of Mining in Total Excise Tax by the BIR	Share of mining Excise in total BIR collections
2000	17.1	0.4	0.07
2001	15.1	0.2	0.03
2002	14.5	0.3	0.04
2003	13.4	0.3	0.04
2004	12.7	0.4	0.05
2005	11.4	0.4	0.05
2006	8.9	0.8	0.08
2007	7.7	1.7	0.13
2008	7.9	1.1	0.08
2009	8.1	1.2	0.10
<b>AVERAGE</b>	<b>11.7</b>	<b>0.7</b>	<b>0.07</b>

Source: Bureau of Internal Revenue, Annual Reports, 2000–2009

Excise taxes collected from the mining industry contribute much less to total excise tax collection than the alcohol, tobacco and petroleum industries. In a peak year, 2007, excise taxes from mining accounted for 1.7 percent of total excise tax collections. But on the average (2000–2009), they accounted for 0.7 percent of excise tax collections.

**Figure 8. Contribution of Mining and Other Industries to Excise Tax Take (%), 2007**

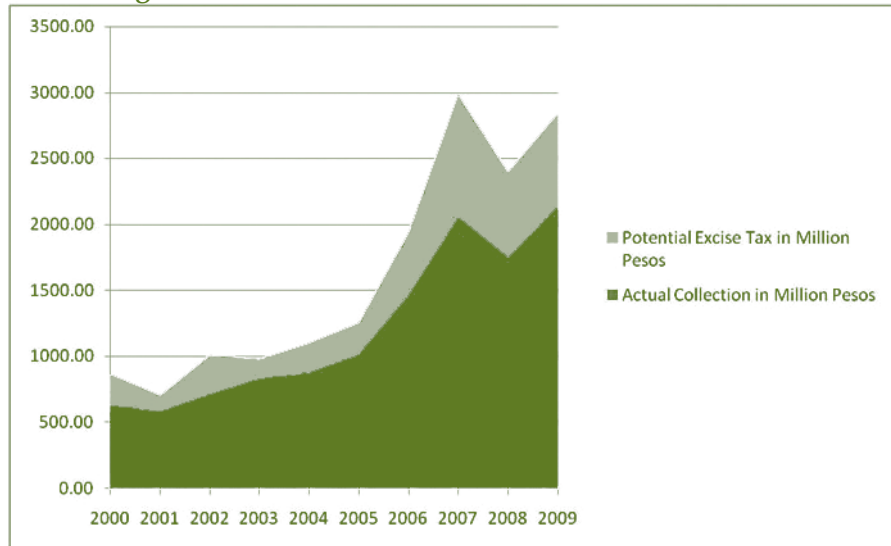


Source: Annual Report, BIR, 2007

A possible source of the low level of mining excise taxes is that reported production values are not accurate. This is indicated by the discrepancy between export and production data.

But even assuming production data to be accurate, it is possible to estimate potential excise taxes from the mining industry by multiplying the production values published by the MGB against the two percent tax rate. However, the operation uncovers yet another discrepancy. Potential excise taxes are much greater than the actual collections by the BIR. If these figures are to be believed, under-collection of excise taxes ranges from 54 percent to 73 percent.

**Figure 9. Potential Excise Tax versus Actual Collections**



Sources: MGB, Mining Industry Statistics released on February 10, 2010, November 15, 2010 and May 6, 2011 and BIR, Annual Reports (2000–2010)

Government officials interviewed surmised that the problem may originate from the sub-sector of small-scale mining. Their perception was that much of small-scale mining operated as part of the informal sector and was insufficiently regulated. The Acting MGB Director estimated that some “P 1.4 Billion from small-scale mining”, was lost in the past year due to the under-declaration of small-scale mining production. But, he also stated that there were informal reports that “large-scale mining projects are not declaring properly.”<sup>54</sup>

Small-scale gold miners are required to sell their gold to the Central Bank but a thriving black market supposedly exists. The Central Bank is required to impose the excise tax, but a confidential government source stated that they often buy the gold on a “no questions asked” basis so that producers will not be tempted to turn to the black market. This appears to be a plausible but only partial explanation. It is, however, clear that while the value of total industry production grew by 244 percent, from 2000 to 2009, excise tax collection grew by much less, 195 percent, during the same period.

