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**Working Paper**

## The political economy of financing children's rights through extractive industries in the Philippines

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Working Paper 2016–2

# **The Political Economy of Financing Children's Rights through Extractive Industries in the Philippines**

*Jewellord T. Nem Singh, Jean B. Grugel and Pascale Hatcher*

prepared for the UNRISD/UNICEF project on

Mobilizing Revenues from Extractive Industries:  
Protecting and Promoting Children's Rights and Well-Being  
in Resource-Rich Countries

February 2016



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This paper is part of a series of outputs from the UNRISD and UNICEF research project on Mobilizing Revenues from Extractive Industries: Protecting and Promoting Children's Rights and Well-Being in Resource-Rich Countries.

The project seeks to contribute to knowledge creation and institutional learning processes within the partner organizations; to bring knowledge to national and international debates about channeling revenues from mineral extraction towards social policy and investments in children; and to examine public finance mechanisms, economic and social policies, and political conditions that are conducive to this end.

More specifically, it aims to:

- advance knowledge and understanding of the linkages between extractive industries and public policies as they relate to children's rights and well-being in Mongolia, Papua New Guinea, and the Philippines; and
- advance knowledge and understanding of the political processes and institutions that impact on revenue mobilization in Mongolia, Papua New Guinea, and the Philippines.

For further information on the project visit <http://www.unrisd.org/eiandchildren>.

Series Editors: Katja Hujo and Harald Braumann

## ***Working Papers on Mobilizing Revenues from Extractive Industries: Protecting and Promoting Children's Rights and Well-Being in Resource-Rich Countries***

*The Political Economy of Financing Children's Rights through Extractive Industries in the Philippines*

Jewellord T. Nem Singh, Jean B. Grugel and Pascale Hatcher, January 2016

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# Acronyms

<b>4Ps</b>	Pantawid Pamilyang Pilipino Programme
<b>ADB</b>	Asian Development Bank
<b>Altai</b>	Altai Philippines Mining Corporation
<b>ATM</b>	Alyansa Tigil Mina
<b>BCF</b>	Billion cubic feet
<b>CCT</b>	Conditional cash transfer
<b>CIT</b>	Corporate income tax
<b>COA</b>	Commission on Audit
<b>DENR</b>	Department of Environment and Natural Resources
<b>EI</b>	Extractive industries
<b>EITI</b>	Extractive Industries Transparency Initiative
<b>EO</b>	Executive order
<b>FDC</b>	Freedom from Debt Coalition
<b>FDI</b>	Foreign direct investment
<b>FPIC</b>	Free, prior, and informed consent
<b>FTAA</b>	Financial or Technical Assistance Agreement
<b>GDP</b>	Gross domestic product
<b>IMF</b>	International Monetary Fund
<b>IPRA</b>	Indigenous Peoples Rights Act
<b>IRR</b>	Implementing Rules and Regulations
<b>LGUs</b>	Local government units
<b>MBC</b>	Makati Business Club
<b>MDGs</b>	Millennium Development Goals
<b>MGB</b>	Mining and Geosciences Bureau
<b>MPSAs</b>	Mineral Production Sharing Agreements
<b>NAPC</b>	National Anti-Poverty Commission
<b>NGO</b>	Non-governmental organization
<b>PDAF</b>	Priority Development Assistance Fund
<b>PHP</b>	Philippine peso
<b>PMC</b>	Philex Mining Corporation
<b>PNOC</b>	Philippine National Oil Company
<b>PWD</b>	Person With disability
<b>Sibuyan ISLE</b>	Sibuyan Island Sentinels League for Environment Incorporated
<b>SNPDC</b>	Sibuyan Nickel Properties Development Corporation
<b>SPEX</b>	Shell Philippines Exploration
<b>TRO</b>	Temporary restraining order
<b>US</b>	United States
<b>USD</b>	United States dollar
<b>VAT</b>	Value added tax
<b>WMCP</b>	Western Mining Corporation Philippines

## Summary

The surging investments in the extractive industries (EI) that began in the 1980s, as well as the commodity boom between 2002 and 2011, have increased the significance of the sector in national economic development. This paper takes the Philippines as a case study and provides a detailed analysis of two key aspects of mining governance: first, the political challenges in realizing a more positive role for EI in social development, particularly in promoting children's rights and children's welfare, and second, the political economy dynamics that might underpin the creation of a welfare regime able to sustain social investments for children. The findings of this paper suggest that in the Philippine context, where the expansion of the EI sector is contested in the public domain, the link between mining governance and the promotion and protection of children's rights is not necessarily straightforward. A likely future resurgence of high prices and the continuing interest of foreign investment in EI means that there will be political opportunity for relevant stakeholders to make a compelling argument for the need to ring-fence mineral rents for social investments in children and young people. To do so would require a strong pro-welfare policy coalition committed to channelling mineral wealth towards social investment and willing to craft a political consensus through negotiations between local and national elites, donor agencies, civil society organizations and affected local communities. Importantly, the state must also wrestle with multinational capital, large Filipino-owned companies and small-scale miners in the process of negotiating reforms. Ultimately, the state must seize this opportunity to take a more active role in laying the foundations of a mining governance framework, bargain with key stakeholders to reach agreement on EI-funded welfare and set out rights-based approaches to development.

This paper builds on a selective qualitative data collection from a variety of printed sources, including donor agency reports, government documents, NGO reports, newspaper archives, and interviews available online. It further builds on a short fieldwork period in Manila, in late August 2013, where key sources from civil society, academia, the extractive industry, the donor community and stakeholders were interviewed.

At the time of writing, Jewellord T. Nem Singh was Lecturer in Development, and Jean B. Grugel was Professor of International Development at the Department of Geography, University of Sheffield, United Kingdom. Pascale Hatcher was Associate Professor at the College of International Relations, Ritsumeikan University, Japan.

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## Introduction

The relatively stable growth in key emerging economies, particularly China and India, alongside sustained investments and a commodity price boom, has meant that primary commodities production is once again seen as a viable developmental strategy in many middle and low-income countries endowed with natural resources (Nem Singh and Bourgoignie 2013). At the core of the debate about primary commodities and development space for resource-rich countries in the Global South lies the question whether national governments are able and committed to leverage natural resource wealth to produce socially equitable developmental outcomes (Barma et al. 2012; Hujo 2012). At the same time, it should also be remembered that the link between mineral wealth and social development remains deeply contested.

There is certainly empirical evidence that natural resource wealth has intensified inequalities in the past (Campbell 2004, 2009; Ross 2012). Some scholars warn policy makers against the problems of weak institutional capacity, rent-seeking, and lack of coherent policies and that, where extractive industries (EI) play a dominant role in the economy, domestic mineral revenues could be used to promote authoritarian practices rather than strengthening democratically accountable institutions.<sup>1</sup> Others observe that state elites, through effective coalition-building, might also take the opportunity of channelling natural resource rents towards poverty reduction even if they face formidable challenges. For example, in Bolivia, Chile, and Ghana, progressive macroeconomic reforms accompanied changes in taxation, pro-poor public expenditures, and distinctive forms of welfare spending.<sup>2</sup>

Taking this departing point, the paper will examine the process of political bargaining in allocating domestic revenues to uphold and promote a pro-children's rights, welfare-oriented reform agenda in the Republic of the Philippines. At the outset, we should note that the Philippine EI has left a painful socio-environmental legacy, with local mining communities negatively affected by mining exploitation. This raises questions about the idea that long run economic growth and social development can be linked to the expansion of EI. Yet, the Philippines has a proven resource endowment that makes it the most mineral-rich in Southeast Asia (Mining Journal 2009: 2). In terms of metal mineral reserves, the 7,107 islands archipelago is ranked fifth in the world; it is third in gold, fourth in copper, and fifth in nickel (DENR 2013). In terms of actual production, the country is the third largest nickel producer, accounting for about 11 per cent of total world production (USGS 2012:22.1). With increasing regional demand for metal minerals, the Philippine government can potentially transform the country into a key supplier and producer of copper and gold (USGS 2012:22.3). While the natural gas sector is comparatively small compared to the metal mining sector both in terms of reserves and production, gas extraction has met less political resistance and currently also generates natural resource rents for the Philippine government.

With the country's lacklustre record of economic growth and poverty reduction in the past five decades (ADB 2007:2), the current Aquino government (2010–present) has begun to consider EI expansion as a viable, although still deeply contested, fiscal strategy for financing poverty reduction programmes. This paper explores the possibilities and limitations of mobilizing extractive rents for social development in the Philippines. Its principal objective is to analyse the challenges of crafting a pro-mining coalition, and with this, generating more domestic revenues from extractive rents. Given

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<sup>1</sup> Herb 2014; Karl 1997; Smith 2007.

<sup>2</sup> Bebbington 2013; Grugel and Ruggie 2012; Mosley et al. 2012; Saylor 2014.

that fiscal mobilization is intrinsically connected with competing interests, coalitions, and strategies within the current mining policy framework, the paper seeks to evaluate the limitations of using EI revenues as part of the state's long-term development strategy. Our research design is informed by qualitative methods, combining data collection from a variety of printed sources, secondary data from government and public organizations, and a short fieldwork period in Manila in late August 2013, where key sources from civil society, academia, the industry, the donor community and stakeholders were interviewed. Skype interviews further complemented the fieldwork to ensure breadth of coverage in mapping stakeholders and actor interests. In order to protect the respondents, interviewees have been kept anonymous.

The paper is structured in three sections. Section 1 builds on a political economy approach to detail the current mining regime and identify existing fiscal linkages between EI expansion and broader social development. Section 2 explains the (weak) developmental role of EI in the light of political opposition against the large-scale mining activities. Here, the socio-environmental and economic legacy of the sector will be detailed. In section 3, we will discuss the institutional designs and development strategies of the Philippine government in channelling and investing natural resource rents in children. In this analysis, we identify the policy challenges in the realization of this goal.

## **Linking Mining Rents to Children's Welfare Expenditure: A Political Economy Approach**

The Philippine government has long sought to develop the EI to generate export earnings and fiscal resources for the state. Large-scale mining, in particular, has a long history in the country that dates as far back as the 1920s during the US colonial period. But unlike in other mining countries, EI expansion in the Philippines has neither succeeded in addressing long-term economic growth nor served as an effective policy instrument for poverty reduction.

A political economy approach is crucial to grasp the distinctive interests, coalitions and strategies of domestic and international actors that drive economic reforms and link the drivers of change to social development. Central to this approach is an emphasis on institutions—the rules of the game, formal and informal practices, and organizational norms—as a vital element to economic development. Specifically, effective institutional and policy reforms require dealing with the politics that underpin institutional development, and with this, recognizing political conflicts at the centre of bargaining processes and negotiations across a range of stakeholders.<sup>3</sup> A political economy approach, thus, involves coming to grips with the drivers that shape how decisions are made and how institutional frameworks are crafted. The paper maps out the political economy dynamics that underpin the bargaining processes, influencing political choices made by the Aquino government in mobilizing natural resource rents for children's welfare spending. Furthermore, these processes are influenced by existing institutional rules, historical legacies and political conflicts, and when taken together, provides an explanation why actors hold their current views and expectations. We carry out this analysis in two parts. In the first section, we explore the current state of the mining sector and the mobilization of mining rent. In the second part, we identify the fiscal linkages thus far made between mining and social development.

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<sup>3</sup> North 1990; From a policy perspective, see Barma et al. 2012; Fritz et al. 2013.

## ***The state of mining***

Passed into law in 1995, the *Republic Act 7942*<sup>4</sup> governs the country's mining regime. While the 1987 Philippine Constitution limited foreign participation—in most economic activities to no more than 40 per cent of capital,<sup>5</sup> under the 1995 Mining Act, contractors with investments of at least USD 50 million, may apply for a Financial or Technical Assistance Agreement (FTAA), allowing for 100 per cent foreign ownership. FTAAAs, which can last for up to 25 years and are renewable for another 25 year period, are governed under specific contracts involving assistance for large-scale exploration, development, use of mineral resources and allow for disputes to be arbitrated offshore.

Today, the country's mining regime—notably the 1995 Mining Act, the 1991 Local Government Code, and ad hoc tax policies—is governed by a three-tier fiscal regime:

- **Small-scale and artisanal mining** is subject to different sub-national legislative decrees and environmental codes, although the national government issued two policies guiding small-scale mining activities—Presidential Decree 1899 “Establishing Small-scale Mining as a New Dimension in Mineral Development” issued in 1984 and Republic Act 7076 “Peoples’ Small Scale Mining Act of 1991”—some of which have specific clauses on mining revenue share of provincial governments (see AFRIM 2012).<sup>6</sup>
- **Large mines** can operate under a Mineral Production Sharing Agreements (MPSAs), whereby mining companies can acquire mineral extraction rights satisfying the constitutional requirement for a minimum of 60 per cent local ownership.
- Upon the passage of 1995 Mining Act, **foreign mining companies** could acquire 100 per cent ownership through FTAAAs, which constitutes a liberal profit-sharing arrangement as the overall taxes levied under this agreement are lower than in MPSAs.

In 2013, the country's mining landscape was characterized by 339 MPSAs and 6 FTAAAs (108,872.5 hectares), 36 exploration permits (115,150.4 hectares), and 98 mineral processing permits. Table 1 provides a historical overview of the increasing number of exploration permits, permits, agreements and contracts in large-scale mining between 2001 and 2013/2014.

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<sup>4</sup> This also includes the revised Implementing Rules and Regulations (IRR) (DENR Administrative Order [AO] 96–40).  
<sup>5</sup> 1987 Philippine Constitution, Article XII, Section 10.

