



# EVALUATING CERTAIN PROVISIONS OF THE 1995 MINING LAW WITH REFERENCE TO THE FRAMEWORK FOR RESPONSIBLE MINING

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A paper prepared for the Ateneo School of  
Government, February 2009



# Assessing the “adequacy” of certain provisions of the 1995 mining law (previously identified as sources of conflict)

- socio-economic development and environmental protection provisions of the law, including the process of obtaining community consent (in the case of indigenous peoples, their free, prior informed consent);
- the sharing of revenues, including the payment of rent, royalties and taxes
- financial assurance
- monitoring

“Adequacy” is assessed in terms of:

- The content of each provision
- The goal or goals to be achieved
- The way each provision is implemented or enforced

And in relation to:

- Past experience
- Comparable experiences in other countries

# The Framework for Responsible Mining

- a global initiative by various stakeholders (mining companies, financiers, governments, civil society organizations, academics, and others) that seeks to develop and evolve standards of corporate mining behavior
- used to assess whether the provisions to be examined adhere to responsible mining standards

# Thematic areas of the Framework

## 1. Mining as appropriate land use

- Law identifies no-go areas but mineralized areas and protected areas overlap
- List of no-go areas incomplete and inadequate
- Government enforcement is weak

# Thematic areas of the Framework

## **2. Environmental damage and protection - EIA**

- The EIA process seems dated and inadequate to deal with the broad impacts of mining
- EIA should contribute to decision-making on whether local communities will accept the environmental costs
- Contribute to information for monitoring mining operations



# Environmental damage and protection – Financial Assurance

- Aside from the final mine rehab fund, only two forms of assurance:
  - Mine wastes and tailings fund - P0.10 per metric ton of tailings and P0.05 per metric ton of mine wastes
  - Environmental trust fund – P50,000
- All potential sources of pollution and damage should be covered by financial assurance (water contamination, acid mine drainage, use of toxic chemicals, etc)

# Environmental damage and protection – Financial Assurance

- If mining company decides to abandon mine, government and taxpayers are left holding the bill for damages and rehab

# Environmental damage and protection – Reclamation, Rehab and Closure

- Mining company must estimate cost of rehabilitating mine site and create a cash trust fund that will cover the total cost
- In a study of financial assurance costs, Kuipers (2000) found that the cost of reclamation of specific mine sites as estimated by mining companies varied by between 50 percent and 500 percent as compared with the costs if state governments were to rehabilitate the same sites.

# Environmental damage and protection – Reclamation, Rehab and Closure

- Mining company still has option of abandoning the mine

# Environmental damage and protection – Monitoring and Oversight

- The present system of government and MMT monitoring appears to be inadequate
  - Violations of Lafayette that led to cyanide spills
  - the participation of DENR personnel in the MMT creates a conflict of interest; stakeholder participation is “skewed and shallow” (Pollisco-Botengan et al. 2004)

# Thematic areas of the Framework

## **3. Ensuring community benefits – Community consent**

- Seeking community approval and the FPIC of Indigenous Peoples is already a requirement of the law
- Critics claim that the consultation processes for obtaining consent are defective
- Affected communities need objective information on the costs and benefits of mining in order to consider consent



# Ensuring community benefits – Community consent

- LGU-declared bans on commercial mining are contested by government and mining companies
- The Framework supports bans but tempers its support by suggesting a review after five years

# Ensuring community benefits – Social Development Program

- The law requires a mining contractor to create a social development and management program (SDMP) and to provide funds for it amounting to 1% of the annual direct mining and milling costs
- However,
  - The SDMP is created and controlled by the mining company
  - Certain expenditures for infrastructure and services provided by the mine are credited to the SDMP
  - No formal assessment of impacts is required as basis for the SDMP

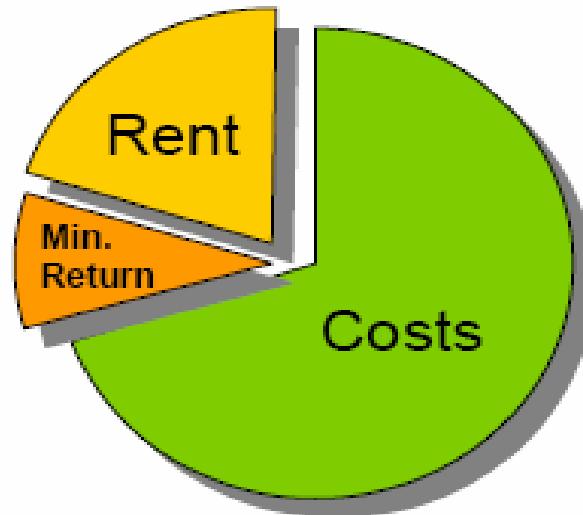
# Ensuring community benefits – Sharing Mining Revenues

