

EXECUTIVE SUMMARY/ OVERVIEW OF THE SEVENTH PH-EITI REPORT

In line with its sustained commitment to the Extractive Industries Transparency Initiative (EITI) and to the principles of transparency and accountability in the extractive industry and in government, the Government of the Republic of the Philippines submits its Seventh PH-EITI Report (7th Report) to the EITI International Board.

Since its inaugural report in 2015, the country has already submitted six reports and has been assessed to have made “satisfactory progress” in implementing EITI during the validation held in 2017.¹ The contents of the earlier reports and the progress reached thus far should be considered integral to this Report.

This Report is unique in the sense that, unlike the typical reporting that follows conventional procedures, its preparation happened at the height of the COVID-19 pandemic, posing significant challenges in collecting and communicating relevant information for the country. As an adaptive response, the Multi-Sectoral Group for the Philippine EITI (PH-EITI MSG) has decided to espouse a flexible approach in preparing this Report, where data would largely be obtained from the disclosures made by the government and the companies.

Notwithstanding this flexible reporting approach, the 7th Report continues to adhere to the MSG-formulated goals for EITI implementation, which are notably linked to the EITI principles and are reflective of national priorities. These goals are as follows:

1. Show the direct and indirect contribution of extractives to the national development;
2. Improve public understanding of the management of natural resources and public availability of data;
3. Strengthen government systems for natural resource management;
4. Create opportunities for dialogue and constructive engagement in natural resource management in order to build trust and reduce conflict among stakeholders; and
5. Pursue and strengthen the extractive sector’s contribution to sustainable development.

The Seventh PH-EITI Report covers data and information from fiscal year 2019 (and early 2020 for some components) and includes chapters on contextual information, reconciliation report, industry outlook, and a thematic report on the social development and management program fund. As deemed necessary by the MSG, important updates as of the time of completing this report were also included.

¹ “Satisfactory progress” means “all aspects of the requirement have been implemented and the broader objective of the requirement has been fulfilled.” <https://eiti.org/philippines>

The **first chapter** provides the contextual information about the Philippine extractive industry. It covers a discussion on the disclosures by government and companies in accordance with Requirements 2 and 3 of the EITI Standard,² with particular focus on fiscal year 2019. It gives information about the extractive industry's contribution to the economy, environmental funds, and beneficial ownership, including an overview of gender-related data from the reporting companies. The contextual information chapter also presents an assessment by the MSG of the comprehensiveness and reliability of the disclosed data and a discussion of Philippine EITI efforts towards systematic disclosure and mainstreaming of extractives data.

The **second chapter** (*description of the Reconciliation Chapter to follow*).

The **third chapter** (*description of the Industry Outlook Chapter to follow*).

The **fourth and last chapter** (*description of the SDMP thematic report to follow*)

The PH-EITI MSG and its Secretariat facilitated the preparation of this Report. Individual consultants were engaged in two phases to research on and eventually write the specific chapters of this Report. After a round of review by the PH-EITI MSG, the consultants' written work were consolidated into this full Seventh PH-EITI Report.

CHAPTER ONE

Contextual Information

I. Legal and Institutional Framework

A. Legal and Fiscal Regime

The 1987 Constitution and the governing laws on mining, oil and gas, and coal

The legal, regulatory, and contractual frameworks governing the extractive industries, including laws and policies relating to state participation in the extractive sector as well as those pertaining to the social development and environmental management of affected communities, have been extensively discussed in previous PH-EITI reports. Overall, by comparison, there has not been any drastic changes in this area.

² EITI Requirement 2 refers to disclosures on the legal, regulatory, and contractual frameworks applicable to the extractive industry. EITI Requirement 3 pertains to disclosures of data related to exploration and production activities, including export data.

The Constitution of the Republic of the Philippines, ratified in 1987, following a long period of dictatorship, has hurdled several attempts at charter change (“cha-cha” in local parlance) and continues to be the country’s fundamental law that also governs the extractive industry.³

The 1987 Constitution declares the State’s ownership of all lands of the public domain and natural resources, including minerals, coal, petroleum, and other mineral oils, of the country. Under its full control and supervision, the State may allow the exploration, development, and use of these resources through various modes, such as through co-production, joint venture, and production sharing agreements. The State may also opt to directly undertake such activities. Based on real contributions to economic growth and general welfare of the country, the Constitution allows the State to enter into technical or financial assistance agreements with foreign-owned corporations for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils. At the same time, the Constitution provides for the passage of a law regarding small-scale utilization of natural resources by Filipino citizens.⁴

Other equally important provisions of the 1987 Constitution refer to aspects where extractive activities may have practical implications. This pertains to the local governments’ entitlement to an equitable share in the proceeds of national wealth use and development within their areas, including the sharing of these with the inhabitants by way of direct benefits, as well as their power to create their own sources of revenues and to levy taxes, fees, and charges that accrue exclusively to local governments;⁵ the mandate for the State to protect indigenous peoples’ rights to their ancestral lands, a common site for extractive activities, as a means of ensuring their well-being;⁶ and the State’s policy to protect the people’s health and environmental rights.⁷

The Local Government Code, dubbed by its author as the key to national development when it was passed in 1991, provides for local autonomy through a system of decentralization, where local government units (LGUs) are given more powers, authority,

³ <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>. See also, Yusingco, M. and Navarro, S., “*Why the 1987 Constitution Has Endured for 32 Years Without Amendment?*” Ateneo School of Government Working Paper No. 19-004, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3350888 (April 2019).

⁴ 1987 Constitution, Article XII, Section 2.

⁵ 1987 Constitution, Article X, Sections 5 and 7

⁶ 1987 Constitution, Article XII, Section 5.

⁷ 1987 Constitution, Article II, Sections 15 and 16

responsibilities, and resources.⁸ Under the Code, LGUs have general welfare powers⁹ as well as specific devolved powers, among others, to enforce laws on small-scale mining, pollution control, and environmental protection.¹⁰ And while the President continues to exercise general supervision over LGUs, the Code requires government authorities to consult with concerned LGUs and secure their prior approval, through local legislation, before implementing any project, including those that may cause pollution or deplete non-renewable resources within their areas.¹¹

In addition, the Local Government Code expounded on the constitutional provision regarding the LGUs' equitable share in the proceeds from the utilization and development of national wealth, nailing the amount of such share at forty percent (40%) of the gross collection derived by the national government from mining taxes, forestry and fishing charges, and such other taxes, fees, or charges, including related surcharges, interests or fines, and from its share in any co-production, joint venture or production sharing agreement in such national wealth use and development within their territorial jurisdiction.¹²

The Indigenous People's Rights Act of 1997 (IPRA)¹³ is relevant as extractive activities would often traverse the ancestral lands and ancestral domain claims of indigenous cultural communities. IPRA defines the concepts of ancestral land and ancestral domain;¹⁴ sets out the different rights of indigenous cultural communities, especially with respect to the use and development of natural resources within their ancestral lands/domains;¹⁵ and highlights the need for free and prior informed consent (FPIC) of concerned indigenous cultural communities in development activities that affect them.¹⁶ Under the IPRA, government agencies are enjoined from issuing any concession, license, or lease, or entering into any production-sharing agreement, without prior certification from the National Commission on Indigenous Peoples (NCIP) that the area affected does not

⁸ Rep. Act No. 7160 (1991), Section 2, available at <https://www.officialgazette.gov.ph/downloads/1991/10oct/19911010-RA-7160-CCA.pdf> See also, Pimentel, A., *"The Local Government Code of 1991: The Key to National Development"* (1993), Manila, Philippines.

⁹ Rep. Act No. 7160 (1991), Section 16.

¹⁰ Rep. Act No. 7160 (1991), Section 17.

¹¹ Rep. Act No. 7160 (1991), Sections 25, 26, and 27 in relation to Section 2 (c).

¹² Rep. Act No. 7160 (1991), Sections 289 and 290.

¹³ Rep. Act No. 8371 (1997), available at <https://www.officialgazette.gov.ph/1997/10/29/republic-act-no-8371/>

¹⁴ Rep. Act No. 8371 (1997), Section 3.

¹⁵ Rep. Act No. 8371 (1997), Chapters III, IV, and V.

¹⁶ Rep. Act No. 8371 (1997), Sections 3(g), 7(c), 33, 35, and 58.

overlap with any ancestral domain, and no such certification can be issued without the required FPIC of the indigenous cultural community concerned.¹⁷

As discussed in previous PH-EITI reports, different laws apply to the specific extractive industries of mining, coal, oil and gas. The government agencies that have the mandate over the particular extractive sectors would typically issue administrative rules and regulations, or memorandum orders and circulars, to implement the applicable laws.¹⁸

The mining sector continues to be principally governed by Rep. Act No. 7942 (Mining Act of 1995) and the Revised Implementing Rules and Regulations (IRR) of Rep. Act No. 7942.¹⁹ The Mining Act of 1995 provides for the government's management of mineral resources and defines the scope for its exploration, development, utilization, and processing.²⁰ It also specifies the eligibilities and procedures for the issuance of exploration permits, mineral agreements, and financial or technical assistance agreements, including permits for varied quarry resources as well as for the transport, sale, and processing of minerals.²¹ The Mining Act of 1995 further contains provisions on the development of mining communities, safety and environmental protection, government share in mineral agreements, and payment of taxes and fees.²²

Small-scale mining, on the other hand, is specially governed by the People's Small-Scale Mining Act of 1991 and DENR Administrative Order (DAO) No. 2015-03.²³

¹⁷ Rep. Act No. 8371 (1997), Section 59.

¹⁸ Based on Exec. Order No. 192 (1987) and Rep. Act No. 7942 (1995), the Department of Environment and Natural Resources (DENR), through the Mines and Geosciences Bureau (MGB), is tasked with matters pertaining to mineral resources exploration, development, and conservation. On the other hand, Rep. Act No. 7638 (1992) provides for the creation of the Department of Energy (DOE) and mandates it to ensure reliable energy supply through, among others, the exploration, development, and utilization of the country's indigenous energy sources. See, <https://www.officialgazette.gov.ph/1987/06/10/executive-order-no-192-s-1987/>, https://mgb.gov.ph/images/stories/RA_7942.pdf and <https://www.officialgazette.gov.ph/1992/12/09/republic-act-no-7638/> for the specific functions of the DENR-MGB and DOE.

¹⁹ Rep. Act No. 7942 (1995) and Department of Environment and Natural Resources (DENR) Administrative Order (DAO) No. 2010-21 are available at https://www.lawphil.net/statutes/repacts/ra1995/ra_7942_1995.html and <https://mgb.gov.ph/images/stories/CDAO-Final.pdf>, respectively.

²⁰ Rep. Act No. 7942 (1995), Chapters II and III.

²¹ Rep. Act No. 7942 (1995), Chapters IV, V, VI, VIII, and IX.

²² Rep. Act No. 7942 (1995), Chapters X and XI.

²³ Rep. Act No. 7076 (1991) and the revised implementing rules and regulations (IRR) of this law are available at https://lawphil.net/statutes/repacts/ra1991/ra_7076_1991.html and <https://mgb.gov.ph/images/stories/DAO2015-03.pdf>.

Executive Order No. 79 (2012) and the relevant implementing rules and regulations²⁴ were issued to institute reforms in the country's mining sector and to ensure environmental protection and responsible mining in mineral resources use. Among the salient provisions of this executive issuance relate to areas that are closed to mining applications; enforcement of environmental standards in mining; review of the performance of existing mining operations and cleansing of non-moving mining rights holders; non-grant of new mineral agreements or a mining moratorium until a law rationalizing existing revenue sharing schemes and mechanisms has taken effect;²⁵ establishment of mineral reservations; opening of areas for mining through competitive bidding; disposition of abandoned ores and valuable metals in mine wastes and mill tailings; development of value-adding activities and downstream industries for strategic metallic ores; constitution of the Mining Industry Coordinating Council (MICC), an interagency forum on mining; measures to improve small-scale mining, such as limiting its operations within declared small-scale mining areas (*Minahang Bayan*) and banning the use of mercury; consistency of local ordinances with national laws on mineral resources development, including timely release of local government shares in the national wealth; and creation of a one-stop shop for mining applications, a centralized database for the industry, and an integrated map system for the common use of all government agencies.

The oil and gas sector likewise remains to be governed by Pres. Decree No. 87 (1972),²⁶ which provides how the government may explore or produce indigenous petroleum, onshore or offshore, directly or indirectly through service contracts. The decree states, among others, the nature and stipulations of service contracts; the obligations and privileges of service contractors; coverage of contract areas; the implementing agency;²⁷ and provisions on full disclosure of interests, performance guarantees, and tax impositions. Pres. Decree No. 87 was later amended to grant new incentives to petroleum service contractors.²⁸

²⁴ <https://www.officialgazette.gov.ph/2012/07/06/executive-order-no-79-s-2012/>. Two departmental administrative orders were successively issued to implement Exec. Order No. 79. These are DAO 2012-07 and DAO 2102-07-A, available at https://mgb.gov.ph/images/stories/DAO_2012-07.pdf and https://mgb.gov.ph/images/stories/DAO_2012-7-A.pdf

²⁵ Note that Exec. Order No. 79, particularly this provision, has recently been amended by Exec. Order No. 130 (2021). Section 4 orders the lifting of the moratorium on new mining agreements. See, <https://www.officialgazette.gov.ph/downloads/2021/04apr/20210414-EO-130-RRD.pdf>.

²⁶ The law is entitled "The Oil Exploration and Development Act of 1972," available at <https://www.doe.gov.ph/presidential-decree-no-87?ckattempt=1>.

²⁷ The Petroleum Board, the implementing agency named under Pres. Decree No. 87, has been replaced in 1976 by the Energy Development Board by virtue of Pres. Decree No. 910, to cover not only petroleum and natural gas, but also coal, geothermal and other less conventional forms of indigenous energy resources. With the passage of Rep. Act No. 7638 (1992), the Department of Energy is construed to assume all the powers and functions of this Board. See, <https://www.officialgazette.gov.ph/1992/12/09/republic-act-no-7638/>.

²⁸ Pres. Decree No. 1857 (1983), available at <https://www.doe.gov.ph/presidential-decree-no-1857>.

The coal sector, finally, is still governed by Pres. Decree No. 972 (1976).²⁹ Similar to the oil and gas sector, this decree provides how the government may undertake by itself the active exploration, development, and production of coal resources, and how it may opt to execute coal operating contracts. Pres. Decree No. 972 also contains provisions on the establishment of coal regions through a blocking system; determination of coal contract areas; qualifications, obligations, and incentives of operators of coal operating contracts, including the reimbursement of operating expenses, payment of other fees, and special allowances; minimum terms and conditions of such contracts; as well as full disclosure of interests and performance guarantee.

Fiscal Regime: The TRAIN Law and its implication on the requirement for legislation on a new mining fiscal regime

The Tax Reform for Acceleration and Inclusion (TRAIN) Law took effect in January 2018.³⁰ In broad terms, the law aimed to enhance the progressive feature of the country's tax system as a means of promoting sustainable and inclusive economic growth. It thus amended several provisions of the National Internal Revenue Code. Among others, the TRAIN Law increased the excise tax rates on minerals, mineral products, and quarry resources, including on coal and indigenous petroleum.³¹ Coal products under coal operating contracts entered into by the government pursuant to Pres. Decree No. 972 as well as those exempted from excise tax on mineral products under other laws are now subject to the applicable rates beginning 1 January 2018.³²

Specifically, the new excise tax rates are as follows:³³

Type of Resource or Product	Excise Tax
1. All metallic minerals	
Locally extracted or produced copper, gold, chromite and other metallic minerals	4% based on the actual market value of the gross output thereof at the time of removal (from 2%)

²⁹ This is the Coal Development Act of 1976, available at <https://www.doe.gov.ph/presidential-decree-no-972>.

³⁰ Rep. Act No. 10963 (2017), available at https://www.lawphil.net/statutes/repacts/ra2017/ra_10963_2017.html.

³¹ Rep. Act No. 10963, Section 48, which amended Section 151 of the National Internal Revenue Code. *See also*, Bureau of Internal Revenue (BIR) Revenue Regulation (RR) No. 1-2018 and BIR RR No. 2-2018, available at <https://www.bir.gov.ph/index.php/revenue-issuances/revenue-regulations/2018-revenue-regulations.html>

³² BIR RR No. 1-2018.

³³ *See also*, BIR RR No. 1-2018 and BIR RR No. 2-2018.

Imported copper, gold, chromite, and other metallic minerals	4% based on the value used by the Bureau of Customs (BOC) in determining tariff and customs duties, net of excise taxes and value-added tax (VAT) (from 2%)	
2. All non-metallic mineral and quarry resources		
Locally extracted or produced	4% based on the actual market value of the gross output thereof at the time of removal (from 2%)	
Imported	4% based on the value used by the BOC in determining tariff and customs duties, net of excise taxes and VAT (from 2%)	
Locally extracted natural gas and liquefied natural gas	Exempt	
3. Indigenous petroleum		
Indigenous petroleum includes locally extracted mineral oil, hydrocarbon gas, bitumen, crude asphalt, mineral gas and all other similar or naturally associated substances with the exception of coal, peat, bituminous shale and/or stratified mineral deposits	6% of the fair international market price thereof, on the first taxable sale, barter, exchange or such similar transaction (i.e., transfer of indigenous petroleum in its original state to a first taxable transferee) (from 3%)	
4. Coal	Date of Effectivity	Excise Tax Per Metric Ton (from Php 10.00 per metric ton)
Domestic and imported coal and coke	January 1, 2018	Fifty Pesos (Php 50.00)
	January 1, 2019	One Hundred Pesos (Php 100.00)
	January 1, 2020 and onwards	One Hundred and Fifty Pesos (Php 150.00)
5. Petroleum products	Date of Effectivity	Excise Tax
Lubricating oils and greases (Including, among others, locally produced or imported oils previously taxed but are subsequently re-processed, refined, or recycled), per liter and kilogram of volume capacity or weight	January 1, 2018 January 1, 2019 January 1, 2020	Php 8.00 Php 9.00 Php 10.00
Regular and unleaded gasoline, per liter of volume capacity	January 1, 2018 January 1, 2019 January 1, 2020	Php 7.00 Php 9.00 Php 10.00
Kerosene, per liter of volume capacity	January 1, 2018 January 1, 2019 January 1, 2020	Php 3.00 Php 4.00 Php 5.00
Aviation turbo jet fuel, aviation gas, kerosene when used as aviation fuel, per liter of volume capacity	January 1, 2018 January 1, 2019 January 1, 2020	Php 4.00 Php 4.00 Php 4.00

Diesel fuel oil and similar fuel oils, with more or less same generating power, per liter of volume capacity; liquefied petroleum gas used for motive power, per kilogram; bunker fuel oil and similar oils with more or less same generating power, per liter of volume capacity; petroleum coke, per metric ton	January 1, 2018 January 1, 2019 January 1, 2020	Php 2.50 Php 4.50 Php 6.00
Liquefied petroleum gas, per kilogram	January 1, 2018 January 1, 2019 January 1, 2020	Php 1.00 Php 2.00 Php 3.00
Naptha and pyrolysis gas, when used as a raw material in producing petrochemical products or in refining petroleum products, or as replacement fuel for natural-gas-fired-combined cycle power plant, in lieu of locally extracted natural gas when this is not available, per liter of volume capacity; liquefied petroleum gas, when used as raw material in producing petrochemical products, per kilogram; petroleum coke, when used as feedstock to any power generating facility, per metric ton	January 1, 2018 January 1, 2019 January 1, 2020	Php 0.00 Php 0.00 Php 0.00

Considering the foregoing increase in excise taxes on mineral products, it was initially queried whether such increase has already satisfied Exec. Order No. 79's condition of a legislation rationalizing the existing revenue sharing scheme. In response, the Department of Finance (DOF) clarified that the TRAIN law only increased the excise taxes, but did not cover the implementation of a new fiscal regime for mining which, as it envisioned, covers other taxes and fees like royalty, windfall, profit, and incentives.³⁴

Policy initiatives on mining before and during the early months of the COVID-19 pandemic

Legislative proposals abound in Congress on the crafting of a new fiscal regime for the mining industry. As mentioned, Exec. Order No. 79 highlights that any effort to lift the moratorium on new mining projects is dependent on the formulation by Congress of a new

³⁴ https://taxreform.dof.gov.ph/news_and_updates/micc-to-conduct-2nd-round-of-audit-of-mining-firms-in-july/ (Date posted: 9 July 2019)

fiscal regime for the industry. As of this reporting period, numerous bills have been filed in the Senate and the House of Representatives to address this.³⁵

Notably, House Bill (HB) No. 6135,³⁶ filed during the 18th Congress in substitution of several other related bills, seemed to gain traction after the House of Representatives included it among 12 priority measures for expedited floor and committee deliberations, which was regarded as a means to help the government revive the economy from the pandemic-induced challenges.³⁷ Similar to the other bills on the matter, HB No. 6135 aims to institute a single fiscal regime for the mining industry and to enhance the government's equitable share in natural resources utilization. The bill proposes to impose royalty payments on large-scale metallic mining operations within and outside mineral reservation areas (at 3% of gross output and a range of 1% to 5% based on profit margin, respectively) and on small-scale metallic mining operations (equivalent to 1/10 of 1% of gross output). Other salient provisions of the bill involve the imposition of an additional margin-based windfall profits tax; exemption of metallic and non-metallic mining contractors from the application of confidentiality clauses of the National Internal Revenue Code, as amended, by requiring them to observe fiscal transparency and comply with the government's EITI requirements; registration of small-scale miners for taxation purposes; and disposition of royalties to a Natural Resource Trust Fund to finance projects that will redound to the benefit of local governments directly affected by mining activities.³⁸ Along

³⁵ This report perused some of the bills filed during the Third Regular Session of the 17th Congress and First Regular Session of the 18th Congress. Among the proposed measures include House Bill (HB) No. 8400, HB 5022, HB 288, HB 560, HB 2557, HB 1687, HB 4541, HB 4874, HB 5253, and HB 8618 which emanated from the House of Representatives; as well as Senate Bill (SB) No. 225, SB 927, SB 1979, SB 240, and SB 313 from the Senate. *See also*, <https://mgb.gov.ph/2015-05-13-02-02-11/mgb-news/685-senate-deliberates-on-fiscal-regime-and-revenue-sharing-arrangement-for-the-mining-industry> (12 February 2019); <https://www.manilatimes.net/2019/08/22/business/columnists-business/ctrp-package-2-and-the-pending-mining-tax-bills/604087/> (22 August 2019); <https://www.pna.gov.ph/articles/1082070> (2 October 2019); <https://businessmirror.com.ph/2019/10/03/house-bill-proposal-fiscal-regime-for-mining-industry/> (3 October 2019); <https://mb.com.ph/2019/10/20/new-mining-tax-regime-not-happening-this-year/> (20 October 2019); <https://www.bworldonline.com/house-committee-approves-fiscal-regime-bill-for-mining/> (22 January 2020).

³⁶ This bill, entitled "An Act Establishing the Fiscal Regime for the Mining Industry," was filed on 30 January 2020 and was initially recommended for approval in substitution of House Bill (HB) Nos. 288, 560, 1687, 2557, 4541, 4874, 5022, and 5253 during the first regular session of the 18th Congress. *See*, https://congress.gov.ph/legisdocs/first_18/CR00211.pdf (Accessed on: 16 May 2021)

³⁷ <https://newsinfo.inquirer.net/1358622/romualdez-house-to-fast-track-passage-of-12-economic-measures> (10 November 2020).

³⁸ https://congress.gov.ph/legisdocs/first_18/CR00211.pdf

with a committee report, which embodied the recommendation for its approval, HB No. 6135 was expected to pass through further congressional proceedings.³⁹

While outside the coverage of the Seventh PH-EITI report, it should be noted that during the pendency of these legislative proceedings and in the process of writing this report, the President of the Philippines issued Exec. Order No. 130 (2021), amending Section 4 of Exec. Order No. 79 which, in effect, lifted the nine-year old moratorium on new mineral agreements and allowed the government to enter into such new contracts.⁴⁰ The executive issuance now directs the government and the Department of Finance to undertake “appropriate measures” to rationalize existing revenue sharing schemes and mechanisms.⁴¹ The issuance has drawn mixed reactions from different mining stakeholder groups and individuals.⁴² Its implications on the proceedings for HB No. 6135 and any other legislative bills that seek to establish a new fiscal regime for the mining industry are not too clear as of date.