<sup>6</sup> Both laws require small-scale mining operators to register their operations and secure permit and/or contract from the government, register mining workers through organization of cooperatives, comply with the required safety, health and environmental conditions, submit production reports, and pay taxes, royalties, and government production share as provided by the law.

**Table 1: Philippine exploration permits, agreements and contracts, 2001–2013/2014**

Type	Number												
Year	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13/ '14
<b>Exploration Permit</b>	9	13	16	13	28	33	44	39	54	99	113	75	36
<b>MPSA*</b>	162	164	175	198	216	209	236	264	275	318	339	339	339
<b>FTAA</b>	2	2	2	2	2	2	2	2	3	6	6	6	6
<b>Mineral Processing permit</b>	-	-	-	7	26	26	37	41	41	54	68	76	98
<b>Industrial Sand &amp; Gravel Permit</b>	109	104	101	103	120	161	185	199	213	202	192	233	196 ***
<b>Total**:</b>	282	283	294	323	392	431	504	545	586	679	718	745	675

\* MPSA: Mineral Production Sharing Agreement \*\* Cumulative over the years \*\*\* Figure for 2014

Source: Compiled from MGB 2013a; 2015a and 2015b

By 2009, over 30 foreign companies had invested in the country's mining sector, including some of the world's largest mining companies: BHP Billiton, Brazil's Vale, and Anglo American. Some 24 flagship projects were projected to be operational before 2016, and the Mining and Geosciences Bureau (MGB) was reporting that at least 50 exploration projects had "good" potential for development (Mining Journal 2009:4). Table 2 provides an overview of the main large-scale mining projects under operation in the country.

**Table 2: Selected large-scale mining projects under operations (2011/2012)**

Project Name	Producers	Commodity	Production <sup>1</sup>	
			2011	2012
<b>Victoria Gold Project</b>	Lepanto Cons. Mining Corp.	Gold	910	564
		Silver	1,049	1,531
<b>Paracale Gold Project</b>	Johson Gold Mining Corp.	Gold	22	0
<b>Acupan Contract Mng. Project</b>	Benguet Corporation	Gold	250	382
		Silver	3	160
<b>Co-O Gold Project</b>	Mindanao Mineral Processing and Refining Corporation (MMPRC) / Philsaga Mining Corp.	Gold	2,219	1,619
<b>Gold Processing Plant</b>	Mindanao Mineral Processing and Refining Corporation (MMPRC) / Philsaga Mining Corp.	Silver	641	710
<b>APEX Maco Operation</b>	Apex Mining Company Inc.	Gold	819	744
		Silver	4,525	3,604
<b>Masbate Gold Project</b>	Phil. Gold Processing & Refining Corp.	Gold	4,197	5,980
		Silver	3,398	4,514
<b>Siana Gold Project</b>	Greenstone Resources Corporation	Gold	0	409
		Silver	0	1,568
<b>Padcal Copper Project</b>	Philex Mining Corp	Gold	4,358	2,218
		Silver	4,129	2,106
		Copper		
<b>Rapu-rapu Polymetallic Project</b>	Rapu-Rapu Processing Inc.	Gold	874	2,016
		Silver	15,381	35,575
		Copper		
		Zinc Concentrate		
<b>Canatuan Mining Project</b>	TVI Resource Development Phils. (Inc).	Gold	214	350
		Silver	14,322	14,279
		Copper		
		Zinc Concentrate		
<b>Toledo Copper Operations</b>	Carmen Copper Corporation	Gold	213	426
		Silver	2,065	3,430
		Copper		

**Note:** (1) in kilograms **Source:** Mines and Geosciences Bureau 2013a (adapted)

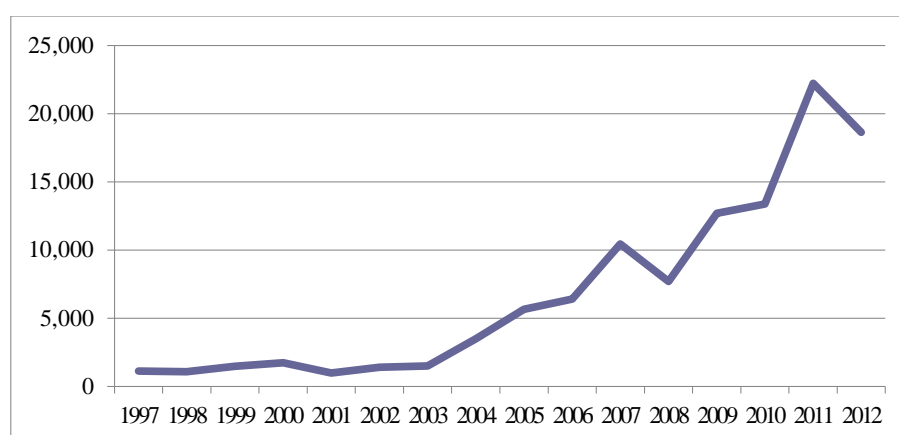
While these figures will be explained in the following section, we note that the country's mining sector has not reached its investment targets in recent years, forcing the government to scale down its mining investment target from its original USD 1 billion to about USD 800 million (Mining Journal 2009:4). Table 3 provides a summary of the contribution of mining to the Philippine economy in terms of investment, sectoral contribution to the GDP, and employment.

**Table 3: Economic performance indicators of the Philippine mining sector, 2008–2012**

	2008	2009	2010	2011	2012
<b>Gross production value (USD)</b>	1.958 billion	2.227 billion	3.221 billion	3.768 billion	3.358 billion
<b>Total mining investment (USD)</b>	604.2 million	719.5 million	1,053.1 million	1,149.7 million	791.7 million
<b>Mining contribution to GDP (USD)</b>	1.205 billion	1.381 billion	1.955 billion	2.237 billion	1.724 billion
<b>Mining contribution to GDP (in per cent)</b>	0.7	0.8	1.0	1.0	0.7
<b>Employment in mining and quarrying (in absolute numbers and as % of total)</b>	158,000 0.5%	169,000 0.5%	197,000 0.5%	211,000 0.6%	252,000 0.7%
<b>Taxes, fees and royalties in mining (USD)</b>	172.87 million	259.87 million	296.28 million	509.81 million	485 million
<b>Total operating metallic mines</b>	23	23	28	30	35
<b>Total processing plant/smelter</b>	2	2	2	2	2
<b>Total number of approved and registered projects</b>	545	586	679	718	730
<b>Total number of applications under process</b>	2,937	2,954	2,771	1,728	1,632

Source: Mines and Geoscience Bureau 2013c

As Table 3 indicates, between 2008 and 2013 the Philippine government received an estimated total of USD 1,724 million in fiscal revenues from the mining sector (MGB 2013b). Despite the negligible contribution of mining to the national economy, the recent investment boom as well as the high commodity prices between 2002 and 2008 means that the Philippine government has steadily received increasing fiscal revenues from the EI. Figure 1 follows the sector's contribution in taxes, fees, and royalties.

**Figure 1: Taxes, fees and royalties from mining 1997–2012, in PHP million**

Source: Mines and Geoscience Bureau 2013b

According to the independent investigation of the International Monetary Fund (IMF) (Sunley 2012), large mines pay different taxes depending on whether they have a MPSA or a FTAA agreement. Only mines operating in a mineral reservation pay the royalty—five per cent of the market value of gross output—and the companies currently mining in a mineral reservation are all operating under a MPSA. All mines pay the two per cent mineral excise tax, which is also levied on the market value of gross output. In addition to the excise tax and possibly the royalty, MPSAs pay national taxes (including corporate income tax (CIT), withholding taxes, customs duties, and value added tax (VAT), as well as various local taxes and fees. The most important local taxes are a business tax based on turnover and the property tax. Investments in the mining sector are eligible for tax incentives provided in the Omnibus Investment Code of 1987 and in the Mining Act of 1995. These incentives include tax holidays, customs duty and VAT exemptions on imports, and a longer loss carry-over.<sup>7</sup>

The low contribution of the mining sector to government revenue is attributed to several factors that extend beyond the generous fiscal regime aimed at attracting foreign direct investment (FDI) in the industry. In an IMF report, Emil Sunley et al. (2012:9) suggest that “low tax revenues are due to the mining sector comprising mostly small-scale mines (with about 34 per cent of total value of production) that do not pay a lot of tax, older mines that are in their twilight years, and a few new mines that are enjoying tax holidays”.<sup>8</sup> In table 4, the royalty rate totals 10 per cent, which is considered high by international standards. However, the actual royalty rate (called Royalty 1) is only five per cent, and the government can extend this rate to all mines through an executive order. But extending this rate is not necessarily easy, since not all mining sites can be declared as mineral reservation. In this context, legislative amendments to the 1995 Mining Act or National Internal Revenue Code would be necessary if the government wished to increase its revenue intake. If this were to be done, the revenue from the mining sector would increase by PHP 2.5 billion (USD 56 million) per year at current levels of production and prices (Sunley et al. 2012: 20).

**Table 4: Production-based levies on metallic minerals mined in a mineral reservation**

Levy	Rate (per cent)
Mineral excise	2
Royalty 1 (applied only to mines on mineral reservation)	5
Royalty to indigenous peoples	1
Local business tax on the extraction of minerals	2
Local business tax on processing of extracted minerals to finished goods	0.38

**Source:** Department of Finance and DENR, as cited in Sunley et al. 2012:19

Current President Benigno “Noynoy” Aquino (2010–2016), who is said to be a strong supporter of further developing the country’s mining sector, attempts to stimulate investments in the mining sector and increase its contribution to the economy. The

<sup>7</sup> The FTAA fiscal regime is structured in two components: the basic government share and the additional government share. The basic government share includes the same national taxes, local taxes, and fees paid by MPSAs. The additional government share, which is paid only after the recovery period (when net cash flows exceed the pre-operating expenses), is equal to 50 per cent of net mining revenue in excess of the basic government share. The additional government share is, in effect, a minimum tax, after the cost recovery period, as it is paid only when the regular taxes and fees are less than 50 per cent of net mining revenue.

<sup>8</sup> In addition, out of a total of 345 active large mining licenses, only 30 per cent of the companies are in the development and production stages and the rest are in the exploration stage.



objective of present reforms in the sector is to bring the contribution of mining from 1.5 to 6.6 per cent of the country's GDP, and in so doing, to "fix the Philippines firmly as a 'mining country'" (Mining Journal 2009: 4). Issued on 9 July 2012, Executive Order No. 79 (EO79) spells out the reform for the mining sector. EO79 and its Implementing Rules and Regulations (IRR) contain salient provisions aimed at clarifying the legal and political uncertainties in the 1995 Mining Act.

The current reform agenda should also be understood in relation to the government's even more recent move to lift its earlier Memorandum Order No. 2011–01, which imposed a ban on all types of mining applications, including exploration permits, mineral production sharing agreements, FTAA, and industrial sand and gravel licenses.<sup>9</sup> Within 24 hours of the restriction being officially lifted, the MGB had already received 126 applications. Leo Jasareno, MGB's director, stated that: "The lifting of the moratorium means that the country is now ready to implement responsible mining, given the trailblazing provisions of [EO79]. We should also expect significant mining investments to start pouring in as we see mineral exploration moving on again" (cited in Asia Miner 2013).<sup>10</sup>

However, it should also be recalled that the promotion of the large-scale mining sector in the Philippines has contributed very little in terms of export production, and not succeeded in creating forward and backward linkages to other sectors, or in attracting sizeable foreign investments. For instance, by 2008, mining contributed 1.5 per cent of the country's gross domestic product (GDP). In addition, the industry's potential for job creation appears to have been overstated.<sup>11</sup> Table 5 provides some detailed evidence as regards the employment record of the mining industry. Notwithstanding the highly unstable nature of employment in the sector as a result of the fluctuation of commodity prices and the relatively short lifespan of most mines, large-scale mining also negatively affect other industries including farming, fishing, and tourism, which tend to offer more sustainable jobs (Christian Aid and PIP Links 2004: 17–19).<sup>12</sup> Yet these sectors in fact create more jobs per unit of money invested and provide a greater contribution to poverty reduction (Goodland and Wicks 2009).

<sup>9</sup> Memorandum Order No. 2011–01.

<sup>10</sup> The paper contains direct quotations, which do not indicate a page number. In this situation, the authors used online versions, rather than print copies of the sources.

<sup>11</sup> While the MGB estimates that the country's mineral industry employed 197,000 people in 2010 (USGS 2012b: 22.1), the sector's requirements for advanced technologies has also resulted in the assignment of higher paid jobs to expatriates or to workers who are not from local communities. On the subject, see notably BIC et al. (2006); Campbell (2004; 2009); Holden (2005).

<sup>12</sup> In addition, new mines often bar local communities from accessing artisanal mining sites, thus depriving them of their livelihoods. Small-scale mining takes place in over 30 provinces in the Philippines and involves as many as 200,000 people. Twenty years ago, small-scale miners were responsible for almost half of the gold production in the country, or 46 per cent of the 27,059 kg of gold (Philippines International Review, 2009).

