

**Strengthening Developing Country Governments'
Engagement with Corporate Social Responsibility (CSR)**

**Conclusions and Recommendations from
Technical Assistance in The Philippines**

FINAL REPORT

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January 2004**

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1.0 Executive summary and recommendations

The World Bank's program *Strengthening developing country governments' engagement with Corporate Social Responsibility* was set up to explore the potential roles of the public sector within developing countries to encourage and strengthen corporate social responsibility, or CSR. It has been based on activities and dialogue on specific sectoral or thematic issues in four countries (Angola, El Salvador, The Philippines and Vietnam), plus commissioned research on cross-cutting themes. It began in April 2002 and concluded with an international conference in November 2003.

The concept of CSR is based on the recognition that businesses are part of society, and that they have the potential to make a positive contribution to societal goals and aspirations in ways that are both good for business and good for development. But why should a government engage with the CSR agenda? Four objectives have emerged:

- To enhance international competitiveness;
- To address current gaps in government capacity;
- To create synergies that use the complementary competencies of government, private and civil society actors to achieve common goals;
- To ensure that CSR practice is in line with national policy goals.

In the Philippines, the technical assistance aimed to build CSR awareness among government officials and key stakeholders, to engage in and stimulate constructive dialogue on how CSR could be a tool for more responsible approaches to managing social and environmental impacts in the mining industry. It focused on clarifying the respective roles that different stakeholders can play to improve corporate social responsibility practices of mining companies operating in the Philippines.

Following an initial mission to the Philippines in February 2003, the CSR Practice provided the following technical assistance:

Research

- The report, 'Profiles in Corporate Social Responsibility of Philippine Mining Companies' provided three examples of best practices in Philippine Mining Companies with regard to managing social and environmental issues.
- Diagnostic of Corporate Social Responsibility (CSR) activities of large scale mining companies in the Philippines and the respective public sector roles that strengthen CSR
- Company Codes of Conduct and International Standards: An Analytical Comparison (Part II Mining and Oil & Gas)

Knowledge Sharing

- Presentation on CSR practices at the regional mining workshops in September 2003
- The International Conference on Corporate Social Responsibility and Public Policy took place in Washington DC in October 2003. A panel from the Philippines (including Edwin Domingo from the Mining and Geosciences Bureau, Raul Angeles from the Board of Investments, Father Pedro Walpole from ESSC, Victor Francisco from Philex Mining and Colin Hubo, University of Asia and Pacific and consultant to the CSR Practice) presented the approach being used in the mining sector towards CSR.
- Presentation on CSR at the National Mining Conference in December 2003

- Development of pilot capacity building workshop for key stakeholders in local mining region (to take place in February 2004)

Based on the findings of these various documents and drawing from the various papers presented at the International Conference on Public Policy for Corporate Social Responsibility¹ and comparable work in other countries in this program, the World Bank makes the following sets of recommendations to the Mining and Geosciences Bureau of the Department of Environment and Natural Resources and the Board of Investments of the Department of Trade and Industry.

Key Recommendations

Best practices in managing the impacts of the mining sector and maximizing the potential development gains can only be achieved if each sector has the information and tools – as well as incentives – to play their respective roles.

The focus of the CSR Practice technical assistance program has focused on the role of the government in encouraging corporate social responsibility in the mining sector. The government has five key roles available to it that provide opportunities for encouraging corporate social responsibility. These are mandating, facilitating, partnering, endorsing and demonstrating.

While recognizing that existing laws need to be harmonized and that until they are, the desired growth of sector will remain fundamentally challenged, the following recommendations will not focus on this issue as it is an area covered by the work of the Oil, Gas, Mining and Chemicals Department of the World Bank Group.

¹ This conference was organised by the World Bank Group in October 2003 to present lessons learned from the Corporate Social Responsibility (CSR) Practice program on ‘Strengthening Developing Country Governments Engagement with Corporate Social Responsibility’.

KEY RECOMMENDATIONS

CENTRAL GOVERNMENT	<p><i>Capacity Building of Local Stakeholders</i></p> <ul style="list-style-type: none"> ▪ The MGB should take a lead in establishing a roll out of the capacity building workshop in regions where mining related issues are “explosive” and divisive”. ▪ The rollout activities should be incorporated as a major program in the drafting of the Minerals Action Plan for 2004. ▪ The MGB should partner with other stakeholders such as the Regional Development Council (RDC) and the Provincial/Municipal government. ▪ Efforts should be made to invite MGB personnel from the Mine Environment and Safety Department to attend the workshop, and to ensure that their reward and/or incentive systems for personnel behaviour are in accordance with the training’s.
	<p><i>Institutional Mechanism</i></p> <ul style="list-style-type: none"> ▪ The government should strengthen its roles as a facilitator, a partner and a demonstrator of best practices to encourage greater corporate social responsibility in the mining sector. ▪ The MGB and BOI should continue to engage in dialogues with mining companies to understand the drivers and constraints facing them in the execution of their CSR activities and with local stakeholders to understand their concerns. ▪ The MGB needs to achieve vertical coordination on mineral resources matters and horizontal coordination of the mineral-related agencies, as well as within the agencies themselves. ▪ Defining the links between CSR and regional/national competitive advantage is highly necessary.
	<p><i>Investment Promotion</i></p> <ul style="list-style-type: none"> ▪ The government should encourage increased transparency and reporting of CSR practices of firms operating in the Philippines. ▪ The BOI may also consider presenting information regarding the CSR enabling environment to potential investors. ▪ The government should keep a watching brief on the Extractive Industry Transparency Initiative. ▪ The government may wish to consider the merits of a new initiative from the Global reporting Initiative which seeks to encourage greater public sector reporting.
LOCAL GOVERNMENT	<p><i>Stakeholders dialogue- Social Acceptance of mining projects</i></p> <ul style="list-style-type: none"> ▪ LGUs need to strengthen public communication and consultation procedures in all phases of mining stages. ▪ As a bridge between the community and the company, LGUs should develop standards to improve the method and quality of feedbacking information to all stakeholders concerned. ▪ LGUs should increase partnership agreements with mining companies during the Environmental Impact Assessment process.
	<p><i>Local Planning</i></p> <ul style="list-style-type: none"> ▪ LGUs should incorporate and integrate mining development plans in the development plans of local government units. ▪ LGUs should have enhanced capacity in land-use planning, zoning and mapping technologies through cross-fertilization and the transfer of best practices in environmental and social management of mining projects. ▪ Strengthen the “business case” for LGUs to encourage and maximize the potential benefits of CSR mining companies.