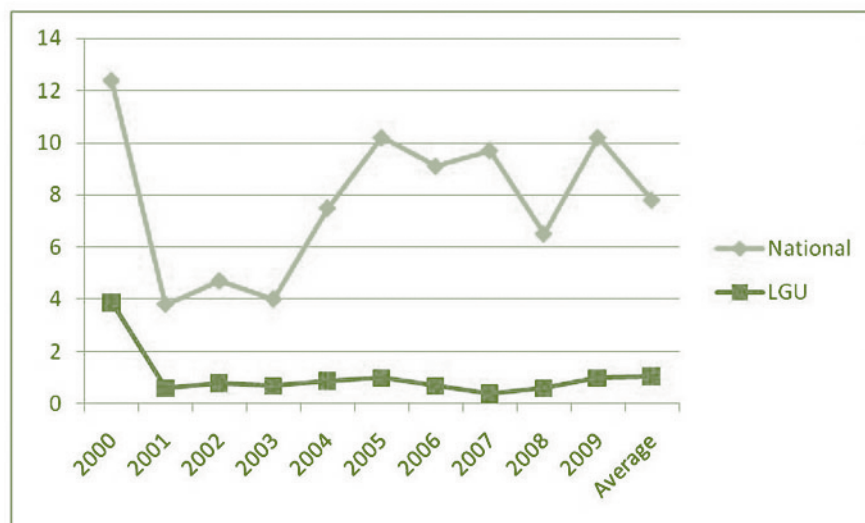
Two things are necessary to determine the real cause of this discrepancy. First, there must be reliable production data. Second, data on excise taxes must be disaggregated in order to identify the source of the under-payment and/or under-collection.

<sup>54</sup> Interview with Leo L. Jasareno, Acting Director, MGB

## Local Government Revenues.

In 2000, the revenue effort<sup>55</sup> for mining in local governments was 12.4 percent. But alarmingly, revenue effort decreased over the decade, until it dropped to one percent. By 2003, it was less than one percent. The drop in local revenue effort mimicked the drop in revenue effort for the industry, but while the latter showed improvement from 2005 onwards, local revenue effort failed to show any recovery and stayed at low levels. It averaged at 1.06 percent from 2000–2009.

**Figure 10. –National and Local Revenue Efforts, Mining Industry, 2000–2009**



Source: MGB, Mining Industry Statistics released on February 10, 2010, November 15, 2010 and May 6, 2011

Local government units are entitled to a 40 percent share of taxes collected by the national government. They receive an Internal Revenue Allocation (IRA), equivalent to the collections from three years prior to current year. The IRA constitutes the biggest source of revenue for most local governments, especially those that are less developed and have less ability to generate tax and other revenues from within their localities (Gomez 2009). In addition to the IRA, local governments also receive 40 percent of the previous year's collection of taxes on national wealth, such as "from mining taxes, royalties,... and other taxes, fees or charges, including related surcharges, interests or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction."<sup>56</sup>

Thus, local governments are very much affected by the generally low revenue effort of the country and by any failure by national government agencies to collect the correct amount of taxes. While the IRA accounts for over 60 percent of local government revenues, LGU shares from the utilization of national wealth account for less than one percent of total LGU revenues and despite increased production levels, have decreased over time.

<sup>55</sup> Actual payments of taxes and other fees to local government as a percentage share of the industry's gross value added.

<sup>56</sup> Section 290, Local Government Code of 1991.



**Table 2. Comparative contributions of IRA and Share from the Utilization of National Wealth to Total LGU Revenues, 2001–2006 (%)**

	2001	2002	2003	2004	2005	2006	Average
IRA	62.7	68.02	66.2	64.43	63.47	64.58	64.9
Share from Utilization of National Wealth	0.59	0.15	0.22	0.19	0.25	0.41	0.30

Source: National Tax Research Center

An additional difficulty for local government units is procedural. The Department of Budget and Management (DBM) is responsible for releasing the shares of local governments. Releases are based on a Joint Certification from the Bureau of Treasury and the Revenue Accounting Division of the BIR that is submitted to the DBM. These certifications state the amount of taxes collected and the respective shares due the local governments. The DBM is supposed to release LGU shares for the first three quarters in February of the ensuing year and that of the last quarter the May following.<sup>57</sup>

However, the LGU officials who were interviewed universally complained that the receipt of their shares was often delayed by several years.<sup>58</sup> The DBM stated that often the certifications that they receive are late, incomplete and not in chronological order.<sup>59</sup>

Furthermore, local officials stated that they had no knowledge of how much they were supposed to receive from mining collections. The DBM confirmed that it was not uncommon for LGU representatives to come to their offices (in Manila) to inquire about their shares. In short, until they are advised of an impending or actual release, LGUs have no knowledge how much their shares will be. This has implications for the LGUs' ability to project budgetary allocations.

The Internal Revenue Code, states that “ ... in the case of mining taxes collected by the BIR, the LGUs are the ones responsible for gathering of documents that will be used as basis in determining their shares from the collection of mining taxes. The municipality/city where the mining/quarry site is located has to secure from the mining companies the documents such as Certification of Mining Tax Payments, ... These documents have to be submitted by the LGU to the BIR for verification and computation of their shares....”<sup>60</sup> In short, the LGUs are on their own; no government body is tasked to inform LGUs of potential or pending receipts.