**Table 5: Selected indicators for all mining and quarrying establishments by industry sub-class, 2010**

Industry Description	Employment per establishment	Average annual compensation	Value added per worker
The Philippines	244	264,438	2,029.74
Mining of hard coal	s	s	s
Extraction of crude petroleum	116	1,440,697	42,872
Gold ore mining	428	273,750	1,063
Copper ore mining	747	275,556	1,547
Chromite ore mining	42	86,139	95
Nickel ore mining	413	225,364	1,214
Marble quarrying	72	160,298	172
Limestone quarrying	95	160,349	563
Stone quarrying, except limestone and marble	35	117,343	194
Clay quarrying	s	s	s
Sand and gravel quarrying	33	88,594	306
Silica sand and silica stone quarrying	27	129,506	563
Stone quarrying, clay and sand pits, n.e.c.	29	163,670	1,123
Other chemical and fertilizer mineral mining	s	s	s
Extraction of salt	29	84,857	137
Other mining and quarrying, n.e.c.	s	s	s
Oil and gas extraction activities on a fee or contract basis	s	s	s
Support activities for other mining and quarrying	s	s	s

**Note:** s - suppressed data to avoid disclosure of individual establishment's data **Source:** 2010 Annual Survey of Philippine Business and Industry, National Statistics Office

Father Gariguez, executive secretary of the Catholic Bishops' Conference of the Philippines (National Secretariat for Social Action) argues that "the local mining industry's contribution to the Philippines economy since the time the mining act was implemented has barely reached two per cent of GDP. In contrast, agriculture contributes a solid 16–17 per cent of GDP" (Gariguez 2010). In this regard, it is worth mentioning that mining regions tend to perform worse in poverty reduction. The region of Mindanao—the richest region in the country in relation to natural resources—is where poverty is most endemic; Mindanao was recently rated as high as 59 per cent (UNICEF Philippines 2010:5). With poverty remaining high, there are demographic challenges for the Philippines. As the population is expected to reach 150 million by 2036 (Doyle et al. 2006:iii), food security in poverty-stricken regions is critical. While the World Bank Group has made rural development "a top national priority" (IBRD and IFC 1999:2), there exists a certain difficulty, as argued by Goodland and Wicks (2009), for reconciling the government's focus on large-scale mining with the need to feed a rapidly expanding population. Indeed, once self-sufficient in rice—the staple food for Filipinos—the Philippines is now the world's biggest importer.<sup>13</sup>

None of this is to suggest that mining cannot contribute to social welfare and poverty reduction. Rather, it is the current mining framework, and its focus on large-scale mining driven by FDI, has thus far failed. In fact, small-scale mining has historically played a role in reducing poverty among poor provinces. Indeed, some mining

<sup>13</sup> We note that the factors contributing to the country's switch in its position from a rice exporter to importer are quite complex and a combination of economic and political variables. Mining is not necessarily directly associated with this, although some stakeholders are suggesting that mining has exacerbated the limited supply as a result of changes in land use.

provinces continue to rely on mining as part of their subsistence livelihoods.<sup>14</sup> While there are few systematic studies examining the developmental potential of artisanal mining in the country, the sector generates significant employment and livelihood for residents and migrant workers, and, when local policies are exercised, contributes quite substantially to overall local revenue collection efforts (AFRIM 2012).

A different set of policies guides the artisanal mining sector today—mainly through local environmental codes and provincial ordinances—alongside two key national laws, namely Presidential Decree 1899 “establishing Small-scale Mining as a New Dimension in Mineral Development” passed by Marcos in 1984 and Republic Act 7076 “Peoples’ Small-scale Mining Act” passed in 1991 by Corazon Aquino’s government (1986–1991). These laws attempt to regulate mining operations by compelling owners to register their operations and secure permits and contracts from the government. In practice, the great uncertainty and the costly processes associated with compliance to such laws mean that often miners have operated illegally, sometimes with the tolerance of large-scale mining operators who own the mining contracts. In many ways, the current attempts to re-regulate the mining industry are perceived as a direct attack against small-scale mining activities, most notably the increase in tax rates. Given the weaker bargaining position of small-scale miners,<sup>15</sup> particularly compared to more organized domestic mining operators and subsidiaries of foreign companies, it is crucial for the Aquino government to be more cautious, when making policy changes in favour of re-regulation of the small-scale mining sector.

However, at the local level, there is no ring fencing of funds collected from the sector that can be utilized as a source of financing development projects in the mining community nor are there any existing welfare programmes except when large-scale mining companies are operating in the mining regions (AFRIM 2012:30; The Philippine Star 2013:B-6). As an outcome of political decentralization, regional and local elites can exercise some of their discretionary powers to utilize mining rents as determined by the 1995 Mining Act, although the local benefits of mining have become subjected to patronage politics and clientelistic relationships between provincial elites and the communities. This, inevitably, means that local communities have thus far not received significant compensations from the socio-environmental impacts of mineral extraction. Women and young people aged 13–24 work in the mines, albeit with different roles as prescribed by community practices. In Benguet and South Cotabato, for instance, out of the sector’s estimated 7,000 workforce, 3,000 are women (AFRIM 2012:26). While women are trained in special skills of gold processing, the young workers serve as hard labour in the tunnels as packers, ball mill operators and *atraseros*.<sup>16</sup> Given weak state regulation—and the state preference for large-scale mining—workers have suffered from health and safety hazards and conflicts of interests arise between large and small mining operators (Israel and Asirrot 2002).<sup>17</sup>

<sup>14</sup> Small-scale mining is defined as mining by individuals, groups, families, or cooperatives with minimal or no mechanization, often in the informal (illegal) sector of the market. Small-scale mining relies heavily on manual labour and does not use explosives. In the Philippines, small-scale mining operations include subsistence mining, (estimated 75 per cent), individual or family business (estimated 15 per cent), and established commercial mining firms (estimated 10 per cent) (Hentschel 2002 in AFRIM 2012:6).

<sup>15</sup> Historically, small-scale mining has been illegal and more difficult to regulate. There are no existing effective institutional channels at the national level to negotiate with the government, and therefore, political bargaining often takes place at the provincial and local levels. The miners are subject to local authorities’ decisions, making them vulnerable to corruption and abuse of power by local chiefs.

<sup>16</sup> *Atraseros*’ duties involve the sacking of ores and mucking wastes, whose working hours depend on the distance of the tunnel. They earn P60 (or USD 1.5) per *puyong* (or sack) (AFRIM 2012:12–13).

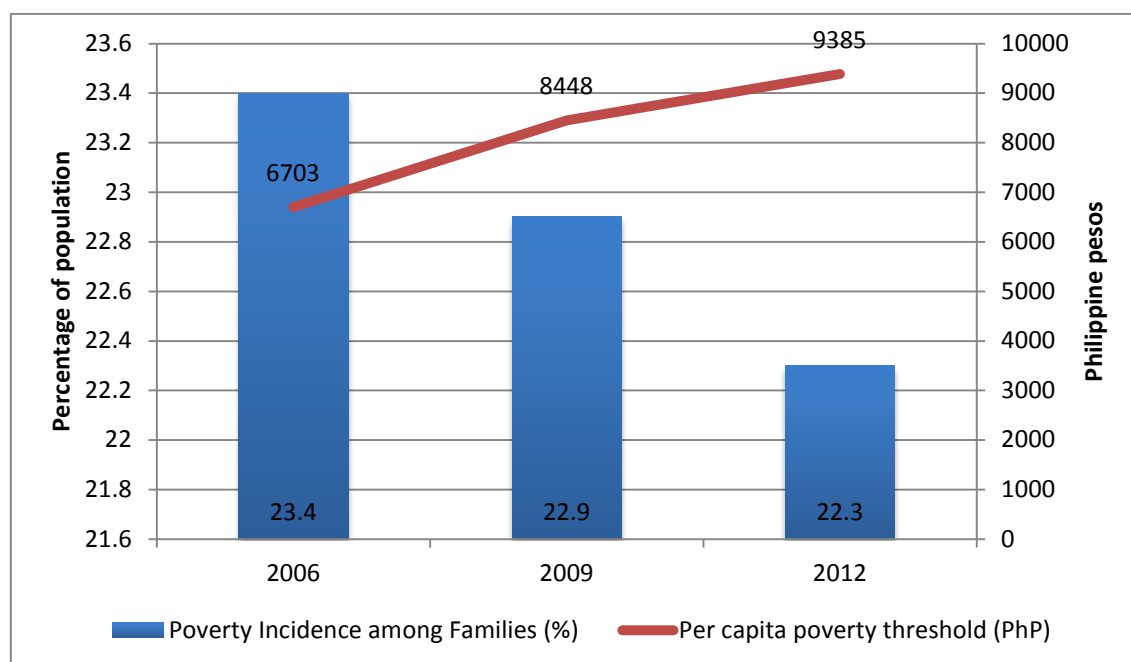
<sup>17</sup> Our interview with the Senior Official at EITI (24 October 2013) likewise suggested that large mining operators have tried to distance themselves from small-scale miners due to the environmental and social hazards associated with manual processing in the mines.

## ***Linking mining rents to children's welfare expenditure: The Pantawid Pamilyang Pilipino Programme***

This section aims to demonstrate the impact of Aquino's poverty reduction strategy, in particular on children, the strengths and limitations of how the government has financed social welfare, and the potential role of EI rents in sustaining these social investments. With some 39 million children, the Philippines, which has a total population of 94.8 million, is youthful (UNICEF n.d.). Its high population growth rate of slightly over two per cent per annum is considered to be relatively "unusual" for a modern, middle-income country (UNICEF Philippines 2010). This is linked, in part, to the strong affinity of Filipinos to the Catholic faith, which has also determined the degree of support over population control strategies, notably on reproductive health and family planning, which was fiercely resisted by the Catholic Church. For instance, the Church wields some power over the National Congress by lobbying to block efforts to enact state-sponsored education campaigns in enhancing information on family planning, women's reproductive rights, and other social issues (UNICEF Philippines 2010:4).

The country was ranked 117th in the Human Development Index (0.660) in 2013, revealing the fact that social development gains in recent years have been limited. Similarly, the Philippines still lags significantly behind neighbouring Asian countries when it comes to poverty and inequality. It is estimated that between 2006 and 2012 the country's poverty incidence among families had changed very little, from 23.4 per cent to 22.3 per cent. At the same time, the poverty threshold—a measure of how much a family would need each month to meet the basic food and non-food needs—has increased over the same time period (figure 2). This means that rising living standards have negatively affected poor families as government policy has failed to make a dent in poverty.

**Figure 2: Poverty incidence among families and poverty threshold in the Philippines, 2006–2012**



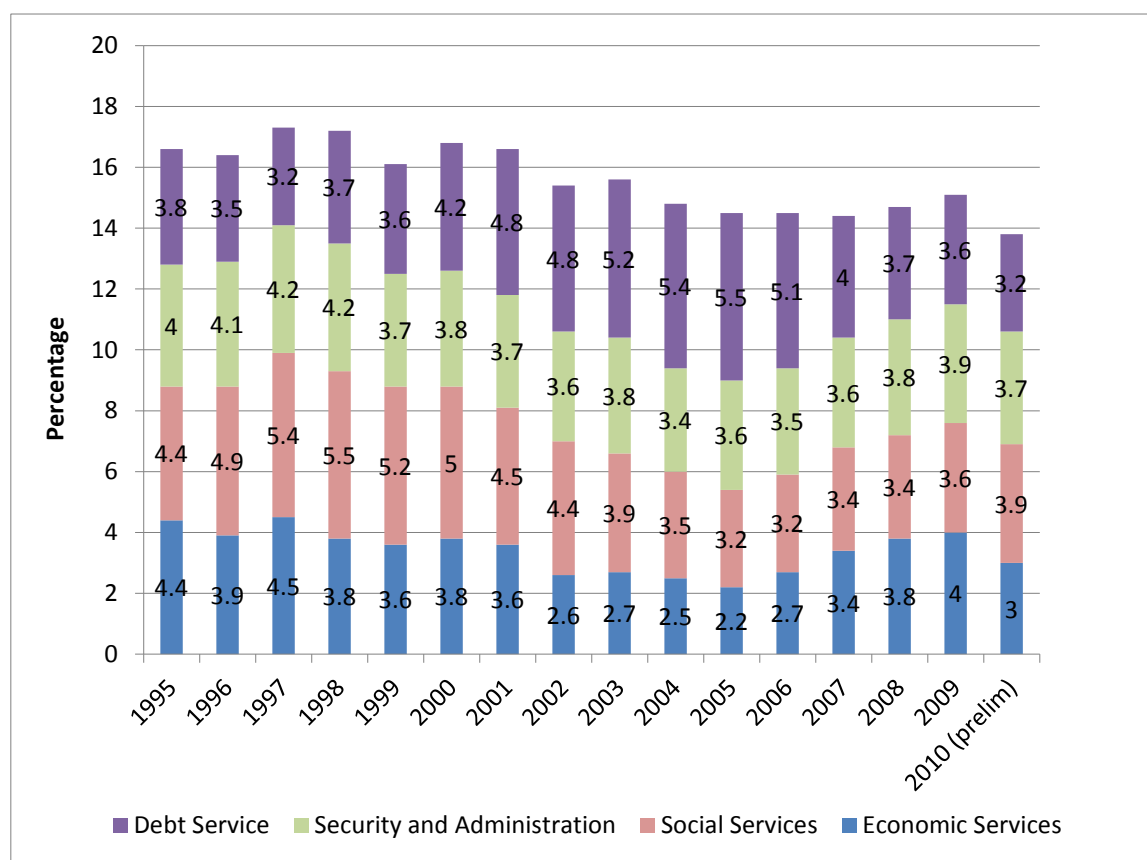
**Note:** Data available online <http://www.nscb.gov.ph/poverty/defaultnew.asp>, accessed on 5 January 2014

**Source:** National Statistics Coordinating Board Poverty Incidence Report

Although in some key development areas the Philippines was able to meet the Millennium Development Goals (MDG) targets, there are still outstanding concerns

particularly in securing health provision for women (National Economic and Development Authority and United Nations Development Programme 2014:74f.) and sustained access to education (National Economic and Development Authority and United Nations Development Programme 2014:6, 37). This trend can be explained by examining government priorities on public spending. Figure 3 provides a detailed picture of the trends in national government spending by sector, as a proportion of GDP. While spending on the social sector increased from 4.4 per cent to 5.5 per cent of GDP from 1995 to 1998, social spending declined year-on-year to just 3.2 per cent by 2005, and only recovered to 3.9 per cent by 2010, at the beginning of the current administration of President Benigno Aquino. Social expenditures were, in fact, largely sacrificed in favour of outlays on debt servicing, which rose from 3.2 per cent to as high as 5.5 per cent of the GDP from 1997 to 2005. By contrast, spending on national defence, peace and order, and public administration remained fairly stable. Briones et al. (2011:12–14) show that government choices about spending have impacted on the overall ability of the Philippine government to achieve the MDG targets. In this context, civil society campaigns, such as the Freedom from Debt Coalition (FDC) and Social Watch Philippines, have sought for the Philippine Government to shift spending priorities towards social development objectives by reducing debt servicing in favour of economic and social sector expenditures.