2.0 Summary of the global findings from the World Bank CSR program

This section summarizes findings from the World Bank’s program *Strengthening developing country governments’ engagement with Corporate Social Responsibility*. Through activities and dialogue on specific sectoral or thematic issues in four countries (listed below), and a series of commissioned research projects on cross-cutting themes, the program explored the potential roles of the public sector within developing countries in relation to CSR.

Country	Sector	Issues
Vietnam	Footwear	Labor
El Salvador	General	Business and education
The Philippines	Mining	Socio-economic and environmental impacts
Angola	Oil	Local content, transparency and social development

The concept of corporate social responsibility (CSR) is based on the recognition that businesses are part of society, and that they have the potential to make a positive contribution to societal goals and aspirations. The CSR agenda places significant emphasis on relationships between enterprises and their stakeholders, both internal (e.g. workers, shareholders and investors) and external (e.g. customers, suppliers, civil society and community groups). Yet one set of key actors is often omitted from this conversation – the government. This is despite the overarching role of the government in setting the framework within which businesses operate, and the potential for aligning the outcomes of business activity to public policy goals.

To some extent, the absence of attention to the role of the government is a reflection of the immaturity of the CSR agenda, and that the term “CSR” has not yet taken hold within many government agencies. Yet there already is a wealth of examples of government actions that can and do promote corporate social responsibility, many of which have not been undertaken explicitly as CSR initiatives. These include traditional activities of labor and environmental regulators and inspectorates, and elements of the work of investment and export promotion agencies. Government agencies that do not use the term CSR are not necessarily doing any less than those that do. Indeed, they may prefer to deal with the challenges brought by the CSR agenda through more established terminology and approaches, in order to focus on the necessary responses and to communicate these to other actors.

Just as the significance of the government is often underplayed within the CSR agenda, so the link between public governance and CSR is seldom given due attention. But governance is an overriding factor in defining the type and trajectory of CSR that will emerge, and the respective roles of different stakeholders. Where the state provides a transparent and predictable business environment, with clear signals for business and enforcement of the law, not only are minimum standards more likely to be upheld, but also the efforts of private sector and civil society actors to promote better social and environmental practices through voluntary measures will be supported. In Angola, companies investing in the oil sector are realizing that if they are to respond to civil society demands that the revenues they generate are harnessed in support of public good such as poverty reduction, they need government support in ensuring transparency. The extent to which the government can underpin CSR through good governance has a strong bearing on the necessary roles of other actors.

But why should the government engage with the CSR agenda at all?

The first reason is the desire to maintain and enhance international competitiveness. In El Salvador, the Government sees CSR as a route to long-term national competitiveness, by capitalizing on the willingness of employers to invest in education and their desire for an educated workforce.

There are indications that CSR issues are increasingly influencing the investment and purchasing decisions of some multinational enterprises.² This survey of 107 MNEs in the extractive, agriculture and manufacturing sectors found that over 80% of respondents consider the CSR performance of potential partners and locations before they enter into a new venture, with just under half choosing one host or source country over another on the basis of CSR issues. Indeed, the most striking link between CSR and competitiveness is made through codes of conduct, developed by buyers to manage social and environmental issues within their supply chains. These have become among the most widespread tools of the existing CSR agenda, alongside the compliance or monitoring schemes that are used to ensure that suppliers implement the codes. In Vietnam, the direct benefit of helping the domestic footwear sector to understand and adhere to labor codes of conduct is securing international contracts that would otherwise be awarded elsewhere. There may also be indirect benefits for individual enterprises in terms of productivity and quality improvements³, and for the sector as a whole in attracting other buyers and investors. Cambodia accepts that its textile industry cannot compete with China simply on the basis of low input costs, and instead is seeking to position itself as a location for ‘responsible’ purchasing by building the capacity of suppliers to implement labor codes of conduct.

If codes of conduct can lead to the exclusion of enterprises (particularly SMEs) from international supply chains, there is a clear rationale for government support to help enterprises respond to them; we discuss possible interventions below. Having said this, it is important not to overstate the significance of codes of conduct. It is clear that they are being applied within the supply chains of a core of multinational enterprises in certain industrial sectors, notably garments and footwear, and to some extent agribusiness.⁴ For enterprises aiming to supply these sectors, there is increasing pressure to implement codes of conduct. But this is often not the case for enterprises in other sectors or for those supplying domestic markets.

The second reason for government engagement with CSR is to address current gaps in government capacity. This is a pragmatic response to situations where government agencies lack capacity to secure enforcement of legislation (for example in countries where codes of conduct are seen as a good tool to enforce implementation of the law) or resources for government expenditure (for example in El Salvador, where the fiscal gap undermines government investment in education). The idea of CSR filling temporary gaps also extends to the global regulatory context – CSR may prove to be a symptom of the current lack of a

² J. E. Berman and T. Webb 2003 *Race to the Top: Attracting and Enabling Global Sustainable Business: Business Survey Report*, Washington, D.C., World Bank.

³ Jørgensen et al. (2003) note that there is currently little understanding of the indirect business benefits of adhering to codes of conduct, such as improved productivity and lower staff turnover.

⁴ For detailed information and analysis of codes of conduct applied to five sectors (apparel; footwear and light manufacturing; agribusiness; tourism; mining; oil and gas), see G. Smith and D. Feldman 2003 *Company Codes of Conduct and International Standards: An Analytical Comparison* (Parts I and II), Washington D.C., World Bank.

mature global governance framework, and developments in global governance may eventually reduce the need for codes of conduct and other CSR tools.⁵

Thirdly, the government can apply CSR to facilitate partnerships and create synergies that use the complementary skills of government, private and civil society actors to achieve public policy goals. Even where there are fully functioning and well-resourced regulatory structures, it still makes sense to make the most of what different stakeholders can offer. For example, in El Salvador, the business community is able to provide financial expertise and mentoring for school managers, while in the Philippines, the Department of Environment and Natural Resources sees communities as “active partners, not beneficiaries” in the context of the mining sector.⁶

A fourth rationale for government engagement with the CSR agenda is to ensure that it is in line with the interests of local stakeholders and with national policy goals. The current CSR agenda, and its emphasis on top-down codes of conduct, reflects its primary association with large multinational companies and their stakeholders, particularly consumers, investors and international civil society organizations. As discussed above, government interventions may be necessary to ensure that domestic companies (particularly SMEs) are able to meet the supply chain requirements imposed by foreign buyers. But there is also a need to support the positive practices of domestic companies, including those operating outside international supply chains. Local visions of what it means to be socially responsible may well be quite different to those of international buyers. In Vietnam, some invitees to a conference on CSR assumed that the topics to be discussed would be assistance for flood victims and other needy people, rather than labor codes of conduct. In the Philippines, there is a need for mechanisms that involve and engage local stakeholders in planning a sustainable future for the mining sector.

