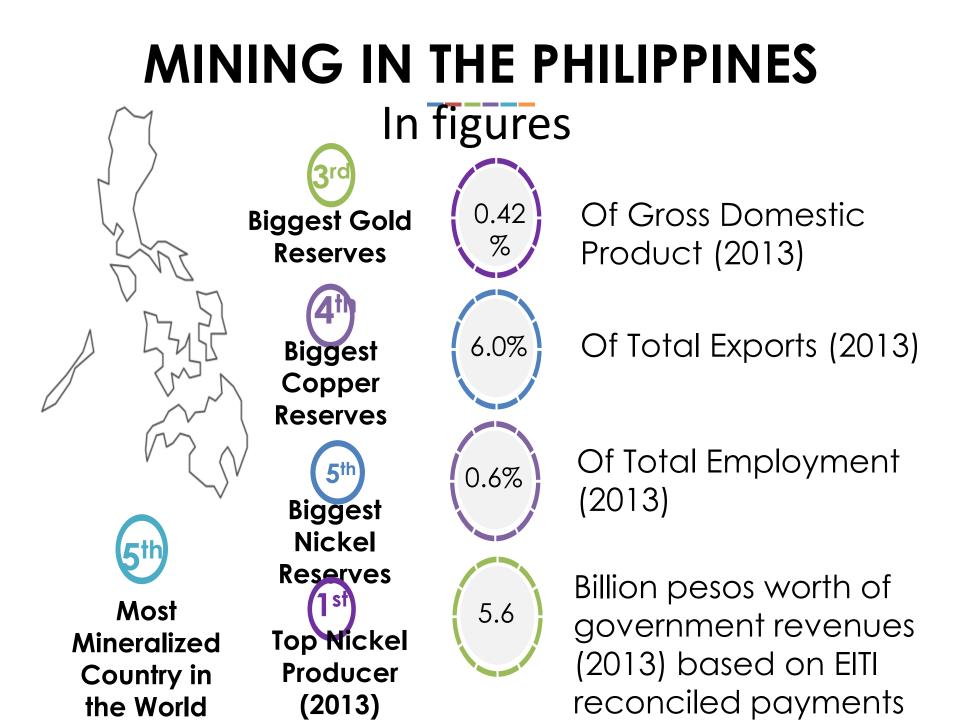
MINING IN THE **PHILIPPINES: ISSUES, CHALLENGES,** INITIATIVES

Grizelda "Gerthie" Mayo-Anda Executive Director Environmental Legal Assistance Center, Inc. (ELAC)

Issues and Challenges

- Conflicting Development Perspectives
 - Mining for Development framework
 - Determining Carrying Capacity in Island Ecosystems
- Environmental and Social Issues
- Weak Governance
- Policy and Legal Issues

CONFLICTING DEVELOPMENT PERSPECTIVES



Mainstream Paradigm

• Low Investment in Mining

Generate employment

• Need for competitive rates

• Generate economic activity









Does the mainstream paradigm work for developing countries?

SUSTAINABLE DEVELOPMENT FRAMEWORK

Mining for Development

Framework

The Mining Act (RA 7942) and Mining Policy Framework

 Allows 100% foreign ownership participation in mining exploration and financial technical assistance agreements (FTAAs)



The Mining Act and Mining Policy Framework

The Mining Act's constitutionality was questioned in a suit filed by the La Bugal-B'laan Tribal Association in February 1997. The suit was against Australian-owned Western Mining Corp, which entered into an FTAA with Philippine Government.

In January 2004, the Supreme Court ruled that the law violated constitutional prohibition against foreign ownership of natural resources but later reversed itself in Dec. 2014, saying that it was unwise "to strangulate growth for parochial and narrow interests."

La Bugal, et al. vs. Ramos, et al.

 In a dissenting opinion Justice Carpio said the law negates the State's ownership of mineral resources as stated in the 1987 Constitution. The share of government in terms of taxes, fees, etc. are "not contractual payments to the State as owner of the mineral resources but are mandatory exactions based on the taxing power of government".

Philippines as a "Megadiversity" country

- Studies have underscored that high value ecosystems in the Philippines are critically threatened.
- While the Philippines has been designated by scientists as one of the world's top 20 "megadiversity" countries, 418 species are already listed as threatened.
- More than 93 percent of Philippine forests have been lost in the last 500 years.

Introduction

Can mining be sustainably undertaken in fragile islands, given existing remediation technology? Should mining be allowed in island ecosystems? Is it worth the risk?