**Figure 3: National government spending as a percentage of GDP, 1990–2010**



Source: Manasan 2010

Additionally, social welfare gains have been blocked by traditions of clientelistic politics and the weak tax and spending capacity of the state (Nem Singh et al. forthcoming; Quimpo 2007). As regional politicians and local executive chiefs maintain their local power bases, mainly a consequence of decentralization of government services, political elites have also learned to manipulate *how* and *when* government

funds are released. Increases in social welfare spending typically coincide with the electoral cycle, because incumbent national and regional politicians can use the expansion of government expenditure to gain electoral advantage over the opposition candidates (Hedman and Sidel 2000; Sidel 1999).

In this context, the conditional cash transfer (CCT) programme, also known as *Pantawid Pamilyang Pilipino Programme* (4Ps), emerged as the key government initiative to extend financial support directly to poor households, and is presented as a programme which “could fundamentally change the dynamic of poverty for millions of households over the coming years” (UNICEF Philippines 2010:5). The programme was first introduced to tackle the overall decline in social expenditure, as well as concerns over the failure to make social progress consistent with the MDGs. Additionally, it established institutional patterns of governance that mitigated against the introduction of welfare regimes independent of votes, political allegiances and clientelism.

With funding principally coming from the World Bank and the Asian Development Bank (ADB), the CCT Programme was established in 2008 under President Gloria Macapagal Arroyo, amidst a serious food price crisis and was subsequently consolidated by the Aquino government (2010-present). From an initial budget of PHP 21 billion (USD 430 million) in 2011, the programme's budget was raised to PHP 39.4 billion (USD 882 million) in 2012 and reached PHP 44.25 billion (USD 991 million) in 2013. Despite significant expansion, funding remains dependent on external loans and the ADB extended an additional USD 100 million in loan in 2012. As table 6 details, the expansion of fiscal spending through the programme has led to a 10-fold increase in coverage, benefiting indigent households in particular.

**Table 6: Expansion of household beneficiaries of the CCT programme**

Year	Number of newly enrolled households in the CCT Programme
2008	291,048
2009	248,034
2010	381,258
2011	1,207,014
2012	834,679
2013	867,745
2014*	258,564
Total	4,088,342

**Notes:** \*as of June 2014 **Source:** DWSD 2014 Cited in: N. N. 2014

The ambition of the programme, which remains the government's “flagship program for the poor” (Rappler 2012), is to break the intergenerational cycle of poverty by allowing selected poor children to have greater access to health, nutrition, and education.<sup>18</sup> The programme covers children up to the age of 14—which was extended to the age of 18 in 2013<sup>19</sup> and provides monthly cash grants of up to PHP 1,200 or USD 27 (Philippine Daily Inquirer 2013a) for up to three children per household,<sup>20</sup> subject to compliance

<sup>18</sup> The 4Ps was meant to support the attainment of the MDGs, notably: Eradicate extreme poverty and hunger; Achieve universal primary education; Reduce child mortality; Improve maternal health; and Promote gender equality and empower women.

<sup>19</sup> The Sectoral Performance Audit Report on the Conditional Cash Transfer Program of the government (CYs 2007 to 2009) found that the programme was lacking in terms of keeping older children in school, noting that enrolment of 12–14-year-old children who are covered under the programme did not improve and as such, the government has now extended the reach of the programme to older children.

<sup>20</sup> Cash transfers are also available to pregnant women availing of pre- and post-natal care.

with specific conditions, notably that the children maintain a class attendance rate of at least 85 per cent of the time, and regularly visit health centres.<sup>21</sup> As such, it follows a standard CCT pattern, focused on increasing the income and social capital of the poor, but does not address overall inequalities. By 2008, the programme reached an estimated 700,000 families (Bello 2010). As of 26 August 2015 there are 4,353,597 active household beneficiaries, of which 570,056 are indigenous households and 217,359 have at least one person with disability (PWD). The programme also covers 10,235,658 schoolchildren aged 0 to 18, from the total registered with an average of two to three children per household (Government of the Philippines 2015).

As well as extending the coverage of the programme and securing funding, the 4Ps' success depended on isolating pro-poor expenditures from local elite politics.<sup>22</sup> In order to do so, the national government threw its political weight behind the programme, which was turned into one of central government's core developmental strategies, with the executive branch using its power and authority to dilute political opposition at the national level and implementation barriers at the regional levels. Aquino personally applied pressure to ensure that the Department of Social Welfare and Development Secretary, Dinky Soliman, could guarantee stringent implementation from the national to the local levels. Aquino's efforts were backed by key external stakeholders and, as such, local politicians found it difficult to delay or withhold the funds for clientelistic purposes.<sup>23</sup>

To be sure, the social development potential of the programme, should not be overstated. Indeed, even while acknowledging the CCT as successful in terms of "containing poverty," various observers have evaluated its impact on inequality as less evident (Bello 2010). But recent impact assessments (Chaudhury et al. 2013) show that the programme is helping to keep younger children in school, as exemplified by improvements in school enrolment among younger age groups (3–11 years old) and school attendance improved for all age groups except for the pre-school ages.<sup>24</sup> Table 7 details primary and secondary school participation rates between 2008 and 2012. It is worth noting that school participation of young females is higher compared to young males, in both elementary and secondary education as figures 4 and 5 show. In addition, the programme is also meeting its objective of ameliorating child health, as shown by improvements in long-term nutritional status of younger children (6–36 months old). In addition, poor households were encouraged to use maternal and child health services such as antenatal care, postnatal care, regular growth monitoring, and receipt of Vitamin A and deworming pills.<sup>25</sup>

**Table 7: School participation in percentage, 2008–2012**

Indicator	2008	2012
Elementary education net enrolment rate (%), male	84.6	94.2
Elementary education net enrolment rate (%), female	85.7	96.3
Secondary education net enrolment rate (%), male	56.4	59.5
Secondary education net enrolment rate (%), female	65.2	70.0

**Source:** National Economic and Development Authority and United Nations Development Programme 2014:20

<sup>21</sup> The Department of Social Welfare and Development (DSWD) recently expanded the programme with the Modified Conditional Cash Transfer and Extended Conditional Cash Transfer, notably to include street families and indigenous peoples.

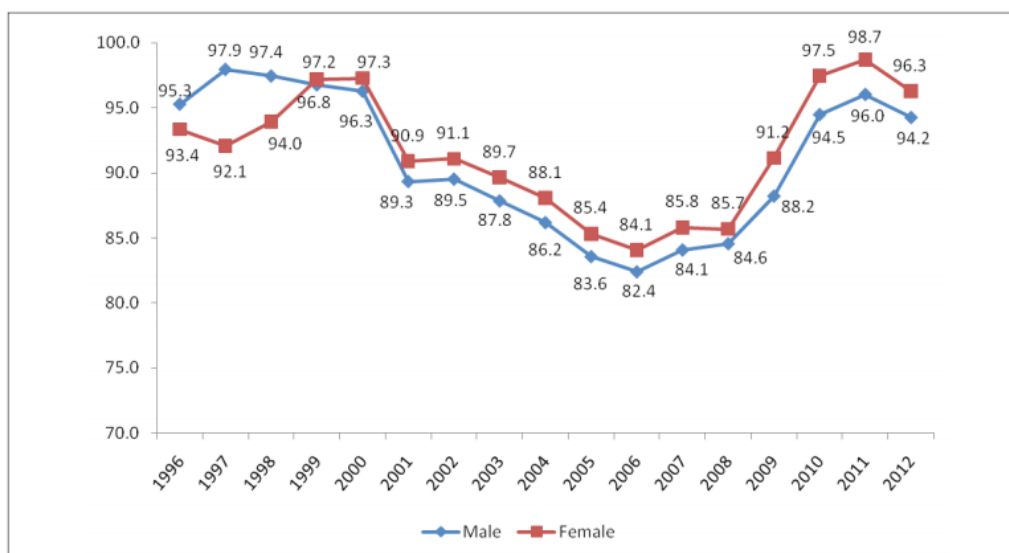
<sup>22</sup> Author interview with a Senior Official, National Anti-Poverty Commission (NAPC), 18 October 2013.

<sup>23</sup> Author interview with a Senior Official, National Anti-Poverty Commission (NAPC), 18 October 2013.

<sup>24</sup> This evaluation referred to the programme before it was extended to the 14- to 18-year-olds.

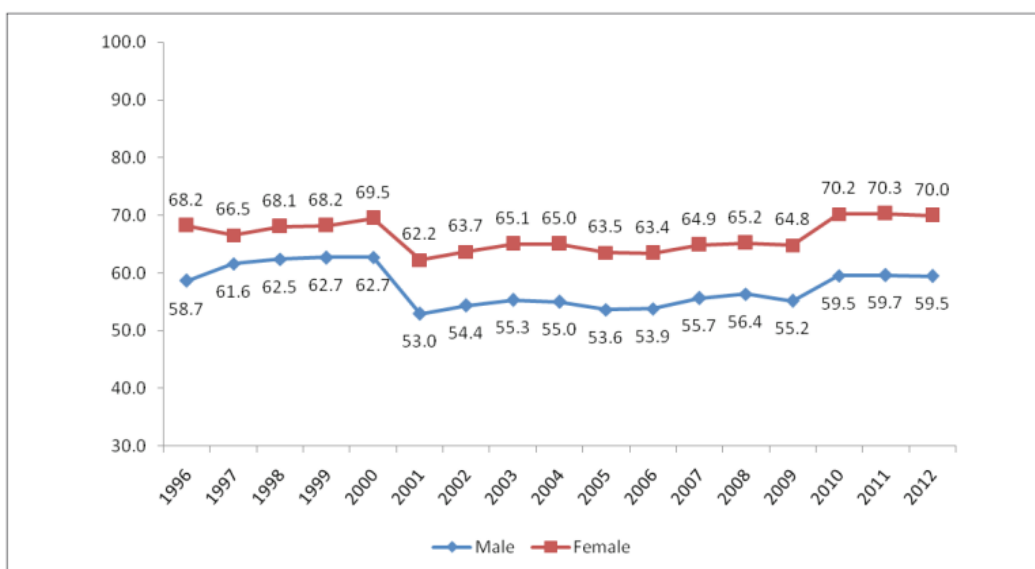
<sup>25</sup> Chaudhury et al. 2013:31; see also Reyes and Tabuga 2012; Usui 2011.

**Figure 4: Elementary education net enrolment rate (%), by sex, 1996–2012**



**Note:** For SY 2002–2003 to SY 2009–2010, the population used in computing the gross and net enrolment rates is based on the revised population projection based on 2.04 per cent annual growth rate between 2000 and 2007 Censuses. For SY 2010–2011 [sic] to SY 2012–2013 population is based on 2010 CPH provided by PSA-NSO. **Source:** National Economic and Development Authority and United Nations Development Programme. 2014: 20

**Figure 5: Secondary education net enrolment rate (%), by sex, 1996–2012**



**Note:** For SY 2002–2003 to SY 2009–2010, the population used in computing the gross and net enrolment rates is based on the revised population projection based on 2.04 per cent annual growth rate between 2000 and 2007 Censuses. For SY 2010–2011 [sic] to SY 2012–2013 population is based on 2010 CPH provided by PSA-NSO. **Source:** National Economic and Development Authority and United Nations Development Programme. 2014:20

Nevertheless, there are major limitations in what the CCT can offer as a sustainable and effective anti-poverty strategy. First, the Aquino government is confronted with the challenge of the long-term financing of his social policy. Using figures for the income gap and the poverty threshold, the National Statistical Coordinating Board estimates that the total cost of eliminating the worst forms of poverty (exclusive of targeting costs) was USD 1.785 billion for the first semester of 2012. In contrast, the budget of the Department of Social Welfare and Development for the CCT was around half of that



(USD 850 million) for the whole of 2012 alone.<sup>26</sup> Second, and more importantly, the realization of social and economic rights must go beyond cash transfer programmes. It requires state capacity to tax and allocate spending effectively, but also some political, social and cultural changes to encourage resource allocation that challenges inequalities in voice and citizenship. As Grugel and Peruzzotti (2010) and Grugel and Rigerrozzi (2012) argue, welfare spending can contribute to protecting rights-bearing subjects, but it does not necessarily deliver fully against a broader agenda of human rights and citizenship.

In light of the complex relationship between rights and welfare, it is interesting to note that government officials and donor agencies tend to view the Philippine CCT programme from a rights-based perspective. Yet in our view, the details of this approach need some critical evaluation. The programme aims to uphold certain rights of children—to food, health, and education. It contributes to efforts to end the intergenerational transmission of poverty. But even in these areas, the limited funding committed to these tasks means its impact is inevitably less than what the programme’s grand aims set out.