- Government revenues from mining consist of taxes and other levies but not rent
- The non-appropriation of rent makes the law unconstitutional (Justice Carpio)
- All rent goes to resource extractors (the mining companies), none to resource owners (the public)

# Rent

Economic (or resource) rent represents the difference between the market price of a commodity (the resource) and the price that the provider is willing to accept for bringing it to market. Rent goes to the owner of the resource.

**Total Product Value**



# Rent

Rent is important because rental revenues are supposed to ensure that substitutes for exhaustible resources can be developed that will ensure long-term economic benefits after those resources are gone. It is important, therefore, for inter-generational equity considerations.

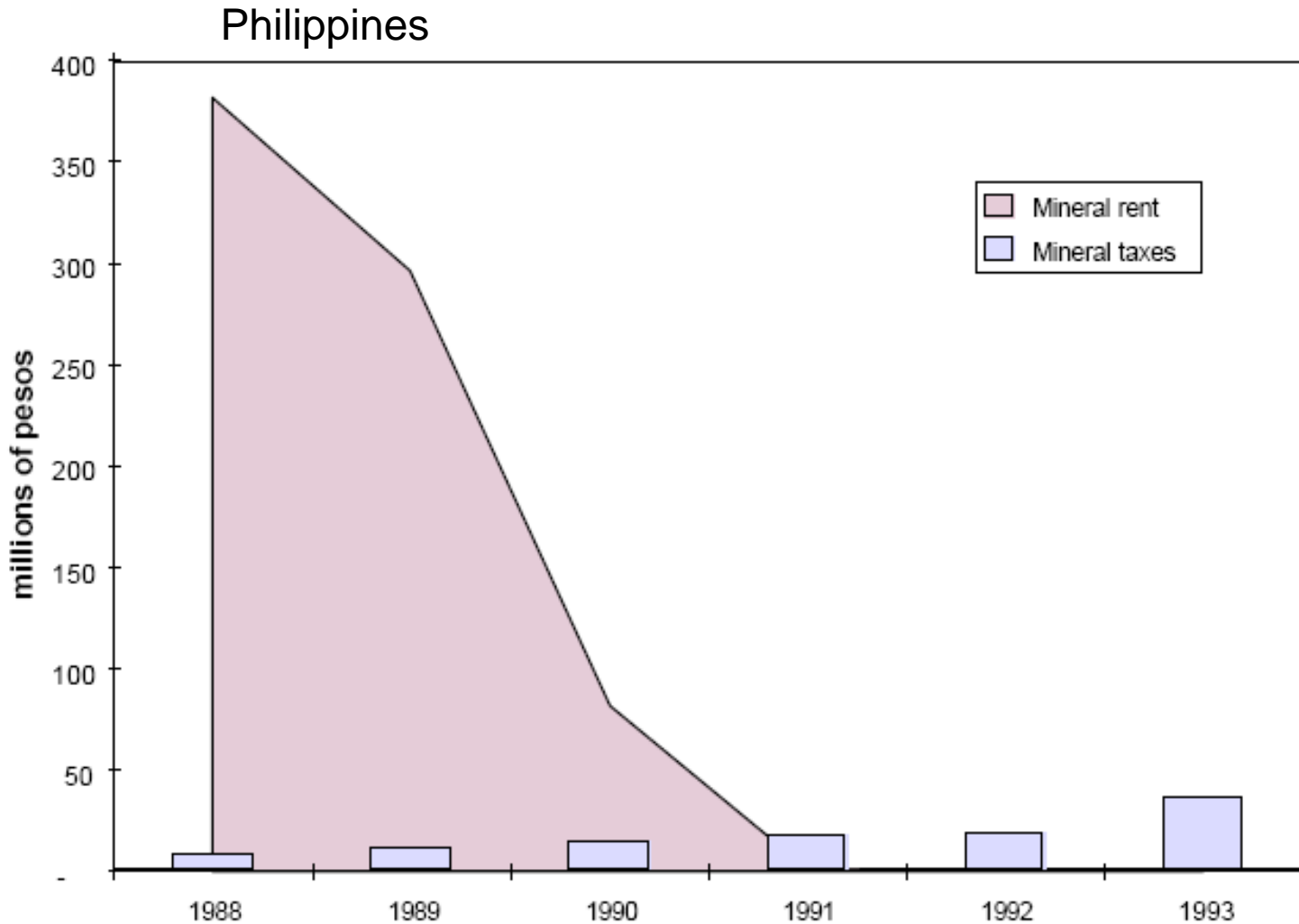
# Ensuring community benefits – Sharing Mining Revenues