Given the complexity of these drivers for government engagement, it may be useful to take a systematic approach to deciding on the most appropriate responses. The range of roles that government agencies might play can be situated within an overarching framework under four broad categories: mandating, facilitating, partnering and endorsing.⁷ The aim should be to map the overlaps between the CSR agenda and existing government activities, and to identify interventions that align business activities with public policy goals.⁸ For example, the Government of El Salvador is seeking to integrate CSR into a national plan for education, and sees its roles as, firstly, to establish clear policies in relation to CSR, and secondly, to facilitate partnerships between the private sector and educational institutions.⁹ The Government of Angola has passed legislation to set targets for hiring of local labor by foreign oil companies, in order to develop local skills and training.

⁵ Michael Klein, Vice President Private Sector Development: The World Bank, and Chief Economist, International Finance Corporation, addressing the International Conference on Public Policy and CSR, Washington, D.C. 8-9 November 2003.

⁶ Edwin G. Domingo, Assistant Director, Mines and Geosciences Bureau, Department of Environment and Natural Resources, addressing the International Conference on Public Policy and CSR, Washington, D.C. 8-9 November 2003.

⁷ See Fox, Ward and Howard (2002) for a discussion of this framework and examples of public sector action under each of the categories.

⁸ See the Diagnostic and Appraisal Tool developed by Michael Warner for the CSR Practice, which takes users through a series of steps, helping them form recommendations on appropriate public sector interventions and instruments.

⁹ H. E. Rolando Ernesto Marin Coto, Minister of Education, El Salvador, addressing the International Conference on Public Policy and CSR, Washington, D.C. 8-9 November 2003.

There is clearly a range of activities that the government could play with respect to codes of conduct and other supply chain requirements. Ensuring consistent and transparent enforcement of the law is fundamental to supporting responsible business activity. A logical next step is providing information, training and other capacity building for local enterprises, both in terms of what standards are required and how they relate to national legislation. This could involve key stakeholders such as trade unions, industry associations and civil society groups. By coordinating the different actors, the government may be able to encourage collaborative capacity building that pools resources and expertise. But a more dynamic response would be to attempt to shape the codes of conduct and their implementation processes, both in the interests of domestic enterprises and the economy as a whole, and to maximize the benefits in terms of higher standards. For example, stakeholders in Vietnam have discussed the notion of a national framework for codes of conduct, which might form a basis to encourage coherence between different buyers' codes and national legislation, and may even facilitate joint audits of factories.¹⁰

But there remains a need to explore how auditors inspecting against private codes of conduct, and the information gathered by them on standards within individual enterprises, could usefully complement and build the capacity of government inspectorates. By doing so, there may be scope to raise standards not only in export sectors, but also in enterprises producing for the domestic sector and in industries beyond those touched directly by codes of conduct. And questions remain about the limits to the implementation of codes of conduct in sectors characterized by short-term contracts and complex supply chains.

While the case of Angola demonstrates how the CSR agenda relies on transparency with regard to the activities of the government, government also has a role to play in ensuring the provision of transparent and reliable information on the activities and impacts of enterprises. It is in the interests of individual companies to differentiate themselves within a market in which discerning buyers (and increasingly, investors¹¹) favour high standards. There may be a role for the government in establishing a comparative framework to allow this, possibly linking higher standards to incentives such as tax concessions or export licenses.¹² In addition to these enterprise-level effects, data collected could be aggregated and used at a national level in positioning the country as a location for responsible sourcing or investment.

To make the most of the leverage that transparency can bring to bear on corporate performance, it may also be necessary for the public sector to support the capacity of civil society to demand and make use of this information, thus creating additional local pressure for better practice. Providing balanced information on the positive and negative impacts of business activity also has the potential to bring stakeholders into constructive debates. For example, in the Philippines, there is a clear need for broad civil society engagement and a

¹⁰ Jørgensen et al. (2003) note that one of the main barriers to implementation of codes of conduct by suppliers is the fact that different buyers interpret even identical provisions in codes of conduct in different ways. This appears to be a greater barrier than the absolute number of different codes.

¹¹ For example, ten leading banks recently adopted the Equator Principles, a voluntary set of guidelines for managing the social and environmental issues related to the financing of development projects.

¹² For example, the Government of Cambodia has linked the granting of export licenses to garment manufacturers to their engagement in an ILO standards scheme.

mechanism that builds mutual trust and informed choices between stakeholders, as well as expanding each stakeholder’s awareness of the possibilities presented by the mining sector.¹³