Moreover, for rights-based local non-governmental organizations (NGOs) and, indeed, UNICEF, the protection of children from adverse social and economic conditions requires more than welfare spending on education and health care.<sup>27</sup> As Save the Children (2005:23) argues, a rights-based approach to social development entails a mandatory action. More importantly, it suggests equality of rights and access: *all* people have the same right to fulfil their individual potential, rather than allowing for some people to be left out. Hence, CCTs might work to contain poverty but they do not open political spaces for the actors themselves to pursue redistribution of power or demand social justice. More practically, in the context of highly unequal societies such as the Philippines, reducing poverty also requires changing macroeconomic policies, notably “reversing of trade liberalization, a moratorium on foreign debt payments, and an effective agrarian reform” (Bello 2010). Progressive NGOs and reform advocates must therefore spend some time to win the battle of gaining approvals for more structural reforms in the economy under the complex coalition of the Aquino presidency. In other words, the policy challenge is not simply to finance welfare policies; it is also about linking welfare approaches with long-term reforms over taxation, trade liberalization and mining policy.

With the next presidential elections due to take place in May 2016, the challenge of poverty reduction rests on moving beyond the 4Ps’ initiative (or “poverty containment”) by combining the CCT with the introduction of parallel social programmes. This, then, entails recognizing the multidimensional nature of poverty and social inequality, and an approach to ring fence mineral rents for social services may be insufficient in enhancing access to education and health across a wider spectrum of the population. Importantly, we also highlight the role of reforming state institutions themselves: that is, building bureaucratic capacity to achieve welfare improvements. Some policy makers we interviewed suggested rationalization and consolidation of different poverty reduction initiatives, some of which operate at a smaller scale, and to establish a coherent anti-poverty policy framework.<sup>28</sup> This requires high levels of inter-agency coordination and a considerable degree of participation from stakeholders. From a rights perspective,

<sup>26</sup> See [http://www.nscb.gov.ph/pressreleases/2013/PR-201304-NS1-04\\_poverty.asp#sthash.o0u0CSU0.dpuf](http://www.nscb.gov.ph/pressreleases/2013/PR-201304-NS1-04_poverty.asp#sthash.o0u0CSU0.dpuf), accessed 5 January 2014.

<sup>27</sup> Author interview with Senior Staff, United Nations Children’s Fund (UNICEF) Philippines, Phone, 7 October 2013.

<sup>28</sup> Author interviews with a Senior Official, National Anti-poverty Commission, 18 October 2013, and Secretary Dinky Soliman, Department of Social Welfare and Development, Skype, 27 September 2013.

these reforms still reflect challenges from the point of view of the state. As we have suggested, poverty reduction and children's rights must incorporate the actual voices of young people and children to claim rights themselves, and with this, provide an open political space with stakeholders to influence the ways anti-poverty strategies are designed.

## **Mining in the Philippines: Politics and Key Stakeholders**

In theory, *existing* mining rents can be leveraged to finance social policy. With sufficient pressure and the use of “political capital” of President Aquino, it may be possible to directly allocate some of these existing mineral rents towards poverty reduction programmes to directly benefit children and families. However, drawing the linkages between the mining policy and social development is, on its own, not yet an established policy discourse of the Aquino government; crucially, the main stakeholders in the mining industry are still reticent in supporting concrete measures towards this direction.

To understand the low contribution of the mining sector to the country's development, we first explore the key drivers of change in the extractive sector by analysing the respective positions of the primary stakeholders. As in Latin America and Africa (Bebbington 2012; Campbell 2009), multi-level forces both within the country and from outside shaped the Philippine mining governance framework. The country's dominant policy paradigm is underpinned by neoliberal norms, which privilege large-scale mining, stressing foreign direct investment as the primary source of export-led growth. In contrast to countries with longer histories of mineral extraction, the Philippines' mining policy failed to take stock of alternatives, including the creation of state-owned mining enterprises or supporting domestic mining companies. This is accompanied by a generous fiscal regime that aims to serve as catalyst for FDI to enter the sector.

### ***The making of the Philippines' mining governance and its main stakeholders***

Successive governments after the democratic transition in 1986 have been resolutely entrenched within the “pro-mining camp”. The Philippines' mining regime was established in the early 1990s, when, under the assistance of the World Bank and the ADB,<sup>29</sup> President Fidel Ramos (1992–1998) opted to reform the country's mining framework in order to attract foreign, large-scale investors. The 1995 *Republic Act 7942* was singled out as “the most foreign-friendly mining policy” from among 70 countries having reformed their mining sector by the Structural Adjustment Participatory Review International Network (SAPRIN 2001:5). The passing of the mining code opened the door to an influx of foreign investors. Had all the mining rights applications since the act's inception been approved, approximately 40 per cent of the country's total land area would have been covered by mining claims (Philippines International Review 2009). From 1994 to 1996 alone, the number of foreign mining companies represented in the country increased by 400 per cent (Holden and Jacobson 2007b:481).

<sup>29</sup> It is to be noted that the liberalization of the mining sector should be assessed in conjunction with the cumulative legacy of the Structural Adjustment Programmes, which had been steering the country's economy since the early 1980s. Together, the IMF and the World Bank have played fundamental roles in determining the socioeconomic path followed by the country. The African Forum and Network on Debt and Development (2007:18) estimates that by the end of 2006, the Philippines had borrowed USD 12.5 billion worth of loans and USD 88.8 million of grants in World Bank development assistance (188 programmes and projects). Already in the 1980s, the World Bank had called for a review of fiscal arrangements and incentives for the Philippines' mining sector, particularly with regard to enticing foreign large-scale investors (World Bank 1987).

The Arroyo government (2001–2010) continued to pursue a liberal mining strategy geared towards attracting foreign large-scale mining investors. In 2005, the administration unleashed an aggressive pro-mining campaign, shifting its mining policy “from mere tolerance to promotion for the revitalization of the minerals industry” (MGB 2008), with the aim to increase foreign investments to USD 10 billion by 2011 (Loki 2009). Arroyo attempted to revive the country’s mining sector by championing the reversal of the January 2004 Supreme Court decision to nullify key provisions of the Mining Act and issuing Executive Order 270 (EO 270). She also sought to bring to a close the legal controversies surrounding large-scale mining, and in so doing explicitly showed the government position in favour of FDI-driven, large-scale mining activities. In her attempt to consolidate mining policy, her government released the Mineral Action Plan, which signalled a renewed focus towards a natural resource-based developmental strategy embedded within a neoliberal policy paradigm.

The country’s pro-mining lobby includes the big private mining companies, represented notably by the Chamber of Mining in the Philippines. The association consists of the Filipino operators of the large mines in the country (see table 2), and they work closely with the Foreign Chambers of Mining in the Philippines that represents the interests of large multinational mining companies operating in the country. While not directly related, the Makati Business Club (MBC), composed of senior business executives representing the largest and most dynamic corporations in the Philippines, is also an influential business lobby with some research capacity to back up its policy recommendations across several economic issues.<sup>30</sup> The MBC expressed concerns regarding the 1995 Mining Act and articulated some recommendations in light of the changes being implemented by the Aquino government, some of these include seeking to end LGU mining moratoriums and supporting the EITI process to reduce corruption in the sector.

On the other side of the spectrum stands a wide range of political actors who have opposed the liberalization of the country’s mining regime. While often labelled as “anti-mining”, these actors actually take quite different perspectives over how to marshal reforms in the sector, ranging from outright anti-mining to reformist stances on the country’s governance framework. They tend to be issue-focused. Some of these reforms include strengthening the socio-environmental provisions in mining policy, reformulating the current taxation regime under the 1995 Mining Act, introducing a new law to clarify the allocation of mining rents between national and sub-national government units, among many other positions. Nevertheless, what unifies the “formidable political force” campaigning against large-scale mining is their dissatisfaction with the 1995 Mining Act (Llorito 2006).

Broadly speaking, we can identify three key actors in the anti-mining/reformist camps: the Philippine NGO community, the Catholic Church and its local organizations, and the sub-national government units. The first grouping are advocacy-type civil society groups and draws strength, power, and influence from its dynamic, numerous and increasingly professionalized network of activists (Vivoda 2008:134). In fact, the country’s civil society has been referred to as “probably the largest NGO density in the world” (Hilhorst cited in Holden 2005:227). The Philippine civil society is characterized by layers of social movements, trade unions, peoples’ organizations, urban poor groups,

<sup>30</sup> The Makati Business Club defines itself as “a private non-stock, non-profit business association organized as a Forum for Constructive Ideas. The main thrust of the MBC is to foster and promote the role of the business sector in national development efforts, both in the planning and the implementation of policies. It is committed to addressing national economic and social issues that affect the development of the Philippines.” For further details, see <http://www.mbc.com.ph/the-mbc/about-us/>, accessed 28 February 2014.

and professional NGOs linked by a long history of advocacy politics and social activism dating back to the anti-dictatorship movement (Quimpo 2007). It is worth noting that the anti-mining movement draws together civil society actors that have campaigned together across a range of political, social, and economic issues. The capacity of Philippine civil society to mobilize nationwide campaigns has been widely documented, and most activist networks enjoy political support from international NGOs and funders. Anti-mining coalitions, such as the Alyansa Tigil Mina (Alliance Against Mining/ATM), bring together different kinds of NGOs and quite distinctive social and political actors such as indigenous communities, environmental groups and political parties (see box 1). These groups have used a wide range of political tactics to contest and halt mining activities, notably campaigns, protests, administrative proceedings, legal proceedings, and diverse collaborations with local governments to ban mining within their jurisdictions (Holden 2005:231–36).

**Box 1: Contentious politics and mining governance: The Alyansa Tigil Mina Movement**

The *Alyansa Tigil Mina* (Alliance against Mining) is a coalition of multi-sectoral organizations, indigenous groups, mining-affected communities, the Catholic Church and other faith-based organizations, and human rights groups. The Alliance was founded in 2004, amidst the Supreme Court's reversal of the mining moratorium.

The ATM calls for three interrelated, but distinct goals: (i) to scrap the 1995 Mining Act and replace it with a new mining law; (ii) to revoke the executive order revitalizing mineral activities; and (iii) to pass a moratorium on mining. The ATM does not object to mining as a whole, but to the policy regime crafted and implemented by various Philippine governments and its accompanying institutions. The ATM is strongly against the liberal orientation of the Philippine Mining Act of 1995 and the Executive Order 270-A that promotes large-scale mining along with generous incentives given to foreign investors. Similarly, the ATM is against the National Mineral Action Plan (NMAP) that designates 53 per cent of ancestral domains and 60 per cent of protected areas to be priority mining areas. For the ATM, the mining regime weakens the rights of indigenous groups and transforms the state into an actor dependent on the economic contribution and political acquiescence of transnational corporations. Contrary to large-scale, transnational mining, the ATM outlines the following as alternatives to the large-scale, transnational mining: agroforestry, eco-tourism and watershed development, fisheries and coastal development, and community-based, small-scale mining. Mobilization has also focused on protecting key 'fragile ecologies' in various locations in the Philippines.

**Source:** Nem Singh and Camba 2016 (Authors' Summary)

The second key actor within the anti-mining/reformist group is the Catholic Church. Approximately 80 per cent of the Philippine population identifies itself as Roman Catholic, making it inevitable that its opinion is taken into account. The Church is solidly entrenched within the anti-mining camp,<sup>31</sup> and its influence "cannot be overestimated" (Holden and Jacobson 2007a: 133–136). The Catholic Church in the Philippines<sup>32</sup> is a pivotal stakeholder in challenging mining activities and is not afraid to link mining activity to human rights abuses and environmental degradation.<sup>33</sup> The language it uses is exceptionally strong. For instance, in its January 2006 pastoral letter, the Catholic Bishops' Conference of the Philippines declared: "We believe that the Mining Act destroys life. The right to life of people is inseparable from their right to sources of food and livelihood. Allowing the interests of big mining corporations to prevail over people's right to these sources amounts to violating their right to life" (Catholic Bishops' Conference of the Philippines 2006:1, quoted in Holden and Jacobson 2007a:142). Box 2 provides a summary of the Church opposition to mining.

<sup>31</sup> See Holden 2005; Vivoda 2008.

<sup>32</sup> The Catholic Bishops' Conference of the Philippines is the official organization of the Catholic hierarchy in the Philippines.

<sup>33</sup> In April 1997 the Church began to engage directly in the government's mining-based development paradigm. See Holden and Jacobson (2007:137–138) for a historical review of the Church challenges to the 1995 Mining Act.

**Box 2: Main arguments for the Church opposition to mining in the Philippines**

- Possible environmental damages: the environmental effects of mining, as demonstrated by the Marcopper incident, are too serious to make it a viable method of developing the Philippine economy;
- Adverse impact on the poor: the environmental disruption linked to mining activities impacts the livelihood of poor people, three-quarters of which rely on subsistence agriculture or aquaculture;
- Endemic corruption: Some members of the Church believe that the degree of corruption in the Philippines is such that no regulatory framework could be effectively applied;
- Militarization of areas in which mines are located;
- Potential to displace indigenous peoples.

**Source:** Adapted from Holden and Jacobson 2007b

It is illustrative of the weight of the Church to note that in 1997, an anti-mining coalition comprised of the Church and a large number of NGOs filed a petition asking the Supreme Court to challenge the Mining Act, its revised Implementing Rules and Regulations (IRR) and the Western Mining Corporation Philippines's (WMCP) FTAA.<sup>34</sup> Signed in March 1995, WMCP's FTAA covered an area of 99,387 hectares on the island of Mindanao where the resident indigenous peoples had allegedly not given their consent to the WMCP's activities. Seven years later, in its January 2004 ruling, the Court held that parts of the Mining Act were unconstitutional. The Court upheld this view and nullified WMCP's FTAA. However, revealing how split elites and the state are on the mining issue, the ruling was short-lived and was reversed by the Supreme Court in December of that same year.