	Model Gold Mine		Model Copper Mine	
	IRR (%)	Effective tax rate (%)	IRR (%)	Effective tax rate (%)
Burkina Faso	-1.6	106.0	3.3	83.9
Poland	3.0	90.2	12.2	37.1
China	7.1	73.9	12.7	41.7
Pap. New Guinea	8.7	72.3	10.8	57.8
Ivory Coast	9.1	69.1	8.9	62.4
Mexico	10.4	62.9	11.3	49.9
Uzbekistan	11.2	62.0	9.3	62.9
Indonesia	11.4	60.4	12.2	48.6
Bolivia	12.2	52.4	11.4	43.1
Tanzania	12.7	57.9	12.4	47.8
Kazakstan	13.5	54.4	12.9	46.1
Ghana	13.6	56.7	11.9	54.4
Greenland	14.7	54.9	13.0	50.2
Peru	14.9	45.5	12.3	42.8
Zimbabwe	15.7	45.9	13.5	39.8
Argentina	16.6	42.5	13.9	40.0
Chile	18.3	36.8	15.0	36.6
Philippines	18.4	38.2	13.5	45.3
South Africa	18.8	32.6	13.5	45.0
Average		58.7		49.2

Source: Otto 2000

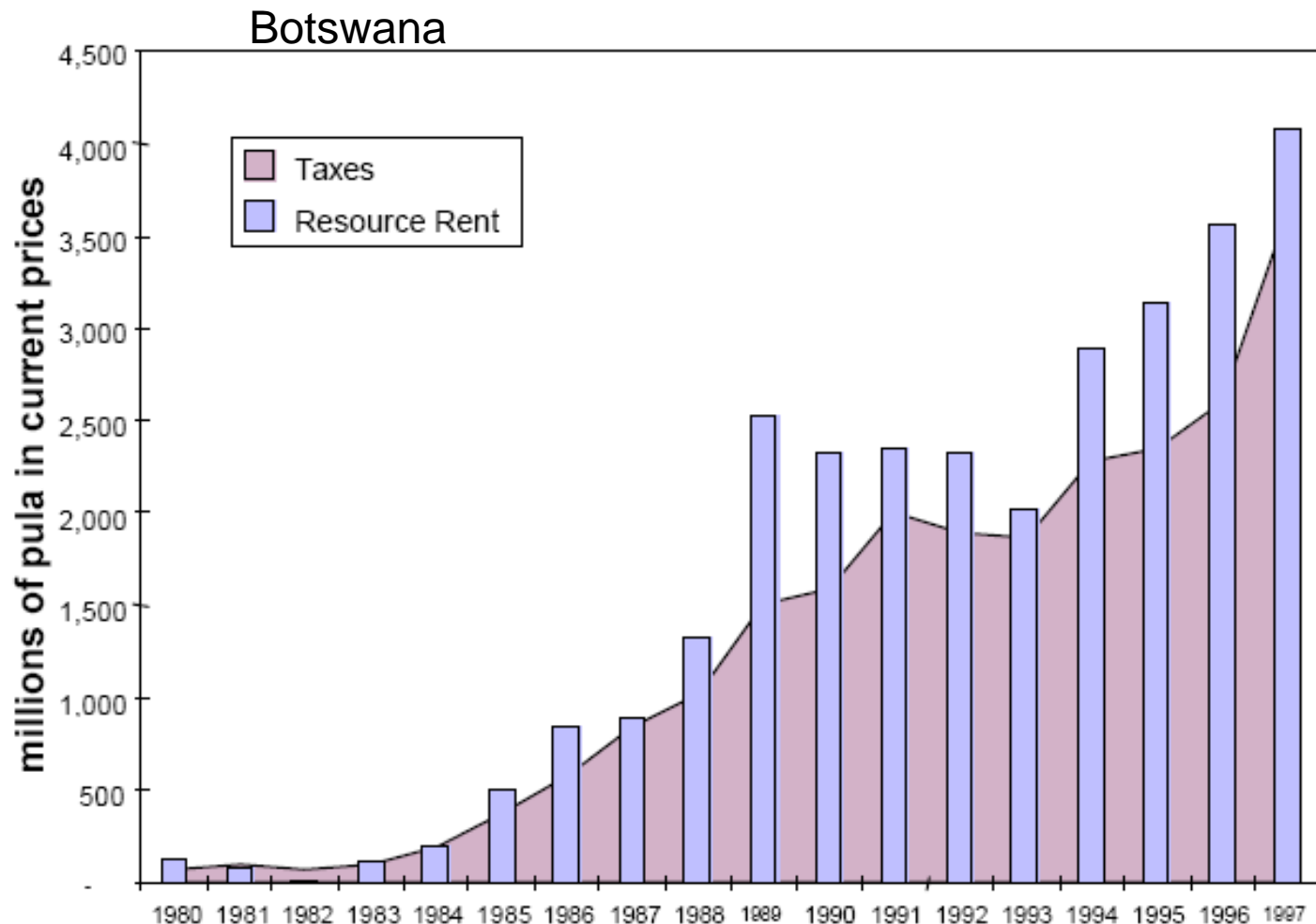
Note: effective tax rate = actual income tax paid divided by net taxable income