Island Ecosystems

- Unique, Fragile and Vulnerable
- Distinction:
 - Evolution of flora and fauna has taken place in relative isolation
 - Endemism and rich biodiversity
 - Many remote islands have some of the most unique flora in the world; some have species of plants and animals that are not found anywhere else, which have evolved in a specialized way, sheltered from the fierce competition that species face on mainland.

(http://www.eionet.europa.eu/gemet/concept)

Biodiversity Status of Islands with Existing and Proposed Mining Projects

Island Ecosystem	Conservation Priority Area	Priority Level	Protected Areas	Area in hectares
I. Dinagat Island (Mt. Kambinlio & Mt. Redondo)		Extremely High Critical		85,955.42
2. Marinduque	Marinduque	Very High		33,575.42
3. Mindoro	Included in the list of Endemic Bird Areas			
	Lubang island, Mindoro Occidental	Extremely High Critical		6,918.78
	Mt. Calavite, Mindoro Occidental	Very High		19,668.82
	Puerto Galera	Extremely High Critical	UNESCO Man and Biosphere Reserve	39,144.83
	Mt. Halcon	Extremely High Critical		62,949.51
	Naujan Lake National Park	Very High	Naujan Lake National Park	25,361.82
	Sablayan, Mindoro Oriental	Extremely High Critical		25,770.45
	lglit and Baco Mountains, Mindoro Occidental	Extremely High Critical	Mt. Iglit Baco National Park	47,482.84

Biodiversity Status of Islands with Existing and Proposed Mining Projects

4. Palawan	Included in the list of Endemic Bird Areas			
	Coron Lakes	Extremely High Critical		1,219.94 hectares
	Cuyo Island	Extremely High Critical		12,302.58
	El Nido	Extremely High Critical		101,985.53
	Lake Manguao	Insufficient Data		1,226.33
	San Vicente-Roxas Forests	Extremely High Urgent		152,430.89
	Puerto Princesa Subterranean River National Park (Cleopatra's Needle)	Extremely High Critical	Puerto Princesa Subterranean River National Park	134,987.00
	Victoria and Anepahan Ranges	Extremely High Critical		182,456.06
	Mt. Mantalingahan	Very High	Mt. Mantalingan Protected Landscape	169,406.09
	Ursula island	Extremely High Critical		1,157.22
	Balabac Group of Islands	Insufficient Data		35,277.60

Biodiversity Status of Islands with Existing and Proposed Mining Projects

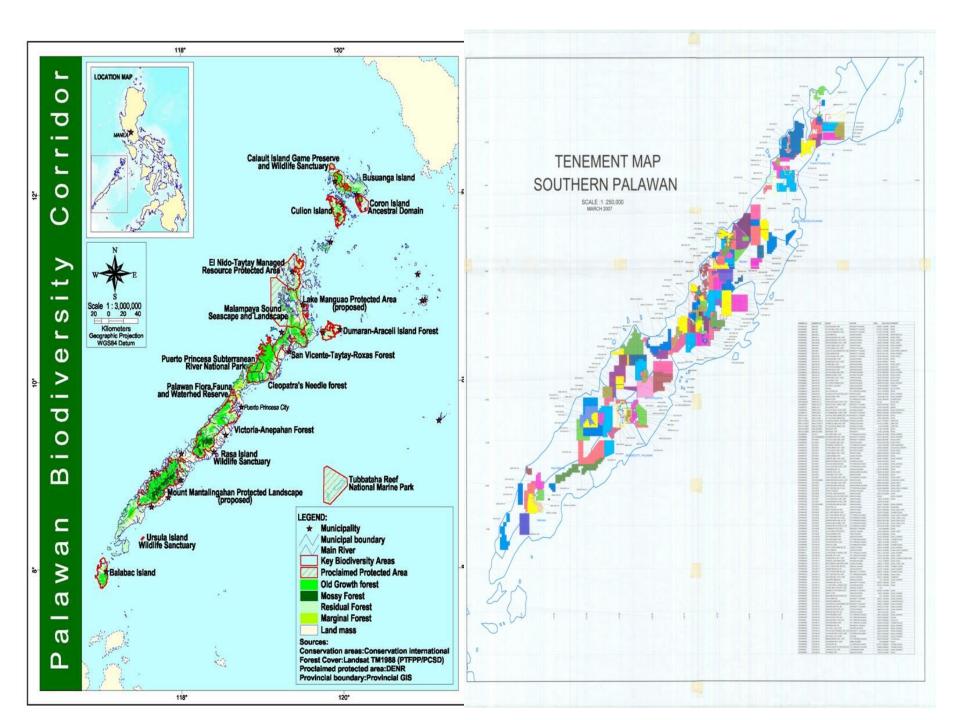
5. Romblon				
	Sibuyan Island (included in the list of endemic bird areas)	Extremely High Critical	Mt. Giting Giting Natural Park	32,033.30
	Balogo Watershed (Romblon- Tablas; included in the list of endemic bird areas)	Very High		
6. Samar Island	Situated in Eastern Visayas which has been identified as an area where endemic bird species are located		Samar Island Natural Park	
	Mt. Cabalantian – Mt. Capotoan Complex	Extremely High Critical		398,116.97
	Southern Samar Mountains	Very High		60,813.16

