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ASIAN PEOPLES' MOVEMENT ON DEBT AND DEVELOPMENT

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ISSUE BRIEF

TAX JUSTICE ISSUES IN THE PHILIPPINES' EXTRACTIVES SECTOR

Large-scale mining investments of Australia, Canada, the United Kingdom, South Korea and China, partnering with local elites, continue to destroy lives, communities and the environment in the Philippines. Major mining disasters, the latest being the Philex Mine spill of toxic tailings, have wrought irreversible damage to ecological systems, as well as the local economies that depend on them. In truth, all big mining processes from exploration to extraction are disasters in the making, inflicting damage on a daily basis to communities in the area and to the environment.

Yet successive Philippine governments in the past persisted in opening up the country's mineral resources to the biggest investors, paying no heed to rising resistance from affected communities. Hailed as the "driver of growth", mining has been promoted as an investment priority program with all the tax and non-tax incentives that go with such status. But it has little to show in terms of development inputs (even in GDP contributions) for enjoying such privileged positions in the Philippine economy, save the trail of misery and destruction it continues to leave in its wake.

It is hardly surprising why local elites have large business interests in the mining sector. The Philippines ranks among the countries in the world with the highest deposits of gold, copper, nickel and other minerals. It is the fifth most mineral-rich country in the world, according to the Mines and Geosciences Bureau (MGB), with 30% of its territory (or around 9 million hectares) known as having high mineral potential (DENR). With an estimated value of $1.4 trillion (Joint Foreign Chambers, 2010), the country's mineral reserves particularly gold, copper and nickel, count among the five largest in the world.

The industry is also a major cause of domestic financial resource loss. On top of producing primarily for foreign markets, it enjoys a range of fiscal incentives given to investment priority areas. The revenue loss has been substantial, prompting the clamor for the rationalization of tax incentives especially for a site-specific industry such as mining where investments would have been made anyway without these resource-eroding sweeteners. These represent resources that, with environmentally sustainable use, can fund development and end poverty. •

MINING'S POTENTIAL

Untapped mineral resources is estimated to be at least US$840 billion in gold, copper, nickel, chromite, manganese, silver and iron, or more than 10 times the country's GDP in 2014. The National Statistical Coordination Board (NSCB) calculates as well that with the Philippines' gold reserves of about US$16.873 billion, poverty in the country can be completely wiped out (Senate of the Philippines).

The Philippines' extractives industry produces primarily for the world market, thus very little is left to meet local demand or to fund development imperatives.

INCREASING PRODUCTION

Mineral production continues with its rising trend. Mines and Geosciences Bureau (MGB) data from 2003 to 2012 show gross production value (GPV) or the total value/gross output of the minerals extracted, more than doubling from PhP41.1 billion to PhP100.8 billion (current prices). MGB figures as of January 2016 reported further increases from previous years; GPV was pegged at PhP157.1 billion and PhP204.7 billion in 2013 and 2014, respectively (DENR-MGB, 2016). Large scale mining, however, still accounts for the biggest shares of aggregate production value in metallic mining.

ISSUES IN REVENUE SHARING AND TAXES

The state gets returns from the mining industry in several ways but generally, through regular taxes from mining as an economic activity paid to the national tax authority, the Bureau of Internal Revenue (BIR), and through royalty taxes based on the volume or price of minerals extracted which the MGB collects.

However, the sector also enjoys generous fiscal incentives. The Mining Act spells out as well the tax exemptions, deductions and other types of incentives that mining enterprises can claim, by virtue of provisions in the Omnibus Investments Code (Executive Order No. 226) defining fiscal and non-fiscal incentives. Firms have to qualify for registration as part of the Investment Priority Plan (IPP) to be able to claim these incentives. Considered preferred, pioneer enterprises, duly registered companies mining companies are entitled to the following:

Omnibus Investments Code	Philippine Mining Act of 1995 (RA No. 7942)
1. Income Tax Holiday (ITH) a. Six (6) years for projects with pioneer status and for projects located in a Less Developed Area (LDA); b. Four (4) years for new projects with non-pioneer status; c. Three (3) years for expansion/modernization projects. 2. Duty exemption on imported capital equipment, spare parts and accessories; 3. Exemption from wharfage dues and any export tax, duty, impost and fees; 4. Tax exemption on breeding stocks and genetic materials; 5. Tax credits on imported raw materials; 6. Tax and duty-free importation of consigned equipment; 7. Additional deduction for labor expense; 8. Employment of foreign nationals; 9. Simplification of customs procedures; 10. Access to bonded manufacturing warehouse.	Incentives under EO No. 226 and the following: 1. Exemption from real property tax and other taxes or assessments of pollution control devices; 2. Income tax-carry forward of losses; 3. Income tax-accelerated depreciation.

MEAGER CONTRIBUTIONS TO GDP

Despite the huge wealth it generates, the sector registers dismal outputs as a proportion of GDP, lagging behind other industrial groups. Compared to agriculture, fishery, forestry; industry and services, it accounted for an "insignificant" (MGB) 0.9% of GDP from 2003-2012 (GMA Network, 2012). In more recent years, this improved only slightly to 1.14% of GDP in 2012 but declined to 1.10% as of the 3rd quarter of 2015.

In terms of government revenues (i.e., earned from mining contract arrangements), inputs from mining barely reached one percent on average from 2007-2010. Excise taxes paid by mining firms averaged a mere 0.12% over 15 years from 1999 to 2013. The graph below shows excise taxes from mineral mining in comparison to alcohol, tobacco and petroleum products. It contributed only PhP2.5 billion or 2.15% of the total PhP116.14 billion excise taxes collected from these four products in 2013.