<sup>57</sup> DOF-DBM-DILG-DENR Joint Circular No. 2009-1

<sup>58</sup> Bantay Kita key informant interviews and FGDs

<sup>59</sup> Interview with DBM personnel.

<sup>60</sup> National Internal Revenue Code as amended by RA 8424 (December 11, 1997) and RA 9337 (May 24, 2005)



## ***Insufficiently disaggregated data sets .***

It is commendable that the MGB regularly issues data sets on the mining industry – on production, approved contracts, gross-value added, exports (from the Central Bank), taxes collected (from the BIR), etc... But the data is insufficiently disaggregated.

The sub-sectors of the mining industry are regulated by different arms of the government, operate under different laws, and each distinct. The players, the terms and conditions under which they operate are as different as their effects on localities, with the possible exception of their effect on the environment.

Without disaggregated data, it is difficult for policymakers to evaluate their respective contributions to the economy as well as the problems that their operations create. It is likewise difficult to evaluate their potential in terms of raising government revenues and contributing to local development and poverty alleviation.

In fact, insufficiently disaggregated data can be used to mislead the public. Currently available data, e.g. on contribution to GDP and to employment, has been used by large-scale mining advocates, treating the aggregated data as if these contributions are produced by their sub-sector, when it is not in the least bit certain that these can be ascribed wholly to their particular sub-sector.

## **Summary of Observations and Recommendations**

## ***Data Discrepancies.***

Miners declare the volume and value of their production in order to secure permits to transport and export, to file tax returns, and so on. The MGB verifies production. Data on national taxes is provided by the BIR and presumably local tax data is provided by the LGUs. Export data is from the Central Bank. In tax returns, the Central Bank also reports to the BIR on the volume and value of small-scale mining production that it has purchased. Reporting from various government units provides the opportunity for comparison and is useful for a system in which there are checks and balances.

A system by which different government agencies report different sets of figures is beneficial to monitoring the industry. As in all other systems of accounting, reporting by another party can reduce the occurrence of fraud. But this is so only if each reporting party is certain that the report will be checked against other reports. To the extent that a party preparing a report is certain that there is no such possibility, the incentive to produce an inaccurate or even a fraudulent report increases.

Figures from different parties do not tally, as in the case of exports being greater than production. However, there is no mechanism to investigate or reconcile discrepancies. Based on inconsistent data, regulation and even mere monitoring of the industry becomes ineffective.

Furthermore, if it is ascertained that reporting is incomplete— as is alleged of LGUs, then this is a problem that should be immediately addressed. Unless it has other, less healthy motivations for doing so, there is no reason any government office, in this case, a local government unit, should tolerate or turn a blind eye to illegal activities and allow informal sector status to operations that have long-term effects

on the stock of the national patrimony. The alleged failure of LGUs to report accurate data on tax and revenues on a sub-sector over which it has jurisdiction, i.e., small-scale mining, is inexcusable and a long-standing and serious governance problem.

The gap between potential and actual collection of excise taxes is a major discrepancy. Although tax evasion hand-in-hand with corruption seems to be the only reasonable explanation, it is difficult to attribute the blame with any certainty, to a definite party or parties. Producers themselves have to be at least partially responsible. Local government units bear some responsibility, as may the Central Bank and regional offices of the MGB. Finally, the BIR that sets collection targets based on production data estimates has to be principally responsible for this gap.

There is a need for further study on the system of estimating potential tax collection, verifying these estimates and taking action when there is failure to realize them.

### ***Environmental Protection.***

This author maintains that the mandates to promote mining and to protect the environment are inherently conflicting and that it is extremely difficult for the DENR to balance the two.

There is no debate that the extraction of mineral resources does extreme damage to biodiversity, water systems, land viability and the environment in general. In an effort to integrate these negative externalities into mining costs, the Mining Act obliges certain expenditures and contributions to be made by contractors. One of these is dedicated to the expenses required for monitoring compliance with an environmental rehabilitation program. However, having the party that is being monitored shoulder the cost of monitoring lends itself to regulatory capture.<sup>61</sup>

The layperson's view is that the costs are ridiculously low. Further study is necessary to determine if the level of these charges is sufficient, if the administration of these funds is such that they are actually available when needed, on what they are actually spent, and how they have succeeded in protecting or rehabilitating the environment.

### ***Government Revenues.***

The level of government revenues derived from large-scale mining depends on the fees it charges relative to the services it provides, the revenues it gains or loses due to the provision of incentives and the efficient collection of taxes due.