Another policy initiative related to mining pertains to the ban on open pit mining. It should be recalled from previous PH-EITI reports that the Department of Environment and Natural Resources - Mines and Geosciences Bureau (DENR-MGB) has earlier issued DENR Admin. Order (DAO) No. 2017-10, which prohibits the use of open pit method of mining for copper, gold, silver, and complex ores, but impliedly permits its use for coal and non-metallic minerals.⁴³ It is observed that the ban remains effective in 2019 with the DENR-MGB’s issuance of Memorandum Circular (MC) No. 19-08, which attempts to clarify the standard definition of open pit mining and other surface mining methods.⁴⁴ Among others, it elucidated that “open pit mines are often used in mining metallic or *non-metallic* deposits and sparingly in coal and other bedded deposits.” It also provided further characteristics of open pit mining and other surface mining methods which accordingly should be used as a

³⁹ The House Committee on Ways and Means and Appropriations issued Committee Report No. 211 on 22 March 2021. <https://www.bworldonline.com/house-committee-approves-fiscal-regime-bill-for-mining/> (22 January 2020); Congress Calendar of Business, 22 March 2021, <https://www.congress.gov.ph/legisdocs/ob/CB233-20210322-2.pdf> (Accessed on 16 May 2021)

⁴⁰ <https://www.officialgazette.gov.ph/downloads/2021/04apr/20210414-EO-130-RRD.pdf>

⁴¹ Section 1, Exec. Order No. 130 (2021).

⁴² <https://mb.com.ph/2021/04/15/mining-sector-cheers-over-eo-130/> (15 April 2021). See also, <https://pcij.org/article/4960/lifting-of-mining-ban-revives-calls-for-better-revenue-sharing-scheme> (24 April 2021).

⁴³ 5th PH-EITI Report and 6th PH-EITI Report, p. 30, referring to DAO No. 2017-10 entitled “Banning the Open Pit Method of Mining for Copper, Gold, Silver and Other Complex Ores in the Country” (27 April 2017), <http://databaseportal.mgb.gov.ph/#/public/documents/572> (Accessed 3 May 2020).

⁴⁴ “Clarification on the Definition of Open Pit Mining Method as per DENR Administrative Order No. 2017-10 and Other Surface Mining Methods” (10 December 2019), <http://databaseportal.mgb.gov.ph/#/public/documents/823> (Accessed 3 May 2020).

gauge to determine whether a surface mining method is indeed an open pit contemplated under the provisions of DAO No. 2017-10.⁴⁵

Notwithstanding this policy, a group consisting of mining corporations and indigenous cultural communities in Southern Mindanao filed in January 2019 a petition to revoke the ban on open pit mining which a provincial government's environmental code imposed since 2010. The petition argued about the huge potential of copper and gold resources that could be mined over the project's life and contended that the most viable way to get these reserves would be through open pit mining. In October 2020, a local court upheld the ban, citing its consistency with prevailing laws and regulations, particularly DAO No. 2017-10, the Local Government Code, and the 1987 Constitution.⁴⁶ The court decision effectively bolstered another setback for the mining permittee that has long been yearning to mine these copper and gold deposits for more than two decades now.⁴⁷

With respect to small-scale mining, the government during this reporting period was notably moving towards intensifying the regulation of the industry, given the observation that small-scale mining has not always been performed manually with simple tools or methods, it has largely remained tax-free, and it has not undertaken responsibility for its impact on the environment. Specifically, the DENR-MGB has identified as a priority measure an amendment to the existing implementing rules and regulations governing small-scale mining to address the policy gaps affecting the industry.⁴⁸

As mentioned, small-scale mining is governed by Rep. Act No. 7076 and DAO No. 2015-03. Under this law and the implementing rules, as fortified by Exec. Order No. 79, small-scale mining can only be undertaken within declared People's Small-Scale Mining Areas (*Minahang Bayan*). In addition, small-scale mining activities have to comply with Pres. Decree No. 1586 (1978) or the Philippine Environmental Impact Statement (EIS) system and are explicitly prohibited from using mercury.⁴⁹ There were reported comments that the process of acquiring small-scale mining contracts, being dependent on the declaration of small-scale mining areas and the submission of other mandatory

⁴⁵ Sections 3 and 4, DENR-MGB Memorandum Circular (MC) No. 19-08 (10 December 2019).

⁴⁶ <https://www.mindanews.com/top-stories/2020/10/court-rejects-petition-to-revoke-south-cotabatos-ban-on-open-pit-mining/> (17 October 2020) and <https://news.mongabay.com/2020/10/philippine-court-upholds-open-pit-mining-ban-in-mindanao/> (19 October 2020).

⁴⁷ Sagittarius Mines, Inc. (SMI), the developer of the planned mine in Tampakan, South Cotabato was not a petitioner in the court case. It was awarded its mine permit in 1995, but has not started its operations because of the provincial ban on open pit mining.

⁴⁸ <https://businessmirror.com.ph/2019/09/12/denr-firm-on-minahang-bayan-to-limit-small-scale-mining-operations/> (12 September 2019)

⁴⁹ Section 5, Rep. Act No. 7076 (1991) and Chapter III, DAO No. 2015-03, in relation to Exec. Order No. 79 (2012). The Philippine EIS system requires proclaimed environmentally critical projects and projects within environmentally critical areas to first secure an Environmental Compliance Certificate (ECC) before undertaking or operating such projects.

requirements,⁵⁰ is so tedious, thereby slowing down small-scale mining activities. There were also some insinuations that small-scale mining activities should be allowed *outside* declared *Minahang Bayan* areas.⁵¹

While the DENR-MGB was willing to streamline the process for the application of *Minahang Bayan* areas, it maintained the position that small-scale mining activities should still be limited to designated *Minahang Bayan* areas as mandated by the above-cited laws and rules. It reasoned that the declaration of these areas, as places where small-scale mining can legally operate, enables the government to better monitor and regulate their extractive activities, while promoting workers' safety, protecting the environment, and generating revenues for the government.⁵² It thus targeted to declare, in addition to the existing 29 designated areas, 150 *Minahang Bayan* areas in the course of three years and vowed to expedite the processing of applications for small-scale mining contracts nationwide.⁵³

During the early months of the pandemic, it should be mentioned that the DENR-MGB issued several guidelines as the mining industry managed its operations and dealt with the effects of COVID-19 and more recent natural calamities.

First, the MGB issued Memorandum Order No. 2020-004.⁵⁴ These guidelines refer to the protocols that mining and mineral processing operations needed to observe as they

⁵⁰ Section 10, DAO No. 2015-03 provides a list of mandatory requirements that a small-scale mining contract applicant needs to submit in relation to a declared *Minahang Bayan*.

⁵¹ <https://businessmirror.com.ph/2019/09/12/denr-firm-on-minahang-bayan-to-limit-small-scale-mining-operations/> (12 September 2019).

⁵² <https://www.pna.gov.ph/articles/1067135> (12 April 2019)

⁵³ <https://www.philstar.com/business/2019/09/19/1952986/government-targets-150-minahang-bayan-areas-2022> (19 September 2019)

⁵⁴ "Guidelines/Protocols for the Resumption of Mining and Mineral Processing Operations During the General Community Quarantine or New Normal" (8 May 2020), accessed at https://mgb.gov.ph/images/Covid_Advisories/MGBMemorandumOrder_2020_004.pdf on 18 November 2020.

resume operations during the General Community Quarantine (GCQ).⁵⁵ This impliedly suggests that mining operations have not fully or lengthily stopped during the pandemic. There may have been a temporary halt or some slow-down in some aspects of the mining activities due to the safety protocols that were put in place, especially in the aspects of shipment and the transport of minerals and mineral products. In the shipment of minerals, mineral products and by-products, supplies, and other similar commodities, for instance, quarantine measures, a “no contact” policy, and a “no disembarkation of vessel crew” policy were imposed. In the submission of reports and payment of fees, e-mail submissions, video recordings, and alternative payment methods, such as online payments and bank transfers, were encouraged.⁵⁶

Second, the MGB issued a memorandum providing guidelines on the realignment of unused Social Development and Management Program (SDMP) funds to support affected impact and non-impact communities due to COVID-19.⁵⁷ The memorandum allowed the MGB regional offices to realign the 2019 total unspent SDMP budget which was carried over to the 2020 Annual SDMP budget then, subject to the approval of the concerned MGB regional directors, the 2020 Annual SDMP budget, for the purpose of implementing programs, projects, and activities that were deemed necessary to combat COVID-19. In such realignment, the regional offices were advised to implement these activities in accordance with the government’s program to augment the needs of affected communities and in coordination with the concerned LGUs and other agencies involved in providing support to affected communities. The MGB reported that, as of July 2020, a total of Php 402-million allocated by mining companies for SDMP has so far benefited more than 1.4 million households and frontline workers across the country. The benefits provided came in the form of protective gears, medical supplies, food packs, vegetables, garden kits, service ambulance, trucks, and boats.⁵⁸

⁵⁵ The Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF) under its Omnibus Guidelines for the Implementation of Community Quarantine in the Philippines, with Amendments as of 18 February 2021, defines *General Community Quarantine (GCQ)* as “the implementation of temporary measures limiting movement and transportation, regulation of operating industries, and presence of uniformed personnel to enforce community quarantine protocols.” Other community quarantine categories are: the *Enhanced Community Quarantine (ECQ)*, a more stringent version of the GCQ; *Modified Enhanced Community Quarantine (MECQ)*, a transition phase between GCQ and ECQ; *Modified General Community Quarantine (MGCQ)*, the transition phase between GCQ and the New Normal; and *New Normal*, which refers to practices that will remain after the pandemic while the disease is not totally eradicated. See, <https://doh.gov.ph/sites/default/files/health-update/OMNIBUS-Guidelines-with-Amendments-as-of-February-18-2021.pdf> Accessed: 19 May 2021.

⁵⁶ Sections 5, 7, and 8, MGB Memo. Order No. 2020-004 (8 May 2020).

⁵⁷ Memorandum from Atty. Wilfredo G. Moncano, Acting MGB Director, to all Regional Directors, dated 1 April 2020. https://mgb.gov.ph/images/Covid_Advisories/Guidelines_on_SDMP_Realignment_MGB_RO_final.pdf (Accessed on 12 October 2020).

⁵⁸ “PH Mining Industry Raises P402M for COVID-19 Response” in <https://www.denr.gov.ph/index.php/news-events/press-releases/1733-ph-mining-industry-raises-p402m-for-covid-19-response> (Published, 25 July 2020).

Third, in response to Super Typhoon Rolly and Typhoon Ulysess, two deadly typhoons that successively hit the country during this period,⁵⁹ the MGB issued a similar memorandum allowing mining firms to realign their unspent SDMP funds, this time, in order to support typhoon victims within the host and neighboring communities as well as non-impact *barangays* in their respective localities. The memorandum stated that such realignment should be consulted with and agreed upon by the host and neighboring communities.⁶⁰

Policy initiatives on coal, oil, and gas

The policy direction on coal, oil, and gas can be drawn from official government pronouncements. In his Fourth State of the Nation Address (SONA) last July 2019, the President of the Philippines stressed the urgency of ensuring the sustainability and availability of energy resources for the country. In this regard, he directed the Department of Energy (DOE) to hasten the development of renewable energy sources and reduce dependence on traditional energy sources like coal.⁶¹ This is somehow consistent with the Philippine government's commitments to the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, international legal instruments that aim to strengthen the global response to the threat of climate change through efforts that limit temperature increase, such as by transitioning towards a low-carbon economy.⁶²

In line with this, the President signed into law Republic Act No. 11285 (2019),⁶³ which promotes, among others, the implementation of energy efficiency and conservation plans as well as the development and use of efficient renewable energy technologies and systems. The DOE, in the same manner, revealed that its energy agenda for 2020 would focus on further strengthening the development of renewable-based resources to meet the country's energy security goals and move towards sustainability.⁶⁴

⁵⁹ Miners allowed to realign SDMP funds for typhoon relief efforts" in <https://mb.com.ph/2020/11/19/miners-allowed-to-re-align-sdmp-funds-for-typhoon-relief-efforts/> (19 November 2020).

⁶⁰ Memorandum from Atty. Wilfredo G. Moncano, Acting MGB Director, to all Regional Directors dated 16 November 2020. https://mgb.gov.ph/images/Citizens_Charter/Memo_re_Realignment_for_typhoon.jpg.

⁶¹ <https://www.officialgazette.gov.ph/2019/07/22/rodrigo-roa-duterte-fourth-state-of-the-nation-address-july-22-2019/> (22 July 2019).

⁶² DENR, International Agreements on Environment and Natural Resources, <https://intl.denr.gov.ph/database-un-conventions/article/17> (27 December 2019)

⁶³ This law, entitled, "An Act Institutionalizing Energy Efficiency and Conservation, Enhancing the Efficient Use of Energy, and Granting Incentives to Energy Efficiency and Conservation Projects" was approved on 12 April 2019. Available at: <https://www.officialgazette.gov.ph/2019/04/12/republic-act-no-11285/>

⁶⁴ Department of Energy, 2019 Accomplishment Report: DOE Inputs to the President's SONA (Press Release), <https://www.doe.gov.ph/sites/default/files/pdf/transparency/2019-esar.pdf> Accessed: 15 October 2020.

Financial institutions were also moving towards the same policy trajectory. An independent evaluation of the energy policy and program at the Asian Development Bank (ADB), for instance, has recommended in 2020 that the bank should revisit its energy policy and formally withdraw from financing new coal-fired energy projects to meet the global consensus on climate change.⁶⁵ While it has already refrained from investing in coal-fired power plants in the region since 2013, ADB has more recently pronounced that it would formally rule out financing for coal mining, oil and natural gas field exploration, drilling or extraction activities. Specifically, it would not fund *new* coal-fired capacity for power and heat generation or any facilities association with new coal generation, but it would continue to consider financing gas projects, such as pipelines and power plants.⁶⁶ In domestic financing, the Rizal Commercial Banking Corporation (RCBC) has earlier declared that it would no longer extend financing to new coal-fired power projects in the country and would shift its energy funding largely on renewable energy and gas-fired power facilities.⁶⁷

As to whether this policy has significantly affected or would significantly affect the implementation of traditional energy sources of oil, gas, and coal remains to be seen in the next reporting periods. Nonetheless, it is observed from the DOE Accomplishment Report for 2019 that while there is a felt increase in renewable energy-based capacity (in megawatts) in the country's total supply for the period 2016 to 2019, the changes in the percentage share in installed capacity of oil-based, natural gas, and coal resources were either nil or insignificant. Specifically, the percentage share of coal has constantly increased; while that for oil-based and natural gas has decreased by less than two per cent only.⁶⁸

Installed Capacity (MW), 2016-2019

	2016	% Share	2017	% Share	2018	% Share	2019	% Share
Coal	7,419	34.6	8,049	35.4	8,844	37.1	10,417	40.8
Oil-Based	3,616	16.9	4,153	18.3	4,292	18.0	4,262	16.7

⁶⁵ Asian Development Bank News Release, "Independent Evaluation Recommends ADB Formally Withdraw from Financing New Coal-Fired Energy Project," available at: <https://www.adb.org/news/independent-evaluation-recommends-adb-formally-withdraw-financing-new-coal-fired-energy> (31 August 2020).

⁶⁶ The Straits Times (10 May 2021), "ADB rules out coal, sets conditions for gas projects in draft energy policy." Accessed at: <https://www.straitstimes.com/asia/adb-rules-out-coal-sets-conditions-for-gas-projects-in-draft-energy-policy> (21 June 2021). See also, Global Trade Review (12 May 2021), "ADB eyes ban on coal, oil and gas support, warned to proceed 'with care'" Accessed at: <https://www.gtreview.com/news/asia/adb-eyes-ban-on-coal-oil-and-gas-support-warned-to-proceed-with-care/> (21 June 2021).

⁶⁷ Manila Bulletin (10 December 2020), "RCBC to stop funding coal projects." Accessed at: <https://mb.com.ph/2020/12/10/rcbc-to-stop-funding-coal-power-projects/> (16 April 2021).

⁶⁸ Ibid., pages 7-8.

Natural Gas	3,431	16.0	3,447	15,2	3,453	14.5	3,453	13.5
Renewable Energy	6,959	32.5	7,079	31.1	7,226	30.3	7,399	29.0
Total	21,425	100	22,728	100	23,815	100	25,531	100

Source: Department of Energy, 2019.

On the government's policy adopting the Philippine Conventional Energy Contracting Program (PCECP), cited in the Sixth PH-EITI Report as an enhanced petroleum service contract awarding mechanism that was officially launched in 2018,⁶⁹ the Department of Energy (DOE) reported that, as of December 2019, a total of three applications were recommended for approval by the President of the Philippines. Of these three applications, two were from area nominations located in Northwest Palawan and Eastern Palawan and one covered a pre-determined area situated in Eastern Palawan, with a combined total investment of about USD 60 million.⁷⁰ The PCECP was intended to boost investments in the oil and gas exploration activities and develop indigenous petroleum resources within the undisputed Philippine sovereign territory. The DOE sees that bolstering the oil and gas exploration would help the country meet its power requirement of 43,765 megawatts by 2040.⁷¹

Another policy that was implemented during this period was Exec. Order No. 30 (2017), specifically the activation of the Energy Investment Coordinating Council (EICC) in streamlining regulatory procedures for the development of energy projects of national significance (EPNS) while accordingly continuing to uphold transparency and accountability among concerned agencies.⁷² Under Exec. Order No. 30, major energy projects can be declared as EPNS if it is in consonance with the policy thrusts and specific goals of the Philippine Energy Plan (PEP) and possesses certain attributes, such as those relating to the significance of the capital investments, contribution to economic development, and environmental impact.⁷³

⁶⁹ 6th PH-EITI Report, page 36, which refers Department Circular No. DC2017-12-0017; *See also*, <https://www.doe.gov.ph/laws-and-issuances/department-circular-no-dc2017-12-0017> (Accessed: 10 June 2021)

⁷⁰ Department of Energy, 2019 Accomplishment Report: DOE Inputs to the President's SONA (Press Release), <https://www.doe.gov.ph/sites/default/files/pdf/transparency/2019-esar.pdf> Accessed: 15 October 2020.

⁷¹ "DOE clears bidders for oil exploration in WPS," in <https://www.pna.gov.ph/articles/1115425> (15 September 2020)

⁷² Department of Energy, 2019 Accomplishment Report: DOE Inputs to the President's SONA (Press Release), <https://www.doe.gov.ph/sites/default/files/pdf/transparency/2019-esar.pdf> Accessed: 15 October 2020.

⁷³ Section 2, Exec. Order No. 30 (2017). Available at: <https://www.doe.gov.ph/eicc/executive-order-no-30?ckattempt=1> (28 June 2017).

For the period 2019 up to June 2020, a total of 133 Certificates of Energy Project of National Significance (CEPNS) were reportedly issued. These correspond to Php 386.86 billion worth of investments and are expected to generate approximately 13,419 jobs during construction and operation. One of the EPNS projects that commenced during this reporting period was the Mindanao-Visayas Interconnection Project (MVIP), which is envisioned by its proponent, National Grid Corporation of the Philippines (NGCP), to create a one-grid Philippines and facilitate power exchange between the major island grids of the country.⁷⁴

Specifically on coal resources, a legislative bill has been filed in the Eight Congress seeking to amend Pres. Decree No. 972 or the Coal Development Act of 1976. In its explanatory note, Senate Bill (SB) No. 613 took note of the considerable expansion of the coal mining industry in the country. Yet, it questioned the significance of the industry's economic and social benefits. The bill thus proposes to increase the public share from the coal proceeds, lessen the environmental impact of coal mining operations, and strengthen the role of coal operators in the development of communities. As of August 2019, the bill was pending before the Senate Committee on Environment, Natural Resources, and Climate Change.⁷⁵

As regards the arbitration case filed by the lead proponent of the Malampaya gas field project, Shell Philippines Exploration B. V. (SPEX), before the International Chamber of Commerce (ICC) in Singapore, SPEX received in 2019 a favorable ruling from the three-person arbitral tribunal.⁷⁶ It is recalled from the Sixth PH-EITI Report that the USD 1.1 billion tax case stemmed from the demand of the Commission on Audit (COA) for the Malampaya consortium to settle what it claimed as “back taxes” under its Service Contract 38 for the gas field venture. The state auditor considered that the income tax should have been to the service contractor's account instead of it being integrated into the royalty share of the Philippine government. Nevertheless, SPEX, along with the other members of the consortium,⁷⁷ argued that its contract prescribes that the contractor's income tax payments are part of the State's royalty share, hence, it was not liable for the alleged back taxes. The DOE perceives the arbitral ruling as an encouraging development for the investors to

⁷⁴ Department of Energy, 2019 Accomplishment Report: DOE Inputs to the President's SONA (Press Release), <https://www.doe.gov.ph/sites/default/files/pdf/transparency/2019-esar.pdf> Accessed: 15 October 2020.

⁷⁵ https://legacy.senate.gov.ph/lis/bill_res.aspx?congress=18&q=SBN-613, Accessed on 9 April 2021.

⁷⁶ “SPEX wins US\$1.1-B Malampaya tax case in arbitration,” in <https://mb.com.ph/2019/04/24/spex-wins-us1-1-b-malampaya-tax-case-in-arbitration/> (24 April 2019).

⁷⁷ Chevron Malampaya LLC and Philippine National Oil Company - Exploration Corporation (PNOC-EC), respectively, have 45% and 10% stake in the consortium.

pursue exploration activities in the country. The Petroleum Association of the Philippines likewise sees the ruling as a revival of the oil and gas exploration industry in the country.⁷⁸

Apart from this case, the national government is also confronted with similar tax dispute resolution proceedings at the International Center for Settlement and Investment Disputes (ICSID) at the World Bank in Washington D. C. In addition, the SPEX has filed a petition before the Supreme Court of the Philippines relating to the COA's continuing tax demand, which has already risen to Php 146.8 billion as of 2016 cut-off date.⁷⁹ It should be mentioned that comments and disclosures pertaining to judicial proceedings are restricted based on the *sub judice* rule in order to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. A violation of the *sub judice* rule may render the parties, including the media, for indirect contempt of court.⁸⁰ Hence, until the Supreme Court has made a decision on the case, neither SPEX nor COA should be expected to comment on the pending tax controversy.

Policy developments regarding the local governments' equitable share in the proceeds of national wealth use and their just share in national taxes

Still on Service Contract 38, but relating to a different issue, the Supreme Court in January 2020 decided on the query of whether the Province of Palawan was entitled to an equitable share in the proceeds from the Camago-Malampaya natural gas project, which is located about 80 kilometers from mainland Palawan.⁸¹ Under the production-sharing scheme of the service contract, the national government would receive 60 percent of the net proceeds from the sale of petroleum drilled from the natural gas reservoir in the said area, while the service contractors would receive 40 percent. Under the 1987 Constitution and the Local Government Code of 1991, as discussed, local government units (LGUs) are entitled to an equitable share in the proceeds of the utilization and development of natural resources *within their respective areas*.⁸² It was thus argued that part of the national government's share under the service contract should be given to the provincial

⁷⁸ "DOE: Ruling on Malampaya, COA to entice investors to explore PH oil resources," in <https://businessmirror.com.ph/2019/04/30/doe-ruling-on-malampaya-coa-to-entice-investors-to-explore-ph-oil-resources/> (30 April 2019).

⁷⁹ "SPEX wins US\$1.1-B Malampaya tax case in arbitration," in <https://mb.com.ph/2019/04/24/spex-wins-us1-1-b-malampaya-tax-case-in-arbitration/> (24 April 2019). See also, <https://www.bworldonline.com/malampaya-group-energy-dept-ask-sc-to-review-coa-decision/>

⁸⁰ Romero vs. Estrada, G. R. No. 174105, 2 April 2009, Retrieved from: https://lawphil.net/judjuris/juri2009/apr2009/gr_174105_2009.html. The relevant provision on indirect contempt in this case is Rule 71, Section 3(d) of the 1997 Rules of Civil Procedure, as amended.

⁸¹ Republic of the Philippines, et.al, vs Provincial Government of Palawan, et.al, G. R. No. 170867 and Bishop Pedro Dulay Arigo, et.al vs Executive Secretary, et.al, G. R. No. 185941, 21 January 2020, available at: <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64868>

⁸² 1987 Constitution of the Philippines, Article X, Section 7 and Rep. Act No. 7160 (1991), Sections 290 and 291

government of Palawan because the project is located within the continental shelf of a municipality over which it has territorial jurisdiction and, by reason of equity, it is the nearest LGU that is capable of rendering necessary assistance and services within the area.