# Ensuring community benefits – Sharing Mining Revenues



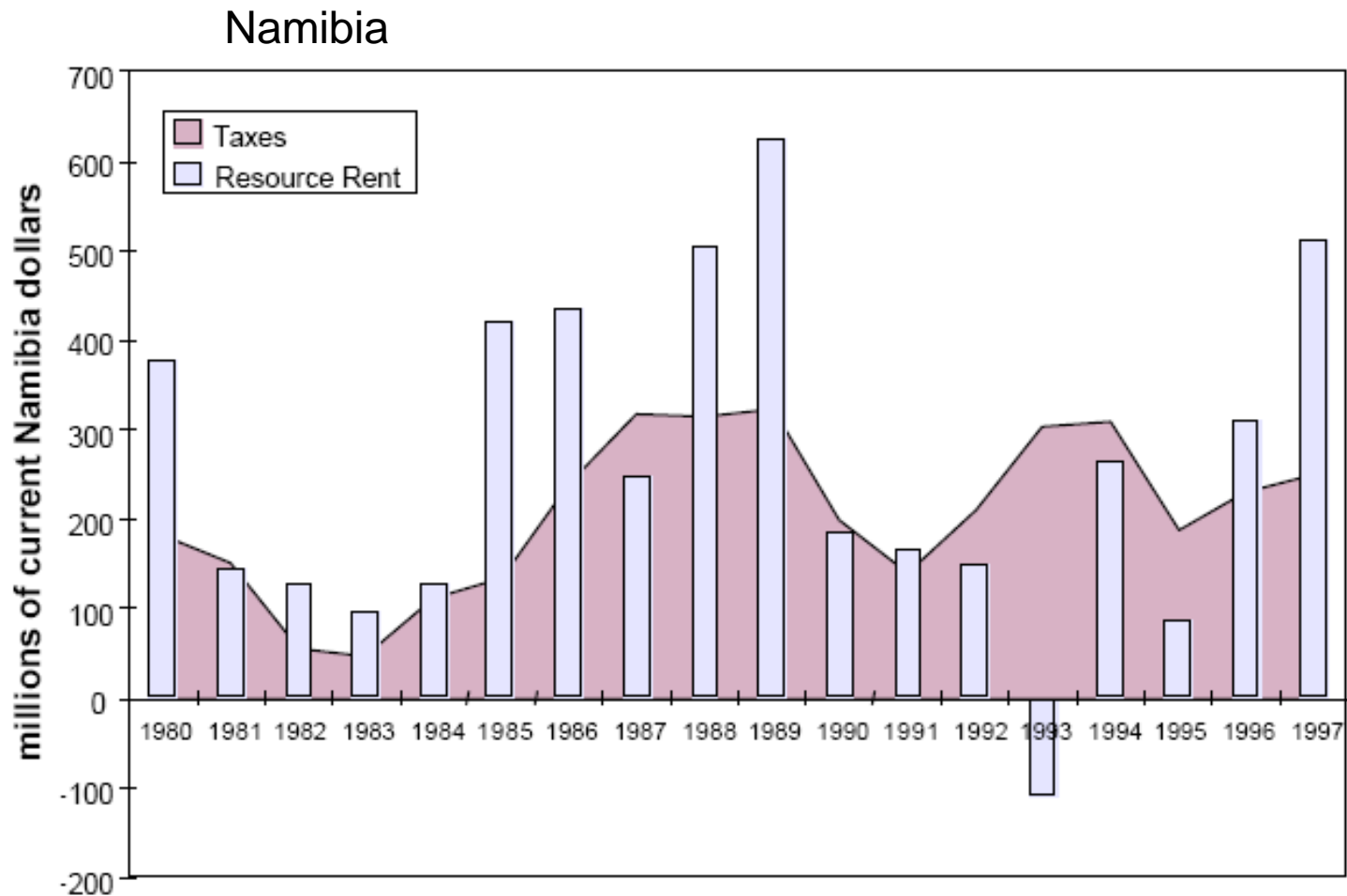
Source: (NSCB, 1999)