Under the present system, government revenues do not reflect the negative externalities generated by the industry (depletion of non-renewable resources, environmental damage and so on). In fact, the fiscal regime is short-sighted. It merely seeks to encourage the entry of invest-

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<sup>61</sup> This author once asked a representative of large-scale mining if the monitoring team did not tend to use this fund as a source of junket and luxury expenditures. The representative replied in the positive. To the succeeding question, "what do you do about it?", the reply was, "What can we do? They are monitoring us."

ment into the industry without due consideration to future costs in terms of resource depletion and the promotion of sustainable development.

The incentives granted to mining contractors are appalling to civil society organizations as well as not a few government officials. These incentives guarantee the return of virtually all the expenditures by mining contractors—investment and tax expenditures—such that they virtually remove all risk from investment.

From the country's point of view, they are ominous and violate all sense of fair play. The government eventually rebates all these expenditures and forsakes almost all gains from the contractors' operations while it loses valuable and non-replenishable resources. Even taxes not paid by the contractor (such as tax on dividends to stockholders) and other expenses (such as royalties to indigenous peoples for surface rights) are eligible for deduction from the government's share. Where is the partnership in that?

There is a need for the government to estimate the level of revenues foregone due to the prevailing fiscal regime and the system of sharing gains from large-scale mining. There is a need for a new Mining Law—one that goes beyond guaranteeing profits for investors and ensures a fair share of gains for the country as well.

### ***The Mining Controversy.***

The mining controversy has caused division within affected communities and created a policy gap where a number of local government units have taken positions that are in opposition to those held by the national agencies that promote the industry.

A major problem is that many members of “host” localities and communities are unconvinced that large-scale mining ventures actually bring development or progress to their localities. While it may be debatable whether or not mining has brought social or economic upliftment, what is certain is that the presence of large-scale mining projects has brought strife and social conflict to many localities.

In each locality, there is a small minority that benefits from the presence of mining projects—suppliers, recipients of assistance, employment and other largesse from the mining company—that are fiercely in favor of mining operations. The majority who maintain that the decision to mine in their areas was secured without their informed consent, live in fear of the environmental devastation they observe, and are just as fiercely anti-mining.

The amount of revenues derived by LGUs from large-scale mining can only be described as pathetic. Revenues derived by local governments do not begin to compensate for the long-term and enduring destruction and alteration of thousands of hectares within their territories. In addition, these giant injuries are committed by entities over which they little have limited jurisdiction—neither in terms of regulation nor taxation.

In the past year, several LGUs have legislated measures to recover their autonomy and dominion over mining companies. In doing so, they have placed themselves in a conflicting position vis-a-vis the national government.<sup>62</sup>

Aware of the paucity of LGU revenues, a representative of the Chamber of Mines of the Philippines has suggested that the 40 percent share of LGUs be paid directly to LGUs. If the national government should adopt this suggestion, the LGUs would definitely be in better position to budget and manage mining revenues, rather than be in the dark about fund releases and schedules.

However, the real question is: What would it take—in terms of environmental, development, and revenue generation programs—for LGUs to agree to allow mining in their areas? Furthermore, what powers would LGUs need to have to ensure gains from these programs?

On the ground, it does appear that current mining policy burdens LGUs and local populations with the costs but fails to include them in the benefits. What must LGUs and local populations receive in order to consider mining a worthwhile trade-off?

## ***Transparency.***

Revenue transparency issues cannot be properly viewed in isolation, i.e., outside the context of greater transparency issues that relate, most particularly, to the consent process.<sup>63</sup>

Revenue transparency is a tool to ensure that all stakeholders (companies, local populations, national government, local government and future generations) shoulder their share of costs and receive their fair share of gains from the extraction of non-renewable mineral resources.

LGUs, local populations and future generations are the most directly affected by large-scale mining operations. However, these stakeholders are the most disadvantaged—in a system in which negotiations and contracts are entered into between companies and the national government and in which the national government dictates the terms and conditions of the operations of these companies. The national government is disadvantaged by the very conditions dictated by the Mining Law and its failure to effectively monitor, regulate and garner adequate revenues from the operations of large-scale mining projects. The Law bends over backwards to encourage entry into the industry and contains ominous conditions that disproportionately favor private investors. Through generous incentives and income shares, these investors are assured of profits. But over time, these gains are endangered and can be secured only to the extent that they are able to fend off the growing opposition from the respective localities they operate in.

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<sup>62</sup> Some examples: The province of South Cotabato has passed an environmental resolution banning open-pit mining, the method used by the mining project in their area. The province of Romblon has declared a moratorium on mining until such time as all issues and controversies are threshed out. The municipality of Cantillan, in Surigao del Sur refused to issue a business permit to a mine that has encroached on its watershed, nevertheless the mine continues to operate with authorization from the national government.

<sup>63</sup> These are discussed extensively in the Bantay Kita report.





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