Finally, the local government units (LGUs) and provincial governments have also often been labelled as entrenched within the anti-mining camp. As a result of the powers vested onto local political leaders as stipulated in the 1991 Local Government Code, some government units have been known to pass specific laws to rein in large-scale mining projects or to ban mining activities outright. Some key examples include Romblon under Governor Lolong Firmalo, South Cotabato to halt the Tampakan Project, and Marinduque after the 1996 mining accident by Marcopper Corporation. However, it is very important to note that some LGUs have bypassed the anti-mining moratorium depending on the political leader in power, and as such, local governments should be discussed on a case-by-case basis. In the above-mentioned cases whereby local political leaders supported an anti-mining stance, there were enormous pressures from the national government and the Mining Chamber of the Philippines to reverse these decisions and allow mining companies to operate if they were able to secure the environmental and social licenses. Box 3 details the case of Romblon, wherein the regional government has shifted from a pro-mining to an anti-mining stance. As will be discussed in the next section, it was only under the Aquino government that mining reforms would seek to resolve the tension between national government prerogative to implement mining policy and local autonomy of LGUs to decide whether mining operations would be implemented.

<sup>34</sup> *La Bugal Tribal Association Inc., et al. v. Victor O. Ramos, Department of Environment and Natural Resources, et al.* (G.R. No. 127882). The claimants argued that the provisions allowing for 100 per cent foreign ownership in the Mining Act were unconstitutional. While the Constitution does allow the Government to enter into FTAs with foreign-owned corporations, the petitioners argued that it is a mere assistance agreement, and as such, the Constitution does not allow for foreign investors to fully control, manage or engage in mining operations (Philippines International Review 2009).

### **Box 3: LGU resistance and mining governance: The case of Romblon**

The province of Romblon is a classic case of a resource-rich region which has failed to benefit from its mineral wealth. Importantly, it is also an example of a province that is attempting to move away from mineral dependency.

In 2003, the Altai Philippines Mining Corporation (Altai)—the local subsidiary of the Canadian-based mining company Altai Resources Inc.—struck a deal with the Sibuyan Nickel Properties Development Corporation (SNPDC) to purchase mining rights in Romblon. In 2007, the latter were given a special permit to cut more than 70,000 trees by the Department of Environment and Natural Resources. As early as 2005, SNPDC and Altai started lobbying for the endorsement of their mining projects by the concerned *barangay* (the smallest administrative division in the Philippines), municipal, and provincial councils. Despite the refusal to endorse the project by the assembly of Barangay Espana, the council of the barangay approved a resolution recommending the project. In Barangay Taclobo, the leader of the council also signed a resolution in favour of the project despite the fact that the resolution was never approved formally. Both resolutions were then submitted for the provincial council's endorsement, which led to the council's approval of the projects.

In August 2010, amidst a wave of local resolutions against any large-scale mining application were adopted, overturning all previous local resolutions favouring mining. The reversal was made possible through the lobbying of a community-based organization, the Sibuyan Island Sentinels League for Environment Incorporated (Sibuyan ISLE). Alongside Alyansa Tigil Mina, the latter pursued their lobbying activities and in 2011, a moratorium on metallic mining was imposed ultimately, the Mines and Geosciences Bureau suspended the company's mining permit.

SNPDC responded with a lawsuit, seeking for a temporary restraining order (TRO) on the mining moratorium and resolutions against mining by the local councils, alongside a declaratory relief seeking the unconstitutionality of local issuances against mining. While the TRO was denied in 2012, the regional trial court declared in January 2013, that the mining moratorium was unconstitutional. A motion for reconsideration was then lodged at the same court and the resolution is still pending.

In April 2013, the Romblon Provincial Environment and Natural Resources Code was approved, thus prohibiting mining in watershed areas, within one kilometer radius of the reserve, and in tourism and agricultural areas (as well as other areas declared under the 1995 Mining Act).

**Source:** Summary written by Rodne Galicha, Alyansa Tigil Mina (ATM)

### ***Challenges to effective mining governance***

The EI in the Philippines' and its mining policy have been shaped by particular historical and political dynamics. Specifically, the tensions between pursuing large-scale and foreign-led mining investments and progressively implementing poverty reduction strategies financed through mineral rents reflect the wider challenges in linking mining and social development. This sub-section explores four specific challenges in more detail.

At the heart of the substantial opposition to mining in the country, both within the anti-mining and the reformist camps, lies the dominant policy paradigm that has guided the country's mining regime for the last three decades. This particular mining management model has thus far severely constrained alternative development pathways, such as creating state mining enterprises, supporting domestic mining companies and greater state oversight over small-scale mining. This aggressive policy towards FDI-led mining also delegitimized the alternative views from key stakeholders, which are now labelled as "anti-mining".

An important element of this development strategy is the "strategic choice" forced upon the state to be "selectively absent" in its formal monitoring functions, particularly in strictly enforcing the socio-environmental regulations, in addition to the lack of institutional capacity to transform fiscal revenues into social development (Szablowski 2007). To deal with the contradictions of promoting mining FDI and regulating socio-environmental standards, the Philippine state has adopted a mining policy priority encouraging economic growth at the expense of addressing some of the socio-ecological externalities of mineral extraction. A clear indication of this strategic choice is reflected in the limited and fragmented implementation of the socio-environmental and human

rights provisions of the mining law. While the Philippines mining regime does embrace an impressive array of environmental and social provisions,<sup>35</sup> a recent report on mining concludes that: “The Philippines may appear to have excellent laws to protect the environment, human rights and indigenous peoples, yet their application is unacceptably poor” (Goodland and Wicks 2009:2; see also Doyle et al. 2006).

The absence of strong regulation in the sector is exacerbated by the particularly acute socio-environmental problems linked with resource extraction. One of the most coherent arguments against the promotion of mining have been articulated by anti-mining and reformist groups: that the Philippines remains one of the most disaster-prone countries in the world, making the country unsuitable for large-scale mining (Holden 2005). Considered to be a “geo-hazard hotspot”, it is one of the 17 countries in the world categorized as a mega-biodiversity country (Doyle et al. 2006:iii). Crucially, the country has witnessed successive environmental disasters caused by large-scale mining. In March 1996 a spill at the Marcopper mine became the worst environmental episode ever sustained in the Philippines. Crucially, the Marcopper mining accident strengthened public opinion against large-scale mining as it exposed the lack of institutional capacity to implement the country’s solid environmental legislations.<sup>36</sup> Several other environmental disasters were also registered, notably the recent 2005 Rapu-Rapu incident, which demonstrates the weakness of the environmental ministry in preventing the chronic environmental problems directly linked to industrial mining activities.<sup>37</sup>

While environmental disasters linked with mining highlight the lack of monitoring capacity to effectively mitigate the environmental costs of extractive activities, there are broader institutional flaws in the design of mining policy. In particular, it has been suggested that the dual role of the Department of Environment and Natural Resources (DENR) as a promoter of sustainable development and a regulator of the mining industry needs to be resolved if mining is to become a long-term development strategy of the Philippines. While these functions are carefully delineated to avoid conflicting interests in mining-intensive economies, the DENR needs to be reformed so as not to become torn in choosing between environmental protection and EI expansion. The Structural Adjustment Participatory Review International Network found that DENR regional offices and field personnel were “actively and aggressively helping mining company personnel in convincing the people to accept the mining project” (cited in Christian Aid and PIP Links 2004:12). In practice, it appears that the DENR has been resolutely entrenched within the pro-mining camp.<sup>38</sup>

Two conclusions can be drawn from the previous discussion. First, it is certainly the lack of monitoring capacity that prevents the Philippine state from taking an autonomous role in mining governance. Second, it can also be argued that the institutional flaws of the regulatory bodies can also create conflict of interests, hence, making the regulation of large-scale mining even more difficult.

<sup>35</sup> See DENR Administrative Order 96–40, Sec. 3; Republic of the Philippines 1995, Sec. 35.

<sup>36</sup> The disaster, which occurred on Marinduque Island and released between 1.5 and 3 million cubic meters of toxic mining slurries and tailings into the Makulapnit and Boac rivers, was caused by the failing of a cement plug in the Tapani pit drainage tunnel. The subsequent public pressures forced the Arroyo government to order, in March 2006, a review of the Mining Act. Created to investigate the health and environmental impacts of the tailings spills, the independent commission found the company guilty of negligence. However, the government failed to follow the commission’s recommendations to shut down operations.

<sup>37</sup> Farrell et al. 2004; Christian Aid and PIP Links 2004; Goodland and Wicks 2009.

<sup>38</sup> However, the recent tailing spill in the copper-gold mine operated by Philex Mining Corporation (PMC) have been sanctioned a fee of P1.034 billion (Philippine Pesos). The DENR rejected the firm’s argument that the incident was caused by force majeure as caused by the incessant rains leading to the leakage from the tailings ponds no. 3 on 1 August 2012 (Valencia 2013: B3; 2012: B10).

The second challenge relates to the potential impact of mining, the state of democracy and human rights in the country. The expansion of mining activities have been plagued with human rights abuses, despite the provisions embedded in the country's human rights framework. For instance, under the Philippines law, the country's indigenous peoples, which are estimated at 11.3 million (NCIP 2013), hold important social and cultural rights that the state must protect, most notably the recognition of Free Prior and Informed Consent (FPIC) (Republic of the Philippines 1997, Sec. 2, chapter II). The 1997 Indigenous Peoples Rights Act (IPRA) spells out the right of indigenous peoples to their ancestral domains, their right to self-governance and empowerment, their social and human rights, and their right to cultural integrity. It also includes provisions for the redistribution of benefits among the local communities, notably indigenous peoples.<sup>39</sup>

However, despite a well-designed human rights policy framework, emerging conflicts between the private sector's mining rights and indigenous peoples' claims over territories on their ancestral lands have become common in mining provinces. In addition to violations of cultural rights, estimates suggest that more than 900 activists have been killed extra-judicially since 2001 and with an additional 185 enforced disappearances, many among whom were civil rights and environmental advocates (Gariguez 2010). The Philippines was facing, by the early 2000s, what Doyle et al. referred to as "a crisis of extra-judicial killings" (2006:iii). Furthermore, the country has witnessed a rise in the use of private military companies, as well as mixed private-public security forces, which have led to the further deterioration of the human rights situation in the country. It is also worth noting that many minors have been recruited into the country's armed conflict over the years (UNICEF Philippines 2010:5).<sup>40</sup> While extrajudicial killings and enforced disappearances have decreased within the Aquino administration, the situation has remained grave enough as of 2015 that Human Rights Watch has lamented the government's human rights efforts remaining "marked more by rhetoric than concrete action to address serious human rights violations" (Human Rights Watch 2015).

The third challenge involves the transfer of some regulatory functions of the national state to international mining capital. At the local level, the "strategic absence" of the state led to the delegation of the enforcement of the socio-environmental standards to companies, leaving local communities in an awkward *rapport de force*. Large-scale mining companies have taken up new roles and responsibilities, specifically in pursuing environmental conservation and welfare expenditures to compensate the affected mining communities. This is consistent with a global trend, whereby national governments are embracing corporate social responsibility as a way of mitigating the socio-ecological impacts of mining. Linked to this, governments are having difficulties to monitor and regulate multinational mining companies, especially when conflicts arise between communities and corporations.

With the Philippine state hesitant to wield its regulatory powers, there have been numerous reports of companies resorting to questionable tactics,<sup>41</sup> notably with the

<sup>39</sup> DENR Administrative Order 96-40 states that "In the event that prior informed consent is secured..., the concerned parties shall agree on the royalty payment for the concerned Indigenous Cultural Community(ies) which may not be less than one per cent (1%) of the gross output" (Chapter IV, Sec. 16).

<sup>40</sup> The armed conflict stemmed from a secessionist movement for an independent Islamic state, particularly in the resource-rich region of Mindanao. The conflict exacerbated in the 1970s after Ferdinand Marcos declared martial law. In addition, the military and the New People's Army (communist) also has a long-standing conflict based on ideological grounds.

<sup>41</sup> On the subject, see notably Coupury 2007; Goodland and Wicks 2009; Nettleton et al. 2004; Rovillos et al. 2003; Whitmore 2006.



support of corruptible local elites. In the case of the principle of free, prior and informed consent, the deception, co-option and sometimes coercion of indigenous peoples and mining communities have been repeatedly noted.<sup>42</sup> And as decentralization of power and functions took place, local governments have been left unprepared to find ways of gaining financial and human resources to effectively monitor the operations of mining companies (O’Callaghan and Vivoda 2010:12). The gap in local monitoring capacities is now partly filled by the industry as most reports and technical studies on mining are usually conducted by private companies or consultants rather than the government. These problems reinforce the clash between national prerogative to expand mining and the local communities. In particular, communities are able to challenge mining projects through the support of the Catholic Church and local political elites on the basis of regional autonomy and competing land claims. When communities and mining provinces imposed temporary bans on large-scale operations, the government has time and again issued threats to align their local ordinances with national economic priorities (Gatmaytan 2012a, 2012b; Gomez 2010).