International Policy Guidance

- Chapter 17, Agenda 21: seeks the protection of the oceans and all kinds of seas, identifies small island developing States and islands supporting small communities as special cases for environment and development, being ecologically fragile and vulnerable.
- Comprehensive Framework for Small Island Developing States (SIDS)
 - Recognition that many problems are directly related to the small size of these States, and that the small size of SIDS "means that the environment and development are closely interrelated and interdependent".

A Close Look into Palawan

- Special Laws: Strategic Envrionmental Plan for Palawan (SEP, Republic Act No. 7611) law, mangrove reserve, game and wildlife reserve, protected areas
- Biogeographic and Geologic Nature
 - High endemism and rich biodiversity
 - Many protected areas; 2 world heritage sites
 - Steep slopes, thin topsoil, narrow island



Mining in Mt. Mantalingahan Protected Landscape

- MMPL established by Proclamation 1815 in 2009 covering some 120,000 hectares
- 5 municipalities
- 33 watersheds
- MPSAs issued
- Land Use Valuation shows enormous benefits from water and biodiversity resources



Photo credit: Conservation International



Threat to the Mt. Bulanjao Mountain Range

Total Economic Valuation of Bulanjao forests vs minerals

Total Economic Value of Mt. Bulanjao Forest Ecosystem Preservation and Economic Cost and Benefit Analysis of the Proposed Mineral Development Option in the Bulanjao Mountain Range¹

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> ^aPalawan State University ^bPalawan Coğncil for Sustainable Development

In view of the renewed interest on the mineral resources of the Philippines and the consequent economic benefits that could be gained from it, the countryside has once again become a hub of mining activity. In the province of Palawan, being known for its vast amount of natural resources particularly mineral resources like copper and nickel, mineral extraction has been going since 1970s.

Mining industry has both its positive and negative impacts. It is beneficial to the society through the products that it produces. On the other hand, it also causes adverse impact on people's lives and properties. For this reason, on-going debate whether mining industry, in the long-run, can be a desirable venture for economic development in the Province of Palawan; should an identified mineralized area be mined out or better left alone? To resolve this issue, conduct of total economic valuation of a forest ecosystem and cost benefit analysis was conducted to provide policy makers in making decisions that veer towards greater social welfare.

This study takes into consideration the prospective mining site in Mt Bulanjao in Bataraza, Palawan which has an aggregate area of 676 hectares. To determine the Total Economic Value (TEV) of Mt Bulanjao, all the benefits from the area is identified and values. Various methods such as benefits transfer method, contingent valuation method and surrogate market are used to come up with the TEV estimation. Framework for the Total Economic Value of a Forest Ecosystem is adopted which can be illustrated using the formula: Total Economic Value = Use Values + Non-use Values BCOSystem is adopted which can be illustrated using the formula: Total Economic Value = Use Values + Non-use Values

Economic Cost-Benefit Analysis (CBA) is also done to determine the net social benefits with and without the mining operation in the area. In this process, all the social costs and social benefits are accounted using the general formula:

Net Social Benefits (NSB) = Social Benefits (B) - Social Costs (C)

Results:

The study revealed that 676 has consisting of three parcels which is the subject of mineral development application has a onetime annual total economic value of Php8,487,812,185.00 (refer to Table 1). For the year one (1) operation of mining, Use Values has the largest percentage (99.88%), contributing to about Php8, 477,604,335.00 of the Total Economic Value (TEV) of Bulanjao Mountain Range. Of this, Indirect-use Values or those environmental services provided by the mountain which are enjoyed by the community has an annual value of Php4, 779,549,020.00 (56.31%). Among the various services identified, it is notable that filtering function of forest to dust has the greatest value amounting to about Php2, 453,346,070.00 followed by the soil conservation/ erosion prevention function which is Php2, 028,000,000.00.

Subjecting to annuity computation, the three parcels have total economic value of Php94, 966,744,098.02 for 18 years.

¹ This study was conducted by the PCSD Staff in 2011 in collaboration with the Palavan State University. Valuation data on mining operation were submitted by the Rio Tuba Nickel Mining Corporation (RTNMC) and the Coral Bay Nickel Corporation (CBNC). Validation and discussion of the study results with the RTNMC and the CBNC will be undertaken by the PCSD Staff as part of the study protocol.