The Supreme Court, however, decided that the province was not entitled to the proceeds of the natural gas project on the ground that the LGU's *territory or territorial jurisdiction* refers only to its *land area*, unless the same is expanded by law to include the maritime area. Accordingly, only the use and development of natural resources found within such land area as delimited by law is subject to the LGU's equitable share under the pertinent provisions of the Local Government Code. Considering that the Camago-Malampaya gas reservoirs were located in the continental shelf, this area would be beyond the provincial government's territorial jurisdiction. The Supreme Court further pointed out that the 1987 Constitution did not apportion the territories of the Philippines among the LGUs. It also ruled that the United Nations Convention on the Law of the Sea conferred no continental shelves on LGUs.⁸³

In another case, the Supreme Court had the occasion to rule on the constitutionality of the exclusion of certain national taxes from the *base amount* for computing the LGUs' just share in national taxes.⁸⁴ It was alleged by the petitioners, led by a legislator named Hermilando Mandanas, that certain taxes collected by the Bureau of Customs have not been included in the *base amount* for the computation of the LGUs' internal revenue allotment (IRA), or the LGUs' share of revenues from the national government, as it should have been. They argued that such just share should be computed on the basis of *all national taxes*, as provided in the 1987 Constitution,⁸⁵ and not just on national internal revenue taxes. The use of the phrase *national internal revenue taxes* could be found in

⁸³ Republic of the Philippines, et.al, vs Provincial Government of Palawan, et.al, G. R. No. 170867 and Bishop Pedro Dulay Arigo, et.al vs Executive Secretary, et.al, G. R. No. 185941, 21 January 2020

⁸⁴ Congressman Hermilando Mandanas, et. al., et. al. vs Exec. Secretary Paquito Ochoa, Jr., et. al., G. R. No. 199802 (2 July 2018) and Garcia vs. Ochoa, et. al., G. R. No. 208488 (3 July 2018). On 8 October 2019, the Supreme Court *en banc* also issued a resolution regarding the implementation of its 2018 decision. Available at: <https://sc.judiciary.gov.ph/3726/> and <https://sc.judiciary.gov.ph/8579/>

⁸⁵ Article X, Section 6 of the 1987 Constitution provides that, "Local government units shall have a just share, as determined by law, in the *national taxes* which shall be automatically released to them."

two legislative documents, the 1991 Local Government Code and the National Internal Revenue Code.⁸⁶

The Supreme Court held that although the power of Congress to make laws is plenary in nature, such drafting of legislation is still subject to the limits of the 1987 Constitution. The Supreme Court observed that the phrase *national internal revenue taxes* under the Local Government Code was more restrictive than the term *national taxes* provided in the Constitution. As such, the Supreme Court ruled that Congress has actually contravened the express provision of the Constitution regarding the appropriate base from which to determine the LGUs' share and has effectively deprived them of their just share from other national taxes, like the customs duties collected by the Bureau of Customs. The Supreme Court thus declared the questioned provision of the Code as unconstitutional, and applied the ruling prospectively insofar as determining the difference between the just share that the LGUs should have received with a proper reckoning from the national taxes *and* the share that they have actually received based on the unconstitutional provision.

The Supreme Court nonetheless clarified that the share of the LGUs in the excise taxes imposed on mineral products pursuant to the other provisions of the National Internal Revenue Code and the Local Government Code,⁸⁷ is governed by a different provision of the 1987 Constitution,⁸⁸ and not the constitutional provision that was the subject matter of this case.

As a result of the Supreme Court's decision, now known as the *Mandanas ruling*, and as the country starts the implementation of this ruling, it is expected that the share of national government revenues that would be transferred to the LGUs would rise. In particular, the World Bank predicted that the internal revenue allotments (IRA) would increase by 55 percent in the 2022 budget, reaching Php 1.08 trillion or 4.8% of the country's Gross Domestic Product (GDP) compared to 3.5 percent of GDP in 2021. It also regarded the

⁸⁶ Section 284 of the 1991 Local Government Code states in part that, "Local government units shall have a share in the *national internal revenue taxes* based on the collection of the third fiscal year preceding the current fiscal year xxx." The phrase *national internal revenue taxes* as used in Section 284 includes all the taxes enumerated in Section 21 of the National Internal Revenue Code (NIRC) as amended, namely: income taxes, estate and donor's taxes, value-added taxes, other percentage taxes, excise taxes, documentary stamp taxes, and such other taxes as may be imposed or collected by the Bureau of Internal Revenue (BIR).

⁸⁷ Section 287 of the National Internal Revenue Code, as amended, in relation to Section 290 of the Local Government Code.

⁸⁸ 1987 Constitution, Article X, Section 7, which refers to the LGUs' equitable share in the proceeds of the utilization and development of national wealth within their respective areas.

ruling, not merely as a transfer of resources, but also as an opportunity to strengthen decentralization and improve social service delivery in the country.⁸⁹

B. Contracts and License Allocation

As discussed in previous PH-EITI reports, the exploration, development, and use of mineral, coal, oil and gas resources in the Philippines may be directly undertaken by the State, or it may enter into co-production, joint venture, or production-sharing agreements, with Filipino citizens or corporations, possibly for a period not exceeding 25 years, renewable for another 25 years, and under terms and conditions provided by law. The President may also enter into financial or technical assistance agreements with foreign-owned corporations for the large-scale exploration, development and use of these resources.⁹⁰

On this basis, contracts for mining in the Philippines are negotiated by the government with permit holders or mining contractors. Major contract forms include Exploration Permit (EP), Mineral Production Sharing Agreement (MPSA), and Financial or Technical Assistance Agreement (FTAA).⁹¹

On the other hand, Service Contracts for oil and gas as well as Operating Contracts for coal are executed by the government through competitive bidding and negotiations.⁹² With the government's adoption of the Philippine Conventional Energy Contracting Program (PCECP) as a means of facilitating faster and simpler public contracting process, Petroleum Service Contracts (SC) may now be awarded either (a) by the applicant's Nomination and Publication of Area/s of Interest, which may be facilitated at any given time; or (b) by the DOE's Offering of Pre-determined Areas or identified areas which are not covered by any application for nomination.⁹³ Similarly, Coal Operating Contracts (COC) may be awarded either (a) by the applicant's Nomination and Publication of Area/s of Interest, which may be processed at any given time; or (b) by the DOE's Publication of Coal Areas that are not covered by any application for nomination.⁹⁴ A Review and

⁸⁹ The World Bank Press Release, "Philippines: Mandanas Ruling Provides Opportunities for Improving Service Delivery through Enhanced Decentralization," at <https://www.worldbank.org/en/news/press-release/2021/06/10/philippines-mandanas-ruling-provides-opportunities-for-improving-service-delivery-through-enhanced-decentralization>, (10 June 2021).

⁹⁰ 1987 Constitution, Article XII, Section 2.

⁹¹ Rep. Act No. 7942 (1995), Articles IV, V, and VI.

⁹² Pres. Decree No. 87 (1972) and Pres. Decree No. 972 (1976), as amended.

⁹³ DOE Department Circular No.DC 2017-12-0017, available at: <https://www.doe.gov.ph/laws-and-issuances/department-circular-no-dc2017-12-0017> Accessed on: 16 June 2021

⁹⁴ DOE Department Circular No.DC 2017-09-0010, available at: https://www.doe.gov.ph/sites/default/files/pdf/energy_resources/dc2017-09-0010-updated.pdf Accessed on: 16 June 2021.

Evaluating Committee (REC) was constituted to approve or reject the applications according to the guidelines set forth by the DOE.⁹⁵

Mineral resources

Data on approved, cancelled, and expired mining permits and contracts are publicly available and may be accessed through the DENR-MGB website and data base portal.⁹⁶ Copies of these contracts and associated documents are likewise accessible on the PH-EITI contracts portal.⁹⁷

By way of summary, the government has so far approved and registered 300 Mineral Production Sharing Agreements (MPSA), five Financial and Technical Assistance Agreements (FTAA), and 15 Exploration Permits (EP). It also has 350 MPSA, 38 FTAA, and 662 EP applications that were still considered to be under process.⁹⁸

As of the end of 2019, the DENR-MGB also reported that there were 50 operating metallic mines, 54 non-metallic mines, 5 processing plants,⁹⁹ and 3,389 small quarries and sand and gravel operations covered by permits issued by LGUs in the country.¹⁰⁰ Out of the 50 operating metallic mines, however, only 34 gold, copper, chromite, and nickel mines were producing; two were suspended by the DENR-MGB;¹⁰¹ 13 were under care and

⁹⁵ See DOE Guidelines for PCEP for Petroleum Service Contract Applications and DOE Guidelines on PCEP for Coal Operating Contract Applications, at https://www.doe.gov.ph/sites/default/files/pdf/issuances/dc2017-12-0017_annex_a.pdf and https://www.doe.gov.ph/sites/default/files/pdf/energy_resources/dc2017-09-0010-updated.pdf Accessed on: 16 June 2021.

⁹⁶ See <https://mgb.gov.ph/2015-05-13-01-44-56/2015-05-13-01-47-51> and http://databaseportal.mgb.gov.ph/?fbclid=IwAR0bjKg7byM8v650B_YKrNU_3cmgXjnhV4fTdbGxqqnjQCCs3DB39LIZ36M#/public Accessed: 11 June 2021.

⁹⁷ See <https://contractspheti.dof.gov.ph/> Accessed: 11 June 2021.

⁹⁸ DENR MGB Mineral Industry Statistics 2019, as of 15 December 2020, https://docs.google.com/spreadsheets/d/13YVHyoWWZns_8BcvuEvB2uOtBa39JJSN/edit#gid=1081798193

⁹⁹ This includes the Philippine Associated Smelting and Refining Corporation (PASAR) for copper; the Philippine Gold Processing and Refining Corporation (PGPRC) and Mindanao Mineral Processing and Refining Corporation (MMPRC) for gold; and Coral Bay and Taganito HPAL Corporation for nickel.

¹⁰⁰ DENR-MGB *Mineral Industry at a Glance*, https://mgb.gov.ph/images/Mineral_Statistics/mining_facts_and_figures_updated_22_June_2020_final.pdf

¹⁰¹ Sta. Cruz Benguet Corporation Nickel Mining Project (BenguetCorp Nickel Mines) and Sta. Cruz Eramen Mining Project (Eramen Minerals, Inc.)

maintenance status; and two have expired mineral production sharing agreements, which were likewise placed under care and maintenance status.¹⁰²

It is noted that, during this period, the Office of the President has allowed several mining companies previously closed under the past DENR administration, based on environmental audit results, to operate anew after they were found to have already complied with mining laws.¹⁰³

Further, as mentioned, Exec. Order No. 130 (2021) has effectively lifted the moratorium on mineral agreements under Exec. Order No. 79 (2012), thus allowing the government to enter into new mineral agreements. The DENR was directed by the executive issuance to formulate in these new agreements terms and conditions that would maximize government revenues and share from the mineral production.¹⁰⁴

Oil and gas

The DOE's official website provides information on active petroleum service contracts as of March 2018.¹⁰⁵ In a more updated list submitted by the DOE to the PH-EITI Secretariat, the Philippines currently has 21 petroleum service contracts, with the following details on their respective locations and service contract operators:¹⁰⁶

	Service Contract Number	Location	Name of Operator
1	SC 6A	Octon and Bonita	The Philodrill Corporation
2	SC 6B		
3	SC 14	Nido and Matinloc	
4	SC 14C	Galoc Field	Galoc Production Company WLL
5	SC 37	Cagayan	PNOC - Exploration Corporation

¹⁰² DENR MGB Summary List of Metallic Operating Mines in the Philippines (50), https://docs.google.com/document/d/1akY9wRq6aFDSGA_V_I3FBPKclddt8-IP/edit. Those with expired MPSAs/under care and maintenance were: Casiguran Nickel Project (Century Peak Corporation) and Bel-at Nickel Project (Oriental Synergy Mining Corporation).

¹⁰³ "List: Mining companies allowed to operate again by Duterte gov't," in <https://www.rappler.com/business/list-mining-companies-allowed-operate-again-by-duterte-government-july-2020>. (23 July 2020). The list includes Berong Nickel Corp., Carrascal Nickel Corp., Emir Mineral Resources Corp., Strong Built Mining Development Corp., and Zambales Diversified Metals Corp.

¹⁰⁴ Section 1, Executive Order No. 130 (2021).

¹⁰⁵ <https://www.doe.gov.ph/energy-information-resources?q=energy-resources/sc-operators> Accessed on: 11 June 2021

¹⁰⁶ PH-EITI Secretariat, DOE List of Petroleum Service Contract Operators, at https://drive.google.com/drive/folders/1U3XT233gc0ihiliXyoCgQtTuBD6XoCt_

6	SC 38	Malampaya Field	Shell Philippines Exploration BV
7	SC 40	Visayan - Northern Cebu	Forum Exploration, Inc.
8	SC 44	Visayan - Central Cebu	Gas2Grid Pte. Ltd.
9	SC 49	Visayan - Southern Cebu	China International Mining Petroleum Co. Ltd.
10	SC 53	Onshore Mindoro	Mindoro-Palawan Oil & Gas, Inc.
11	SC 54	Northwest Palawan	Nido Petroleum Philippines Pty. Ltd.
12	SC 55	Southwest Palawan	Palawan55 Exploration & Production Corp.
13	SC 56	Sulu Sea	Total E&P Ltd.
14	SC 57	Calamian/Northwest Palawan	PNOC - Exploration Corporation
15	SC 58	West Calamian/Northwest Palawan	Nido Petroleum Philippines Pty. Ltd.
16	SC 59	Southwest Palawan	PNOC - Exploration Corporation
17	SC 63		Nido Petroleum Philippines Pty. Ltd.
18	SC 72	Recto Bank	Forum (GSEC101) Ltd.
19	SC 74	Northwest Palawan	PXP Energy Corporation
20	SC 75	Northwest Palawan	PXP Energy Corporation
21	SC 76	East Palawan	Ratio Petroleum Ltd.

Coal

The DOE's official website likewise provides information on the coal contract system in the Philippines. It referred to three types of coal contracts, namely: coal operating contracts (COC) for exploration; COCs for development and production; and small-scale coal mining permits (SSCMP).¹⁰⁷ However, more current data was provided by the DOE to the PH-EITI Secretariat for this reporting period.

As of January 2020, there were 25 coal operating contracts for development/production in the country. Below is the list of the coal operating contracts, with details on their respective locations and contract holders:¹⁰⁸

¹⁰⁷ <https://www.doe.gov.ph/energy-statistics?q=energy-resources/philippine-coal-contract-system>, Accessed on: 11 June 2021.

¹⁰⁸ PH-EITI Secretariat, DOE List of Coal Operating Contract Holders (update as of 2 January 2020), at https://drive.google.com/drive/folders/1U3XT233gc0ihiliXyoCgQtTuBD6XoCt_

	Coal Operating Contract Number	Location	Name of Contract Holder
1	COC 5	Antique	Semirara Mining and Power Corporation
2	COC 9	Cebu	Adlaon Energy Development Corporation
3	COC 13	Cebu	Ibalong Resources & Development Corporation
4	COC 41	Zamboanga Sibugay	PNOC-Exploration Corporation
5	COC 68	Oriental Mindoro	Filipinas (Pre-Fab) Systems, Inc.
6	COC 78	Zamboanga Sibugay	Filipinas (Pre-Fab) Systems, Inc.
7	COC 83	Surigao del Sur	Benguet Corporation
8	COC 93	Zamboanga Sibugay	A Blackstone Energy Corp.
9	COC 116	Cagayan Valley	D. M. Wenceslao and Associates, Inc.
10	COC 122	Isabela	PNOC-Exploration Corporation
11	COC 123	Cagayan Valley	D. M. Wenceslao and Associates, Inc.
12	COC 125	Albay	Lima Coal Development Corporation
13	COC 126	South Cotabato & Sultan Kudarat	Daguma Agro Minerals, Inc.
14	COC 127	Surigao del Sur	Smart Mining and Resources Development Corp.
15	COC 128	Albay	Samaju Corporation
16	COC 129	Albay	Samaju Corporation
17	COC 131	Cebu	Forum Cebu Coal Corp.
18	COC 134	South Cotabato & Sultan Kudarat	Sultan Energy Phil. Corp.
19	COC 138	Sarangani Province & Lake Sebu, South Cotabato	Bonanza Energy Resources
20	COC 145	Surigao del Sur	Great Wall Mining and Power Corporation
21	COC 148	Surigao del Sur	Abacus Coal Exploration and Development Corp.
22	COC 151	Negros Occidental	Guidance Management Corp.
23	COC 153	Sorsogon	Lima Coal Development Corporation
24	COC 159	Davao Oriental	Titan Exploration & Dev. Corp. (pending application)
25	COC 173	Cebu	BBB Mining and Energy Corp.

C. State Participation

In the mining industry: the role of the Philippine Mining Development Corporation and moves toward the privatization of state-owned mining assets

State participation in the country's mining industry is primarily undertaken by the Philippine Mining Development Corporation (PMDC). The PMDC is a government-owned and controlled corporation with capital funds from three other state-owned entities — the Natural Resources Development Corporation (44%), the Philippine National Oil Company (36%), and the National Development Company (20%).¹⁰⁹

As a government corporation, now attached to the DENR, the PMDC was initially designated as the implementing arm of the DENR in undertaking the mining and mineral processing operations in the Diwalwal Mineral Reservation in Compostela Valley Province in Mindanao.¹¹⁰ The PMDC was subsequently given the broader task of closely monitoring and overseeing the implementation of the country's utilization and development of its mineral resources. At present, it undertakes the development, promotion, and management of various projects that were classified as mineral reservations, Privatization Management Office (PMO) assets, and cancelled tenements.¹¹¹

Mineral reservations are established by the President of the Philippines when national interest so requires, upon the recommendation of the DENR-MGB. With the aim of generating revenues from mineral reservations, the PMDC currently handles two mineral reservation projects, namely, the Diwalwal Gold Mining (Compostela Valley and Davao Oriental) and Dinagat Chromite-Nickel Mining projects (Dinagat Island Province).¹¹² *PMO assets*, on the other hand, refer to government properties which have been identified as unnecessary or inappropriate for the government to maintain and which needed to be privatized or otherwise disposed to other government entities. The PMDC was designated as trustee and disposition entity for Batong Buhay Gold Mines, Inc. (in Kalinga Apayao Province) and North Davao Mining Corporation (in Davao del Norte).¹¹³ Finally, *cancelled tenements* refer to about 68,570 hectares of mining tenements which were considered by the government in 2005 as non-performing due to the failure of their contractors to pursue mining activities under their respective contracts for a long period of time. The PMDC in 2007 was tasked to handle and put into public bidding these cancelled tenements under the government's mining revitalization program.¹¹⁴

¹⁰⁹ PMDC succeeded the Natural Resources Mining Development Corporation (NRMDC). It was first attached to the DENR by virtue of a Memorandum of Agreement between DENR, PMDC, and NRDC for a specific task. In 2007, PMDC was transferred to the Office of President through Exec. Order No. 636, then was transferred back to the DENR through Exec. Order No. 689 with a broader mandate. See, <https://pmdc.com.ph/site/about-us/> Accessed on: 24 October 2020.

¹¹⁰ See also, <https://pmdc.com.ph/site/mineral-reservations/>

¹¹¹ PMDC Official Website, particularly, <https://pmdc.com.ph/site/mineral-reservations/>, <https://pmdc.com.ph/site/pmo-assets/> and <https://pmdc.com.ph/site/cancelled-tenements/>

¹¹² <https://pmdc.com.ph/site/mineral-reservations/> and <http://119.92.161.2/embgovph/Portals/42/Articles/2016Publications/MiningProjsChron/AAM-PHIL-P1.pdf>.

¹¹³ <https://pmdc.com.ph/site/pmo-assets/>

¹¹⁴ <https://pmdc.com.ph/site/cancelled-tenements/>

As of September 2019, the PMDC, through its partner companies, has implemented the following 12 mining projects:¹¹⁵

	Name of Project	Location	PMDC Partner or Operator
1	Batong Buhay Copper-Gold Project	Kalinga Province	Balatoc Indigenous Cultural Community and Carascal Nickel Corp./CNC-Faratuk Mining Inc.
2	Dinagat Nickel-Chromite Project - Parcel 1	Dinagat Island (Surigao Mineral Reservation Area)	AAM-Phil Natural Resources Exploration
3	Dinagat Nickel-Chromite Project - Parcel 2A	Dinagat Island (Surigao Mineral Reservation Area)	Pacific Nickel Philippines
4	Dinagat Nickel-Chromite Project - Parcel 2B	Dinagat Island (Surigao Mineral Reservation Area)	AAM-Phil Natural Resources Exploration
5	Malitbog Chromite Project	Bukidnon	SBG3A Corporation
6	North Davao/NDMC Mineral Project (copper-gold)	Compostela Valley	Asia Alliance Mining
7	Opol Chromite Project	Misamis Oriental	Filipinas (Prefab Systems) Inc.
8	Opol Gold Project	Misamis Oriental	Black Stone Mineral Resources Inc.
9	Pinamungahan Limestone Project	Cebu	Mabuhay Filcement Corp.
10	San Fernando Limestone Project	Cebu	Mabuhay Filcement Corp.
11	Upper Ulip - Paraiso (gold, copper)	Compostela Valley (Diwalwal Mineral Reservation Area)	Paraiso Consolidated Mining Corporation
12	PMDC 729 Area Victory Tunnel (gold, copper)	Compostela Valley (Diwalwal Mineral Reservation Area)	Paraiso Consolidated Mining Corporation

Except for the Batong Buhay copper-gold project, which included the Balatoc indigenous cultural community as a beneficiary, all the foregoing PMDC projects named the national government, the concerned local government units, and the mining industry as beneficiaries. All the projects were also described as providing for the exploration, development, mining, and commercial utilization of the relevant mineral deposits as well as associated minerals within the specified areas.

In a further effort to spur economic growth amidst the COVID-19 pandemic, the government has likewise moved towards the privatization of state-owned mining assets that were under litigation. These assets refer to once successful mining companies that have failed to settle their debts with government financial institutions, which led to their foreclosure and transfer of assets to the national government. Unfortunately, when the government auctioned off their shares to mining companies, the highest bidding firms

¹¹⁵ PMDC Projects Summary as of September 2019, at <https://pmdc.com.ph/site/wp-content/uploads/Project-Summary-Sept-2019.pdf>

failed to fulfil their obligations, which resulted in protracted lawsuits that have left these mining assets idle.¹¹⁶

Five state-owned mining assets were identified for this purpose. These were the: (1) copper-gold project of Maricalum Mining in Negros Occidental; (2) nickel mining project of Nonoc Mines in Surigao del Norte; (3) gold and copper-rich North Davao Mining property in Davao del Norte; (4) copper mines of the Basay Mining Corporation in Negros Oriental; and (5) nickel mines once operated by the Marinduque Mining and Industrial Corporation in Western Samar. As of this reporting period, the government was constituting an interagency team that would study the courses of action for the eventual privatization and revival of operations of these state-owned mining assets.¹¹⁷

In the oil, gas, and coal industry: the role of the Philippine National Oil Company - Exploration Corporation (PNOC-EC)

The State participates in the oil, gas, and coal industry through the Philippine National Oil Company - Exploration Corporation (PNOC-EC), which is the upstream oil, gas, and coal subsidiary of the state-owned Philippine National Oil Company (PNOC). The shares of stock of PNOC-EC are 99.79% owned by the national government through PNOC, while the remaining 0.21% is held by public shareholders.¹¹⁸

Oil and gas

In 2019, the PNOC-EC worked with the Department of Energy (DOE) in petroleum exploration programs for different service contracts that were aimed at discovering new hydrocarbon deposits in the country. It was an active operator of three service contracts (SC 37, SC 57, and SC 59) and an active partner, with percentage equity shares, in five service contracts (SC 38, SC 58, SC 63, SC 74, and SC 75), or a total of eight Petroleum Service Contracts covering a combined area of 57,630 km², described as the largest exploration acreage holding in the country's oil and gas sector. In these service contracts, the PNOC-EC held varying shares ranging from percentage equity shares of five percent to full ownership share of 100 percent, which are detailed in the following table:¹¹⁹

¹¹⁶ "Gov't Urges to Privatize Mining Assets to Rebuild Industry," in <https://mgb.gov.ph/2015-05-13-02-02-11/mgb-news/903-gov-t-urges-to-privatize-mining-assets-to-rebuild-industry> Accessed on: 29 October 2020.

¹¹⁷ See also, "Govt keen on privatizing, operating mining assets," in <https://businessmirror.com.ph/2020/10/26/govt-keen-on-privatizing-operating-mining-assets/> Accessed on: 13 June 2021.