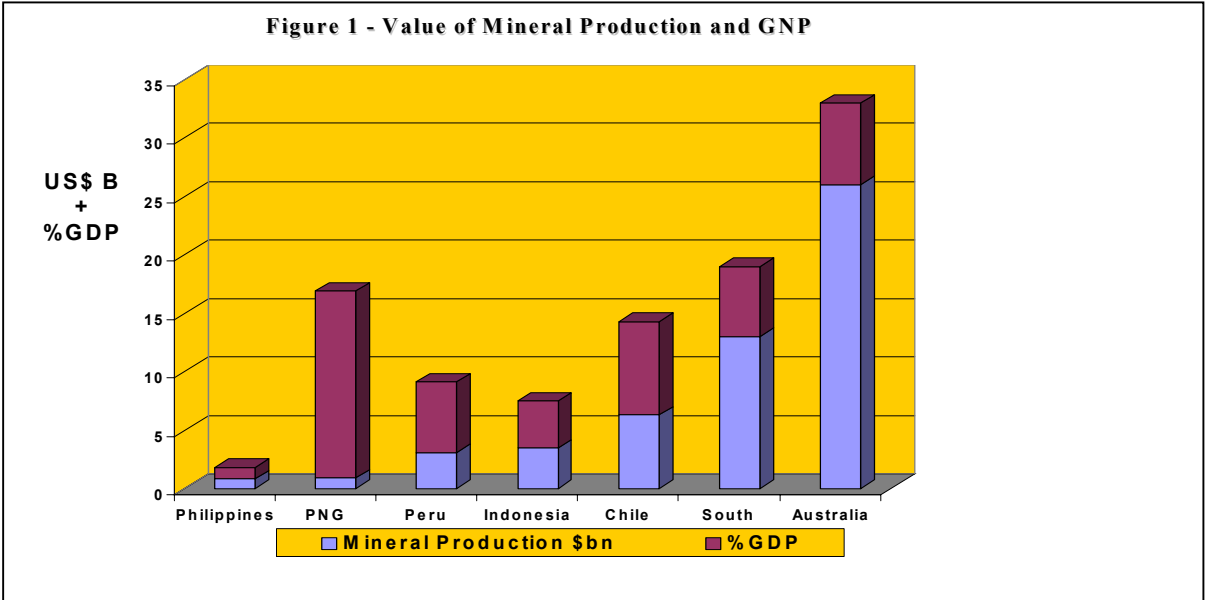
In exploring and performing its potential roles, the government can play an important function in shaping a national CSR agenda not only responds to external pressures such as codes of conduct, but is also in line with local needs. In assessing the opportunities that CSR provides, the challenge is for governments to identify priorities and incentives that are meaningful in the national context, building on the strengths of local enterprises as well as those of foreign multinationals. By doing so, there is a significant opportunity for the government to harness current enthusiasm for CSR to delivery against public policy goals and priorities.

3.0 The CSR program in The Philippines

This section summarizes the background of the mining sector operating in the Philippines and its key challenges. The section then covers the objectives and activities of the CSR program in the Philippines.

3.1 Background of the mining sector and current challenges

The Philippines is a highly mineralized country with very rich potential for copper, gold, nickel, chromite and other metallic minerals. It is also abundant in non-metallic and industrial minerals such as marble, limestone, clays, feldspar, and rock aggregates. Presently, the country’s mineral industry produces US\$ 1 Billion in annual sales similar to Malaysia and Papua New Guinea, but lagging behind Indonesia (US\$ 3.6 Billion), Chile (US\$ 13 Billion) and Western Australia (US\$ 26 Billion). (See Figure 1).¹⁴



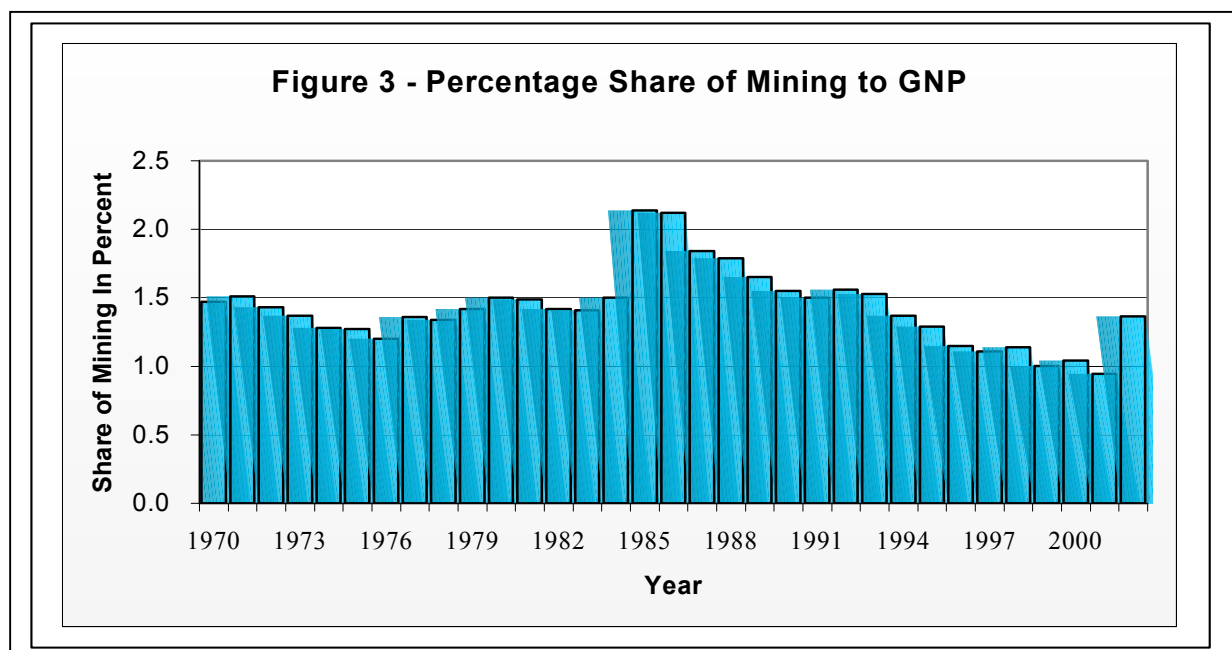
During the 1980s, the industry contributed 2.1% of the country’s gross domestic product. This has declined over the years to 1.3% in 2002.¹⁵

¹³ C. L. Hubo (2003) *Corporate Social Responsibility (CSR) and Public Policy in the Philippine Mining Sector*, paper presented to the International Conference on Public Policy and CSR, Washington, D.C. 8-9 November 2003.

¹⁴ Mines and Geosciences Bureau

¹⁵ Peter Wallace, *The Philippine Mining Situationer Report*, 2003.