# Ensuring community benefits – Sharing Mining Revenues



Source: Lange and Gaobotse, 1999

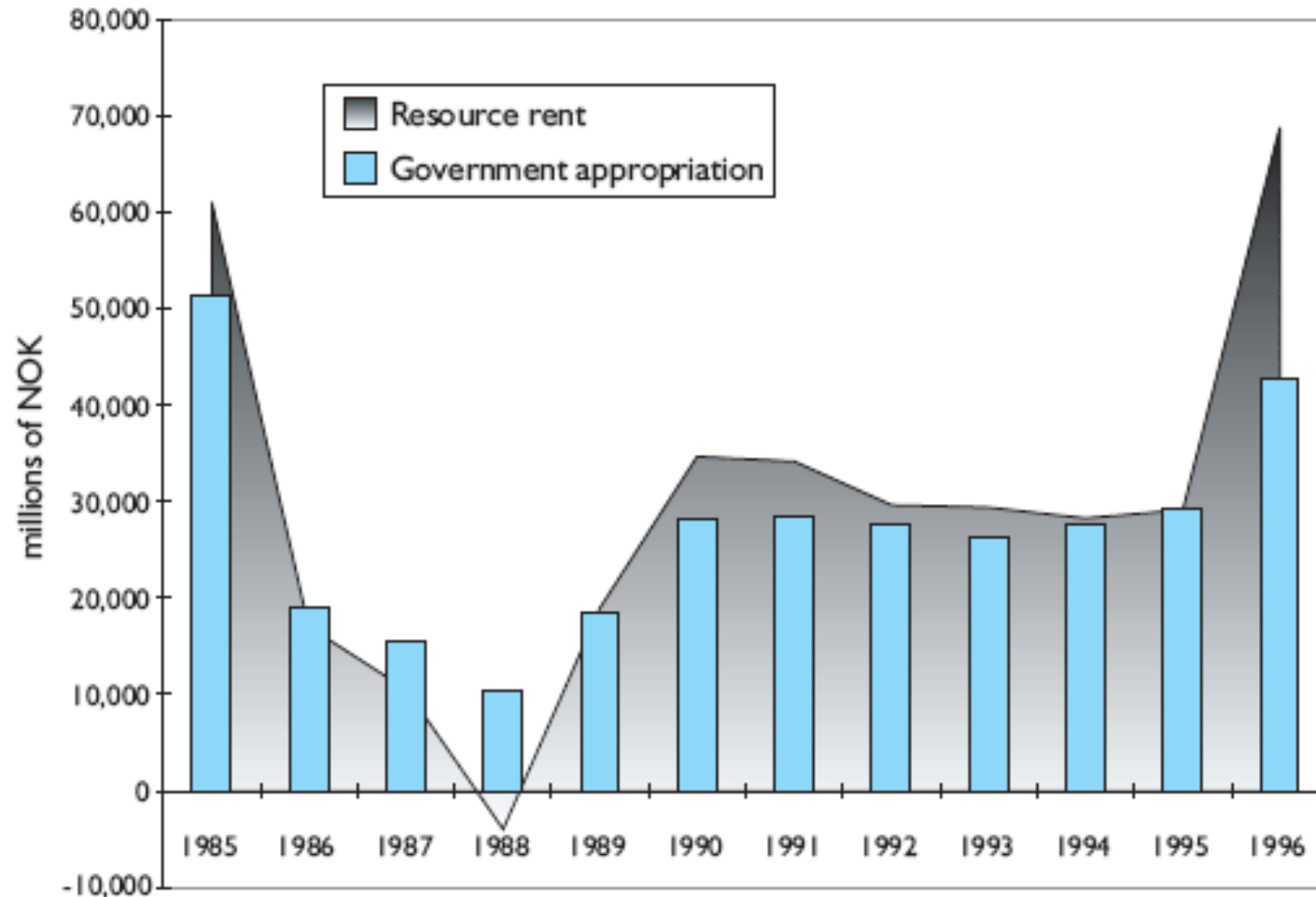
# Ensuring community benefits – Sharing Mining Revenues