¹¹⁸ PNOC-EC Official Website, in <https://www.pnoc-ec.com.ph/mandate-and-functions> Accessed on: 18 November 2020. See also, PNOC-EC Annual Report 2019, in <https://drive.google.com/file/d/1d8ljCGRQeJcBVxGcTM8cYx9Qs6e116W1/view> Accessed on: 18 November 2020

¹¹⁹ PNOC-EC Annual Report 2019, in <https://drive.google.com/file/d/1d8ljCGRQeJcBVxGcTM8cYx9Qs6e116W1/view> Accessed on: 18 November 2020 and <https://www.pnoc-ec.com.ph/services/petroleum-service-contracts> Accessed on: 14 June 2021

	Service Contract Number/Location	Acreage (in km ²)	PNOC-EC Ownership/ Percentage Equity Share	Partner/ Participating Interest	Operator
1	SC 37 - Cagayan Basin	2,200	100%	n/a	PNOC-EC
2	SC 38 - Malampaya Gas Project/Offshore Palawan	830	10%	45% - SPEX BV 45% - UC38 (Udenna Corp.)	Shell Philippines Exploration BV (SPEX BV)*
3	SC 57 - Calamian/ Northwest Palawan	7,200	28%	51% - CNOOC 21% - Mitra Energy	PNOC-EC to China National Offshore Oil Company (CNOOC)*
4	SC 58 - West Calamian/Offshore Northwest Palawan	13,440	50%	50% - NIDO Petroleum Ltd.	NIDO Petroleum*
5	SC 59 - West Balabac/Southwest Palawan	14,760	100%	n/a	PNOC-EC*
6	SC 63 - East Sabina/ Southwest Palawan	10,560	50%	50% - NIDO Petroleum Ltd.	PNOC-EC*
7	SC 74 - Linapacan/ Northwest Palawan	4,290	5%	25% - Philodrill 70% - PXP Energy Corp.	PXP Energy Corp.
8	SC 75 - Northwest Palawan Basin	6,160	35%	50% - PXP Energy Corp. 15% - PetroEnergy Resources Corp.	PXP Energy Corp.*

*with changes in the participating interests and/or in the status of implementation

It is worth noting that the participating interests of the private sector in SC 38, the Malampaya gas project, have recently changed. It was reported in May 2021 that Malampaya Energy, a subsidiary of Udenna Corporation, was acquiring the 45% operating interest of SPEX BV in the project. Through this arrangement, the Udenna Corporation would effectively control the project, with a 90% operating interest. The corporation has earlier bought Chevron Malampaya LLC's 45% interest in the gas project. The PNOC-EC continued to hold its 10% equity share.¹²⁰

It should also be mentioned that, as regards SC 57, the Deed of Assignment for the partners of PNOC-EC, particularly China National Offshore Oil Company (CNOOC) as having acquired 51% participating interest and operation of the Service Contract, has not yet been signed by President of the Philippines. As a result, SC 57 was considered as still under *force majeure*, with its exploratory activities suspended until the President has granted the required approval of the Deed.¹²¹

¹²⁰ "Dennis Uy buys Shell stake, gains control of Malampaya," in <https://www.rappler.com/business/dennis-uy-udenna-buys-shell-stake-gains-control-malampaya-gas-field> (20 May 2021).

¹²¹ <https://www.pnoc-ec.com.ph/projects/service-contract-no-57-calamian>

Four other service contracts — SC 58, SC 59, SC 63, and SC 75 — were similarly granted suspension of work obligations by the DOE on the basis of *force majeure* and were previously advised to wait for the DOE's notice of commencement or resumption of their exploration activities, which was pegged on the resolution of the West Philippine Sea (South China Sea) maritime dispute.¹²² In October 2020, the DOE lifted the *force majeure* suspension of SC 58, SC 59, and SC 75, signalling the operators to start or resume their exploration activities. However, due to the pandemic situation, the continuing concerns in the West Philippine Sea (South China Sea), and/or the current oil prices, all of them have sought discussions with the DOE or have already requested for additional time to fulfil their outstanding commitments. The DOE has so far granted a one-year extension of the technical moratorium to SC 58 and SC 63.¹²³

Beyond the scope of the current service contracts, the PNOC-EC has continued to review other areas in the country to accelerate the search for new energy sources. It has also assessed exploration opportunities abroad for acquisition of overseas development and producing assets.¹²⁴

Coal

In 2019, the PNOC-EC continued to participate in the exploration and development of coal deposits in the country through Coal Operating Contracts (COCs). Based on its Annual Report for 2019, PNOC-EC has invested in four COCs, listed as follows:¹²⁵

	Coal Operating Contract Number/Location	PNOC-EC Ownership/Share	Operator
1	COC 41 - Zamboanga Sibugay	100%	PNOC-EC
2	COC 122 - Isabela Coal Mine - Mouth Power Plant Project (Isabela Province)	100%	PNOC-EC
3	COC 185 - Buag, Malangas, Zamboanga Sibugay	100%	PNOC-EC

¹²² SC 57 was under *force majeure* suspension since 2008; SC 58 and 75 were granted suspension of work commitments due to *force majeure* since 2015; while SC 59 was granted suspension of work obligations based on *force majeure* in 2018. The suspension effectively imposed a technical moratorium on their respective exploration-related activities in the contract areas.

¹²³ See, <https://www.pnoc-ec.com.ph/services/petroleum-service-contracts>. It is noted that SC 63 was earlier granted an extension of up to November 2020 to continue its technical and commercial studies.

¹²⁴ PNOC-EC Annual Report 2019, in <https://drive.google.com/file/d/1d8ljCGRQeJcBVxGcTM8cYx9Qs6el16W1/view>

¹²⁵ <https://www.pnoc-ec.com.ph/services/coal-operating-contracts> and PNOC-EC Annual Report 2019, in <https://drive.google.com/file/d/1d8ljCGRQeJcBVxGcTM8cYx9Qs6el16W1/view>

4	COC 186 - Imelda, Malangas, Zamboanga Sibugay	100%	PNOC-EC
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For COC 41, PNOC-EC notably supervised the mining operations of various small-scale coal miners within the coal contract area. It was reported that about 15 of these small-scale miners have delivered 5,600 metric tons (MT) to PNOC-EC.¹²⁶

As for COC 122, PNOC-EC was granted exclusive rights over nine coal blocks totalling 9,000 hectares, with proven reserves of over 25 million metric tons (MMT) of lignite coal. It has long acquired its environmental compliance certificate (ECC) for both the mine and the power project. PNOC-EC likewise reported about their corporate social responsibility (CSR) initiatives in the area.¹²⁷

Two coal operating contracts, COC 185 and COC 186, were approved by the Energy Investment Coordinating Council (EICC) as Energy Projects of National Significance (EPNS).¹²⁸

In 2019, the PNOC-EC was able to secure the required Certificate Precondition for COC 41, COC 185, and COC 186 from the National Commission on Indigenous Peoples (NCIP). This meant that the coal contracts either did not overlap with any ancestral domain area of any indigenous cultural community (ICC), or in case the contract areas were within an ancestral domain area, that the required free and prior informed consent (FPIC) was properly obtained from the concerned ICC. As COC 41 continued with its pre-development activities, COC 186 started the drilling exploration of a portion of its coal contract area; while COC 185 continued to seek the endorsement of the local government unit for its coal exploration activities.¹²⁹

II. Industry Potential

The potential of the Philippine extractives industry could not be ignored. Based on data from the DENR-MGB, out of the country's total land area of 30 million hectares, 9 million

¹²⁶ Id.

¹²⁷ Id.

¹²⁸ Section 2 of Exec. Order No. 30 (2017) states that an energy project may be considered by the DOE as 'projects of national significance' if it is in consonance with the policy thrusts and specific goals of the Philippine Energy Plan, and which has any of the following attributes: (a) significant capital investment of at least Php 3.5 billion; (b) significant contribution to the country's economic development; (c) significant consequential economic impact; (d) significant potential contribution to the country's balance of payments; (e) significant impact on the environment; (f) complex technical processes and engineering designs; and (g) significant infrastructure requirements. See, <https://www.doe.gov.ph/sites/default/files/pdf/eicc/20170628-eo-30-rrd.pdf>

¹²⁹ <https://www.pnoc-ec.com.ph/services/coal-operating-contracts> and PNOC-EC Annual Report 2019, in <https://drive.google.com/file/d/1d8IjCGRQeJcBVxGcTM8cYx9Qs6e116W1/view>.

hectares have been identified as holding high mineral potential. As of May 2020, the percentage of the country's total land area covered by mining tenements was 2.42% or 727,372.18 hectares (although subject to mandatory relinquishment by contractors). As mentioned, there were 50 metallic, 54 non-metallic, and 5 processing plants in operation as of the end of 2019; as well as 3,389 small quarries and sand and gravel operations covered by permits issued by LGUs in the country.¹³⁰

In terms of mineral reserves, the Philippine Statistics Authority (PSA) accounted that, historically, the estimated levels of metallic and non-metallic mineral reserves of the country stood at 7 billion metric tons (MT) and 50 billion MT, respectively. Way back in 1994, copper comprised the bulk of metallic mineral resources with about 72 percent; while the share of nickel was approximately 16 percent. Among the non-metallic minerals, limestone and marble accounted for 39 and 29 percent, respectively. It is for this reason that the Philippines is considered as one of the world's richest countries in terms of mineral resources.¹³¹

For coal, oil and gas reserves, a study made by the Asian Development Bank (ADB) in 2018 identified natural gas and coal as the primary indigenous fossil fuel resources in the Philippines, with proven gas reserves of 98.54 billion cubic meters, economically recoverable coal of approximately 316 million tons, and proven oil reserves of around 100 million barrels.¹³² A similar report accounted that the country had 139 million barrels of proven crude oil, including lease condensate, reserves and 3.5 trillion cubic feet (Tcf) of proven natural gas reserves in 2019. It also mentioned that the West Philippine Sea (South China Sea) held unexplored hydrocarbon stores which in total contain an estimated 11 billion barrels of oil and 190 trillion cubic feet of natural gas in proven and probable reserves.¹³³ The DOE likewise described the vast potential of the country's coal resources, which it valued at 2.37 billion MT in 2019, with 184 million MT, 314 million MT, and 450 million MT considered as probable, in-situ, and mineable reserves, respectively.¹³⁴

¹³⁰ MGB Website, Mineral Statistics, available at: https://mgb.gov.ph/images/Mineral_Statistics/mining_facts_and_figures_updated_22_June_2020_final.pdf

¹³¹ Philippine Statistics Authority Official Website, Mineral Resources (2016 edition), available at <https://psa.gov.ph/content/mineral-resources>, Accessed on: 25 June 2021.

¹³² Asian Development Bank, Philippines: Energy Sector Assessment, Strategy, and Roadmap (October 2018), accessed at: <https://www.adb.org/sites/default/files/publication/463306/philippines-energy-assessment-strategy-road-map.pdf>.

¹³³ U. S. Energy Information Administration (2020), citing the *Oil & Gas Journal*, Philippines: Overview, accessed at: <https://www.eia.gov/international/analysis/country/PHL>. The report referred to the Reed Bank, located near the Spratly Islands, a portion of which is claimed by the Philippines. The exploration of the West Philippine Sea (South China Sea) has been the purported subject of joint exploration discussions between the Philippines and China.

¹³⁴ Department of Energy Official Website, Coal Reserves, as of December 2019, available at <https://www.doe.gov.ph/energy-statistics?q=energy-resources/coal-reserves&ckattempt=1> Accessed on: 14 April 2021.

The foregoing figures demonstrate the important role that the extractives industry play in the country's economic development. As will be discussed in the next paragraphs, the industry has the potential to provide direct and indirect employment to the Filipino population. It could stimulate local and regional economic development as extractives firms invest, for instance, in road infrastructure, utilities, and other facilities within the project areas. The industry could likewise contribute to the country's foreign exchange through exports and additional revenues for the government through taxes and fees on extractives industry operations and other related activities. Nonetheless, the activities of the industry has the potential to significantly impact the environment, which need to be likewise considered from the exploration phase, to actual extraction and, if relevant, eventual processing and decommissioning.

A. Exploration Activities

Mineral resources

In 2019, the DENR-MGB has approved and registered 15 mining exploration permits, and considered as under process 662 applications to explore varied mineral resources in the country.¹³⁵ Holders of an exploration permit are typically given the right to conduct exploration for all minerals in specified areas for a period of two years, subject to relinquishment or renewal by the MGB. It should be emphasized that the exploration period covered by the permit is included as part of the exploration period of the MPSA or FTAA, as the case may be. When the permittee determines the commercial viability of the project covering the permit area, such permit holder is expected to file a declaration of mining project feasibility and work program for mine development with the MGB. Once approved, the holder gains exclusive right to the MPSA or FTAA.¹³⁶

Coal, oil, and gas

As discussed under the *Contracts and Licenses* paragraphs, the PNOC-EC has worked with the Department of Energy (DOE) as active operators and/or partners in the exploration and development of oil, gas, and coal resources in the country. In 2019, the PNOC-EC was engaged in eight Petroleum Service Contracts and four Coal Operating

¹³⁵ DENR-MGB Mineral Industry Statistics, as of December 2020, at https://mgb.gov.ph/images/Mineral_Statistics/MIS_3Yr_Qtrly-2018_to_Q1-2021_for_UPLOAD_as_of_28_May_2021.pdf Accessed on: 2 May 2021.

¹³⁶ Rep. Act No. 7942 (1995), Chapter IV, Sections 20-25.

Contracts for petroleum and coal resources exploration in different parts of the Philippines.¹³⁷

The PCECP: Exploring Predetermined and Nominated Areas for petroleum and coal

Through the Philippine Conventional Energy Contracting Program (PCECP), the DOE drummed up its efforts to heighten investments in oil, gas, and coal exploration activities in the country. The procedure for the awarding of petroleum service contracts and coal operating contracts *via* the PCECP depends on whether the area being applied for is a *pre-determined area* or a *nominated area*.¹³⁸

Under the DOE guidelines, the timeline for processing Petroleum Service Contracts for *predetermined areas* under the PCECP is about 201 working days counted from the program launch, the submission, opening, and evaluation of the required documents, up to the endorsement of the award for the service contract. Based on its assessment of the applicants' legal, technical, and financial qualifications, the duly constituted Review and Evaluation Committee will endorse the winning applicant to the DOE Secretary, who may in turn endorse the awardee to the President of the Philippines for final approval.¹³⁹

The DOE has so far identified 14 PCECP predetermined areas for off-shore petroleum exploration and development, as follows:¹⁴⁰

Coverage	Size (Hectares)	Location
Area 1	748,000	Cagayan
Area 2	448,000	East Palawan
Area 3	440,000	East Palawan
Area 4	288,000	East Palawan
Area 5	212,331	Sulu Sea
Area 6	1,282,335	Sulu Sea

¹³⁷ PNOEC-EC Annual Report 2019, in <https://drive.google.com/file/d/1d8ljCGRQeJcBVxGcTM8cYx9Qs6eI16W1/view> Accessed on: 18 November 2020. See also, <https://www.pnoc-ec.com.ph/services/petroleum-service-contracts> and <https://www.pnoc-ec.com.ph/services/coal-operating-contracts> Accessed on: 14 June 2021.

¹³⁸ DOE Department Circular No.DC 2017-12-0017, available at: <https://www.doe.gov.ph/laws-and-issuances/department-circular-no-dc2017-12-0017> and DOE Department Circular No.DC 2017-09-0010, available at <https://www.doe.gov.ph/pcecp?q=pcecp/coal/application-guidelines/department-circular> Accessed on: 16 June 2021

¹³⁹ Id. See also, DOE, PCECP Timetable for Predetermined and Nominated Areas, at https://www.doe.gov.ph/pcecp?q=pcecp/petroleum_timeline

¹⁴⁰ DOE, Petroleum Predetermined Areas (PDAs) Map, available at: <https://www.doe.gov.ph/pcecp?q=pcecp/petroleum-area-map> Accessed on: 21 June 2021

Area 7	358,000	Sulu Sea
Area 8	488,000	Agusan-Davao
Area 9	748,000	Agusan-Davao
Area 10	384,000	Cotabato
Area 11	488,000	West Luzon
Area 12	464,000	West Luzon
Area 13	452,000	West Luzon
Area 14	480,000	West Luzon

By comparison, the timeline for facilitating applications for Petroleum Service Contracts for *nominated areas* under the PCECP is only 81 working days. This is counted from the time of the applicant's publication of such nominated area, then will similarly go through the process of submission, opening, and evaluation of the submitted documents, until the application is endorsed to the President of the Philippines for the awarding of the service contract.¹⁴¹ As of February 2020, the DOE has documented the publication of PCECP applications for 9 nominated areas in different parts of the country.¹⁴²

In its accomplishment report for 2019, the DOE stated that it has recommended for the President's approval three PCECP applications, two were from area nominations located in Northwest Palawan and Eastern Palawan and one covered a predetermined area situated in Eastern Palawan, with a combined total investment of about USD 60 million.¹⁴³

More recently, in September 2020, the DOE was reported to have already opened the bids and named the firms who have passed the legal, technical, and financial requirements for four nominated areas under the PCECP. The successful bidders were: Troika Giant Power Corporation (Nominated Area No. 5, Mindoro-Cuyo basin), PXP Energy Corporation (Nominated Area No. 6), and Udenna Energy Corporation (Nominated Area Nos. 7 and 8), all located within the West Philippine Sea.¹⁴⁴

In the same manner, the DOE outlined the process for awarding Coal Operating Contracts (COCs) for the exploration of coal resources under the PCECP. Nominating area

¹⁴¹ DOE Department Circular No.DC 2017-12-0017 and PCECP Timetable for Predetermined and Nominated Areas, at https://www.doe.gov.ph/pcecp?q=pcecp/petroleum_timeline

¹⁴² DOE, PCECP Nominated Areas, at <https://www.doe.gov.ph/pcecp?q=pcecp/nominated-areas>

¹⁴³ DOE, 2019 Accomplishment Report: DOE Inputs to the President's SONA (Press Release), <https://www.doe.gov.ph/sites/default/files/pdf/transparency/2019-esar.pdf> Accessed: 15 October 2020.

¹⁴⁴ Philippine News Agency, "DOE clears bidders for oil exploration in WPS" (15 September 2020), at <https://www.pna.gov.ph/articles/1115425> Accessed on: 20 November 2020.

applicants under the contracting program have 61 days from the date of publication up to the opening of the bids, after which, their submitted work program, technical legal, and financial documentation would be assessed by the Review and Evaluation Committee and endorsed to the DOE for approval.¹⁴⁵ As of this reporting period, the DOE has accounted PCECP nominated areas for coal exploration in Asturias, Carmen, Compostela, and Danao City, Cebu, which, upon publication of the applications, were subjected to any counter offer or challenge by other prospective bidders.¹⁴⁶

Joint Philippines-China oil and gas exploration in the West Philippine Sea

Following the Memorandum of Understanding (MOU) signed by the Philippines and China in 2018, which created the framework for cooperation on oil and gas exploration in the West Philippine Sea (South China Sea), officials of the two countries reportedly held their first meeting in Beijing, China in October 2019. Consistent with the MOU provisions, the two countries officially convened during this meeting the Intergovernmental Joint Steering Committee, which would be responsible for negotiating the cooperation arrangements and the maritime areas to which they would apply (called ‘cooperation areas’) as well as the creation of the corresponding Working Groups. According to the news, among the issues that were tackled by the committee included the proposed areas for exploration and the suggested sharing scheme.¹⁴⁷

It should be mentioned that the MOU referred to the parties’ decision to negotiate on an accelerated basis arrangement to facilitate oil and gas exploration in the ‘cooperation areas’ consistent with applicable international law rules.¹⁴⁸ Aside from the Joint Steering Committee, the MOU also provided for the establishment of Inter-Entrepreneurial Working Group/s that would negotiate on the applicable technical and commercial arrangements in relevant ‘working area/s’. On this matter, the MOU authorized the China National Offshore Oil Corporation (CNOOC) as the Chinese enterprise for each Working Group, with the PNOEC-EC as the default enterprise for the Philippines if there is no such enterprise for specific working areas. Finally, the MOU highlights that all discussions and activities

¹⁴⁵ DOE Department Circular No.DC 2017-09-0010, at <https://www.doe.gov.ph/pcecp?q=pcecp/coal/application-guidelines/department-circular>. See also, <https://www.doe.gov.ph/pcecp?q=pcecp/coal/application-guidelines/timeline>

¹⁴⁶ DOE, PCECP Coal Nominated Areas, at <https://www.doe.gov.ph/pcecp?q=pcecp/coal/maps/nominated-areas>

¹⁴⁷ Rappler, “Philippines, China hold first meeting on oil, gas exploration deal,” (30 October 2019), accessed at <https://www.rappler.com/nation/philippines-china-first-meeting-oil-gas-exploration-deal> on 28 November 2020. See also, Batongbacal, J., “The Philippines-China MOU on Cooperation in Oil and Gas Development,” in Asia Maritime Transparency Initiative (5 December 2018), available at <https://amti.csis.org/philippines-china-mou-cooperation-oil-gas-development/>

¹⁴⁸ The MOU cited the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea (UNCLOS), and the 2002 Declaration on the Conduct of Parties in South China Sea.

pursuant to the MOU should be done without prejudice to the respective legal positions of both governments.¹⁴⁹

B. Production Data

Mineral resources

According to statistical data from the DENR-MGB, the total gross production value in mining for 2019 was Php196 billion, which increased by Php16 billion from Php180 billion total gross production value in 2018. Of this amount, large-scale metallic mining accounted for Php 130.3 billion, non-metallic mining at Php 65.1 billion, and small-scale mining at Php 0.6 billion. In 2018, the gross production value in large-scale metallic mining, non-metallic mining, and small-scale mining were Php121.8 billion, Php57.6 billion, and Php0.6 billion, respectively.¹⁵⁰ Hence, for metallic minerals alone, the total estimated production value in 2019 has increased by about 7.03% or Php8.5 billion *vis-a-vis* 2018 figures.¹⁵¹

The primary mineral commodities, with corresponding production volume and value for 2018 and 2019, are listed below for comparison:¹⁵²

Mineral Commodity	Year	Production Volume	Unit	Production Value in Pesos
Gold	2018	20,765	In Kg.	44.8 billion
	2019	20,646		47.36 billion
Silver	2018	29,782		790.7 million
	2019	31,267		827.26 million
Copper	2018	69,933	In metric tons	20.68 billion
	2019	71,892		18.46 billion
Nickel Ore	2018	344,969		28.88 billion
	2019	323,325		31.8 billion

¹⁴⁹ Id., Memorandum of Understanding on Cooperation on Oil and Gas Development between the Government of the People's Republic of China and the Government of the Philippines, signed on 27 November 2018.

¹⁵⁰ DENR-MGB, Mining Industry Statistics (Release Date: 28 May 2021), available at https://mgb.gov.ph/images/Mineral_Statistics/MIS_3Yr_Qtrly-2018_to_Q1-2021_for_UPLOAD_as_of_28_May_2021.pdf

¹⁵¹ DENR-MGB, Mineral Statistics, Facts and Figures, CY2019, at https://mgb.gov.ph/images/Mineral_Statistics/mining_facts_and_figures_updated_22_June_2020_final.pdf

¹⁵² DENR-MGB, Philippines Metallic Mineral Production by Commodity (1998-2020), available at <https://mgb.gov.ph/2015-05-13-01-44-56/2015-05-13-01-47-51#philippines-metallic-mineral-production-by-commodity> Accessed on: 12 May 2021

Chromite	2018	50,650		502.36 million
	2019	38,423		390.56 million
Mixed Nickel-Cobalt Sulfide	2018	84,818	In dry metric tons	26.63 billion
	2019	88,814		31.70 billion

It is observed from the foregoing information that the rise in the value of the country's metal production in 2019 was largely driven by the nickel industry, which reportedly benefited from a nickel ore export ban implemented by Indonesia during the same year. Together with mixed nickel-cobalt sulfide products, nickel ore now comprised 49 percent of the country's total metallic production value.¹⁵³

Gold production volume, on the other hand, slightly declined in 2019, but still contributed 36% of the country's total production value. Meanwhile, copper production value decreased by 11% at Php18.46 billion, notwithstanding a 5% increase in its production volume. This was attributed to lower copper prices in the world market.¹⁵⁴

Oil and gas

Based on the average monthly production reports submitted by five operators to the Department of Energy (DOE), the country's total volume of oil production in 2019 was 776,093 barrels.¹⁵⁵ This is less compared to the 1.17 million barrels of oil reported in the Sixth PH-EITI Report.¹⁵⁶ The reporting firms included Nido, Matinloc, North Matinloc, Galoc, and Alegria (SC 14A, SC 14B, SC 14C, and SC 49), with an annotation that three of these oil fields (Nido and Matinloc) have stopped production during different quarters of the period.¹⁵⁷

¹⁵³ S&P Global Market Intelligence, Philippines' FY-19 metal value up 7% YOY, driven by nickel," (16 April 2020), at <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/philippines-fy-19-metal-production-value-up-7-yoy-driven-by-nickel-58070708> Accessed on: 2 May 2021.

¹⁵⁴ Id.

¹⁵⁵ DOE, Philippine Petroleum Production, As of 31 December 2019, CY-2019 Monthly Production, available at: https://www.doe.gov.ph/sites/default/files/pdf/energy_resources/2019_monthly_production_dec.PDF Accessed on: 19 October 2020.