FORGONE REVENUES

Over 211 special laws provide tax incentives in the form of 4 to 8 years income tax holidays (ITHs), exemptions on duties, taxes, wharfage dues, export tax credits and additional deductions from taxable income (e.g., labor expenses). In addition, there are 14 Investment Promotion Agencies, each operating their own tax regime, with no publicly available data on the cost of incentives and or an incentives monitoring and evaluation system in place (Jacinto-Henares, 2015).

Forgone revenues from ITHs and special rates in seven investment promotion agencies, including the Board of Investments (BoI), amounted to PhP365 billion in only four years from 2012-2015. Of this figure, BOI incentives which mining firms avail of as part of mandatory investment areas, accounted for 28% or PhP101.3 billion.

EVADING PUBLIC SCRUTINY

In 2013, the Philippines officially signed on to the multi-stakeholder Extractive Industries Transparency Initiative (EITI), a mechanism and process that enables groups to compare and identify discrepancies between companies' reports of revenues with tax obligations. EITI-Philippines notes that "[e]xcept for a reference in EO 79 about the country's commitment to EITI, there is yet no overarching law that governs transparency in the extractive industries" (Philippines-EITI).

Thus far, EITI Philippines reports total un-reconciled discrepancies for the mining, oil and gas industries declining from PhP58 million in 2012 to PhP2.7 million in 2013 (Philippines Extractive Industry Transparency Initiative). However, the full picture may never be known through the EITI as it does not have mechanisms for sanctions and enforcement, and reporting is purely voluntary.

The "Tax Incentives Management and Transparency Act" (TIMTA, Republic Act No. 10708) was ratified by the House of Representatives and the Senate only in October 2015. Among its aims is to "[promote] transparency and accountability in the grant and administration of tax incentives by the country's Investment Promotion Agencies (IPAs) to optimize the incentives' social benefits for the country's overall development." Section 4 in particular mandates businesses enjoying incentives to submit complete annual tax incentives reports of their income-based tax incentives, value-added tax and duty exemptions, deductions, credits or exclusions from the tax base.

Only 33 of 51 targeted material companies (i.e., those with net sales of least PhP1 billion) were reported in July 2014 to have complied with EITI's disclosure requirements. Currently, the two reports thus far list 36 material companies as EITI-compliant (Leyco). Of non-material companies (less than PhP1 billion in net sales), 29 were targeted for EITI compliance but only 12 reported (Mariano).

One of those that declined participation is Semirara Mining and Power Corp. of DMCI Holdings. Other firms identified that did not join the EITI process were Pacific Nickel Phils., Inc., Mt. Sinai Mining Exploration and Development Corporation, Citinickel Mines & Development Corporation and AAM-PHIL Natural Resources Exploration and Development Corporation. Among the oil and gas companies, these are Oriental Petroleum & Minerals Corp., Alcorn Gold Resources Corp., Trans Asia Oil & Energy Development Corp., Forum Energy Philippines Corp. (Magno).

OTHER LOSSES - ENVIRONMENTAL DEGRADATION AND SOCIAL DISLOCATION

Challenging the generous fiscal incentives granted to mining investments gains even more traction in the light of the sector's continuing history of inflicting environmental, social and cultural harm. The Philex mine spill at the Philex mines in Padcal, Benguet, Mountain Province, last August 2012 was preceded by two other spills in the 80s and the 90s. But the latest incident has overshadowed the Marcopper disaster, with 20 million tons of toxic tailings leaking into water bodies, or 10 times larger than the volume released by the Marcopper mine in 1996.

A fact-finding mission organized by civil society found many adverse impacts resulting from the Philex disaster:

- the Balog Creek, previously categorized as class A river, as well as the downstream Agno River were heavily polluted after the spill, badly affecting the environment, agricultural lands and local communities whose livelihood were based on the proper functioning of the river.
- Elevated heavy metal levels included zinc, arsenic and copper, the latter being 4.5 times higher than the allowed level
- Complaints over diseases in downstream communities increased
- People had to stop fishing, and later on, fish catch was reported to be reduced significantly, while some people reported to have seen mutant fishes
- Other NGOs described the rivers to be biologically dead

CONCLUSIONS

In the face of many human and development needs that are often plugged through borrowings and government's sale of its assets, the fairness of the proposition to examine and put an end to the generous incentives packages extended to the mining sector bears no further justification.

Particular to the extractives sector, there is a clear case to be made against awarding wide-ranging incentives to investments that would have been made anyway because minerals are site-specific. But what is even more reprehensible and unjust is that these incentives are generously given to a sector raking in billions in profits for foreign big business interests and partner national elites, displacing communities and inflicting often irreversible environmental damage.

It is thus a welcome development that government and lawmakers have pressed anew for the rationalization of fiscal incentives and greater transparency and accountability in the extractives sector. Financial resources that can be raised from judiciously granting incentives are crucially needed by a country where basic social services remain grossly wanting, where building the fundamental infrastructure needed to meet basic needs remains contingent on incurring more debts and dependent on private sector investment.

However, rationalization also raises the question – what is being rationalized? Clearly, the direction is towards rationalizing incentives in a way that they support government's Investment Priorities Plan – procedurally a plan without benefit of broad consultations and substantively reflecting a growth-driven paradigm that continues to be debunked, among others, by continuing dependence on borrowings and privatization, chronic crisis and poverty, and the inability to build publicly subsidized infrastructure for the adequate, predictable and sustainable delivery of basic social services. Efforts towards truly reforming the country's fiscal incentives regimes must comprehensively move in this direction. ●