Source: Lange and Hassan, 1999

# Ensuring community benefits – Sharing Mining Revenues

Norway, oil and gas



# Ensuring community benefits – Sharing Mining Revenues

- LGUs exact taxes and fees from mining and are also supposed to get 25% of national taxes on mining. Between 2000 and 2005, however, the LGU share from these taxes averaged only 13%
- LGUs, local communities and IPs need to have a plan for managing the windfall from mining in order to build a base for long-term prosperity

# Summary

## 1. On mining as appropriate land use

- There usually exist alternative uses for land and mining is only one option. There ought to be a process by which such options are to be evaluated and assessed. Benefit-cost analysis is only one tool in a toolkit that looks at the various and often differing values people place on land.

# Summary

## 2. Environmental responsibility

- The current EIA process is limited in assessing the wide-ranging environmental impacts of mining, both on-site and downstream of the mine, in providing baselines to assess the adequacy of protection measures, and does not generate values for costs and benefits on which decisions for consent can be reliably based.

# Summary

## 3. Ensuring community benefits

- The only financial benefit sharing in the law is the 1% royalty paid to IPs
- The SDMP should be regarded as compensation for negative social costs of mining.
- No rent is assessed on the extraction of resources.
- The process of community consent giving is problematic.

# Summary

## 4. Governance

- The monitoring and oversight provisions of the law are inadequate based on past performance of the MMTs and the DENR offices themselves.
- The law lacks provisions for ensuring that the claims of transparency and accountability have substance.

# Recommendations

- Definitively identify the specific areas where mining should never be allowed or temporarily disallowed. This should be done with broad public participation and taking into consideration not just the need for environmental protection but also community development and welfare needs.
- Expand the environmental impact assessment process to include site characterization and a comprehensive social impact assessment. These assessments should serve as the baseline for the environmental and social measures that the mining company will have to take to mitigate impacts. These assessments should take into account the costs of negative impacts so that it can be determined whether or not the mitigation and compensation measures to be taken to respond to them are adequate.
- Community consent should be a condition for every phase of mine development.

# Recommendations

- The information from these assessments and other studies, such as feasibility studies, conducted for the mine site should be made available to community members and other stakeholders as an input in the consent process.
- The financial assurance currently in place is grossly inadequate and need to be adjusted. The coverage should also be expanded to include other possible sources of damage or contamination.
- The concern about revenue sharing is a real one. It is paramount that society as a whole, and the local communities in particular, should have a greater share in the wealth produced from their mineral resources because one day those resources will be gone. The current sharing is inadequate and the collection of minimal rent grossly unfair to resource owners. The 1995 mining law is clearly deficient in this regards and will have to be amended or changed so that the proper rent can be charged to those who extract the country's mineral resources.

# Recommendations

- Local communities and local governments will need assistance in building their capacities to manage their windfall revenues from mining in a way that responds to current needs but also builds a base for long-term prosperity. It is a task that the mining company, even with its social development program, cannot and should not undertake. Civil society groups will have to consider this as an important point of intervention in local communities.
- There should be a an independent system for monitoring and auditing that responds to the need for adequate information to assess the operations and condition of mines and the adequacy of the mining companies' social development programs.