¹⁵⁶ 6th PH-EITI Report, citing the Energy Annual Report 2018, at https://www.doe.gov.ph/sites/default/files/pdf/transparency/esar_2018_06282019.pdf

¹⁵⁷ Note 155 (DOE, Philippine Petroleum Production, CY 2019). Nido oil field stopped production during the third quarter of 2019; Matinloc ceased production in the second quarter; while North Matinloc reported that it had no production during the entire year. See also, DOE Key Energy Statistics 2019, Oil and Gas Production, By Source, at https://www.doe.gov.ph/sites/default/files/pdf/energy_statistics/2019-key-energy-statistics.pdf

SC 38 (Malampaya), the deep-water gas-to-power project in the West Philippine Sea near Palawan province, produced a total of 155,690.47 MMscf (million standard cubic feet), with a monthly average of 12,974 MMscf, of gas in 2019. It also produced an estimated four million barrels of condensate during the year, higher than the 3.43 million barrels recorded in the 6th Report.¹⁵⁸

The Malampaya gas field, initially the joint venture between SPEX BV, Chevron, and state-owned PNOEC-EC (now 90% controlled by Udenna Corporation, with 10% retained by PNOEC-EC), was considered critical to the country's energy needs as it provides up to 20% of the country's power. The DOE projected that the gas field will run dry by 2027. Imported liquefied natural gas (LNG) was accordingly the conceivable substitute for the natural gas supply from Malampaya.¹⁵⁹ Hence, in preparation for the increase in downstream LNG imports, the DOE has marked the Philippines as an LNG hub by approving the permits of five proposed LNG Regasification Terminal Projects targeted for operation from 2022 to 2025.¹⁶⁰

Coal

Coal production has increased in the Philippines from 2018 to 2019, or from 13.06 million metric tons (MT) to 15.27 million MT. The table below provides the details on coal contract producers, their respective volume of production, and percentage of total production volume:¹⁶¹

Producer Group	Volume of Production	Percentage of Total Production Volume
Semirara Mining	15.2 million MT	99.45%
Other Coal Operating Contracts	15,352.55 MT	0.10%

¹⁵⁸ Note 155 (DOE, Philippine Petroleum Production, CY 2019). See also, DOE Key Energy Statistics 2019, Oil and Gas Production, By Source, at https://www.doe.gov.ph/sites/default/files/pdf/energy_statistics/2019-key-energy-statistics.pdf and the 6th PH-EITI Report for the 2018 oil production data.

¹⁵⁹ US Energy Information Administration, Philippines Country Overview. <https://www.eia.gov/international/analysis/country/PHL> Accessed: 19 October 2020

¹⁶⁰ DOE Official Website, Press Release (23 March 2021), "DOE marks PH as LNG Hub," accessible at: <https://www.doe.gov.ph/press-releases/doe-marks-ph-lng-hub> on 20 June 2021. Three proponents, namely, Excelerate Energy L.P., Batangas Clean Energy, Inc., and Atlantic Gulf & Pacific Company of Manila, Inc. were issued Notices to Proceed; and two proponents, namely, FGEN LNG Corporation and Energy World Gas Operations Philippines, Inc. were issued Permits to Construct.

¹⁶¹ DOE Official Website, Coal Statistics 2019, available at <https://www.doe.gov.ph/energy-statistics?q=energy-resources/coal-statistics> and accessed on 10 November 2020. See also, DOE Key Energy Statistics 2019, Coal Production, By Source, available at https://www.doe.gov.ph/sites/default/files/pdf/energy_statistics/2019-key-energy-statistics.pdf and accessed on 14 June 2021

Small-Scale Coal Mines	68,841.65 MT	0.45%
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It is noted from the DOE's coal statistical data that Semirara Mining and Power Corporation continued to be the primary producer of coal in the Philippines. It is also the only power supplier in the country, with subsidiaries that include the Southwest Luzon Power Generation Corporation; St. Raphael Power Generation Corporation; Southern Luzon Power Generation Corporation; Semirara Energy Utilities, Inc.; and SEM-Calaca Power Corporation.¹⁶²

C. Export Data

Minerals and mineral products and manufactures

Citing the Philippine Statistics Authority (PSA), the DENR-MGB accounted that the total export of minerals and mineral products in 2019 was valued at USD 4,676 million (or USD 4.68 billion), contributing 6.6% of the country's total exports. On the other hand, the export of non-metallic mineral manufactures in the same year was roughly USD 268 million, sharing 0.4% to the total exports.¹⁶³ Compared to 2018 accounts, these numbers indicate an increase in both the export of minerals and mineral products as well as in the export of non-metallic mineral manufactures.¹⁶⁴ Copper, gold, and nickel were the country's leading mineral exports. The United States, Japan, and China were among the major countries of destination of Philippine mineral exports.¹⁶⁵

The Philippines export data on minerals and mineral products are disaggregated by the PSA according to commodity description, country of destination, volume, and value.¹⁶⁶

Oil and gas commodities

¹⁶² US Energy Information Administration, Philippines Country Overview. <https://www.eia.gov/international/analysis/country/PHL> Accessed: 19 October 2020

¹⁶³ DENR-MGB Official Website, Mining Industry Statistics (Release Date: 28 May 2021), available at https://mgb.gov.ph/images/Mineral_Statistics/MIS_3Yr_Qtrly_2018_to_Q1-2021_for_UPLOAD_as_of_28_May_2021.pdf

¹⁶⁴ Id., In 2018, the total export of mineral and mineral products was USD 4,068 million, while the total export of non-metallic mineral manufactures was USD 233 million, with respective contributions of 5.9% and 0.3% to the country's total exports.

¹⁶⁵ DENR-MGB Official Website, Mineral Statistics, CY 2019, available at https://mgb.gov.ph/images/Mineral_Statistics/mining_facts_and_figures_updated_22_June_2020_final.pdf. See also, Philippine Statistics (PSA), Value and Volume of Philippine Exports by Port: January to December 2019. PH-EITI Secretariat: <https://docs.google.com/spreadsheets/d/1SL3tP4MR3P-t4mon6SdcQbpb12GVjW5b/edit#gid=1296098054> (metallic) and https://docs.google.com/spreadsheets/d/1sn9XI0NbSFdyKzg_6gdX5rmK2W2TNqud/edit#gid=966051525 (non-metallic)

¹⁶⁶ Id.

Data from the PSA show the total volume and value of oil and gas exports from January to December 2019 to be 1.22 billion gross kilograms, with FOB value of USD 445 million, representing 0.18 percent of the total volume of exports and 0.63 percent of the total value of exports for the year.¹⁶⁷ This was lower compared to 2018 PSA data of 1.62 billion gross kilograms and value of USD 784 million, which represented 1.13 percent of total exports for that year.¹⁶⁸ Based on DOE data, the country's exportation of oil products was 11,676 million barrels (MB), which also showed a decline from 16,752 MB oil exports in 2018. The country has exported to several countries, notably Singapore, Thailand, and Malaysia.¹⁶⁹

The PSA statistics on oil and gas exports are likewise disaggregated to commodity description, country of destination, volume in gross kilograms, and FOB value.¹⁷⁰

Coal

As the volume of the production of coal increased in 2019, the volume of coal exports more than doubled in the same year, with China receiving 96.48 percent of the country's coal exports and the remaining 3.52 percent shared by Thailand, India, and Taiwan. Based on DOE statistical data on coal exportation, the country has sent overseas 10,018 million metric tons (MT) of coal in 2019 *vis a vis* 5,054 million MT in the preceding year.¹⁷¹

Information from the PSA from January to December 2019 accounted for a total of 11 billion gross kilograms of coal exports for 2019 (5.5 billion gross kilograms in 2018), with FOB value of USD 460.5 million, which was also higher than the previous year's USD 281 million FOB value.¹⁷²

III. Contribution to the Economy

¹⁶⁷ PSA, Value and Volume of Philippine Exports by Port: January to December 2019, PH-EITI Secretariat: <https://docs.google.com/spreadsheets/d/1Bdwbu4Rzi6ITDcwJjaLpHqw9uziUul2y/edit#gid=1523666603>.

¹⁶⁸ 6th PH-EITI Report 2018.

¹⁶⁹ DOE Key Energy Statistics 2019, Oil Products Exportation, By Country of Destination, at https://www.doe.gov.ph/sites/default/files/pdf/energy_statistics/2019-key-energy-statistics.pdf

¹⁷⁰ Id.

¹⁷¹ DOE Coal Statistics 2019, at <https://www.doe.gov.ph/energy-statistics?q=energy-resources/coal-statistics&ckattempt=1> and DOE Key Energy Statistics 2019, Coal Exportation, By Country of Destination, at https://www.doe.gov.ph/sites/default/files/pdf/energy_statistics/2019-key-energy-statistics.pdf

¹⁷² PSA, Value and Volume of Philippine Exports: January to December 2019, PH-EITI Secretariat: <https://docs.google.com/spreadsheets/d/15i1VsKJWAZmN2VifAmVOEOtEoBCcCgz/edit#gid=658733011>

The contribution or “value-added” of the extractives industry to the national economy is typically measured in terms of its percentage share to the country’s Gross Domestic Product (GDP), its contribution to the revenue of the government, and its impact on generating or sustaining employment.

On top of fiscal contributions, the Philippines extractives industry is also known to provide non-fiscal benefits, especially to local communities. These benefits are typically channeled through various program fund mechanisms such as the Social Development Management Program (SDMP), the Contingent Liability and Rehabilitation Fund (CLRF), and the Environmental Protection and Enhancement Program (EPEP).

The succeeding paragraphs highlight the extractive industry’s fiscal contributions to the national economy. The discussion on the non-fiscal benefits are included in the specific chapter on SDMP as well as in the paragraphs on environmental funds and gender-related extractives data of this chapter.

Contribution to Gross Domestic Product (GDP)

The Philippine Statistics Authority (PSA) released the *National Accounts of the Philippines* for the first quarter of 2017 up to the fourth quarter of 2019 in January 2020, with 2000 as the base year. Among the data presented refer to the national *Gross Domestic Product, by Industrial Origin and Percentage Contribution*.¹⁷³

GDP by Industrial Origin and Percentage Contribution, 2017-2019 (Unit in Million Pesos), at current prices

Industry Sector	2017	2018	2019	% of Sector 2019	% of GDP 2019
TOTAL	4,810,842	5,358,045	5,638,399	100	25.3
A. Mining & Quarrying	133,955	146,185	144,220	2.56	0.6
B. Manufacturing	3,075,374	3,320,346	3,404,491	60.38	15.3
C. Construction	1,113,606	1,347,556	1,502,135	26.64	6.7
D. Electricity, Gas & Water Supply	487,908	543,958	587,552	10.42	2.6

It may be observed from the foregoing table that the contribution of mining and quarrying to national GDP in 2019 was less than 1 percent (0.6%), which was a notch lower than the industry sector’s contribution in the past two years of 0.7 percent. Mining and quarrying

¹⁷³ PSA, National Accounts of the Philippines, 1st Quarter 2017 to 4th Quarter 2019, as of January 2020, *Gross National Income and Gross Domestic Product by Industrial Origin and Percent Contribution*, at current prices. Available at: <https://psa.gov.ph/sites/default/files/Q4%202019%20NAP%20Publication-9ch3.pdf> Accessed on 14 June 2021.

also had the smallest portion, at 2.56 percent, in the industry sector's contribution to GDP, although the industry sector as a whole contributed 25.3 percent of the GDP in 2019.¹⁷⁴

Another set of data provided by the PSA was the national *Gross Value Added (GVA) in Mining and Quarrying, by Industry Group*, for the same period. It is noted from the table below that the use of *mining and quarrying* as an industry group also includes coal, oil, and gas:¹⁷⁵

GVA in Mining and Quarrying, by Industry Group, 2017-2019
(Unit in Million Pesos), at current prices

	Industry/Industry Group	2017	2018	2019
1	Copper Mining	9,369	9,992	8,880
2	Gold	25,501	24,963	26,101
3	Chromium	135	374	315
4	Nickel	12,229	13,555	15,619
5	Other Metallic Mining	663	607	619
6	Crude Oil, Natural Gas, and Condensate	32,025	38,411	36,395
7	Stone Quarry, Clay, Sandpits	22,935	26,312	28,378
8	Other Non-Metallic Mining	31,099	31,970	27,913
	GVA in Mining and Quarrying	133,955	146,185	144,220

From the above GVA figures, gold and nickel were the top contributors in the *mining and quarrying* industry group for 2019. Other contributors included the stone quarry, clay, and sandpits. The rest of the members of this industry group noticeably contracted during the period *vis a vis* the previous year, specifically copper mining, chromium, crude oil, natural gas, and condensate, and other non-metallic mining.

The PSA also has a counterpart account for the different regions of the Philippines. In its October 2020 data, CARAGA Region in Mindanao and MIMAROPA (Region IV-B) in Luzon¹⁷⁶ held the highest GVA percentage share of the Gross Regional Domestic Product (GRDP) in their regions for mining and quarrying, at 10.4% and 8.8%, respectively. The

¹⁷⁴ Id.

¹⁷⁵ Id., *Gross Value Added in Mining and Quarrying by Industry Group*, at current prices.

¹⁷⁶ CARAGA region is composed of five provinces: Agusan del Sur, Agusan del Norte, Surigao del Sur, Surigao del Norte, and Dinagat Islands; six cities: Butuan City, Cabadbaran, Surigao, Bislig, and Bayugan; 67 municipalities and 1,311 barangays. MIMAROPA is an acronym that stands for the provinces of Occidental Mindoro, Oriental Mindoro, Marinduque, Romblon, and Palawan.

overall GVA percentage share of mining and quarrying to the GRDP in 2019 was 0.8 percent. See table below for the details:¹⁷⁷

GVA in Mining and Quarrying and GRDP, by Region (Unit in Thousand Philippine Pesos), at current prices

Region	Total Mining & Quarrying (MAQ)	Total GRDP	Share to GRDP
NCR - National Capital Region	436,302	6,309,290,637	0.0
CAR - Cordillera Administrative Region	8,618,548	322,093,866	2.7
I- Ilocos Region	1,448,189	629,772,047	0.2
II - Cagayan Valley	9,966,556	397,625,523	2.5
III - Central Luzon	6,691,647	2,177,046,900	0.3
IVA - CALABARZON	5,262,020	2,861,724,791	0.2
IVB - MIMAROPA	33,348,468	377,014,287	8.8
V - Bicol Region	9,921,818	560,314,934	1.8
VI - Western Visayas	27,488,116	916,379,059	3.0
VII - Central Visayas	10,701,835	1,266,701,029	0.8
VIII - Eastern Visayas	570,898	465,694,628	0.1
IX - Zamboanga Peninsula	494,730	397,206,561	0.1
X - Northern Mindanao	2,804,649	882,204,432	0.3
XI - Davao Region	7,516,281	922,094,956	0.8
XII - SOCCSKSARGEN	555,804	470,422,524	0.1
XIII - Caraga	31,736,036	306,308,490	10.4
BARMM - Bangsamoro Autonomous Region of Muslim Mindanao	4,261,788	254,523,606	1.7
Total (Philippines)	161,825,686	19,516,418,271	0.8

Revenue Contribution

The DENR-MGB published in its website that mining firms have contributed an estimated Php 27.16 billion to the Philippine economy in 2019 through the payment of national and local taxes, fees, and royalties to the national and local governments. However, it may be gleaned from the following table that the overall revenue payments collected from the

¹⁷⁷ PSA, Regional Accounts of the Philippines, *Gross Value Added in Mining and Quarrying and Gross Regional Domestic Product, By Region, Annual 2019*, at current prices (as of October 2020), PH-EITI Secretariat, at https://docs.google.com/spreadsheets/d/1IO_cOptH2Wzk9UL0gCF5acolZnn4h6_y/edit#gid=852296327

mining sector have decreased in 2019 compared to Php 31.5 billion in the preceding year:¹⁷⁸

Taxes, Fees, and Royalties from Mining	2018 (in Php)	2019 (in Php)
Fees, Charges, and Royalties Collected by DENR-MGB	1,730.5 million	1,911.9 million
Excise Taxes Collected by BIR	4,918.0 million	5,452.8 million
Taxes Collected by Other National Government Agencies	21,676.4 million	16,436.2 million
Taxes, Fees, and Charges Collected by LGUs	3,170.5 million	3,363.6 million
Total	31,495.4 million	27,164.5 million

The overall decline is attributed to the lower tax collections made by other national government agencies, which, nonetheless, continued to comprise the bulk of the revenue collections for the year. All other sources of revenue, specifically, the excise taxes collected by the BIR and those collected by the DENR-MGB and LGUs from mining-related activities relatively increased in 2019.

It is worth mentioning that several mining companies landed in the DOF's list of top 500 taxpayers for return period 2019 — Taganito Mining Corporation, Cagdianao Mining Corporation, Rio Tuba Mining Corporation, Nickel Asia Corporation, Philex Mining, and Hlnatuan Mining Corporation.¹⁷⁹ They were cited to have filed their income tax returns ahead of the deferred payment deadlines during the extended lockdown period and were recognized to have provided the government with additional funds to sustain its social amelioration programs, emergency health measures, and economic stimulus packages amidst the COVID-19 pandemic situation.¹⁸⁰

From another lens, the Bureau of Internal Revenue (BIR) - Large Taxpayers Service unit provided PH-EITI with information about its tax collections from 62 large extractives taxpayers (3 coal, 41 metallic mining, 13 non-metallic mining, and 5 oil and gas

¹⁷⁸ MGB Mining Industry Statistics (Release Date: 28 May 2021), available at https://mgb.gov.ph/images/Mineral_Statistics/MIS_3_Yr_Qtrly_2018_to_Q1-2021_for_UPLOAD_as_of_28_May_2021.pdf

¹⁷⁹ DOF, Top 500 Annual Income Tax Return (AITR) Filers for Return Period 2019, Extraction Date: 19 May 2020, Return Period: 2019, available at: <https://www.dof.gov.ph/download/top-500-aitr-filers-for-return-period-2019/?wpdmdl=26193&refresh=5eca671e2c8dc1590322974> Accessed on: 21 November 2020.

¹⁸⁰ DOF News and Views, "DOF cites Top 500 taxpayers that filed 2019 ITRs ahead of extended payment deadlines," (25 May 2020), accessed at: <https://www.dof.gov.ph/dof-cites-top-500-taxpayers-that-filed-2019-itrs-ahead-of-extended-payment-deadlines/> on 21 November 2020.

companies) for Tax Year 2019.¹⁸¹ Below is a summary of the types and amount of taxes collected by the BIR:

Type of Tax	Metallic	Non-Metallic	Oil and Gas	Coal
Income Tax	5.36 billion	2.88 billion	8.8 billion	599 million
Value-Added Tax	115.3 million	1.16 billion	9.6 million	159.5 million
Percentage Tax	n.a.	n.a.	n.a.	n.a.
Excise Tax	4 billion	117.97 million	n.a.	329.9 million
Other Tax	129.1 million	29.1 million	6.31 million	3.99 million
Total Collection	9.61 billion	4.19 billion	8.81 billion	1.1 billion

Employment Contribution

Citing the PSA, the DENR-MGB reported that approximately 182,000 workers were employed in the mining industry in 2019, which represented 0.4 percent of the total employment figures in the Philippines, a drop from the 207,000 workers or 0.5 percent of the total employment recorded in the previous year.¹⁸² The DENR-MGB noted that the estimates vary, with a supposedly conservative assumption that for every job in the mining industry, about four indirect jobs could be generated in the upstream and downstream sectors.¹⁸³

The PSA likewise published a statistical labor survey, dated October 2019, providing percentage distribution of employed persons by sex, by region, and by major industry groups. The data similarly showed that 0.4 percent of workers in the Philippines were employed in the mining and quarrying industry (172,576 of 43,144,000 employed individuals), with the males making up 0.6 percent of total male employment population and the females comprising 0.1 percent of total female employment population. In comparison to 2018 figures, the number of female employees increased while that of male employees decreased. A summary of the employment data by sex is provided below:¹⁸⁴

¹⁸¹ The coal companies include Semirara, Daguma Agro-Minerals, and D.M. Wenceslao and Associates. The 5 oil and gas companies were Galoc Production Co. SPC, Nido Galoc Production, PNOC-EC, Shell Philippines Exploration BV (SPEX), and Philodrill Corp.

¹⁸² DENR-MGB, Mining Industry Statistics (Release Date: May 2021), available at: https://mgb.gov.ph/images/Mineral_Statistics/MIS_3Yr_Qtrly-2018_to_Q1-2021_for_UPLOAD_as_of_28_May_2021.pdf

¹⁸³ DENR-MGB, Minerals Industry at a Glance, CY 2019, available at: https://mgb.gov.ph/images/Mineral_Statistics/mining_facts_and_figures_updated_22_June_2020_final.pdf

¹⁸⁴ PSA Statistical Tables on Labor Force Survey (LFS): October 2019 (Release Date: 13 May 2020), Table 6 on *Percent Distribution of Employed Persons by Sex, by Region, and Major Industry Group*: October 2019, accessible at: <https://psa.gov.ph/content/statistical-tables-labor-force-survey-lfs-october-2019>

Employment Estimates in Mining and Quarrying (MAQ) (2018-2019)

	2018			2019		
	Total Number of Employed PH	Percentage in MAQ	Number of Employed in MAQ	Total Number of Employed in PH	Percentage in MAQ	Number of Employed in MAQ
Philippines	41,325,000	0.5	206,625	43,144,000	0.4	172,576
Male	25,548,000	0.7	178,836	26,432,000	0.6	158,592
Female	15,777,000	0.1	15,777	16,712,000	0.1	16,712

Furthermore, the PSA statistical labor survey revealed that employment in mining and quarrying for this year was highest in the Cordillera Administrative Region (CAR) and CARAGA region, at 1.4 percent and 2.6 percent, respectively.¹⁸⁵

It is finally observed that the employment of women in mining and quarrying has not yet been significant in all the regions, except in CARAGA (Region XIII), situated in Northeastern Mindanao, where women employment registered at 1.0 percent. The rest of the regions had 0.1 percent women employees, none, or no available record.¹⁸⁶

It is assumed that any reference by PSA to any information relative to *mining and quarrying* as an industry already includes data on oil, gas, and coal.

IV. Environmental Funds and Other Environment-Related Data

The Philippine Environmental Impact Statement (EIS) System considers major mining, coal, oil, and gas projects as environmentally critical projects and thus require an environmental compliance certificate (ECC) before they can start to operate.¹⁸⁷ The general process for securing an ECC is prescribed under DENR Admin. Order No. 03-30 and facilitated by the DENR-Environmental Management Bureau (EMB). Violations of the terms of an ECC may be meted with the penalty of suspension, cancellation of the certificate, and/or fine in the sum of Php 50,000 for every violation of such terms.¹⁸⁸

Mining

¹⁸⁵ Id.

¹⁸⁶ Id.

¹⁸⁷ Pres. Decree No. 1586 (1978), Sec. 4 and Proclamation No. 2146 (1981), Retrieved from: https://lawphil.net/statutes/presdecs/pd1978/pd_1586_1978.html and <https://www.officialgazette.gov.ph/1981/12/14/proclamation-no-2146-s-1981/>

¹⁸⁸ Implementing Rules and Regulations (IRR) for the Philippine Environmental Impact Statement System, Retrieved from: <http://eia.emb.gov.ph/wp-content/uploads/2016/06/DAO-2003-30.pdf> See, Section 9 of Pres. Decree No. 1586 for the penal provision.

Given the extractive nature of its operations, mining firms are required by the Mining Act of 1995 to set aside funds for environmental protection, enhancement, and rehabilitation. As discussed in previous PH-EITI reports, Chapter XI of the Mining Act, as implemented by DENR Admin. Order No. 2010-21, provides for the establishment of environmental funds.¹⁸⁹

It is important to note that these funds are *not* paid to the government, but are either allocated by mine contractors/permit holders for specific environment-related purposes and reported to the DENR-MGB; or deposited as a trust fund with a government depository bank and used by mining companies for the indicated environmental objectives.¹⁹⁰

Below is a summary of the different types of environmental funds for mining projects:¹⁹¹

Type of Environmental Fund	Description/Purpose	Amount
Environmental Protection and Enhancement Program (EPEP) and Annual EPEP (AEPEP)	EPEP is the comprehensive environmental management plan for the life of the mining project on which AEPEPs are based and implemented to achieve the environmental management objectives, criteria, and commitments, including protection and rehabilitation of the disturbed environment. AEPEP is submitted to MGB/Regional Office 30 days before the start of every calendar year.	Initially, 10% of the total capital/project cost or such other amount depending on environmental/geological condition, nature, and scale of operations and technology employed (EPEP) Annually, 3-5% of direct mining and milling costs depending on the above conditions (AEPEP)
Contingent Liability and Rehabilitation Fund (CLRF)		
Mine Rehabilitation Fund (MRF) is an environmental deposit to ensure availability of funds for the satisfactory compliance with EPEP/AEPEP commitments.	MTF is deposited as a trust fund in a mutually acceptable government depository bank for exclusive use in the monitoring program approved by the MRF Committee	Determined by MRF Committee, but not less than P150,000

¹⁸⁹ Rep. Act No. 7942 (1995), at https://www.lawphil.net/statutes/repacts/ra1995/ra_7942_1995.html. DAO 2010-21 is entitled, "Providing for a Consolidated Department of Environment and Natural Resources Administrative Order for the Implementing Rules and Regulations of Republic Act No. 7942, Otherwise Known as The 'Philippine Mining Act of 1995,'" retrieved from: <https://mgb.gov.ph/images/stories/CDAO-Final.pdf>

¹⁹⁰ Id.