Government Policy vis-a-vis Constitution

Mining as an industry to achieve Sustainable Development (Mineral Action Plan) • Article 12, Section 2, Paragraph 4 of the Constitution --- "The President may enter into agreements xxx utilization of minerals, petroleum xxx based on real contributions to the economic growth and general welfare of the country."

Policy Issues

- Mining policy is structured to fulfill the foreign market, catering to the need of the global extractive industry players; Export-oriented and Dependent on foreign capital
- Government prioritizes the revitalization of the mining industry, as expressed in the Mineral Action Plan (EO 270 and 270-A)

Is Government selling our national patrimony?

- Mining Incentives under Mining Act of 1995
- Incentives of the Omnibus Investment Code of 1987
- Investment Guarantees
 - Repatriation of Capital
 - Freedom from Expropriation
 - Remittance from earnings and interest on foreign loans
 - Freedom from requisition of properties
 - Confidentiality of Information

Is Government selling our national patrimony?

- Mining Incentives under 1987 Omnibus Investment Code
- Fiscal incentives: tax exemptions, tax credit on raw materials and supplies, additional deductions from taxable income
- Non-fiscal incentives: employment of foreign nationals, simplified import procedures, 10-year imports of consigned equipment

Incentives under Philippine Mining Act

- Tax Holiday during recovery of preoperating expenses for a maximum of 5 years from commercial production (FTAA)
- Income Tax carry forward of losses
- Income Tax accelerated depreciation of fixed assets
- Exemption from payment of real property taxes on pollution control devices

More benefits to mining corporations in the use of our natural resources

(i) preference of "mining rights" over "surface rights"

(ii) provision of "income tax holiday" under the Omnibus Investment Code or EO 226 and other "tax incentives" under the Special Economic Zone Act or RA 7916

(iii) Provision of ancillary rights like "timber rights, water rights, easement rights"

MINING TAXATION IN THE PHILIPPINES

- National Government
- -excise tax (2% of revenue)
- royalty in mineral reservations (5% of revenue)
- Corporate Income Tax (30% of profit)
- -VAT
- Local Governments
- Local business tax (1% of revenue)
- Real property tax (maximum of 2 per cent of the assessed value of the real property)
- Community tax
- -Occupation fees
- Registration and permit fees
- Indigenous Peoples
- Minimum 1 % of gross revenue

Not a Single Centavo from Mining Companies

"xxx the 1987 Constitution mandates the State to exploit our mineral resources through direct undertaking, joint venture, or co-production arrangements. The purpose is for the State, as owner of the mineral resources, to receive its fair share in the profits from the exploitation of our mineral resources. Sadly, for the last 20 years the State has not received a single centavo from the profits of mining companies."

Supreme Court Justice Antonio Carpio on Closing the Gaps between Law and Justice, Regional Convention of Mindanao lawyers on November 30, 2007, Davao City

Policy and Legal Issues

- Unclear rules and regulations on the implementation of the 1% royalty share for the affected Indigenous Peoples/Communities
- Non-compliance with environmental laws, safety standards and permit requirements
- Institutional: Weak regulatory mechanisms; weak Implementation of existing laws

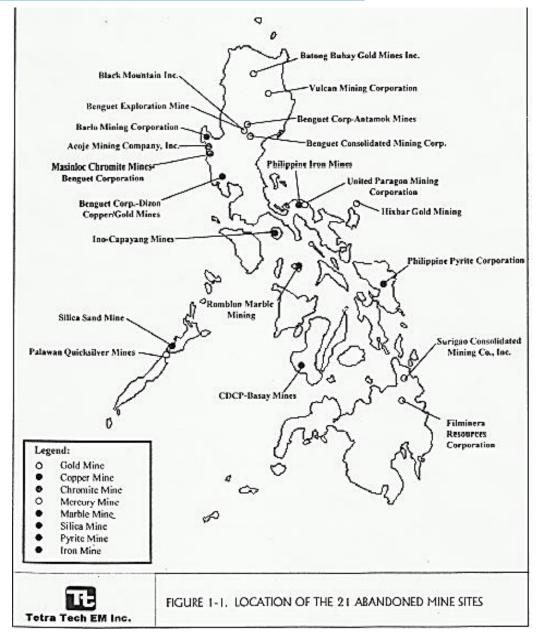
Consent and Acceptability Issues

- Effect of Moratorium Ordinances of LGUs
- Effect of Free, Prior and Informed Consent (FPIC) under the Indigenous Peoples' Rights Act (IPRA, RA 8371)
- Social Acceptability processes