Finally, an effective mining governance regime requires an institutional framework that encourages increased efficiency in collecting mining rents and enhanced capacity to isolate these fiscal resources from corruption and rent-seeking (Barma et al. 2011; Mosley et al. 2012). The challenge for the government, inevitably, is to deal with a political culture that harnesses corruption as a way of securing contracts and socio-environmental licenses from bureaucratic agencies. Indeed, the mining sector has historically been vulnerable to the whims of the country’s bureaucrats, local political factions, and the national elites.<sup>43</sup> The Fraser Institute Annual Survey of Mining Companies 2011–2012 places the Philippines among the top 10 most corrupt jurisdictions in the world (McMahon and Cervantes 2012:6). Hence, when civil society groups called to halt mining expansion in 2005, this coincided with fears of widespread corruption in the way that the government was selling assets and procuring deals with foreign companies.<sup>44</sup> Box 4 details one controversial corruption case associated with resource rents from the petroleum industry, the Malampaya Deep Water Gas Project.

<sup>42</sup> See Goodland and Wicks 2009; Rovillos et al. 2003; Whitmore 2006.

<sup>43</sup> On the issue of corruption, see O’Callaghan and Vivoda 2010; Bello et al. 2004.

<sup>44</sup> One prominent example comes to mind here. In 2008, a USD 349 million concessional loan from China’s Export-Import Bank to finance the installation of broadband within government agencies was found to have been fraught with corruption as various officials at the top level approved the memorandum of agreement (MOU) between the National Broadband Network and Chinese-owned ZTE Corporation. Upon legislative investigation, the contract was declared null and void. See the web link for further details: <http://www.inquirer.net/specialfeatures/nbndeal/index.php>, accessed 28 February 2014.

#### **Box 4: Corruption and human rights abuses: The case of the Malampaya Deep Water Gas Project**

The Malampaya Deep Water Gas-to-Power Project (Malampaya)—a USD 4.5 billion joint venture between Shell Philippines Exploration (SPEX), Chevron Texaco, and the Philippine National Oil Company (PNOC)—is the largest industrial investment in the Philippines.

Initiated in 1998 with a SPEX initial capital—it began operation in January 2002—the project is composed of two units: the Malampaya Upstream Gas Project (USD 2 billion) and Malampaya Downstream Gas Project (USD 2.5 billion). The gas field has proven reserves of around 2.5–3.5 trillion cubic feet (TCF) of gas, 85 million barrels of condensate and at least 29–40 million barrels of oil. The gas is situated 850 metres deep offshore Northwest Palawan (Southern Luzon) and is expected to produce 146 billion cubic feet (BCF) of gas annually. It is to be noted that Ferdinand Marcos, through Presidential Decree 910 (1976), had created the Energy Development Board, which still today manages funds for exploration and development of indigenous energy sources, which are derived from service contract fees paid by investing companies. The Decree gives direct control over these funds to the President, without any oversight from National Congress.

In recent years, extra-judicial killings were reported after exposures of corruption in public works financed through the Malampaya funds (Cuevas-Miel 2013). The Commission on Audit (COA) likewise discovered that PHP 77.2 billion of the Malampaya funds had been lying “idle” for eight years, while PHP 19.4 billion were spent on projects unrelated to energy development (Philippine Daily Inquirer 2011). Some of these funds were diverted to non-profit foundations run by Jeane Napoles—now found to have been divesting government funds into special accounts for patronage distribution (Philippine Daily Inquirer 2013b, 2013c, 2013d). The corruption scandal has made clear the lack of effective regulatory frameworks to manage government funds. While the Malampaya case is not a unique rent-seeking case in the Philippines, it shows the weaknesses of the existing institutional oversight mechanisms meant to shield EI rents from corruption.

In this context, the candidacy of the Philippine government to the Extractive Industries Transparency Initiative (EITI) since May 2013 has been interpreted as a renewed commitment by the Aquino government to allow for a social dialogue among key stakeholders to take place, recognizing the need for greater transparency in revenue management.<sup>45</sup> However, there are concerns that the EITI candidacy can become a legitimating tool for the Philippine government to justify the expansion of large-scale mining, thereby, again sidelining the adverse socioeconomic impacts of the industry.<sup>46</sup>

## **Alternative Mining Regimes and the Financing of Social Expenditure**

We have thus far shown that there are weak direct linkages between mining governance and the promotion of children's rights particularly through social expenditure. In addition, domestic bargaining processes rather than an externally driven reform agenda tend to determine the direction of social spending and the success of progressive social agendas to finance inclusive development. In this context, the current Aquino government must seek to establish a considerable degree of political consensus among key stakeholders if large-scale mining is to gain traction as a viable development policy. If the government can ensure greater contributions in state revenues from the extractive industries, the Philippine state is then faced with the choice between domestic spending through social programmes and saving for future uses. The MGB (2013a) reports gradual improvements in mining revenues in recent years, with gold and copper as the two main contributors in the sector. However, though the sector can arguably contribute more,<sup>47</sup> it appears that in light of the historical legacy of the sector, as well as the more contemporary debates over

<sup>45</sup> Launched in 2002, the voluntary initiative is meant to encourage the transparency and disclosure of revenues from resource-rich governments and the industry.

<sup>46</sup> Author interview with Senior Official, Extractive Industries Transparency Initiative (EITI), Skype, 24 October 2013. See also Klein (2013).

<sup>47</sup> Author interview with Senior Official, National Anti-Poverty Commission, Skype, 18 October 2013.

Executive Order No. 79 (EO79), the prospect of expanding mining exploitation in the country remains highly contentious and improbable in the medium-term.

In this final section, we first detail the current reform agenda for the mining sector. We then explore alternative ways of financing social investments on children, and whether and how the government can establish a common framework to move forward in the policy debate on promoting child rights and well-being.

### ***Contemporary reforms of the mining regime***

The highly polarized context surrounding reforms of the mining regime in the Philippines is illustrated by President Aquino's recent reform attempts. As detailed in the first section of this paper, EO79—which was issued in 2012—and its IRR were advertised as a re-invigorated effort in promoting a pro-mining framework modelled on heightened socio-environmental safeguards while also improving the fiscal revenues generated by the sector. The latter delineates where mining operations can take place, providing much needed clarification in response to the strong political resistance in key mining provinces. Box 5 details the main provisions of EO79.

#### **Box 5: Summary of EO79 key provisions**

##### **Key provisions of EO 79:**

1. Section 1 of EO 79 identifies the areas closed to mining applications, such as:
  - a. Areas expressly enumerated under section 19 of RA 7942, or the Mining Act;
  - b. Protected areas categorized and established under RA 7586, or the National Integrated Protected Areas System (NIPAS);
  - c. Prime agricultural lands;
  - d. Tourism development areas as identified in the National Tourism Development Plan (NTDP); and
  - e. Other critical areas, island ecosystem, and impact areas of mining.
2. Section 2 provides for full and strict enforcement of environmental standards.
3. Section 4 suspends the grant of new mineral agreements pending legislation rationalizing revenue-sharing schemes and mechanisms.
4. Section 12 directs the Department of the Interior and Local Government (DILG) and the LGUs to ensure consistency of local ordinances with the Constitution and national laws.

##### **Other provisions of EO 79:**

1. Section 11 provides that small-scale mining operations shall be undertaken only within the declared People's Small-Scale Mining Areas or *Minahang Bayan*.
2. Section 13 creates a one-stop shop for all mining applications and procedures.
3. Section 14 commits participation in the Extractive Industries Transparency Initiative (EITI).
4. Section 14 creates a centralized database of all mining-related information which shall be publicly accessible, transparent, complete, and comprehensive. Information and data gathered from the conduct of Resource Accounting or Full-Cost Benefit Analysis Studies, in line with the Wealth Accounting and Valuation of Ecosystem Services (WAVES) and the National Climate Change Action Plan (NCCAP), shall also be made part of the centralized database.
5. Section 16 provides for the creation of an integrated map system for the common use of all government agencies which shall include mining-related maps such as mining tenement maps, geo-hazard and multi-hazard maps, ancestral lands and domains, among others.

**Source:** Makati Business Club 2012

EO79 quickly polarized opinions, drawing criticisms from pro- and anti-mining interests alike. At first glance, the new measures appear to be focused on reining in the mining sector and as such, it speaks to the anti-mining/reformist camps. After all, EO79 and the IRR expand mine-free areas to designated tourism sites, farms, marine sanctuaries and island ecosystems;<sup>48</sup> require investors to prove that mining is the most

<sup>48</sup> These extend the no-go zones listed in the 1995 Mining Act and the National Integrated Protected Area System. Here EO79 bans mining in tourism development areas identified by the National Tourism Development Plan; prime agricultural lands; fisheries development zones and marine sanctuaries to be determined by the agriculture secretary; and island ecosystems to be determined by the DENR through mapping technology.

productive use of lands containing mineral deposits; ban exports of unprocessed ores after three years; and increase the state's share of revenues, including a 5 per cent royalty for future mining contracts. The IRR further insists on fostering value-adding activities and the development of downstream industries for the mineral sector and vows to join the EITI. Crucially, the IRR embrace an agenda on "Responsible Mining Policies" (DENR 2012).<sup>49</sup>

However, the small print of EO79 and its IRR actually speak to large-scale investors. In addition to the simple fact that the IRR is not retroactive, they call for the consistency of local ordinances with the Constitution and national laws. In effect, IRR warns local governments of the supremacy of the central government decisions: "LGUs [Local Government Units] shall confine themselves only to the imposition of reasonable limitations on mining activities conducted within their respective territorial jurisdictions that are consistent with national laws and regulations" (DENR 2012:Sec. 15). According to Bishop Arturo Bastes, the move would overstep existing local ordinances against mining and could very well "escalate the problem, creating more division between the local stakeholders and the government" (cited in Catholic Church News 2013). In turn, forty governors have threatened to bring the issue to the Supreme Court, fearing that the EO would "destroy the countryside" that local legislation had managed to protect thus far (Cabacungan and Uy 2012).

Pro-mining interests were also quick to protest and to threaten the government with legal action over EO79. According to the Financial Times, the new policy added to the uncertainty of investors: "Unstable policies have long kept the Philippines off the radar screens of global miners but Manila's move to rewrite mining rules risks putting the country further off the grid" (Landingin 2012). By 28 September 2013, amidst intense pro-mining lobby, the IRR, which were published on 14 September, were suspended pending a review to make them "less ambiguous" (Olchondra and Andrade 2012). Less than a month after the initial IRR were made public, the Aquino government issued a revised set of IRR— a development which undoubtedly reflects the formidable political weight of the Chamber of Mines and its exercise of power when its interests are threatened by reformist agendas aimed at greater state regulation of the mining industry. For the Chamber of Mines, EO79 extended the moratorium on new grant mining agreements pending the issuance of a legislation rationalizing existing revenue sharing schemes and mechanisms (EO 79:Section 7), even as the association has blamed the moratorium for the poor performance of the sector since it was issued in 2011 (Olchondra and Andrade 2012). Interestingly, the Joint Foreign Chambers of the Philippines expressed their "welcome...and appreciation of the constructive framework upon which responsible mining can move forward in the Philippines".<sup>50</sup> It is also worth noting that the MBC has taken a more reformist stance in light of EO79 (see box 6).

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<sup>49</sup> Adopted by the Climate Change Adaptation and Mitigation, and Economic Development Cabinet Clusters in a Joint Resolution dated 16 March 2012.

<sup>50</sup> Joint Foreign Chambers Statement on Executive Order No. 79, issued on 11 July 2012, paragraph 1.

**Box 6: MBC recommendations on mining policy after EO79****MBC cited specific recommendations:**

- a. For the government to finalize a definitive map that clearly identifies the boundaries of zones open to mining
- b. For the government to strongly consider incorporating into national policy global best practices, including internationally accepted environmental standards and models on revenue and benefit sharing.
- c. For Congress to pass legislation rationalizing revenue-sharing schemes with the President certifying the bill as urgent.

**Source:** MBC Congress Watch Report No. 171, issued on 29 November 2012:2

Coalitions of NGOs and political parties in the oppositions have been calling for the Parliament to adopt a mining framework other than that embodied in EO79, which remains solidly entrenched within liberal norms for the sector. Father Gariguez, the executive secretary of National Secretariat of Social Action argues that “EO is not the solution to our problem. The Chamber of Mines is rejoicing already—an indicator that this EO actually favours mining companies” (cited in Cabacungan and Uy 2012). Human Rights Watch further notes that EO79 remains “silent on the issue of rights abuses arising from mining investments, and on the deployment of paramilitaries at the mines” (Human Rights Watch 2013a). The core argument that undergirds such positions is that the dominant policy paradigm that has underpinned the country’s mining governance for the last three decades may not necessarily be the most conducive to poverty reduction. Driven by neoliberal norms, governments have continued to privilege FDI-led, large-scale mining activities, thus far severely constraining alternative development pathways for the sector. As observed by Gagné-Ouellet (2012), such framework privileges mining over any other types of territorial use, not to mention that industrial mining activities might have negative consequences on local communities dependent on artisanal and small-scale mining.

### ***Discussion and recommendations: Financing poverty reduction and social investments***

The findings presented in this paper suggest that in order to harness the benefits from EI for children, states must take a more active, pro-regulatory role in mining to renegotiate the terms of the bargain between states, multinational capital, and domestic businesses. But the Philippine government must in equal measure undertake policy steps that actively protect children from the adverse effects of mining activities and ensure that their basic rights are guaranteed across the board. As one of our key sources aptly put it, “the history and challenges in mining are but one part of the reform agenda, and maybe mining revenues can be linked to social expenditure [and by extension to children’s rights promotion] but it may not necessarily happen...the CCT has been expanding without having the benefit of mining revenues. They may not be inextricably linked.”<sup>51</sup>

At the same time, the absence of stakeholders who can advocate for a children’s rights perspective in mining governance makes it more compelling for NGOs, and indeed UNICEF, to mainstream child rights into mining policy, including allocation of mining rent. This is, indeed, a two-step process that requires the Aquino government to first find whether there is evidence that supports expansion of mining in order to contribute to social development, and second, to ensure that mining rents can harness a pro-child rights agenda. The first step would be to ensure that political spaces are opened up for the key stakeholders to expand the mining agenda beyond simply accruing more rents

<sup>51</sup> Author interview with Senior official, Australian Aid (AusAID), August 28, 2013, Manila, Philippines.

and make a case for an inclusive development strategy that links mining rents to children's rights. Only if this is done can the next second step be taken, which is to design an institutional framework and implement administrative reforms aimed at enhancing the overall capability of *both* national and regional governments in monitoring, regulating, and utilizing mining rents towards productive investments in the economy as well as promoting child-friendly social spending through mineral wealth.