Production Value	P 26.3 Billion
Value-Added Contribution	P 10.0 Billion or 1.1% of Philippine GDP
Exports	US\$ 537 million or 1.6% of total Philippines exports
Paid-up Investments	P 261 Million
Direct Employment	104,000
Wages and Benefits	P 4 to 5 Billion
Taxes and Fees	P 2.2 Billion
Multiplier Effect	For each mining job, 4 to 10 allied jobs created upstream and downstream



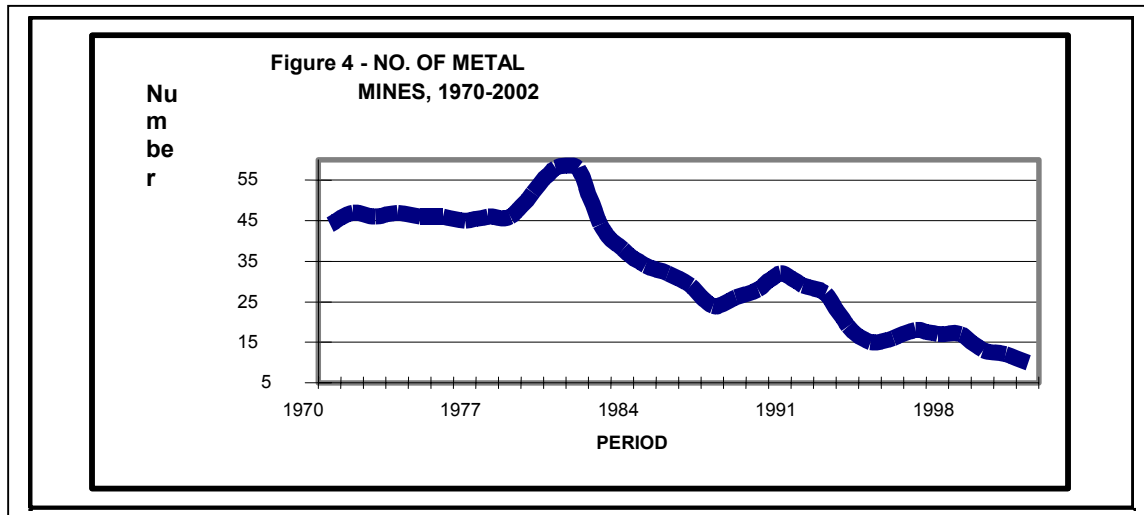
Some 12 metal mines continue to operate but this is a handful compared to the 58 metal mines that operated in 1980s.¹⁷ Today, the local minerals industry consists of:

- 1 large-scale gold mine (*Victoria Project of Lepanto*);
- 1 large-scale copper mine (*Padcal Project of Philex*);
- 4 medium-scale nickel mines (*Palawan Project of Rio Tuba Mining Corp., Cagdianao Project of Cagdianao Mining Corp., Sigbanog Project of Hinatuan Mining Corp., and Taganito Project of Taganito Mining Corp.*)
- 3 medium-scale chromite mines (*Masinloc Project of Benguet Corp, Omasdang Project of Crau Minerals and Homonhon Project of Heritage Resources Mining Corp.*)
- 3 medium-scale gold mines (*Canatuan Project of TVI Resources Philippines, Inc., Acupan SSM Operations of Benguet Corp., and the Diwalwal Direct State Development Project of the Natural Resources Development Corp.*)
- 15 cement plants and quarries;

¹⁶ Source: consolidation of data from Wallace Philippine Mining Report (2003)

¹⁷ SEE BUSINESSWORLD, January 22, 2004

- 80 small to medium-scale limestone quarries (agriculture and industrial)
- 90 rock aggregate quarries and crushing plants
- 245 sand and gravel quarries with industrial permits
- 9 slaked lime producers
- 22 small to medium-scale marble quarries; and
- More than 2,000 quarries and small-scale mines of various commodities including those covered by permits issued by local government units.



This decline can be attributed to a number of factors including: a soft international market; low world prices for principal metal products; and general lack of investments in the global mineral industry.

But the most significant factor in the decline of mining industry in the Philippines can be attributed to increasing stakeholder activism of various civil society groups and the Catholic Church. Many groups have been very vocal with their engagement with the government and mining companies over the issue of social acceptance and sustainability of mining practices. Indeed, these groups have blocked the entry of foreign players by challenging the constitutionality of the Financial and Technical Application Agreement (FTAA), which allowed up to 100% foreign ownership of mining projects, as well as raising a legal issue on the potential conflict between the Mining Act of 1995 and the Indigenous Peoples Reform Act (IPRA)¹⁸. This activism is present at every step from service delivery to policy development and political mobilization. It has developed into coalitions and has managed, to a large degree, to secure a “mining ban” in the country.

In a bid to resuscitate the ailing industry, the government of President Gloria Arroyo changed its policy towards mining, from one of “tolerance” to “promotion”. This policy change can be seen in the National Minerals Policy (NMP) that aims to encourage sustainable mining and greater reporting and transparency. The NMP is aimed at strengthening further Republic Act

¹⁸ “Previous to the Act, foreign-equity/ownership was restricted up to only 40%.” Edwin G. Domingo, “Public Policy initiatives in Institutionalising CSR in the Philippine Mining Industry”, CSR Conference, October 2003, Washington DC, USA

7942 or the Philippine Mining Act of 1995 to attract foreign mining investors back into the country¹⁹ and address pressing policy gaps and stakeholder issues and concerns.

If the mining sector is revived, the government is expecting to receive an average of US\$380 million of mining investments annually over the next 10 years. It is one of the economic strategies identified by the World Bank’s Country Assistance Strategy for 2003 to 2005 report that could catalyze economic growth and community development.²⁰ Table 2 below shows the potential benefits that would accrue to local and national governments.

Table 2. Benefits Stream During the Life Cycle of the Mine²¹

Exploration/Development/ Construction Phase	Operating Phase	
Pre-Operating	Recovery Period	Post-Recovery Period
Expenditures & Benefits	Expenditures & Benefits	Expenditures & Benefits
Exploration Development and Construction Local Taxes Indirect Taxes Direct Employment Indirect Employment Social Infrastructures Environmental Improvements Development of Geosciences and Mining Technology	Local Taxes Indirect Taxes Direct Employment Indirect Employment Social Infrastructures Environmental Improvements Development of Geosciences and Mining Technology	National taxes Additional Government Share Local Taxes Indirect taxes Direct Employment Indirect Employment Social Infrastructures Environmental Improvements Development of Geosciences and Mining Technology

The Mining Act of 1995 and its implementing rules and regulations have already addressed some gaps in establishing a sustainable mining regime in the Philippines. The Act was designed to transform the “environmental and social responsibilities of mining operators as major cost centers”.²² Specifically, the mining companies are obliged to allocate:

- 10% of capital investments for environment-related structures;
- 3% to 5% for annual environmental programs;
- 1% of direct mining and milling costs for social and community development;
- 1% of annual gross revenues as royalty to Indigenous Groups, if present in mining area;
- Cost of Final Mine Rehabilitation and Decommissioning, including costs of ten year maintenance and monitoring period; and
- Monitoring fund of the multi-partite monitoring committee (DENR, LGU, mining company, host community and accredited NGO).