¹⁹¹ Id.

It can either be in the form of the Monitoring Trust Fund (MTF) or the Rehabilitation Cash Fund (RCF).	RCF is a designated amount to ensure compliance with the approved rehabilitation activities and schedules, including research programs contemplated in the EPEP/AEPEP. It is also deposited as a trust fund in a mutually agreed depositary bank.	Equivalent to 10% of the total amount needed to implement the EPEP or Php5 million, whichever is lower, in 4 equal quarterly deposits within 15 calendar days from the start of each quarter following approval of the EPEP.
Mine Wastes and Tailings (MWT) Fees and MWT Reserve Fund	MWT Fees are collected semi-annually from operating contractors/lessees/permit holders based on the amounts of mine waste and mill tailings generated for the period. These accrue to a MWT Reserve Fund and deposited as a trust fund to be used for the payment of compensation for damages caused by mining operations; also for approved research projects	In general, Php0.05/MT of mine waste produced and Php0.10/MT of mill tailings generated from mining operations
Final Mine Rehabilitation and Decommissioning Program (FMRDP) and FMRD Fund	FMRDF is established by contractor/permit holder to ensure that the full cost of the FMRDP is accrued before the end of the operating life of the mine. It is deposited as a trust fund in a government depositary fund and used exclusively to implement the approved FRMDP. FMRDP covers the full extent of the work needed to achieve the objectives of mine closure, such as decommissioning, rehabilitation, maintenance and monitoring and employee and other social costs, including residual care, if needed, over a 10-year period	Initially, based on the expected mine life Annually, based on the formula equivalent to the cost of implementing the approved FMRDP multiplied by the required percentage based on a given table.

According to the DENR-MGB, which monitors these funds, mining companies have committed as of 2019 the amounts of Php 358.22 billion and Php 3.99 billion for the implementation of activities under their approved EPEP and FMRDP, respectively.¹⁹² In addition, it reported that as of 31 May 2020, mining companies have planted 36.87 million seedlings in about 28,717.37 hectares of mined-out and other areas, with a survival rate of 91.58% or 33.76 million trees.¹⁹³

PH-EITI's ORE Tool likewise provides data on the mining companies' submissions of the environmental funds for 2019, particularly with respect to the fund balance as of end of 2018, the amounts withdrawn or spent, any additional funds allocated, and the amounts

¹⁹² DENR-MGB Official Website, Mining Industry at a Glance, available at https://mgb.gov.ph/images/Mineral_Statistics/mining_facts_and_figures_updated_22_June_2020_final.pdf

¹⁹³ Id.

deposited in the bank by end of 2019. The total amounts for metallic and non-metallic mining are detailed in the following tables:¹⁹⁴

Type of Fund	Beginning Balance (end of 2018)	Withdrawn or Spent	Additional Amount	Ending Balance (2019)
AEPEP	2.21 billion	2.93 billion	n.a.	(163.47 million)
MTF	6.17 million	5.85 million	5.05 million	6 million
RCF	186.83 million	1.9 million	6.39 million	191.6 million
MWTF	n.a.	none	7.75 million	7.75 million
ETF	2.72 million	2,156.91	448,831.13	2.72 million
Annual Work and Financial Plan for FMRDP	554.55 million	94.66 million	n.a.	459.92 million
FMRDP	1.82 billion	n. a.	137.6 million	1.86 billion

ORE Tool: Environmental Funds and Expenditures (Metallic), 2019, in Php

Type of Fund	Beginning Balance (end of 2018)	Withdrawn or Spent	Additional Amount	Ending Balance (2019)
AEPEP	181.72 million	230.45 million	n.a.	(8.04 million)
MTF	2.86 million	723,068.68	519,316.24	2.59 million
RCF	60.1 million	3.44 million	1.68 million	54.8 million
MWTF	29,247.32	1.19 million	n.a.	n.a.
ETF	10.61 million	8.14 million	1.88 million	2.48 million
Annual Work and Financial Plan for FMRDP	33.18 million	7.48 million	n.a.	25.7 million
FMRDP	128.5 million	n.a..	75.73 million	272.73 million

ORE Tool: Environmental Funds and Expenditures (Non-Metallic), 2019, in Php

The foregoing figures are based on available data provided by metallic and non-metallic mining companies to the PH-EITI Secretariat as of the time of writing of the Seventh PH-EITI Report. It is observed that not all companies have submitted their environment-related data; there were gaps in the information provided; and there were some discrepancies in the final amounts reached by the end of the reporting year.

Coal, oil, and gas

¹⁹⁴ PH-EITI Secretariat, ORE Tool, Retrieved from: https://docs.google.com/spreadsheets/d/17QO7HZ1rs4IIYXbR7iCv0o073rC-a_YJ/edit#gid=262807388 and https://docs.google.com/spreadsheets/d/1Pi0dWEt6p0luH_KrvzTAG0x5aXMqBlc0/edit#gid=260681673, 20 June 2021

As opposed to mining, where the environmental funds are provided by its special law, the required environmental funds for coal, oil, and gas projects are found under the rules and regulations that implement the Philippine EIS system, which governs all other environmentally critical projects.¹⁹⁵ DENR Administrative Order No. 2003-30 prescribes two types of environmental funds — the Environmental Monitoring Fund (EMF) and the Environmental Guarantee Fund (EGF).¹⁹⁶

The EMF is the fund that a proponent sets up after the ECC is issued for its project, which is used to support the activities of the multi-partite monitoring team (MMT), the body tasked to monitor compliance with the conditions of the ECC and the environmental management plan.¹⁹⁷ The amount allocated for the EMF is accordingly determined on the basis of the annual work and financial plan agreed upon by the MMT, which is derived from the proponent's environmental monitoring plan. This could be based, for instance, on the cost of monitoring activities and the proposed environmental information programs, the rates of which are agreed upon by the parties within limits of pertinent government guidelines.¹⁹⁸

The EGF is another fund set up by the proponent for projects determined by the DENR to pose significant public risk or where the project requires rehabilitation or restoration. It is intended to be used for the immediate clean-up or rehabilitation of areas affected by damages in the environment and the deterioration of environmental quality as a direct consequence of the project's construction, operation, or abandonment. It is also designed to compensate parties and communities affected by the negative impacts of the project and to fund community-based environment-related projects, such as information and education as well as emergency preparedness programs.¹⁹⁹

Similarly, there is no explicit provision in the rules regarding the appropriate amount of the EGF. Hence, it is likewise negotiated by the proponent and the DENR-Environmental

¹⁹⁵ Proclamation No. 2146 (1981) considers three categories of environmentally critical projects (ECPs) contemplated under Pres. Decree No. 1586 (1978), namely: (1) Heavy Industries, e.g., petroleum and petro-chemical industries including oil and gas; (2) Resource Extractive Industries, e.g., major mining and quarrying projects; and (3) Infrastructure Projects, e.g., major power plants (fossil-fuelled, nuclear fuelled, hydroelectric or geothermal).

¹⁹⁶ Implementing Rules and Regulations (IRR) for the Philippine Environmental Impact Statement System, Retrieved from: <http://eia.emb.gov.ph/wp-content/uploads/2016/06/DAO-2003-30.pdf>

¹⁹⁷ Id. Section 3 (n) and Section 9.1. The MMT is composed of representatives of the proponent and of stakeholder groups, including from concerned LGUs, locally accredited non-governmental organizations/people's organizations, concerned DENR-Environmental Management Bureau (EMB) regional office, relevant government agencies, and other sectors that may be identified in the process.

¹⁹⁸ Revised Procedural Manual for DENR Administrative Order No. 2003-30 (DAO 03-30), August 2007, Annex 3-5: Environmental Monitoring Fund (EMF) Administration and Management Guidelines, Retrieved from: <http://eia.emb.gov.ph/wp-content/uploads/2020/07/Revised-Procedural-Manual-DAO-03-30.pdf>

¹⁹⁹ DENR Admin. Order No. 2003-30, Section 3 (g) and Section 9.3.

Management Bureau (EMB), taking into consideration the EIS committed programs; degree of environmental risk involved; valuation of resources that would most likely be affected; and the proponent's ability to provide the funds. It is clear, however, that whenever the available fund in the EGF is not sufficient to pay for compensable claims, the proponent is mandated to provide additional funds to cover the cost of rehabilitation or restoration, and to replenish the same whenever the amount falls below 50 percent of the agreed amount. At the end of the project's life, such EGF is needed to have enough amount to ensure adequate financing of rehabilitation, restoration, decommissioning, or abandonment.²⁰⁰

This EGF, which is most likely applicable to coal, oil, and gas projects, has two major components, namely: the *Trust Fund*, which is a guaranty instrument that is used to compensate aggrieved parties for any damages to life or property, among others; and the *Environmental Guaranty Cash Fund*, which is earmarked for immediate rehabilitation and compensation of affected communities in case of damages or accidents.²⁰¹

The DENR-EMB Official Website contains a master list of environmentally critical projects (ECPs), including mining, coal, oil and gas projects, that have been issued with ECCs as of 31 December 2020. The list contains the ECC reference numbers, project names, the project proponents, their respective locations per region, and the dates when their ECCs were issued.²⁰² However, copies of the ECCs and details of the agreed amounts of the EMF or the EGF either on an individual project or industry level were not yet readily available on the website. Yet, the public can apparently make use of the website's *ECC Online Application System* to inquire about approved/denied applications by typing the appropriate data or by sending an e-mail to the bureau to request for a copy of the ECC.²⁰³ It is not clear whether the system can also respond to queries for detailed information about the aforementioned environmental funds.

V. Beneficial Ownership Information

SEC MC No. 15 and EITI standard on beneficial ownership information

²⁰⁰ Revised Procedural Manual for DENR Administrative Order No. 2003-30 (DAO 03-30), August 2007, Annex 3-6: Environmental Guarantee Fund (EGF) Administration and Management Guidelines, Retrieved from: <http://eia.emb.gov.ph/wp-content/uploads/2020/07/Revised-Procedural-Manual-DAO-03-30.pdf>

²⁰¹ Id.

²⁰² DENR-EMB Official Website, Updated List of Environmental Critical Projects (ECPs) with Environmental Compliance Certificates (ECCs), as of 31 December 2020, accessed at: <http://eia.emb.gov.ph/wp-content/uploads/2021/06/FINAL-MASTER-LIST-ECPs-as-of-DEC-2020.pdf> on 20 June 2021.

²⁰³ DENR-EMB Official Website, ECC Online Application Systems - Approved/Denied Applications, <http://ecconline.emb.gov.ph/live/Search.aspx>

In 2019, the Securities and Exchange Commission (SEC) issued Memorandum Circular (MC) No. 15, requiring all SEC-registered corporations in the country to include, under pain of penalty, beneficial ownership information in the submission of their general information sheets (GIS).²⁰⁴ This was issued in its effort to help implement the country's anti-money laundering law and anti-terrorism financing legislation.²⁰⁵ It was also seen as parallel to the EITI's moves to promote public disclosure of beneficial ownership information in the extractives industry.²⁰⁶

Progress in extractives industry participation

The Sixth PH-EITI Report provided a comprehensive account of PH-EITI's pilot measures in achieving compliance with the beneficial ownership (BO) information disclosure requirement, which was not only carried out in conjunction with the first year of implementing SEC MC No. 15, but also with deliberate adherence to the circular's policy, definitions, template, and timetable.²⁰⁷

In retrospect, the BO disclosure exercise for the Sixth PH-EITI Report resulted in the participation of 29 companies, partial participation of 12 companies, and non-participation of 24 companies in the extractives industry.²⁰⁸ This meant that those that *participated* have complied with all the requirements, including have given consent to the publication of their BO information. The companies that *did not participate* were those that did not submit any document, including any waiver, consent, or declaration, within the given timeframe; and the companies that *partially participated* referred to those that disclosed their BO information but did not give consent to publication, did not have complete supporting documents, or provided BO information but not in the prescribed template.

²⁰⁴ Section 177 of the Revised Corporation Code mandates all corporations to submit annually a General Information Sheet (GIS) with the Securities and Exchange Commission (SEC). A GIS is a document that embodies information about the corporation which is signed and attested by the corporate secretary. The SEC collects this information as part of its regulatory mandate to ensure full and timely disclosure of material information, protect investors, and prevent fraudulent or manipulative practices that distort the free market.

²⁰⁵ SEC MC No. 15, Series of 2019, Amendment of SEC Memorandum Circular No. 17, Series of 2018 on the Revision of the General Information Sheet to include Beneficial Ownership Information ("2019 Revision of the GIS"), Retrieved from: <https://www.sec.gov.ph/mc-2019/mc-no-15-s-2019-amendment-of-sec-memorandum-circular-no-17-series-of-2018-on-the-revision-of-the-general-information-sheet-gis-to-include-beneficial-ownership-information-2019-revisio/>

²⁰⁶ Requirement 2.5, EITI Standard 2019, <https://eiti.org/document/eiti-standard-2019#r2-5> See also, Sixth PH-EITI Report, Chapter 3, *Beneficial Ownership Transparency in the Philippines*, Retrieved from: <https://eiti.org/document/philippines-6th-eiti-report-fy-2018>

²⁰⁷ Id.

²⁰⁸ Id.

For the Seventh PH-EITI Report, the BO disclosure exercise plainly intended to build on the results of the pilot disclosure activity by requesting the companies that partially participated and those that did not participate for the 6th Report to complete their participation or to take part this time. In addition, more companies were requested to comply with the BO information disclosure requirement.

Of those targeted for the 6th Report, the number of participating companies rose to 32, with three additional companies (Century Peak, SR Metals, and Northern Cement); those that partially participated increased to 15, with three more companies (Apex Mining, Itogon-Suyoc Resources, and LNL Archipelago Minerals); while 18 of the targeted companies continued not to participate.

With new companies that were covered for the 7th Report, the total number of participating companies further increased to 35; those that partially participated remained at 15; and those that did not participate rose to 28. Below is a summary of the total number of companies that participated, partially participated, and did not participate, with a breakdown of the number of companies per extractives sector:²⁰⁹

Sector	Participated	Partially Participated	Did Not Participate
Metallic Mining	26	7	18
Non-Metallic Mining	6	8	5
Oil and Gas	3	0	4
Coal	0	0	1
Total	35	15	28

To further elaborate, the next table lists the names of the extractives companies, grouped according to their level of participation in the PH-EITI's beneficial ownership disclosure exercise covering the period 2019/2020:²¹⁰

	Participated		Partially Participated		Did Not Participate
1	AAM-Phil Natural Resources Exploration and Development Corporation	1	Apex Mining Co., Inc.	1	Abra Mining and Industrial Corp.*
2	Adnama Mining Resources, Inc.	2	Apo Land & Quarry Corp.	2	Asencio-Pinzon Aggregates Corp./Pacific Concrete Products, Inc. and Big Rock Aggregates Corp.*

²⁰⁹ PH-EITI Secretariat, Based on company declarations to SEC and/or submissions to PH-EITI as of June 2021, which generally covers 2019/2020, the first year that SEC MC No. 15 was implemented.

²¹⁰ Id.

3	Agata Mining Ventures, Inc.	3	Bohol Limestone Corp.	3	Atro Mining-Vitali, Inc. (not operating)
4	Benguet Corp. Nickel Mines, Inc.	4	Concrete Aggregates Corp.	4	Benguet Corp.
5	Berong Nickel Corp.	5	CTP Construction and Mining Corp.	5	Carmen Copper Corp.
6	Cagdianao Mining Corp.	6	Island Quarry and Aggregates Corporation	6	China International Mining Petroleum Co. Ltd.*
7	Carrascal Nickel Corp.	7	Itogon-Suyoc Resources, Inc.	7	Citinickel Mines and Development Corp.
8	Century Peak Corp.	8	LNL Archipelago Minerals, Inc.	8	Eramen Minerals, Inc.
9	Chevron Malampaya LLC	9	Montalban Millex Aggregates Corp.*	9	Filminera Resources Corp.
10	Dinapigue Mining Corp.	10	Rapid City Realty Development Corp.	10	Galoc Production Company WLL - Philippine Branch
11	Dolomite Mining Corp.	11	Republic Cement and Building Materials, Inc.	11	Gozon Development Corp.
12	Eagle Cement Corp.	12	Republic Cement Iligan, Inc.	12	Greenstone Resources Corp.
13	FCF Minerals Corp.	13	Republic Cement Land and Resources, Inc.	13	Hallmark Mining Corp.*
14	Hinatuan Mining Corp.	14	Republic Cement Mindanao, Inc.	14	Hardrock Aggregates, Inc.
15	Holcim Mining and Development Corp.	15	Strong Built Mining and Development Corp.	15	Krominco, Inc.
16	JLR Construction and Aggregates Inc.			16	Marcventures Mining and Development Corp.
17	Johson Gold Mining Corp.*			17	Mil-Oro Mining Corp./Austral-Asia Link Mining*
18	Lepanto Consolidated Mining Corp.			18	Mt. Sinai Exploration and Development Corp.(not operating)
19	Libjo Mining Corp.			19	Nicua Corporation (not operating)
20	Northern Cement Corp.			20	Nido Galoc Production
21	Oceanagold (Philippines), Inc.			21	Oriental Synergy Mining Corp.**
22	Oriental Vision Mining Philippines Corp.			22	San Rafael Development Corp. Operator: Majestic Earth Core Ventures, Inc.*
23	Pacific Nickel Philippines, Inc.			23	Semirara Mining and Power Corporation
24	Philsaga Mining Corp.			24	Shenzhou Mining Group Corp. (not operating)**
25	Philex Mining Corp.			25	Solid North Mineral Corp. (Assignment from Holcim Philippines, Inc.)*
26	Philippine National Oil Company - Exploration Corporation			26	The Philodrill Corp.*
27	Platinum Group Metals Corp.			27	Tribal Mining Corp.*
28	Rio Tuba Nickel Mining Corp.****			28	Wellex Mining Corp./Vista Buena Mining Corp.*
29	Shangfil Mining and Trading Corp.*				

30	Shell Philippines Exploration B.V.**				
31	Sinosteel Phils. H.Y. Mining Corp.				
32	SR Metals, Inc.				
33	Taganito Mining Corp.				
34	Techiron Resources, Inc.				
35	Zambales Diversified Metals Corp.				
<p>*Additional companies contacted for the 7th Report. **Companies that could not be reached or contacted. ***With consent to publish what is already published at https://reports.shell.com/annual-report/2020/servicepages/downloads/files/shell-annual-report-2020.pdf and https://pilipinas.shell.com.ph/investors/financial-reports.html ****Counted here as non-metallic, but has MPSAs for both metallic (MPSA No. 114-98-IV) and non-metallic (MPSA No. 213-2005-IVB)</p>					

It is noted that 13 additional companies were reached out by PH-EITI to participate in the disclosure exercise for the 7th report. Of this number, two opted to participate, 1 partially participated, and the rest did not participate, either because they did not respond or they declined to participate. From the entire list, two of the primary reasons cited as to why several companies had partial participation in the disclosure exercise were their lack of consent to the publication of the information disclosed and the pendency of a resolution or waiver from their respective boards.

Publicly Listed companies and companies listed in foreign stock exchanges

The EITI standard on beneficial ownership information also requires publicly listed companies to disclose the name of the stock exchange, with a link to the stock exchange filings where they are listed.²¹¹ In the Philippines, the extractives companies listed in the Philippine Stock Exchange (PSE) are subject to disclosure requirements under the Securities Regulation Code, particularly with respect to statements on the beneficial ownership of securities.²¹²

The following tables successively show the extractives companies that are included in the Philippine Stock Exchange (PSE) list of publicly listed companies and those that are known to be listed in stock exchanges abroad:²¹³

²¹¹ EITI Standard 2019, Detailed Guidance on Requirement 2.5, available at <https://eiti.org/document/eiti-standard-2019#r2-5>

²¹² Rep. Act No. 8799 (2000), available at: https://lawphil.net/statutes/repacts/ra2000/ra_8799_2000.html

²¹³ PH-EITI Secretariat, based on document provided by the SEC. See also, Philippine Stock Exchange (PSE) Electronic Disclosure Technology or PSE EDGE, accessible at: <https://edge.pse.com.ph/page/aboutPseEdge.do>

Publicly-listed Companies in the Mining and Oil Sector

Name of Company	Sector
Abra Mining and Industrial Corporation	Mining
Ape Mining Company, Inc.	Mining
Atlas Consolidated Mining and Development Corp.	Mining
Atok-Big Wedge Co. Inc.	Mining
Benguet Corporation	Mining
Century Peak Metal Holdings, Inc.	Mining
Coal Asia Holdings, Inc.	Mining
Geograce Resources Phils., Inc.	Mining
Lepanto Consolidated Mining Company	Mining
Manila Mining Corporation	Mining
Nickel Asia Corp.	Mining
NIHAO Mineral Resources International, Inc.	Mining
Omico Corporation	Mining
Oriental Peninsula Resources Group, Inc.	Mining
Philex Mining Corporation	Mining
Semirara Mining and Power Corporation	Mining
United Paragon Mining Corporation	Mining
Vulcan Industrial and Mining Corporation	Mining
Dizon Copper Silver Mines, Inc.	Mining
Ace Enexor, Inc.	Oil
Oriental Petroleum and Mineral Corporation	Oil
PXP Energy Corporation	Oil
The Philodrill Corporation	Oil

Extractives Companies Listed in Foreign Stock Exchanges

Company	Parent Company/Owner	Foreign Stock Exchange
Chevron Malampaya LLC (CMLLC)	Chevron Corporation	CVX is listed in New York
OceanaGold Philippines (OGPI)	OceanaGold Corporation	OGC listed in Toronto and Australia
Shell Philippines Exploration B.V. (SPEX)	Royal Dutch Shell PLC	RDP is listed in Amsterdam, New York, and London

Categories of beneficial owners in the extractives industry

Collating the beneficial ownership information from the participating companies that gave consent to publication, PH-EITI was able to generate a matrix of the individual names of the beneficial owners in the metallic and non-metallic mining industry as well as in the oil and gas sector, their respective nationality and country of residence, percentage of ownership or voting rights, category of beneficial ownership as provided and defined in MC No. 15, series of 2019, and whether or not they are politically exposed persons.²¹⁴

In sum, there were 136 name entries declared as beneficial owners. Of this number, only 77 uniquely appeared, as some name entries repeat as beneficial owners for different companies. The beneficial owners are grouped according to the categories of MC No. 15 as follows:

Category	Number of Entries	Description
A	19	Natural person/s owning, directly or indirectly or through a chain of ownership, at least 25% of the voting rights, voting shares or capital of the reporting corporation.
B	2	Natural person/s who exercise control over the reporting corporation, alone or together with others, through any contract, understanding, relationship, intermediary or tiered entity.
C	12	Natural person/s having the ability to elect a majority of the board of directors/trustees, or any similar body, of the corporation.
D	6	Natural person/s having the ability to exert a dominant influence over the management or policies of the corporation
E	1	Natural person/s whose directions, instructions, or wishes in conducting the affairs of the corporation are carried out by majority of the members of the board of directors of such corporation who are accustomed or under an obligation, to act in accordance with such person's directions, instructions, or wishes.
F	1	Natural person/s acting as stewards of the properties of corporations where such properties are under the care or administration of said natural person/s.
G	2	Natural person/s who actually own or control the reporting corporation through nominee shareholders or nominee directors acting for or on behalf of such natural person/s.
H	1	Natural person/s ultimately owning or controlling or exercising ultimate effective control over the corporation through other means not falling under any of the foregoing categories.

²¹⁴ *Politically exposed persons* are those that have held or are holding an elective or appointive position in the government, either at the national or local level.

I	86	Natural person/s exercising control through positions held within a corporation (i.e., responsible for strategic decisions that fundamentally affect the business practices or general direction of the corporation such as the members of the board of directors or trustees or similar body within the corporations; or exercising executive control over the daily or regular affairs of the corporation through a senior management position). Applicable in exceptional cases where no natural person is identifiable who ultimately owns or exerts control over the corporation, the reporting corporation having exhausted all reasonable means of identification and provided there are no grounds for suspicion.
Not indicated	6	Natural person/s where “Chairman Emeritus” or “Director” was indicated.

Based on the consolidated beneficial ownership information, there were only 11 politically exposed persons, all of whom are connected with PNOG-EC, the upstream oil, gas, and coal subsidiary of the state-owned PNOG.