Weak Implementation

- Mining activities have been allowed in watersheds, protected areas and core zones
 - Violation of RA 7611 or *Strategic Environmental Plan for Palawan* (SEP), which provides that all natural forests (*old-growth or residual forests*) are areas of maximum protection (Section 9, RA 7611)
- Allowing large-scale corporations to apply for smallscale mining permits while their large-scale mining permits or MPSAs (mineral production sharing agreements) are being processed and pending approval

21 Abandoned Mines



"Abandoned mine sites pose **environmental and health risks**" – TetraTech for MGB

Bagacay, Samar



Loan from World Bank for Rehabilitation of Bagacay Mines: 34.7 million pesos

Impacts and Damages

- Household, community displacement from subsistence or livelihood activities
- Reduced access or availability of local water supply for in-site and off-site areas
- Unpaid use and depletion of groundwater
- Pollution of surface water and aquifer
- Leakages, overflowing or collapse of tailings dam
- Loss of biodiversity
- Impacts on health

Marinduque

DAMAGES: US\$80 million or higher

Acid Mine Drainage: Dead Boac and Mogpog Rivers

Marinduque



Heavy Metal Poisoning

Rapu-Rapu, Albay







Contaminated Tailings, mud and silt that flowed downslope towards the sea.

(Ungay and Hollowstone)

Rapu-Rapu, Albay



Fish Kill in Rapu-Rapu in 2007

Didipio, Nueva Vizcaya



Didipio, Nueva Vizcaya



Didipio, Nueva Vizcaya





Siocon, Zamboanga del Norte



Mt. Canatuan Mining Site

Claver, Surigao del Norte

Pollution of coastal areas



Siltation due to Taganito Nickel Mining activities

(Photo taken on December 2012 by Erwin Mascarinas)



Damaged Tailings Pond No. 3 discharged more than 20 million metric tons of solids



Gray sandy sediment build up on river bank. This build up is **NOT natural** to the Balog creek.



Murky waters of the Balog River

Social and Environment safety nets under the Mining Act

Sustainability and environmental protection

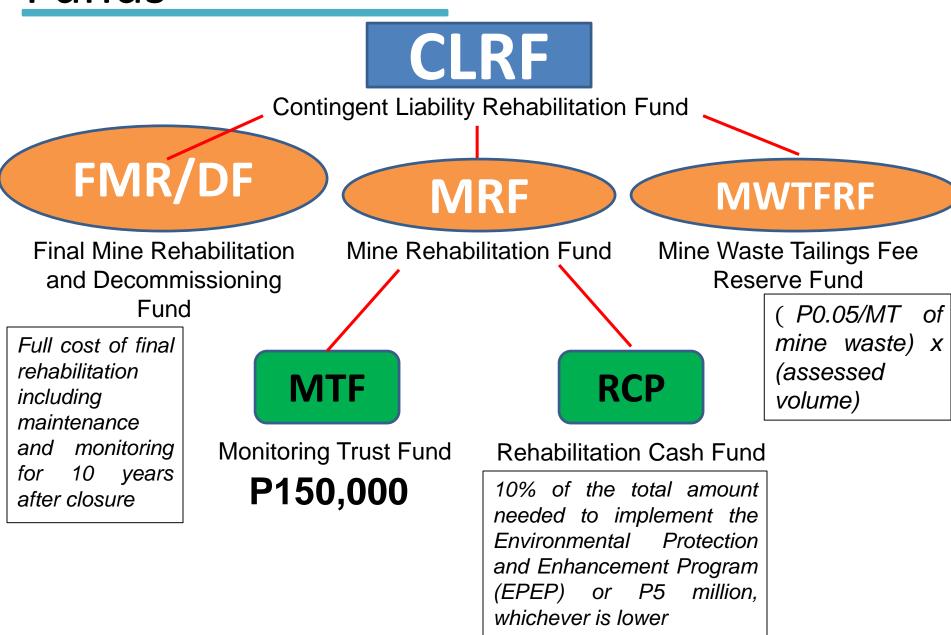
- •Environmental Work Program at least 10% of exploration costs
- •10% of estimated project development cost devoted to environment-related infrastructure
- •Mine Rehabilitation Fund about 3-5% of annual direct mining/milling costs or Php 5 million, whichever is lower, plus P50,000 for monitoring trust fund
- •Environmental Trust Fund Php 50,000 is replenished and is to be used to compensate for damages apart from those arising from mine waste and railings

Social and Environment safety nets

- Mine Waste Tailing and Reserve Fund Php0.05 for every ton of mine waste, Php 0.10 for mine tailings; used to compensate for damages resulting from these
- Polluter's tax Php 50 for every ton of waste disposed in unauthorized areas
- Final Mine Rehabilitation/Decommissioning fund