¹⁹ In terms of foreign investment attractiveness, the Philippines (32%) is at the bottom end of the investment attractiveness index in a survey released by the Fraser Institute (Canada) of Mining companies in 2002/2003.

²⁰ Business World, January 22, 2004

²¹ Source: Mindanao Association for Mineral Industry

²² Cabalda, et. al., Sustainable Development in the Philippine Minerals Industry: A Baseline Study, IIED (UK), 2002, p. 6.

The law also contain social and environmental safety nets far stronger than previous mining laws, rules and regulations. It has.²³

- ***Built-in protection for the Indigenous Peoples (IP)*** through the prior informed consent requirement, one of, if not the only mining law in the world that contains such requirement, even pre-dating the free and prior informed consent (FPIC) requirement of the Indigenous Peoples Rights Act of 1997;
- ***Competitive fiscal regime.*** The fiscal regime is a major consideration among the investor's criteria for investment. The fiscal regime of the Philippines is considered competitive not only in Asia but throughout the world, according to an independent study by the Institute for Global Resources Policy and Management of the Colorado School of Mines (CSM) in the United States in 2000;
- ***Equitable sharing of the benefits of mining*** among the major stakeholders – the national and local government, the communities and the mining company. Under the fiscal regime, the benefits of mining are approximately shared at 50%:50% between the government and the contractor. The 50% is further divided into 50% for the national government, 10% for the provincial government and 20% each for the municipality and host barangays; and
- ***Environmental and social provisions*** comparable, if not better than similar provisions in mining laws of established countries. During the World Bank Mine Closure and Sustainable Development Workshop in 2000, the Philippines was among the nations considered to “have [a] comprehensive policy and legislation that provides for both comprehensive mine closure and post-mining sustainable development”. The Social Development and Management Program (SDMP) was also cited as a “tool for community participation”. The SDMP is meant for the development of the host and neighboring communities and is managed by the communities themselves together with the mining company and guidance by the Government and site-base NGOs. In addition, the national wealth sharing scheme, provided under the Local Government Code of 1991 where 40% of mining taxes collected by the national government is flowed back to the communities was cited as “one of the only few wealth sharing scheme of such nature in the world”.

Indeed, the Mining Act generated a remarkable change in the way mining is conducted in the country. The strong environmental component of this Act, which was largely driven by the negative impacts of previous mining activities, addresses some of the concerns of the stakeholders. However, stakeholder groups have increasingly tied environmental concern to social justice issues and organizations in which ethnic, class and gender politics are central themes. Among the issues tied to environment and social justice are worker rights, economic justice and gender discrimination. Also, recent incidents involving mining firms such as Marcopper and Manila Mining have further affected public perception and contributed to the poor image of the industry.

²³ Cited from the Information, Education, and Communication materials of Mines and Geosciences Bureau.

The government's National Minerals Policy (NMP) aims to address the interlinked issues of the environmental and social impacts and "promote sustainable development through responsible mining practices".²⁴ The policy has four major policy thrusts:

- Protection and rehabilitation of the environment
- Promotion of social and community stability
- Preservation of options for future generations
- Establishment of a competitive and prosperous minerals industry

Each policy thrust consists of specific policy objectives that address specific issues relating to the Precautionary Principle; the Polluter Pays Principle; Free and Prior Informed Consents in Ancestral Domain Areas; the Role of NGOs and LGUs; Community Development; Consensus Building; and Mine Rehabilitation. The NMP also aims to address some of the barriers to the growth of mining in the country. Among them:

- High production costs associated with labor intensive practices, rising labor costs and growing trade union militancy;
- Higher taxation levels than other host nations with the Philippine complex royalty, excise, realty, capital goods, income and value-added taxes; and
- High interest rates as a result of foreign financial bodies not willing to provide long term loans due to fears of policy instability.
- Complex procedures for the issuance of mining contracts and permits and the lack of investment assistance centres that can provide information and advisory services to mining applicants and other prospective mining investors.
- Lengthy process to facilitate the approval or denial of Environmental Compliance Certificate (ECC) for mining projects especially for environmentally critical projects

The National Minerals Policy (NMP) was launched following the National Mining Conference in December 2003 where the President Gloria Arroyo signed Executive Order 270 outlining the National Policy Agenda on Revitalizing Mining in the Philippines.

EO 270 gives flesh to President Arroyo's pronouncement last year regarding the policy shift in mining, from one of tolerance to promotion in recognition of the industry's potential economic contributions. It "aims to promote responsible mineral resources exploration, development and utilization in order to enhance economic growth, in a manner that adheres to the principles of sustainable development and with due regard for justice and equity, sensitivity to the culture of the Filipino people and respect for Philippine sovereignty."²⁵

EO 270 underscored the principles that will guide the revitalization based on the points of convergence reached during the 9-month consultation process among government, industry, and civil society groups as well as other stakeholders. Following the consultation, study tours were held in Canada, Australia and Peru to raise the awareness of stakeholders on best practices in modern mining abroad. The process culminated in a National Mining Conference in December 2003 after which EO 270 was signed along with the adoption of the Action Plan to address outstanding mining issues. These are:

²⁴ Director Horacio Ramos of MGB in a speech before the Philippine Minerals Exploration Association (February 2003).

²⁵ Businessworld, January 22, 2004.

- Critical role of investments in the mineral industry;
- Clear, stable and predictable investment and regulatory policies;
- Value-adding of minerals and mineral products;
- Promotion of the small-scale mining sector as a formal sector;
- Use of efficient technologies in extraction and utilization of minerals;
- Integrate environmental protection, mitigation and progressive rehabilitation in mining operations;
- Safeguard the ecological integrity of areas affected by mining including biodiversity and small-island ecosystem;
- Pursuit of multiple land use and sustainable utilization of minerals;
- Remediation and rehabilitation of abandoned mines;
- Equitable sharing of economic and social benefits from mining;
- Enhance public awareness and respect for the rights of communities and;
- Institutionalize continuous and meaningful consultation process with industry and all other stakeholders.