ADB Study on Beneficial Ownership Information

In a 2021 Technical Assistance report prepared for the Securities and Exchange Commission (SEC), an Asian Development Bank (ADB) consultant provided recommendations on ways to improve the framework and process for obtaining accurate and up-to-date information on beneficial ownership.²¹⁵

The report recommended, among others, that the Philippines should enact a Beneficial Ownership (BO) Registration Law requiring all legal persons and legal arrangements to identify their beneficial owners and register those beneficial owners with a public authority, such as, the SEC for corporations and partnerships, and the Bureau of Internal Revenue (BIR) for trusts and other legal arrangements. In the alternative, it is recommended that the country should create a separate Beneficial Ownership Registry that will function as a repository of all this information.

Until then, the report suggested that the Philippines should take steps to require BO transparency and consistency, such as through the issuance of Memorandum Circulars (MC) by the public authorities. The provisions of the MC are envisioned to apply to all reporting entities, legal entities, and legal arrangements, suggesting the need for a common definition of what constitutes BO, common indicia for determining effective control, common and consistent method for calculating indirect ownership, and common guidelines for dealing with concerted actions

²¹⁵ Gegenheimer, G., *Recommendation Report to the Philippines: To Improve the Framework and Process on Obtaining Accurate and Up-to-Date Beneficial Ownership Information*, A Technical Assistance (TA) Consultant’s Report under TA-9433 REG: Enhancing Tax Transparency of ADB Developing Member Countries, prepared for the Republic of the Philippines Securities and Exchange Commission (April 2021).

The report also mentioned that if the BO Registration Authority would be an entity other than the SEC, publicly listed companies should be exempted from the requirement to register their BOs. However, they should still be required to publicly disclose the identities of their beneficial owners on their website or on the SEC website.

Finally, the report recommended the imposition of substantive penalties for providing false or misleading BO information and for failure to provide updated BO information; and underscored the importance of the government's commitment to allocate sufficient human, financial, and technological resources for its effective enforcement.

Latest SEC initiatives

In October 2020, the SEC issued MC No. 30, requiring all SEC-registered foreign corporations to disclose their beneficial owners in their general information sheets (GIS). The circular clarified that the provisions of MC No. 15, series of 2019, equally apply to such foreign corporations, thus obliging their resident agents, country or regional/area heads to exercise due diligence in reporting and updating their information on beneficial ownership. Penalties may be imposed for failure to make the required disclosure as well as for failure to exercise due diligence in ensuring compliance with the disclosure requirement.²¹⁶

More recently, the SEC also issued MC No. 1, series of 2021 or the "Beneficial Ownership Transparency Guidelines." The circular requires all shareholders, directors, and trustees of registered corporations who are acting as nominees/trustees of another person to disclose to the SEC their principals or nominators or the persons on whose behalf they act as such shareholders, directors, or trustees. It also mandates all incorporators of a corporation seeking SEC registration to make a disclosure of the person/s on whose behalf the registration was applied for.²¹⁷

Likewise, all information regarding the sale or transfer of shares of stock (date, by whom, and to whom) are required to be disclosed and recorded in the stock and transfer book of the issuing corporation in order to be considered effective. Nonetheless, it should be pointed out that the transfers of shares in a publicly listed company which are made through the PSE are not covered by the disclosure requirement; but publicly listed companies are still required to disclose BO information in their GIS.²¹⁸

²¹⁶ SEC MC No. 30, series of 2020, entitled, "Revision of the General Information Sheet (GIS) of Foreign Corporations to Include Beneficial Ownership Information," Retrieved from: <https://www.sec.gov.ph/mc-2020/mc-no-30-s-2020/>

²¹⁷ SEC MC No. 1, series of 2021, entitled, "Guideline in Preventing the Misuse of Corporations for Illicit Activities through Measures Designed to Promote Transparency of Beneficial Ownership," Retrieved from: <https://www.sec.gov.ph/mc-2021/mc-no-01-s-2021/>

²¹⁸ Id.

PH-EITI Registry of Beneficial Ownership Data

It is worth mentioning that the PH-EITI has already created a *Beneficial Ownership Registry* page in its official website, which may be accessed at <https://pheiti.dof.gov.ph/boregistry/>. Albeit preliminary in nature, the BO registry page is looking at providing BO ownership information of extractives companies in the Philippines based on company declaration submitted to the SEC and/or PH-EITI and on company submissions to PH-EITI in September 2020. The registry will also provide the categories of beneficial owners in the industry.

Currently, the public can already download relevant documents on the matter, including a brochure, road map, and Gantt chart on beneficial ownership.²¹⁹

VI. Gender-Related Extractives Data

A. Overview of Results of Gender Reporting (company/industry sources)

For the Seventh PH-EITI Report, the extractives companies were requested to submit gender-related data and information.²²⁰ A total of 70 extractives companies (41 metallic, 26 non-metallic, and 3 oil and gas) responded, in full and in part, to a set of 34 major questions that probed into gender and employment data within their companies. The data that was generated demonstrably had its limitations,²²¹ but several important points could already be highlighted as indicative findings on gender and the extractives industry.

Overall, based on the number of company-hired employees across the three sectors, male employees, regardless of indigeneity, dominated the industry's employment population in 2019. Of the 23,286 employees in the metallic sector, only 2,423 were female²²² and the rest were male. In the non-metallic sector, 175 of the 1,630 employees were 'non-indigenous' female employees;²²³ while the oil and gas sector had 247 male and 152 female employees.

²¹⁹ PH-EITI, Beneficial Ownership Registry, accessible at: <https://pheiti.dof.gov.ph/boregistry/>

²²⁰ This was undertaken pursuant to EITI Standard 2019, Requirement 6.3 on disaggregation of employment data by gender and, when available, by company and occupational level, at <https://eiti.org/document/eiti-standard-2019#r6-3>. See also, Guidance Note 30 - Towards Gender-Responsive EITI Implementation, at <https://eiti.org/document/guidance-note-30-towards-genderresponsive-eiti-implementation>

²²¹ The gender reporting data contain several gaps and discrepancies. In many instances, the total figures do not equate with the disaggregated data. In other instances, the questions were not fully answered or not responded to.

²²² Out of 2,423 female employees, 2,052 were 'non-indigenous' and 371 were 'indigenous'.

²²³ There is noted discrepancy in the figures as the data provided is limited to 'non-indigenous' female employees only, with no available data for 'indigenous' female employees.

Like their employed male counterparts, female employees were hired by the extractives companies either on a regular or probationary basis. Across all the sectors, most of the female employees have regular employment status.

Extractives Sector	Regular		Probationary	
	Male	Female	Male	Female
Metallic	14,891	1,994	666	100
Non-Metallic	1,595	281	41	20
Oil and Gas	183	136	4	2

Others were, nonetheless, engaged as project, seasonal, or sub-contractual workers. The reports, however, did not specify the types of projects they worked on, the nature of contracts they were engaged in, and the period during the year when they were hired. Based on the figures below, the numbers for seasonal and sub-contractual work could be significant.

Sector	Project Workers		Seasonal Workers		Sub-Contractual Workers	
	Male	Female	Male	Female	Male	Female
Metallic	1,869	503	2,751	393	5,001	563
Non-Metallic	1,156	74	242	44	2,011	135
Oil and Gas	54	11	n/a	n/a	69	10

Except in the oil and gas sector,²²⁴ women and men from both the host and neighboring barangays were hired by metallic and non-metallic mining companies. Reports submitted show that out of 8,732 company employees hired from the host barangays, 7,687 were men, while 1,045 were women.²²⁵ On the other hand, fewer individuals were recruited from the neighboring barangays, with a total of 5,244 employees, comprising 4,709 men and 535 women.

As regards foreign employment, six of the 41 companies in the metallic mining sector reported the presence of foreigners in their firms, with OceanaGold Philippines hiring 28 of the tallied 39 foreign employees/consultants.²²⁶ In the gender disaggregated data,

²²⁴ No available data for the oil and gas sector.

²²⁵ This represents the total number for metallic (8,181) and non-metallic (551) companies. Metallic mining companies had 7,200 men and 981 women; while non-metallic mining companies had 487 men and 64 women, respectively.

²²⁶ The 5 other companies included Philsaga Mining Corporation, Adnama Mining Resources, Inc., Sinosteel Philippines H.Y. Mining Corporation, Apex Mining Co., Inc., and Lepanto Consolidated Mining Company.

however, the total number of foreign workers was 50, with 17 male and zero female as regular employees; and 32 males and one female considered as foreign consultants.²²⁷ In the oil and gas sector, only Shell Philippines Exploration provided information, stating that it has six foreign workers who are all male.²²⁸

The gender reporting instrument also looked at the number of female employees based on rank in operations and administrative work; as well as on the nature of their work in the company. In terms of *rank*, female employees were mostly part of the rank and file, with a considerable number working as members of the junior staff, and a less significant number occupying senior staff positions. Regardless of rank, it is noted that more females were involved in administrative rather than operations work.

Sector	Female Employees per Rank (Operations)			Female Employees per Rank (Administrative)		
	Rank & File	Junior Staff	Senior Staff	Rank & File	Junior Staff	Senior Staff
Metallic	376	273	44	805	459	125
Non-Metallic	49	47	10	98	60	46
Oil and Gas	11	6	n/a	91	15	91

In terms of the *nature of work*, female employees performed varied types of work. Those in operations were described as mining engineers, geologists, chemists, metallurgists, electrical engineers, mill operators, drillers, and environmental rehabilitation officers; while those in the administrative units worked as accountants, bookkeepers, and office clerks. Some companies have at least one or two female lawyers, while others that did not have lawyers hired female employees as compliance officers, paralegals, legal clerks, or licensing and contracts coordinators. Female employees likewise performed work related to community relations; safety, health, and environment; warehouse and inventory; purchasing; and health care, such as doctors and nurses. Still others worked as company drivers, security guards, utility personnel, and housekeepers.

With the exception of 16 metallic and six non-metallic mining companies, all extractives companies, including in the oil and gas sector, claimed to have no employees' unions. The few companies that reported the presence of an employees' union also stated that they allow women employees to be members of such union. Reports show that 620 female employees from the mining sector were members of existing company unions.

²²⁷ This is one instance where the total numbers claimed did not sync with the sum of the disaggregated data reported.

²²⁸ No available data from the nonmetals sector

On the question of whether the companies have an all-women employees' association, only six metallic and one non-metallic mining company positively responded.²²⁹ Accordingly, the stated general purposes for such an association included the promotion of women empowerment, gender equality, and environmental sanitation within their companies. Most of these companies also allow their women employees to be members of such associations.

On the matter of compensation and benefits provided, majority of the companies across the mining, oil, and gas sectors stated that female employees received the same pay as their male counterparts of the same rank or position, or for work of the same nature. They were also given the same work assignments and opportunities as their male counterparts of the same educational training. Most female employees likewise have equal opportunities for promotion as their male colleagues with the same educational qualifications and who perform the same/similar work.²³⁰ One of the reasons for the affirmative responses was their strict adherence to company policy regarding promotion of equal employment opportunity and elimination of gender discrimination in the work place. Others, however, justified that employees' compensation was predominantly based on the employees' qualifications and performance evaluation, regardless of gender considerations.

Referring to the gross basic salary of female employees, there were notable differences across the sectors. In the *metallic mining sector*, nearly half of the senior staff received monthly salaries below Php60,000 and only 11 percent received more than Php100,000, with 24 percent receiving within the range of Php60,000 and P70,000; more than half of the junior staff received salaries below Php30,000; and 31 percent of the rank and file employees received Php10,000 to P15,000. In the *non-metallic sector*, 31 percent of the female senior staff received more than Php100,000, 15 percent received Php60,000 to Php70,000, and 23 percent received below Php60,000; for junior staff, 38 percent received less than Php30,000, 27 percent received Php40,000 to Php50,000, and another 27 percent received more than the P50,000 and P70,000 salary range; while most rank and file employees received Php10,000 to Php15,000 monthly salary. Gross salaries in the *oil and gas sector* were distinctly higher compared to the mining sector across all ranks, with the female senior staff receiving more than Php100,000; junior staff receiving within the range of Php50,000 to Php60,000; and rank and file employees, at Php20,000 to Php30,000 salary range per month.

The reports further show that all extractives companies provided the typical employees' leave benefits like maternity and paternity leaves. In addition, some companies (23

²²⁹ The six metallic mining companies were Apex Mining Co., Taganito Mining Corp., Philex Mining Corp., Cagdianao Mining Corp., Filminera Mineral Resources, Inc., and Hinatuan Mining Corporation. The lone non-metallic company was Republic Cement in Iligan.

²³⁰ Metallic mining companies: 78% to 88%; non-metallic mining companies: 73% to 84%; oil and gas: 100%.

metallic, 18 non-metallic, and 2 oil and gas) provided health insurance coverage. A smaller number provided day care services (6 metallic and 4 non-metallic), transportation from mining site to residence (4 metallic and 4 non-metallic), and hospitalization (5 metallic, 1 metallic, and 1 oil and gas). About 26 metallic and 14 non-metallic mining companies also claimed to provide women employees with housing benefits, which took the form of free lodging within company premises or rent subsidies outside company premises.

With regard to training opportunities, extractives companies (26 metallic, 14 nonmetallic, and 3 oil and gas) reported that they provided different skills training for their women employees. These training activities relate to livelihood skills (e.g., baking, food processing, candle-making) and technical skills (e.g., computer literacy, bookkeeping, accounting, emergency response). Similar trainings were also arranged by some companies (27 metallic and 12 non-metallic) for women from host and neighboring barangays.

Finally, the companies responded to questions about the more sensitive issues regarding equal employment opportunity and sexual harassment in the extractives industry. Most companies reported about the presence of relevant policies on equal employment opportunity (33 metallic, 24 non-metallic, 3 oil and gas); as well as policies against sexual harassment, including written procedures for investigating sexual harassment complaints (34 metallic, 23 non-metallic, 3 oil and gas). While this is the case, data showed that not many companies have gender and development (GAD) officers nor have they discussed gender/gender issues in their companies (12 metallic, 5 non-metallic, 3 oil and gas). In instances that there were gender-related discussions, the companies cited conversing about gender diversity and inclusion, gender preference and gender sensitivity, women empowerment, violence against women and children, reproductive health, and human rights of women, among others.

As to whether they had knowledge of the occurrence of sexual harassment in the work place, seven mining companies declared having awareness of such cases. On the query of whether any of the company executives or supervisors have received complaints or have been informed, formally or informally, about issues affecting women employees, six mining companies cited sexual harassment issues. A fewer number of metallic mining companies (ranging from one company to four companies) mentioned issues concerning unsafe or inappropriate working conditions for women, personal safety and security, disrespect of women, domestic violence and other forms of abuse, lack of services for women-specific needs, and varied forms of discrimination in the work place. Except for sexual harassment, disrespect of women, and discrimination concerns, non-metallic mining companies reported not receiving similar complaints or issues against their executives/supervisors. The three oil and gas companies likewise reported the absence of any such gender-related incidents or complaints.

B. Gender Data Reporting Considerations

With gender as an emergent policy area in Philippine governance, deeper efforts to mainstream gender and women's participation in the governance process were being undertaken in the context of the Philippine Open Government Partnership (PH-OGP) National Action Plan 2019-2021.²³¹ In its paragraphs on women and gender, the action plan cited the commitment of DOF, through PH-EITI, in launching a gender scoping study and gender audit tool to assess gender-inclusivity among extractives companies.

In 2019, the PH-EITI commissioned such scoping study on women and large-scale mining in the Philippines.²³² Using gender analysis, human rights, and sustainable livelihood frameworks, the study attempted to explore the situation of women who are employed in large-scale mining companies. To some extent, the results of the study are consistent with the indicative findings from the companies' gender data reports. The study highlighted the growing involvement of women in mining, albeit still considered small in terms of the nature of work that they perform. It also mentioned their lack of meaningful participation in the development of programs that affect women, such as the companies' social development and management program (SDMP). Finally, it cited the absence of gender dimensions in existing mining laws, policies, and administrative issuances.

Important considerations for gender data reporting can be drawn from the recommendations of the scoping study. Among these include the need to identify: (a) gender-based barriers that exist in the employment of women in the mining industry, and measures that the government should undertake or has undertaken to address these barriers; (b) social, environment, and economic impacts of mining on women, particularly in terms of reducing poverty and sustaining livelihoods among rural women and men in host and neighboring barangays; (c) adoption of equal opportunity policy for the employment of women, particularly of rural women; (d) education and training of women, particularly rural women, that would make them qualified for work in mining operations; (e) sex-disaggregated data that goes beyond the number of women and men employees, including as well the nature of work they perform in specific and detailed categories, their participation in decision-making and in the development and implementation of programs, their gender issues and concerns, and the programs that have been developed to address those issues and concerns; (f) data specific to rural women employees; (g) level and quality of participation of rural women in the planning, development, and implementation of their SDMPs; (h) guidelines on the inclusion of gender-responsive projects in the SDMPs

²³¹ The Philippine Open Government Partnership (PH-OGP) National Action Plan (NAP), 2019-2021: *Genuine Co-Creation for Transformative Outcomes: towards a more open government, towards a more felt government*, Retrieved from: https://www.opengovpartnership.org/wp-content/uploads/2019/12/Philippines_Action-Plan_2019-2021.pdf

²³² Ursua, E., Baquirin, A., Real, M., and Villalba, M., *Women and Large-Scale Mining in the Philippines: A Scoping Study*, commissioned by the PH-EITI (October 2020).

that target rural women in impact communities; and (i) voluntary participation of mining companies in the UN Global Compact.²³³

VII. Strengthening PH-EITI Data and Data Disclosure

A. Summary of Disclosed Data

The data disclosed for the Seventh PH-EITI Report were mostly obtained from two primary sources, namely: the official websites of the relevant government institutions and the data or reports that government and corporate entities submitted to PH-EITI. Data from the government entities were typically acquired after a request is made by the PH-EITI. On the other hand, reports from the extractives companies were voluntarily submitted as requested or, particularly for the mining sector, in compliance with the directive for them to participate in PH-EITI.²³⁴ In most cases, these were requested to generate more updated information, to fill up gaps from government or corporate disclosures, or to address specific PH-EITI objectives like those relating to beneficial ownership information, environmental funds, and gender-related data.

Below is a summary of the disclosed data based on the chapter outline, with remarks on the data sources:

Disclosed Data	Remarks on Data Source
I. Legal and Institutional Framework	
A. Legal and Fiscal Regime	<p>The 1987 Constitution and all national laws are available in the <i>Official Gazette</i>, the official journal of the Republic of the Philippines. https://www.officialgazette.gov.ph/</p> <p>Copies of the administrative orders, memorandum circulars, rules and regulations issued by implementing agencies are available in their respective websites, such as the BIR revenue regulations (https://www.bir.gov.ph/index.php/revenue-issuances/revenue-regulations.html). The DENR-MGB also has a regularly updated database portal for all its rules and regulations, at http://databaseportal.mgb.gov.ph/#/public/documents/AD/Rules%20and%20Regulations</p> <p>Decisions and resolutions of the Supreme Court of the Philippines are likewise available in its official website, https://sc.judiciary.gov.ph/</p>

²³³ The UN Global Compact encourages companies to align their strategies and operations with the universal principles of human rights, labor, environment, and anti-corruption, and take actions that advance societal goals. Available at: <https://www.unglobalcompact.org/what-is-gc>

²³⁴ DENR Admin. Order No. 2017-07, *Mandating Mining Contractors to Participate in the Philippine Extractive Transparency Initiative (PH-EITI)*, retrieved from: <http://databaseportal.mgb.gov.ph/mgb-public/api/attachments/download?key=ifTteFwqRme9GkljAx3MYtvTSoVPgwHCnYLtelwN1jbavsFYH3Gj95nd8Ga7BWtf>

	<p>Congress has <i>LEGIS</i>, a search-based system that allows access to the full texts of legislative bills, including information on the history and status of the proposals from the 8th Congress up to the present 18th Congress, at https://congress.gov.ph/legis/</p> <p>The DOE regularly publishes comprehensive annual reports, which contain information that is useful for PH-EITI reporting. However, it has not published an annual report for 2019. Instead, the DOE published an <i>Energy Sector Accomplishment Report</i> for 2019, which was merely a brief input to the 2019 State of the Nation Address of the President of the Philippines. https://www.doe.gov.ph/sites/default/files/pdf/transparency/2019-esar.pdf</p> <p>Other information from the sector may be navigated through the different pages of the DOE's official website. https://www.doe.gov.ph/</p>
B. Contracts and License Allocations	<p>Data on the latest approved, cancelled, and expired mining permits and contracts are publicly available and may be accessed through the DENR-MGB's official website and database portal, at https://mgb.gov.ph/2015-05-13-01-44-56/2015-05-13-01-47-51 and http://databaseportal.mgb.gov.ph/?fbclid=IwAR0bjKg7byM8v650B_YKrNU_3cmgXjnhV4fTdbGxqqnjQCCs3DB39LIZ36M%23/public#/public.</p> <p>Copies of these contracts and associated documents may also be accessed at the PH-EITI Contracts Portal, at https://contractspeiti.dof.gov.ph</p> <p>The DOE official website provides information on active petroleum service contracts but only as of 2018. A more updated list of petroleum service contract operators was submitted by DOE to the PH-EITI Secretariat for inclusion in the 7th Report. https://www.doe.gov.ph/energy-information-resources?q=energy-resources/sc-operators&ckattempt=1</p> <p>The DOE official website likewise provides information on the coal contract system. However, more current data was provided by the DOE to the PH-EITI Secretariat for inclusion in the 7th Report. https://www.doe.gov.ph/energy-statistics?q=energy-resources/philippine-coal-contract-system</p>
C. State Participation	<p>For mining, PMDC has an official website, which contains 2019 data on the different projects that it is managing, i.e., mineral reservations, PMO assets, and cancelled tenements, at https://pmdc.com.ph/site/#</p> <p>For coal, oil and gas, PNOC-EC has an official website and an <i>Annual Report</i> for 2019. Both contain important data on the nature and degree of state participation in petroleum service contracts as well as in coal operating contracts. https://www.pnoc-ec.com.ph/</p> <p>However, it is observed that the changes and consequent transfer of ownership are reported as matters of fact or after-the-fact of such transfers. How these changes and transfers are negotiated and decided is not clear from the official website and report.</p>

<p>II. Industry Potential</p>	<p>Data on mineral resources were based on the official website of the DENR-MGB, https://mgb.gov.ph/images/Mineral_Statistics/mining_facts_and_figures_updated_22_June_2020_final.pdf</p> <p>Data on mineral reserves, a 2016 version, were taken from the official website of the PSA, at https://psa.gov.ph/content/mineral-resources</p>
<p>A. Exploration Activities</p>	<p>The official website of the DENR-MGB provides updated information on the number of registered mining exploration permits and those that were still under process. https://mgb.gov.ph/images/Mineral_Statistics/MIS_3Yr_Qtrly-2018_to_Q1-2021_for_UPLOAD_as_of_28_May_2021.pdf</p> <p>The PNOC-EC official website and 2019 annual report stood as basis for obtaining information on coal, oil and gas exploration. https://www.pnoc-ec.com.ph/</p> <p>The DOE official website has a page dedicated to PCECP. It has a map of pre-determined and nominated areas for petroleum and coal exploration, relevant departmental circulars, and an outline of the process for securing contracts through the program, at https://www.doe.gov.ph/pcecp. However, there is no available data on how the PCECP process is actually implemented.</p> <p>The MOU on Cooperation on Oil and Gas Development between Philippines and China was published online and referred to in the news. However, the text of the MOU is not available in official online platforms.</p>
<p>B. Production Data</p>	<p>The DENR-MGB's official website provides updated data on total gross production value for metallic and non-metallic mining. It also contains mineral production volume and value for the metallic sector, by commodity (for 1998 to 2020) and by company (2019). https://mgb.gov.ph/2015-05-13-01-44-56/2015-05-13-01-47-51</p> <p>The DOE's official website contains monthly production data of five petroleum service contract operators. It also published the <i>Key Energy Statistics for 2019</i>, which includes data on production of oil and gas, by source. https://www.doe.gov.ph/sites/default/files/pdf/energy_resources/2019_monthly_production_dec.PDF and https://www.doe.gov.ph/sites/default/files/pdf/energy_statistics/2019-key-energy-statistics.pdf</p> <p>The DOE's official website likewise provides illustrated statistics on coal production, at https://www.doe.gov.ph/energy-statistics?q=energy-resources/coal-statistics&ckattempt=1. Coal production data, by source, are also included in the <i>Key Energy Statistics for 2019</i>.</p>
<p>C. Export Data</p>	<p>The DENR-MGB's official website, <i>Mining Industry Statistics</i> page, includes data on exports of mineral and mineral products, citing PSA. (Link earlier provided)</p> <p>The country's export data on minerals and mineral products are disaggregated by the PSA according to commodity description, country of destination, volume, and value. This was submitted as a report by PSA to the PH-EITI Secretariat.</p>