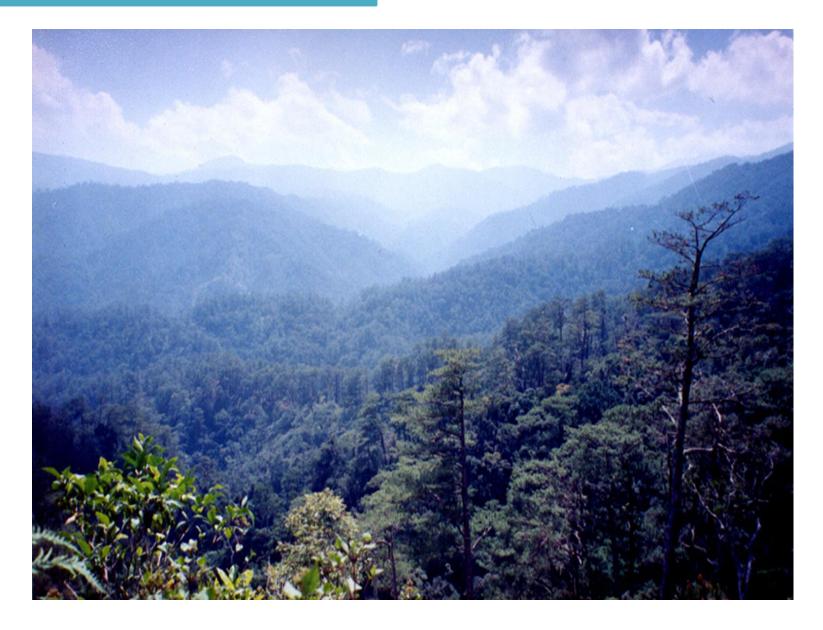
 variable cost including cost of 10-year
 monitoring maintenance and monitoring period

Funds



	B MINE REHABILITATION COMPANY 1. Abra Mng & Ind'I Corp 2. Benguet Corp-Acupan Contract Mining Project 3. Benguet Corp-Benguet Antamok Gold Operation	has been disabled Philex Mng Corp C FUND LOCATION	Review View	Tepo	Philex Mining Corp. Tuba, Itogon, Benguet Rehabilitation Cash Fund: Monitoring Trust Fund: Environmental Trust Fund: (Performance fund) As of 31 Dec 12	MPSA-276-2009-CAR MPSA-156-2000-CAR MPSA-157-2000 5,512,302.47 176,095.77 507,840.12	Image: Constraint of the second se
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Mt. Mantalingahan, Palawan



Mt. Mantalingahan, Palawan

Potential Sand and Gravel and Nickel Reserves

Nickel**	268,010 mt	12.8 billion pesos
Sand and Gravel*	11,044,104 m ³	2.2 billion pesos
	Amount	Value

TOTAL

15.0 billion pesos

*The volume of sand and gravel reserve was estimated on the assumption that the total mineable length is 10% of the total length of all the rivers in the watersheds and at a price of P200/m³

** The value for nickel was computed at P47,810/mt

Mt. Mantalingahan Total Economic Value (TEV)

(timber, farming, livestock production, nontimber forest products gathering, river-based livelihood, water and mining)

93.9 billion pesos

Indirect Use

(carbon stock, soil, conservation, watershed and biodiversity functions, and protection of marine biodiversity) 172.1 billion pesos