The Order also directed the DENR to formulate the Draft Minerals Action Plan (MAP) based on these principles in consultation with all stakeholders and to be submitted to the Office of the President within 90 days. The top priorities for the MAP include the **remediation and rehabilitation of abandoned mines** and **pursuing accountability for the negative impacts of mining**. Specifically, this refers to:

- Resolution of the Marcopper case. Thus far, the Province of Marinduque, the Department of Health and the DENR have agreed together that a study covering not only the impact of the tailings spill on Boac River, but also other aspects of the environment in Marinduque has to be conducted. This study known as the Marinduque Environmental and Health Study (MEHS) finally started last June 9 with the arrival of US scientists for an initial six-day site visit. The 18-month MEHS would include the implementation of a comprehensive mine environmental and health assessment, evaluation of the final remediation options for the Boac river, and preparation of a monitoring program for both Boac and Mogpog rivers, the Marcopper site and Calancan Bay.²⁶
- Resolution of the Supreme Court case on the Mining Act of 1995

The Supreme Court case challenging the constitutionality of the Mining Act was filed by a group of NGOs on 7 February 1997, which was given due course by the Court on 3 February 1998 for en banc resolution. The Office of the Secretary has recently filed a resolution requesting the Supreme Court to resolve the cases in the soonest possible time.²⁷ At the time of writing this report, the Supreme Court has declared null and void several provisions of the Mining Act and its implementing rules and regulations for being unconstitutional.²⁸ The Supreme Court nullified all provisions concerning

²⁶ Mines and Geosciences Bureau.

²⁷ Mines and Geosciences Bureau.

²⁸ The Supreme Court declared Sections 23, 33 to 41, 56, 90 unconstitutional. These sections refer to the Financial or Technical Assistance Agreement (FTAA), an investment scheme to attract foreign capital in the mineral sector wherein a foreign mining firm is required to invest at least \$50 million in a local mining project as a sign of “commitment”. This agreement allows up to 100% foreign equity participation or ownership. It follows a 25-year, extendable for another 25, with minimum capitalization of \$4 million and minimum

the Financial or Technical Assistance Agreement (FTAA) and other permits that can be granted to foreign corporations such as the exploration permits, and mineral processing permits. The government through the Office of the Solicitor General had filed a Motion for Reconsideration and an appeal is now pending in the Supreme Court.

3.2 Technical Assistance on CSR in the Mining Sector

Strengthening CSR is seen as an important tool to secure best practices in managing socio-economic and environmental impacts of the mining sector. The goal of the technical assistance to the Government of the Philippines has been to identify potential government roles in strengthening CSR, to build agreement around that analysis and to develop a subsequent implementation plan to serve as a roadmap for future action by the government.

The objectives of this technical assistance were:

- to build awareness about the opportunities presented by CSR among key government officials (representing government ministries and agencies interested in supporting sustainable growth in the mining sector);
- to engage in discussions about government roles in strengthening CSR;
- to support government efforts to engage with key stakeholders on the issues associated with mining and CSR.

The technical assistance was designed to complement ongoing activities of the Mining Group of the World Bank with other project partners such as the Canadian and Australian Embassies, USAID, the Chamber of Mines and ESSC.

The draft diagnostic report clearly demonstrated that CSR activities are directly relevant to achieving public sector objectives. The key challenge is how to increase this alignment and strengthen the government case for CSR as a key investment objective. The diagnostic exercise demonstrates that large scale mining operations in the country are making significant contributions to these objectives, though their CSR activities are further advanced or progressive in some areas rather than others. The public sector roles being played by the government of the Philippines have, according to this study, largely been focused on '**mandating**' and '**endorsing**' corporate behavior.

The diagnostic identified that the *partnering* and *facilitating* roles of the government could be strengthened. The CSR Practice's technical assistance was designed to help support the government begin to fulfill these roles. For example:

Following government interest in utilizing local best practice examples in its dialogue with stakeholders, the CSR Practice commissioned consultant Mr. Colin Legarde Hubo, faculty member of the University of Asia and the Pacific (UA&P) in Manila to prepare a report for detailing three local examples of mining companies' approaches to CSR. The report entitled '[Profiles on Corporate Social Responsibility of Philippine Mining Companies](#)' was published

investment for infrastructure and development of \$50 million. It is allowed only for metallic minerals development such as gold, copper, nickel, chromite, lead and zinc.

in October 2003 by the Technical Working Group established to develop the Road Map for the mining sector.

The CSR Practice commissioned Foley Hoag, a law firm in Washington DC that specializes in CSR, to prepare a comparative analysis of mining company codes of conduct²⁹. The report is presented in the form of a series of matrices and includes approximately 25 different company codes (including those of a few domestic mining companies) broken down into key CSR themes: Human Rights, Social Governance, Community, Labor, Environment and Economic. All entries have been verified with the company or organization. The matrices are accompanied by an analytical narrative that seeks to identify trends within each category. In addition a further separate study has been conducted looking into the implementation mechanisms and processes employed by mining companies to help them adhere to their codes of conduct and policies. We expect that the report will have many uses within the government (both central and local) and could potentially be used by other stakeholders as well.

The regional workshops in the key mining regions sharing best practice in sustainable mining and the study tours held to Australia, Canada and Peru which were supported by various project partners.³⁰ All contributed to the government's role of *facilitation*. The CSR Practice's technical assistance was discussed at these workshops and international best practices on managing social and environmental impacts were also presented.

In October 2003, the CSR Practice organized an international conference on the roles of the public sector in supporting CSR activities. A discussion was held in plenary after participants from the Philippines representing business, government and civil society had made short presentations on the approach to CSR in the mining sector and the relevant roles of the public sector.

It is clear that local government actions and initiatives can contribute to social acceptance of sustainable mining in the country. Stakeholders at the local level should have access to instruments for greater participation in CSR activities. To enable the government's work in this area, the CSR Practice commissioned a pilot stakeholder capacity building workshop that was held in Mindanao. The workshop program builds upon various studies that have been written about the mining sector in the Philippines, its legal framework as the many reports that document stakeholder views and concerns. It also draws on the lessons learned from the [Natural Resources Cluster](#) initiative of the Business Partners for Development Program (1998-2001). The pilot workshop was held in February 2004 with 25 key stakeholders from the key mining region around Surigao del Norte.