	<p>DOE's official website, <i>Key Energy Statistics 2019</i>, provides data on oil production export, by country of destination. At the same time, PSA's report to PH-EITI provides oil and gas exports data, disaggregated by commodity, country of destination, volume, and FOB value. (Link earlier provided)</p> <p>It is noted, however, that the DOE and PSA used different units of measurement in their respective data disclosures. DOE used million barrels, whereas PSA used gross kilograms.</p> <p>For coal, DOE's official website, reflecting <i>Coal Statistics</i> and <i>Key Energy Statistics for 2019</i>, as well as PSA's submission to PH-EITI similarly provide data on volume and value of coal exports.</p> <p>It is also noted that the two agencies used different units of measurement, with DOE adopting million metric tons and PSA using billion gross kilograms.</p>
III. Contribution to Economy	
A. Contribution to GDP	<p>PSA published the <i>National Accounts of the Philippines</i> in January 2020, covering the first quarter of 2017 up to the fourth quarter of 2019. This includes data on gross national income and GDP, by industrial origin and percent contribution, at https://psa.gov.ph/sites/default/files/Q4%202019%20NAP%20Publication-9ch3.pdf</p> <p>While not included in the published national accounts, PSA also submitted a report to PH-EITI regarding GVA in Mining and Quarrying and GRDP, by region</p> <p>It is observed that in all its data, the PSA regarded <i>Mining and Quarrying (MAQ)</i> as part of the Industry Sector, different only from Manufacturing, Construction, Electricity, Gas and Water Supply sub-sectors. MAQ, for PSA, includes not just data on mining and quarrying, but also on coal, oil, and gas.</p> <p>This is made more explicit in its presentation of GVA in MAQ, by Industry Group, for 2017-2019, where "crude oil, natural gas, and condensate" was listed with metallic and non-metallic mining under the MAQ industry group.</p>
B. Revenue Contribution	<p>The DENR-MGB official website contains information on taxes, fees, royalties for mining; fees, charges, and royalties collected by MGB; excise taxes collected by BIR; those collected by other national government agencies; and taxes, fees, and charges collected by LGUs (Link earlier provided)</p> <p>The BIR submitted tax information requested by PH-EITI. The Large Tax Payers Service unit, in particular, provided information on 62 large taxpayers, disaggregated into coal, metallic and non-metallic, and oil and gas companies, and their respective income tax, VAT, excise tax, and other tax collections.</p>

<p>C. Employment Contribution</p>	<p>The DENR-MGB official website, Mineral Industry Statistics page, provides data on the number of workers in the mining industry.</p> <p>At the same time, the official website of the PSA released in May 2020 the <i>Statistical Tables on Labor Force Survey</i> (as of October 2019), with percent distribution of employed persons by sex, by region, and by major industry. https://psa.gov.ph/content/statistical-tables-labor-force-survey-lfs-october-2019</p> <p>It is assumed in this 7th Report that, based on earlier observation, whenever PSA cites MAQ data, it refers to metallic and non-metallic mining, coal, oil and gas. This may, however, need to be cross-checked with MGB data, as the numbers are not far apart for mining <i>per se</i>.</p>
<p>IV. Environmental Funds and Other Environment-Related Data</p>	<p>The DENR-MGB official website provides some information on the mining companies' commitments for implementing approved EPEP and FMRDP. However, these are not disaggregated.</p> <p>PH-EITI's <i>ORE Tool</i> contains a raw compilation of mining company submissions of specific environmental funds for 2019, with columns on mandated amount, balance as of end of 2018, expenditures and any additional contributions in 2019, and balance amount as of end of 2019. However, not all companies submitted, or there were noticeable gaps in the information provided, and there were discrepancies in the final amounts by end of 2019.</p> <p>The DENR-EMB's official website has a repository of all environmentally critical projects (ECPs) — mining, coal, oil, and gas — that have issued ECCs. However, copies of the ECCs are not readily available, but may be requested through the site.</p> <p>For coal, oil, and gas projects, amounts of their EGFs and EMFs are likewise not readily available in the EMB website. It is noted in the substance of the 7th Report that the final amounts of these funds would be varied as these are negotiated by the proponent, DENR-EMB, and other stakeholders upon a consideration of different factors that may be unique to specific projects.</p>
<p>V. Beneficial Ownership</p>	<p>SEC policy on disclosure of beneficial ownership exists and there are recent issuances on the matter, specifically applying the disclosure policy on registered foreign corporations and providing for BO Transparency Guidelines, at https://www.sec.gov.ph/mc-2020/mc-no-30-s-2020/ and https://www.sec.gov.ph/mc-2021/mc-no-01-s-2021/</p> <p>Data disclosed was based on company declarations to SEC and/or submitted to PH-EITI as of June 2021. Scope of information in this 7th Report depended on the level of company participation, such as whether companies gave consent to the publication of information disclosed.</p> <p>The PH-EITI website has also developed a new Beneficial Ownership Registry page, at https://pheiti.dof.gov.ph/boregistry/</p>

VI. Gender-Related Extractives Data	<p>PSA's official website provides some data on gender and employment through its 2019 Statistical Labor Force Survey, specifically on the significance of the employment of women in MAQ across the regions. https://psa.gov.ph/content/statistical-tables-labor-force-survey-lfs-october-2019</p> <p>Company submissions to PH-EITI regarding their responses to a reporting template provide some information on different aspects of gender and employment in the extractives industry.</p>
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B. MSG Assessment of the Comprehensiveness and Reliability of Disclosed Data

The Multi-Stakeholder Group (MSG) noted the progress in PH-EITI data disclosures since the country committed to join EITI in 2012. Over the years, implementing agencies have produced relatively more substantive data in their respective websites and more companies have participated in PH-EITI efforts to promote transparency in the extractives industry. Online tools that increase transparency have likewise been developed, such as the Online Reporting in the Extractives (ORE) tool, the Contracts Portal, and the Extractives Disclosure Generator (EDGE) tool.²³⁵ However, progress accordingly still falls short of the EITI requirements on comprehensiveness and reliability of disclosed information, noting that more focus is still given on the technical aspects of reporting rather than on providing, through informed policy, concrete solutions to substantive issues concerning local governance and utilization of funds, among others. It is concluded that there remains a huge space for improvement in terms of providing access to timely, reliable, and accurate extractives data that improve extractives governance and eventually benefit the relevant stakeholders.

In December 2020, the PH-EITI, together with the MSG, convened an online *Conversations on Systematic and Comprehensive Data Disclosures* with representatives from different national government agencies and some participating companies. The activity looked into the challenges and constraints experienced in facilitating systematic and comprehensive data disclosures, and inquired about agency responses to effectively address these issues.

Of those invited to participate, the DENR-MGB, the Department of Budget and Management - Local Government and Regional Coordination Bureau (DBM-LGRCB), Bureau of Internal Revenue (BIR), Securities and Exchange Commission (SEC), Bureau of

²³⁵ *ORE* is an online tool that has been created to make reporting of companies and national government agencies more efficient and cost-effective. The *Contracts Portal* is a contracts registry where contracts and supporting documents of all PH-EITI participating companies are uploaded. The *EDGE portal* is part of the *Systematic Extractives Electronic Disclosure* initiative to make extractives data more accessible to the public.

Customs (BOC), Commission on Audit (COA), and DENR-Environmental Management Bureau (DENR-EMB) responded to the assessment questions.²³⁶

The agencies identified several challenges and constraints that may be grouped into issues of timeliness, readiness, comprehensiveness, and accessibility of disclosed data. Below is a summary of the said discussions:

Agency Issue	Challenge/Constraint
1. Timeliness	
DENR-MGB	Agency has an existing database, but updating of data from regional offices is not done/submitted to MGB at the same time; hence, different data are shown within certain periods, which affect reliability of data.
DBM-LGRCB	Agency shares data on national wealth fund releases to LGUs, but releases are delayed. Ideally, under the Local Government Code, collecting agencies provide DBM with information for fund release one year after the same is collected. Releases get delayed due to data reconciliation issues between collecting agency and the Bureau of Treasury. For instance, they have already collected in 2017, but DBM continues to receive collections up to 2020 for the same period. Hence, information does not timely reflect collections for the past year. Data do not fully reflect information attributable to delayed receipt of needed information.
SEC	While most companies have submitted their 2019-2020 data (including BO information) to the agency, as directed, there was marked delay in the receiving and consequent encoding of the GIS data as a result of the safety protocols in handling documents that need to be followed during the pandemic. GIS data are typically in printed and notarized forms.
2. Readiness	
DENR-MGB	Some of the other data required by PH-EITI are not readily updated or not efficiently reported. There is an apparent need to enhance their system of EITI reporting.
DBM-LGRCB	Some of the data that the agency receives contain inconsistencies and inaccuracies (e.g., in names or sub-total figures). These are sometimes returned to the collecting agencies for rectification of data before the same are processed by DBM. In addition, the data they receive are often submitted in different formats and are given in hard copies. It thus takes time for the agency to manually input and convert the printed data into soft copies/versions and to determine which government bank will the funds be eventually transmitted.

²³⁶ The Department of Energy (DOE), Philippine Ports Authority (PPA), National Commission on Indigenous Peoples (NCIP), Bureau of Treasury (BTr), Bureau of Local Government Finance (BLGF), and Philippine Statistics Authority (PSA) were also invited to attend. However, due to internet connectivity issues or prior commitments, these agencies were not able to participate in the discussion.

SEC	In terms of including beneficial ownership information in the GIS, some companies reported encountering difficulty in determining the beneficial owners based on the SEC's memorandum circular.
DENR-EMB	Clarification was sought about the scope of social and environmental expenditures, and whether EMF and EGF are contemplated as part of the expenditures that should be reported to PH-EITI. While EMB is in charge of the EMF and EGF that are set up by coal, oil, and gas companies, these funds are accordingly not directly paid to the agency but are deposited in government banks for use in MMT activities in case of the EMF and for compensation for environmental damages and rehabilitation in case of the EGF. Given the nature of the funds, and that these are negotiated per project, the amounts are not readily available.
3. Comprehensiveness and Accessibility	
BIR	The agency releases tax information based on the taxpayers' execution of waivers of confidentiality of data. However, such waiver is limited to one year only, hence, the coverage of the data that BIR can release is limited to that period alone. Any further data must be requested and issued on an annual basis. The desired comprehensive and multi-year waivers are problematic because of Section 270 of the NIRC as well as the possibility that the company officers (who are the authorized signatories of the waiver letters) change from year to year.
SEC	While the GIS may be accessed by the public upon request, the same is not true for disclosed beneficial ownership information. Disclosure is distinguished from publication of beneficial ownership data. There are data privacy considerations.
DBM-LGRCB	The agency can only share information to authorized entities, including to the local chief executives and/or their authorized representatives, if such is requested. Information is not readily shared. Any disclosure must be backed up by an imprimatur from the heads of office.
BOC	The agency has detailed summaries of importation data because of its online reporting tool for the submission of such information. While comprehensive, such information is not accessible to the general public. Like BIR, the agency regards as confidential the information on import duties and excise taxes. But this information may be provided to PH-EITI upon request. The agency does not collect revenues from the export of mining companies, but if data on the volume or value of export is requested, it can also provide such information.
DENR-EMB	The agency only posts the issued ECCs in their website. Copies of the EIS documents may nonetheless be requested by the public. A reservation was expressed as to whether the contents of the MOA entered into by EMB and proponent companies regarding the MMT can be publicly disclosed because of possible confidentiality issues. Legal advice from the agency's legal unit is required to determine proper regard for the said documents.

COA	The agency can only audit payments made to the government, such as royalty collections from mining companies operating within mineral reservation areas; fees and charges collected for the services rendered by the MGB; and mine wastes and tailings fees. Its auditing jurisdiction does not cover trust funds deposited with authorized government banks, e.g., SDMP, MTF, MRF, and FMR/DF, as these are deposited in the name of the mining companies and not paid to the government.
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In response to the foregoing challenges and constraints experienced by the national government agencies, several initiatives were undertaken or considered.

Agency	Action/Initiative
DENR-MGB	A new unit of IT personnel established. A centralized database system that follows the EITI reporting format proposed, where collection of data from the regional offices would be faster and more efficiently accomplished.
DBM-LGRCB	An online portal for national wealth releases being set-up for completion in 2021. Portal is downloadable in excel format and has a drill-down option that enables access to filtered and more relevant information for stakeholders, especially the LGUs. Initial page is accessible at: https://www.dbm.gov.ph/index.php/programs-projects/shares-in-the-utilization-and-development-of-national-wealth A joint memorandum circular with agencies drafted to address issue on form and format of the reports
BIR	Option to issue waivers for more than one year left with the companies, with a proviso that the latter update the waiver if there would be any changes in the circumstances of the previous signatories. Extension of waivers authorized as a mandate from concerned government agencies may be considered. Any policy or issuance or inter-agency MOA authorizing extension of such waivers will be followed.
SEC	Guidelines for information-sharing on the beneficial ownership information being drafted. Among the solutions include: (a) facilitation of agency-to-agency requests, esp. as regards law enforcement agencies, that will be directed to the Office of the SEC chairperson; and (b) signing of MOU between or among government agencies.
COA	Compliance audit ongoing to determine whether the trust funds should be payable to MGB or retained in the custody of the mining companies. Resolution No. 2020-03 was issued prescribing guidelines on compliance audit. Results of compliance audit to be published in COA website. 2017 findings about the opportunity costs incurred by the government for the non-imposition of royalty fees to mining companies operating outside the mineral reservation areas shared and now considered in a bill pending in the Senate. Collections audited, royalties and fees assessed based on audit, and several Notices of Charge issued for the underassessment of these fees and charges.

C. Efforts towards Systematic Disclosure and Mainstreaming

The disclosure of information in the extractives industry is envisioned as a routine activity of the government and the private sector. Such systematic disclosure and mainstreaming of extractives data should apply in all thematic areas of PH-EITI implementation, such as in contract transparency, government revenues, company payments, beneficial ownership, social and environmental expenditures, as well as gender and employment. This could include enabling access to PH-EITI data through public financial reporting, annual company or government agency reports, information portals, and other open data and freedom of information initiatives.

For the Seventh PH-EITI Report, the country has made progress in its efforts towards systematic disclosure and mainstreaming.

Publication of the Mainstreaming Feasibility Study

A mainstreaming feasibility study comprising two phases was undertaken with the overall aim of informing PH-EITI and EITI implementing agencies how EITI can be systematically disclosed. The first phase involved the development of work plan, methodology, and outline of the study; stakeholder consultations and an initial draft. The second phase firms this up with the production of a mainstreaming road map including detailed action steps, and finalization of the feasibility study.

The first phase of the mainstreaming feasibility study was completed and is now published on the PH-EITI website.²³⁷ The initial findings of the study recommended that the MSG and implementing agencies agree on clear objectives and approach to mainstreaming, develop a mainstreaming roadmap, enact and implement enabling policies, utilize existing online platforms of PH-EITI, and identify the actions within a specific time frame in order to effectively mainstream PH-EITI data. A mainstreaming workshop was thereafter arranged for this purpose.

Mainstreaming consultation sessions with extractives stakeholders

With the assistance of the PH-EITI secretariat, the consultant for the mainstreaming feasibility study facilitated a consultation session with implementing agencies in order to finalize the feasibility study and develop a mainstreaming action plan. A significant number of MSG members participated and around 70 representatives from over 15 government agencies attended the activity.

A special session was subsequently held for members of the extractives industry, with 80 representatives from 25 metallic and 16 nonmetallic mining companies in attendance. A

²³⁷ <http://ph-eiti.dof.gov.ph/>

separate consultation session with the PH-EITI secretariat and with civil society organizations was likewise held.

Among the emerging insights that were drawn from the consultation sessions include: (a) the redefinition of systematic disclosure or the adaptation of EITI mainstreaming in the context of the Philippines; (b) the continued relevance of reconciliation at least in the interim and in particular data sets; (c) the significance of a schematic design or some form of visualization to better communicate how systematic disclosure will look like; (d) the combination of centralized and decentralized disclosures as the country's model of mainstreaming, at least in the interim, to facilitate efficient aggregation of data for analysis; and (e) redefining the role of the MSG and the Secretariat under PH-EITI mainstreaming.

VIII. Conclusion

This chapter presented the contextual information for the Seventh PH-EITI Report and covered a discussion of the disclosures made by the implementing agencies and participating companies, through their respective websites or through the reports they submitted to the PH-EITI Secretariat. Apart from the legal and regulatory frameworks, the chapter provided information about the industry's potential and its contribution to the economy, in terms of percentage of GDP, revenue collection, and employment. The chapter also delved into relevant information about the industry's environmental funds, beneficial ownership disclosures, and gender-related data. Finally, it discussed ways of strengthening PH-EITI data and data disclosures, with an assessment of the comprehensiveness and reliability of the disclosed data and a discussion of ongoing efforts towards systematic disclosure and mainstreaming.

This chapter concludes with substantive and process-related recommendations for consideration in future PH-EITI reports:

Re-directing PH-EITI lens on small-scale mining

Efforts to intensify the regulation of the small-scale mining industry were noted, given the observation that the industry has not always performed manually with simple tools, has remained tax-free, and has not undertaken responsibility for its environmental impacts.

At the same time, the DENR-MGB has targeted to declare new 150 small-scale mining areas or *Minahang Bayan* in the course of three years and to expedite the processing of such applications nationwide.

It is noted that previous PH-EITI reports have already included a scoping study on small-scale mining. However, these developments should place the small-scale industry within the radar of PH-EITI efforts in promoting transparency and accountability in the sector.

Looking at the removal of the moratorium on new mining agreements and need for a new fiscal regime for the mining industry

In previous PH-EITI reports, there has always been a discussion about the significance of the mining industry's contribution to the Philippine economy. The establishment of a new and better fiscal regime for the mining industry was seen as the answer. It is for this reason that Congress in the last years became occupied with a number of legislative proposals to determine the appropriate fiscal regime that will bring forth real and felt contributions to the country's economic growth.

With the issuance of Exec. Order No. 130 (2021), which, in effect, lifted the nine-year old moratorium on new mineral agreements and allowed the government to enter into such new contracts, it is important for PH-EITI to look into its implications on both the fiscal and non-fiscal aspects of mining activities. When the executive issuance mentioned about "appropriate measures" to rationalize existing revenue sharing schemes and mechanisms, issues concerning the necessity of a new fiscal regime or its impact on existing legislative bills on the matter are undoubtedly raised.

Dealing with the global and national transition to a low-carbon economy

PH-EITI should begin to look at how it will deal with the global and national transition to a low carbon economy. This report has cited the country's policy direction towards strengthening renewable sources of energy, which is in line with international developments on climate change and sustainable development.

The transition to a sustainable and decarbonized economy will definitely reshape the extractives industry. It will have profound implications on the kinds of data, disclosures, and dialogues that will be required to support accountable and good governance in the industry.

Transparency is central to ongoing efforts to support the energy transition, and that includes possibly the need for PH-EITI to later include an industry reporting on emissions and disclosure of climate risks.

Achieving reliability of reported/disclosed data

This report has cited significant progress in PH-EITI reporting over the years. For the 7th Report, a number of data gaps and inconsistencies were nonetheless observed, which affect the comprehensiveness and reliability of the data reported.

It is recommended that implementing agencies agree on the scope or coverage of the reports, including the units of measurement to be used in such reporting tools. For instance, PSA used *Mining and Quarrying* as inclusive of mining, coal, oil and gas. As its

data is not always disaggregated, it is possible that the DENR-MGB, when citing the PSA figures, would attribute the same figures to the mining industry alone. Different implementing agencies likewise employ different units of measurement in their reports, such that it could be a challenge to provide a comparable and reliable assessment of some important data.

It is also recommended that there is an agreement or guidance as to which agency's data should be used for the PH-EITI report in situations where two or more agencies provide different or inconsistent or contradictory data.

Still on the scope and coverage of the reports, it is recommended that the year/s covered are clear from the guidelines/templates provided. For the 7th Report, for example, the implementing agencies as well as the participating companies should only include data for the fiscal year/s covered by such report. Having the same reporting scope or coverage period is useful when making a comparative analysis across sectors and within the same sector but across different years.

Social, Environmental, and Gender Data

This chapter mentioned about funds *committed* by companies for the implementation of activities under their approved EPEP and FMRDP. At the same time, the report cited the realignment of unused SDMP funds to support affected communities due to COVID-19 as well as typhoon victims within host and neighboring communities, and the consequent benefits to numerous households and frontliners nationwide. It is recommended that future PH-EITI reports include more detailed information, such as data on *committed* vis a vis *actual* amounts spent, specific local communities or other individuals/entities that actually received these benefits, types of projects, and process used for determining priority areas/projects.

The gender reporting tool was a good start to encourage companies to disclose data on the gender and employment dimensions of the extractives industry. The reporting tool could be enhanced so it is able to generate in-depth data that could sufficiently inform policy reform in the gender and employment arena. For instance, while the reports provided numbers on the project, seasonal, and sub-contractual female workers in the companies, the same did not give specific data on the types of projects, period or seasons within the year, or nature of contracts performed by such female workers.

The ORE Tool

This report relied on the ORE Tool for the paragraphs on Environmental Funds and Other Related Data. The tabulated information requires crucial improvements in terms of achieving accuracy, completeness, and reliability of data reported by participating companies. The information was disaggregated according to the types of environmental

funds and was intended to provide data changes from 2018 to 2019, by looking at the beginning balance, expenditures, additional funds made, and ending balance. However, an accounting of the figures presented showed varied data gaps and discrepancies in total amounts.

It is recommended that the templates for the ORE Tool be reviewed and revised. It may also be worthwhile for PH-EITI to convene learning sessions with responsible persons from the participating companies on the use of the ORE Tool.

Continuing efforts at systematic disclosure and mainstreaming

The initial gains of PH-EITI's mainstreaming efforts are commendable and should be continuously supported. In a gradual pace, implementing agencies and participating companies should increasingly regard information disclosure as a matter of routine business activity in all thematic areas of PH-EITI implementation, such as in contract transparency, government revenues, company payments, beneficial ownership, social and environmental expenditures, as well as gender and employment.

As this happens, the role of the PH-EITI MSG and PH-EITI secretariat is seen as evolving from its focal role in preparing the annual PH-EITI reports into one that effectively monitors the comprehensiveness and reliability of the agency and company disclosures, substantively analyzes the data, raises public awareness, convenes dialogues to inform policy, and develops recommendations for policy reforms.

Reiterating recommendations from previous PH-EITI Reports

This report reiterates some of the recommendations mentioned in previous PH-EITI reports, with additional inputs, as follows:

Strict implementation of DENR Admin. Order No. 2017-07.

DENR Admin. Order No. 2017-07 mandates mining contractors to participate in PH-EITI in accordance with the requirements set by the MSG, where the government, the industry, and civil society are represented. While the issuance clearly demonstrates the commitment of the DENR-MGB to ensure more transparency and accountability from the sector, the implementing rules and regulations should be immediately issued to properly guide companies on what constitutes compliance with EITI standards and the corresponding implications for non-participation.

In addition, it is worth reminding that the DENR-EMB is equally tasked to promote the objectives of the administrative issuance, with both the MGB and EMB mandated to disclose all the information requested by the PH-EITI in a timely manner. The EMB may use the administrative issuance or issue its own circular to require environmentally critical

projects other than mining (i.e., coal, oil and gas) to disclose environmental funds like its EMF and EGF as part of the conditions of its ECCs or as part of the implementation of the Philippine EIS system.

Participation of oil and gas and coal sectors, and increased participation of non-metallic mining and small-scale mining

While the oil and gas sector has been consistently represented in previous PH-EITI reports, it is recommended that the DOE issue an administrative order similar to DENR Admin. Order No. 2017-07 to further promote accountability and transparency in the sector.

Although more non-metallic mining companies have participated in the 7th Report, it is recommended that efforts are consistently exerted to encourage more metallic mining companies to engage with PH-EITI and disclose relevant information. This would include initiatives to clarify and allay concerns about data disclosures, to explain the scope and extent of waiver, and to highlight the benefits that they may derive from such participation.

In addition, as efforts to regulate small-scale mining intensifies and as the government declares more small-scale mining areas (*Minahang Bayans*), small-scale mining associations should likewise be increasingly engaged to participate in PH-EITI.

Encouraging other industry stakeholders from the government

It is recommended that additional representatives from other government agencies, such as the NCIP, BOC and EMB, be invited to the MSG and other technical working groups formed by PH-EITI. Considering that extractives activities pass through ancestral lands and ancestral domain claims, which are within the mandate of the NCIP, the agency should be duly represented to ensure that it is fully aware of the PH-EITI requirements and for it to consider the steps taken by other government agencies.