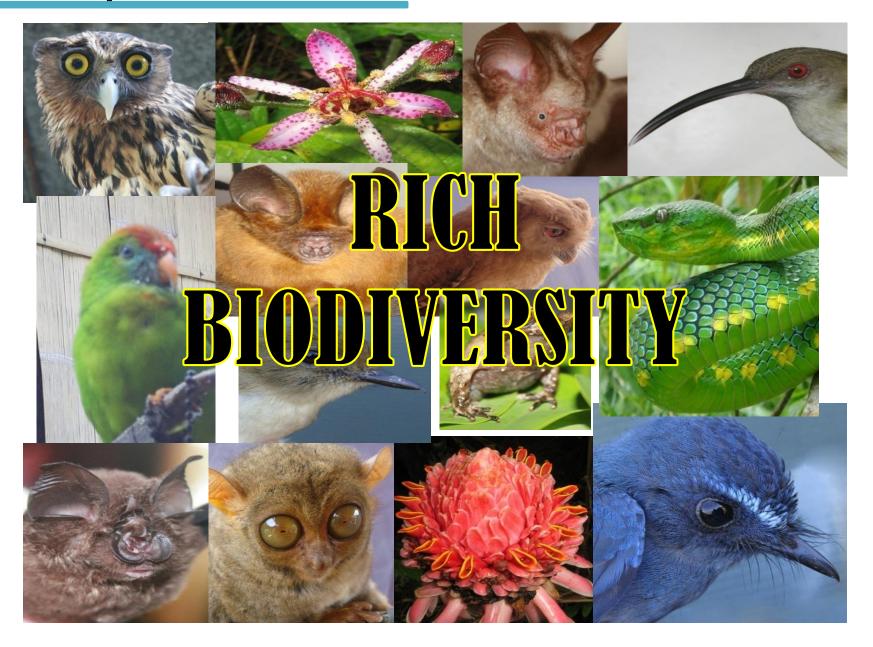
TOTAL ECONOMIC VALUE

266.0 BILLION PESOS

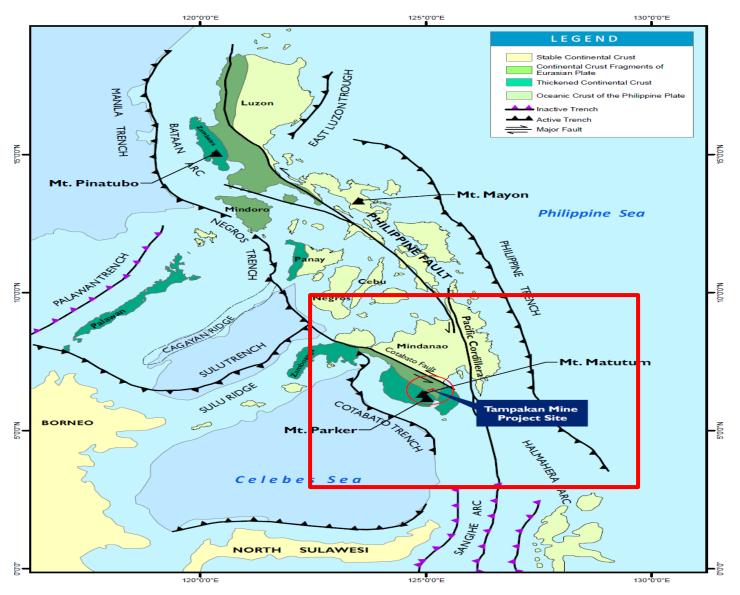
(2% discount)

THE VALUE OF ENVIRONMENTAL GOODS AND SERVICES PRODUCED FAR EXCEEDS THE NET BENEFIT FROM MINING

Tampakan, South Cotabato



FAULTLINES

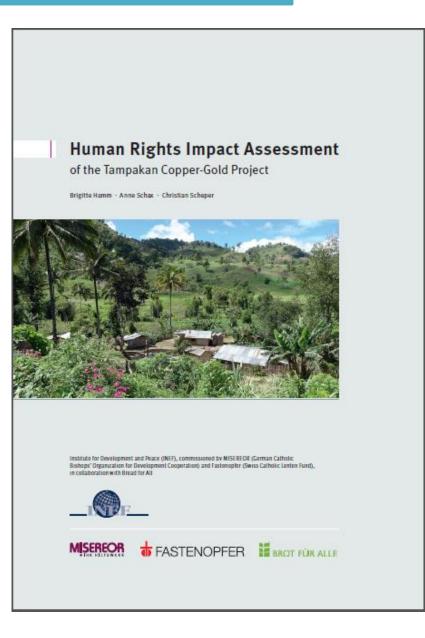




Water supply for the nearby villages and agricultural lands of the four provinces will be compromised



Proposed Open Pit Mine



"...this brings about a situation in which a responsible openpit mine of this magnitude does not seem feasible."

INITIATIVES

- Information/Education and Signature Campaigns
- Accountability Actions (including legal remedies)
- Advocacy
 - Alternative Mining Law
 - Engagements with local government units and government agencies
 - Engagements under the Extractives Industry Transparency Initiative (EITI)

Information/Education Campaigns

- NO2MININGINPALAWAN and other Key Biodiversity Areas in the Philippines
 - When 5 million signatures were reached in 2012, we submitted this to the Office of the President.
 Not long after, Executive Order No. 79 was issued by former President Aquino.
 - 10 million signatures were reached in 2015

Accountability Actions

- Using the new Supreme Court Rules of Procedure for Environmental Cases, local communities and civil society groups have initiated judicial and administrative actions to seek damages, rehabilitation of destroyed forests and ancestral domains.
 - Environmental Protection Order (EPO), Writ of Continuing Mandamus and Writ of Kalikasan (Nature), Citizen's Suits
- Local officials who allowed or tolerated illegal mining activities were sued before the Ombudsman.