In the first instance, the government must take a more pro-active role in renegotiating contracts and policies with large mining companies and small-scale miners, with the view of increasing the revenue intake of the state from EIs. The impact of economic growth to social development can only be maximized if and when governments are able to develop state capacity, including capacity to mobilize fiscal revenues for poverty reduction (Bräutigam et al. 2008; di John and Putzel 2009). For the Aquino government, this implies undertaking policy reforms to generate more taxes from the EI and elsewhere, and to raise revenues more effectively. While a tax reform agenda is always contentious, it is particularly difficult in situations, where the business lobby and multinational corporations are able to exert pressures towards the state to opt for a low tax regime in the name of private investment. It is only under certain circumstances, for example enormous public pressure to tax the extractive sector or raise revenues outside of income taxes, that a progressive taxation reform agenda becomes politically feasible (Moore 2013).

The Aquino government may wish to push for reforms that will enhance the tax administration system, notably in tax collection and imposition of penalties, but additionally the government may seek to diversify its tax base and consider raising revenues from the sectors deemed to be under-contributing to the state. Fletcher (2005) argues that there are efficiency gains and equity advantages from increasing excises and indexing them to inflation, raising the VAT rate and broadening the tax base, raising electricity rates, and rationalizing tax incentives. These proposals, however, bear some distributional consequences, and if not carefully evaluated on a case-by-case basis, may sometimes affect the poor negatively, thus making the tax reform regressive. A pragmatic approach to tax reform requires the Aquino government to create and sustain political support for such major reforms— but in this context, Aquino's popularity and political capital, which is now dwindling as a result of his decision not to scrap the pork barrel system, needs to be carefully used to establish a credible tax policy reform agenda.<sup>52</sup>

However, the current investment climate and resource boom provide an opportunity for the Aquino government to use his popularity and political capital to support progressive taxation in large-scale mining. Sunley et al. (2012) clearly explain the complex three-tier fiscal regime in mining that partly contributes to the low contribution of the mining sector to government revenues. They found that 34 per cent of mineral exploitation is

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<sup>52</sup> As indicated in box 3, the Aquino government is facing a tough choice to reform the pork barrel system, which has been historically used as a resource for patronage and clientelist politics by legislators and the executive. Members of the Philippine Senate and House of Representatives have access to government funds that can be used for "development" purposes without going through normal budgetary processes or through the executive branch. In 2006, the amount was P70 million (USD 1.56 million) per representative and P200 million (USD 4.47 million) for each senator (Nogales and Lagman 2012). The pork barrel changed its name several times, such as the Countryside Development Fund, Congressional Initiative Fund, and currently the Priority Development Assistance Fund (PDAF). The Supreme Court decision declaring PDAF as unconstitutional has boosted public outrage against the inaction of President Aquino (Cabacungan 2013). The President has access to specific funds, including the revenues from the Malampaya Deep Water Gas Project, which can be spent without going through institutional checks and balances. Given the rising public pressures to account for government spending of taxes and revenues, the mining sector has been recently scrutinized. The EITI process is currently perceived as one way to ensure that transparency and accountability become key principles in resource wealth management.

currently done by the small-scale sector, which remains largely unregulated by the government. In response, the IMF mission established three key reform suggestions which legislators and executive officials should consider:

- rationalization of the multiple fiscal regimes applied to the mining sector into a single regime that facilitates full foreign investment in large-scale projects;
- rationalization of the multiple fiscal regimes into a single progressive system that establishes a competitive base which provides investors with a fairer rate of return for their risk and investment while delivering a steady and predictable stream of government revenues for the sale of the resources, with the government's share rising appropriately as profits from the sale of its resources increase; and
- efficiently delivering a fair share of rewards for the sale of natural resources to the local government units hosting the exploited resources (Sunley et al. 2012:15).

But as we have shown in the paper, since large-scale mining has encountered significant political resistance, the government must reconsider whether the model championed for the sector is conducive to secure children's rights, and furthermore, if the sector is able to lead the country's growth strategy. In addition, taking into account the broader power dynamics, the government should make a careful delineation in terms of its fiscal regime between large-scale companies and small-scale miners. Our analysis also suggests that a "fair deal" with the local communities would require separating the tax rates depending on the size of the mining operations. In addition, the state must create incentive structures for small-scale and artisanal miners to register and become legal entities who can pay appropriate taxes to the state. This involves, partly at least, giving some political voice to mining communities and small miners rather than favouring large-scale operators. This has implications, for example, as regards how mining contracts, licences, and permits are distributed, but also, it requires government regulation to increase the capacity of small miners to comply with the social and environmental clauses of the current mining framework.

In addition to tax reform, poverty reduction and child well-being depends crucially on economic policies and the growth strategy the government promotes. One important note is that the country's experience of growth differs from its neighbouring Asian tigers. First, the economy's growth over time has generally been slower and more erratic. This is in part due to government decisions on spending and investment, wherein debt servicing and public administration have constrained expenditure towards economic and social services (see figure 3). Second, economic growth failed to translate into significant poverty reduction to the extent that it has done elsewhere (Habito 2010:vii). In explaining this, our interview with the National Anti-Poverty Commission (NAPC) points to the nature of "jobless growth" economic growth in the country. Put simply, while the economy is experiencing growth and rising national income, there are few "trickle down" effects to the poor. Tellingly, employment generation over the past two years has fallen short of the official goal of adding 1 million new jobs a year needed to absorb new entrants into the labour force and to put a dent in joblessness. In 2014, 6.8 per cent of the labour force was unemployed and 19 per cent underemployed (ILO 2015: 6). This unemployment challenge is primarily a youth phenomenon as 1.4 million young people account for almost one half of the total unemployed (ILO 2015:7). In other words, the combination of lacklustre growth and persistent inequality have rendered anti-poverty strategies ineffective.

The Aquino government has recognized the need for the extractive sector to contribute more to revenue-raising efforts.<sup>53</sup> Legislative efforts in Congress on Alternative Mining

<sup>53</sup> Author interview with Senior Official, National Anti-Poverty Commission, Skype, 18 October 2013.

Management have not only sought to balance national and regional shares of mining revenues, but more importantly, there has been some political support to increase royalty fees and other taxes paid by the extractive industry.<sup>54</sup> In addition, some discussions have been taking place on the possibility of “ring-fencing” revenues for social development of the vulnerable and affected communities, and in particular, for spending towards young workers at the local and national levels. This assumes that welfare spending must increase and be targeted at the national government and local government units receiving mining rents. However, given the heterogeneous political contexts upon which local government units operate, the institutional framework must create channels and mechanisms that would prevent rent capture by local authorities.

With regard to domestic fiscal mobilization of EI rents in the Philippines, if the government wishes to increase its revenue intake, policy recommendations point towards the need to carry on legislative amendments to the 1995 Mining Act or National Internal Revenue Code, notably in accordance to the IMF Report (Sunley et al. 2012). If this is done, revenues from the mining sector would increase by PHP 2.5 billion (USD 56 million) per year at current levels of production and prices (Sunley et al. 2012: 20). Second, the new mining management law must address problems resulting from the dual role of the Department of Environment and Natural Resources as a regulator of the environment and the mining industry on the one hand, and its function as a promoter of investments on the other hand. Third, the Aquino government has to become more cautious when making policy changes in favour of re-regulation of the small-scale mining sector. Such changes need to consider not only the amount of revenues to be taken by the state but also its consequences to all the players in the mining industry.

We note that the link between revenue-raising and ring-fencing for children's welfare needs to be made more explicit by advocates of welfare and rights-based approaches. Given the problem of corruption and rent-seeking in the Philippines, civil society organizations have advocated for ring-fencing existing rents to reduce the discretionary powers of state elites in rent allocation. While this is a medium-term strategy rather than a holistic approach to fiscal mobilization, the present administration's CCT initiative can nevertheless benefit from an increase in mineral rents as it remains highly dependent on donor financing. As Aquino's presidency ends in 2016, the President was able to extend the programme for up to 18 years as well as finance social protection schemes until he leaves office.<sup>55</sup> While some stakeholders remain critical of the impact of this programme (Reyes 2013), the Department of Social Welfare and Development Secretary, Dinky Soliman, argues that the CCT's success ultimately lies in ending intergenerational poverty.<sup>56</sup>

It is in this context that mining rents can best be useful. Even within the existing mining framework, it remains possible for the Philippine government to utilize some of the mineral rents towards financing social policy for children's welfare. Simultaneously, the government can integrate the CCT initiative into a wider poverty reduction strategy, which means streamlining other existing projects at a smaller scale—for example the Philhealth programme and other initiatives across different bureaucratic agencies—and ultimately, creating a clear pro-welfare approach to growth and poverty reduction (Reyes and Tabuga 2012; Usui 2011).

<sup>54</sup> See House Bill 3736; Hatcher 2014; Nem Singh and Camba 2016.

<sup>55</sup> Author interview with Senior Official, National Anti-Poverty Commission, Skype, 18 October 2013.

<sup>56</sup> The programme has already been successful as the number of children receiving immunization and de-worming has reached up to 8–9 million over the course of the CCT initiative. Author interview with Secretary Dinky Soliman, Department of Social Welfare and Development, Skype, 27 September 2013.



## Conclusions

Economic growth does not necessarily lead to social development, whether in the Philippines or elsewhere. Amid the high commodity prices and a renewed interest by prospective foreign investors, this paper asked whether mining rents could potentially play a greater role in the country's social development—a question which is increasingly discussed in the Philippines.

Building on a political economy framework, we have argued that such path remains highly politically sensitive in a country, where equitable growth has remained elusive and where mining has had a torturous socio-environmental legacy. In this context, analytical attention needs to be paid to the political processes underlying the adoption of particular policy models—that is, around the politics surrounding mobilization, negotiation, and the crafting of political consensus around social reform. In other words, the success of such policy would require the adoption of a clear pro-regulation stance by the government, agreement between stakeholders and civil society—which will only be forthcoming if there is a conviction that genuine social advances will be delivered.

The scale of the Philippines's mineral reserves and the potential contribution of mining to state revenues have motivated several successive administrations to intensify their efforts to develop the sector. Since the enactment of the 1995 Philippine Mining Act, economic liberalization geared towards a foreign-led, large-scale mining sector was prioritized. While external drivers of the country's mining regime—the World Bank, the ADB, and other international donors—have created a mining governance framework that champions large-scale over small-scale mining (AFRIM 2012; Israel and Asirot 2002), small-scale, artisanal mining has flourished, despite being often illegal and subject to very loose—if any—regulation. As such, small-scale mining has developed under the shadow of the prized large-scale mining model, leaving the artisanal miners in less safe working conditions—longer hours and less labour protection—while little attention has been given to prevent environmental degradation. The result is that local communities around artisanal mines bear extensive and profound social costs, many of which are invisible or ignored by the state. AFRIM (2012) notes that small-scale gold mining provides local revenues for mining provinces in Benguet and South Cotabato, and employment in communities including women and young workers aged 13–24, but the weak implementation of local environmental regulations and the practice of using toxic chemicals mean that the health of the workers and the community have been threatened and come with hazardous forms of child labour. Put simply, the costs of both large and small-scale mining activities are borne by affected local communities, and therefore, have shaped negative public perceptions towards the extractive industries in general.

This usually means that civil society starts out with a negative *a priori* position on the debate over mining and social development and opposes the extension of mining contracts, despite the rise in international prices.<sup>57</sup> It has further been argued that the particular legacy of mining in the Philippines, as well as its rather systematic failure to deliver on its more recent promises of poverty reduction and environmental safeguards, have brought a range of stakeholders together, providing momentum to force the opening of political spaces to challenge the legacy of an externally driven neoliberal model for the mining sector. In some cases, political coalitions have been formed among national civil society organizations, the Philippine Catholic church, affected local communities and local government units, which seek to challenge national

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<sup>57</sup> Hatcher 2014; Holden 2005; Vivoda 2008.

prerogatives as regards mining policy by demanding regional autonomy to decide whether or not large-scale mining operations should continue or commence in their mining provinces. There are, of course, other situations whereby regional elites are complicit with the national government in pushing for joint venture operations to immediately take effect, with the promise of jumpstarting the local economy.

We suggest that a rights-based approach is necessary if mining is to obtain some degree of political legitimacy. The current reforms of mineral exploitation and fiscal regimes must therefore reflect and integrate long-standing strong concerns as regards the socio-ecological consequences of large-scale mining. The future of the mining sector in the Philippines will remain uncertain until inclusive political spaces are created to allow for an effective social dialogue with affected communities, civil society organizations and the communities who are directly affected by mining activities. However, such dialogue would need to break away from more technocratic practices and allow for the possibility of the neoliberal norms—which have been championed for the past 30 years for the country's sector—to be challenged. This would heighten the possibilities for the adoption of a new regulatory regime which prioritizes the socio-environmental aspects of the development of the sector, while ensuring that benefits from mining serve the poorest segments of the population, most especially children.

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