²⁹ The report will be available in February 2004 on line at the [Corporate Social Responsibility Practice's website](#).

³⁰ Namely, USAID, Australian and Canadian Embassies.

4.0 Recommendations for public sector roles

This section gives details of the roles that the Mining and Geosciences Bureau of the Department for Environment and Natural Resources (MGB/DENR) and the Board of Investments of the Department for Trade and Industry (BOI/DTI) could consider strengthening in order to contribute to the goal of sustainable development of the mining sector.

Vision

The aim for DENR and DTI is to encourage sustainable growth in the mining sector in the Philippines. The strategy for achieving this will necessarily involve a variety of different stakeholders who each need to have the information and tools – as well as the necessary incentives – to fulfill their key roles. The role of government is therefore twofold: firstly to fulfill its primary role as a key stakeholder, and secondment to enable others to fulfill theirs.

Strategy

The DENR and DTI need to consider corporate social responsibility in their broader strategies for developing the mining sector.

Capacity Building of Local Stakeholders

Clearly the opportunities presented by partnering at a local level can only be realized if key stakeholders have the necessary skills to identify opportunities for partnership, and have the skills in engaging with each other. In part, the pilot capacity building workshop that took place in February 2004 contributed to this objective. It also highlighted particular roles for the government in encouraging CSR, and is expected to further deepen understanding of the sector and the opportunities and risks presented by mining.

After reviewing the pilot, the MGB should take a lead in establishing a roll out of the program in regions where mining related issues are “explosive” and “divisive”. The rollout/replication activities should be incorporated as a major program in the drafting of the Minerals Action Plan for 2004. In this effort to sustain the revitalization process and to achieve broader acceptance of mining activities, the MGB should partner with other stakeholders such as the Regional Development Council (RDC) and the Provincial/Municipal government.

As the personnel assigned under the Mine Environment and Safety Department is the interface with local stakeholders in the monitoring and enforcement of social and environmental provisions of the mining Act, conscious effort should be made to invite MGB personnel from this department to attend the workshop, and to ensure that their reward and/or incentive systems for personnel behavior are in accordance with the training’s.

Institutional Mechanism

The CSR Practice recommends that in order to encourage greater corporate social responsibility in the mining sector, the government should strengthen its roles as a facilitator, a partner and a demonstrator of best practices.

The BOI and MGB should continue to meet to discuss approaches to encouraging corporate social responsibility – along with representatives from civil society and business.

In particular, the MGB needs to achieve vertical coordination on mineral resources matters extending from the national to the regional and local levels of government, and horizontal

coordination of the mineral-related agencies (BOI, DTI, EMB, etc.) as well as within the agencies themselves.

Finally, CSR and mining efforts will remain limited unless it is being linked to regional and national economic competitiveness strategies and outcomes. Thus defining the links between CSR and regional/national competitive advantage is highly necessary.

Investment Promotion

MGB should encourage increased transparency and reporting of CSR practices of firms operating in Philippines – drawing on the key categories identified in the codes of conduct comparison report commissioned by the CSR Practice. This information can then be collated, along with an analysis of the enabling environment for CSR and then presented to potential investors (and other stakeholders). Thus, in terms of the government’s role as a “demonstrator”, the CSR Practice recommends that the government should keep a watching brief on the Extractive Industry Transparency Initiative, which is encouraging greater transparency regarding revenue flows received by governments from oil, gas and mining companies. In addition, the government may wish to consider the merits of a new initiative from the Global Reporting Initiative which seeks to encourage greater public sector reporting. It may be that this initiative is of interest to the Board of Investments. Finally, the BOI may also consider presenting information regarding the enabling environment to potential investors.

This section gives detailed recommendations for local government roles.

5. Role of Local Governments

Local governments are both beneficiaries and active participants in mineral resources development and management in the country. The Constitution as well as the Local Government Code safeguard these rights by allowing local government units to have a share of forty percent (40%) from the gross collection of the national government from mining taxes, royalties and other fees. In the case of occupation fees, the province gets 30% and host municipalities get 70%. In the current Mining Act, local government units are mandated and:

- are responsible for issuance of permits and endorsement of mining activities operating within their locality and actively participate in the issuance of Environmental Compliance Certificate. Crucial to this is the LGUs role to facilitate the process by which communities reach an informed decision on the social acceptability of a mining project.
- participate in the monitoring of mining activities as member of the Multi-partite Monitoring Team and the Mine Rehabilitation Fund Committee.
- are responsible for settling disputes and managing grievances by acting as mediator between indigenous cultural communities and the mining contractor, if the need arises.
- maximize the utilization and benefits arising from the social infrastructures and community development projects of mining companies for host and neighboring communities. In the implementation of the Mining Act and its implementing rules

and regulations, local governments coordinate and extend assistance to the DENR and the MGB.

To ensure a sustainable mining regime at the regional level, it is recommended that local government units need to enhance certain institutional responsibilities, such as:³¹

- Strengthen public communication and consultation procedures in all phases of mining stages: exploration, feasibility, construction, operations and closure. Local government units, generally perceived by the community as a “bridge” between them and the company, should develop standards to improve the method and quality of feed-backing information to all stakeholders concerned. An important finding is that stakeholders at the local level prefer to use informal channels of arbitration to settle disputes and grievances.
- Incorporate and integrate mining development plans in the development plans of local government units: village, municipal, provincial and regional levels, in order for mining benefits to have a wider impact and prevent duplication of priorities and projects between the LGUs and mining company.
- Enhance LGUs capacity in land-use planning, zoning and mapping technologies through “cross-fertilization” and the transfer of “best-practices” in environmental and social management of mining projects;
- Strengthen the “business-case” for LGUs to encourage and maximize the potential benefits of CSR of mining companies. At present, some LGU’s viewed their engagement with companies as no more than a means to enforce the regulatory requirements of the Mining Act. A possible way to expand the business case is to directly remit LGUs tax-share in mining to the host local government;
- Increase partnership agreements with mining companies during the Environmental Impact Assessment process: identification of sources, receptors, mitigation and management of potential impacts as a way to ensure social acceptability of mining projects.

³¹ Results compiled during the CSR Capability Building Workshops for Key Mining Regions, Surigao City, Philippines, 16-21 February 2004.

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