ADVOCACY and ENGAGEMENTS

Bridging the Gap between Law and Justice NEW MINING POLICY NEEDED

Role of LGUs



- Implementation of small-scale mining act and quarrying requirements
- Monitoring of mining and quarrying
- Participating in multisectoral monitoring teams (MMTs)

LGU Initiatives

- Passage of ordinances providing for moratorium on mining and quarrying activities
- Seek assistance from scientists and technical experts to conduct a total economic valuation or studies to assess environmental impacts

Local Legislative Initiatives

- Mining Moratorium Ordinances (Capiz, Mindoro, Sibuyan in Romblon, Eastern Samar, Marinduque)
- Environmental Codes
- Establishment of local protected areas (watersheds, marine reserves and sanctuaries)
- Filing of Environmental Cases (using the new Supreme Court Rules on the Prosecution of Environmental Cases)
- Advocacy for a new alternative mining law

Proposal

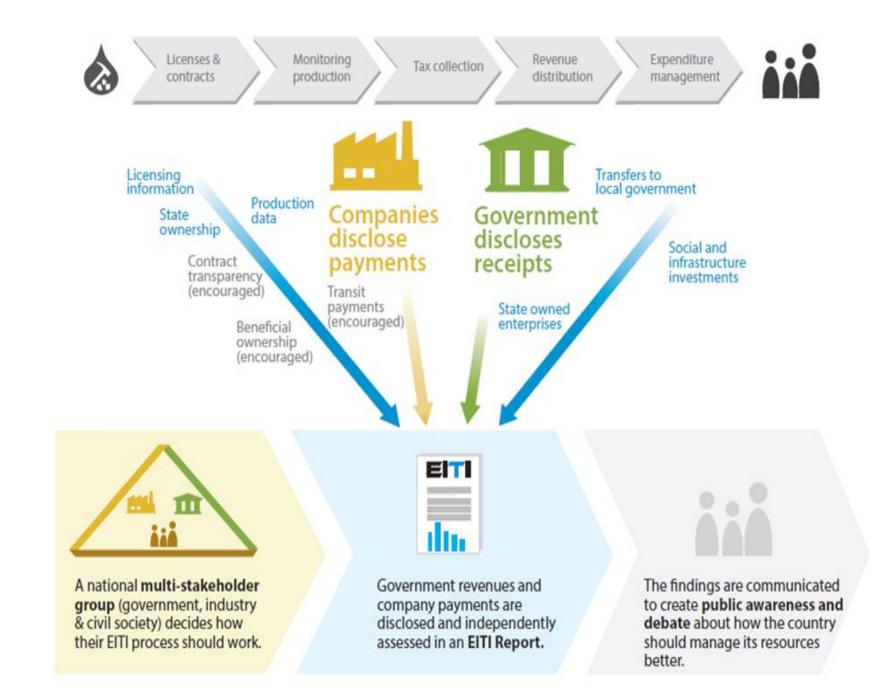
- Evidence-based and grounded on national consensus and a balancing of stakeholder interests
- Accurately accounts for benefits and costs in order to make rational decisions
 - Currently, we are not able to accurately measure benefits and costs, and this is so fundamental
 - Environmental and social costs are high but can be mitigated if done properly.
 - Extractive Industries Transparency Initiative
 - Environmental and Social Impact Assessment (ESIA)
 - Strategic Environmental Assessment (SEA)
 - Critical island ecosystems need to be closed off to mining (i.e. NIPAS, SEP)

Alternative: Minerals Management Bill

- Perspective:
 - Conservation of non-renewable mineral resources
 - for the benefit of the present and future generations of Filipinos
 - adopting a sustainable, rational, needs-based minerals management
 - towards effective utilization of mineral resources for national industrialization and modernization of agriculture

Minerals Management Bill

- Multisectoral Minerals Councils
- Prohibit open-pit mining
- No-Go zones for Mining; Protect Island Ecosystems
- Establish corporate transparency and accountability



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Recommendations

Taxation to reflect current context of the Philippines

Weak institutional policy

Promote slow utilization of minerals to give leeway in strengthening institutions

Limited implementation of good governance measures

Biodiversity hotspot

Weak tax administration

Weak regulatory capacity

Design tax regime that ensures profit for mining companies but at the same time gives government and local communities a fair share from their resources

4 NECESSARY CONDITIONS MINING DEVELOPMENT FRAMEWORK

Good governance of the public and extractive sector

Link the extractive sector and the rest of the economy

Institutional Fair share in capacity the extraction of resources

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Protect Respect Remedy