

CSO National Conference and Action Planning Workshop 17-18 February 2016, Manila Hotel

EXECUTIVE SUMMARY

The 2016 CSO National Conference and Action Planning Workshop was held on February 17-18, 2016 at the Manila Hotel. The CSO event, which dovetailed with the launch of the 2nd EITI Country Report during the 4th Philippine EITI National Conference. The 4th CSO National Conference organized by Bantay Kita was supported by the USAID through the Development Alternatives Inc. (DAI), the British Embassy Manila, Christian Aid, and 11.11.11.

The national conference had three major objectives: (1) to build the capacity of CSOs in understanding the EITI report and the related documents disclosed by the EITI process; (2) to increase the understanding of CSOs of the extractive industry; (3) to strengthen the CSO coalition by identifying activities that the coalition members deem relevant given the extractive industry context in the country that will feed into policy formulation and advocacy. The expected deliverables include: conference documentation report, 4 Action Plans from the subnational CSOs of Luzon, Visayas and Mindanao and the IP group.

There was a total of 137 participants during the event, 76 (or 55%) of which comprises male while the rest or 61 of the total population are female. There were representatives from development partner agencies such as USAID, British Embassy, Christian Aid, DAI, ADB, Australian Embassy, Natural Resource Governance Institute, Triple 11, and World Bank. Majority or 70% of the attendees were CSO participants from the 3 island groups of Luzon, Visayas and Mindanao, and the special group of Indigenous Peoples though mostly from Mindanao areas as well. The rest of the attendees comprised of the speakers, resource persons and the Bantay Kita secretariat.

The conference served as an avenue of knowledge sharing on various topics related to EI, to share Bantay Kita's research findings on the socio-economic impact of mining, lessons learned from project implementation, and on the findings of the monitoring tools the coalition has implemented. The event likewise served as platform to introduce the CSO representatives to the PH-EITI MSG. Below is a summary of the presentations and activities conducted during the 2-day CSO conference.

- Director Daniel Miller from USAID-Philippines commended Bantay Kita and CSO representatives to the PH-EITI MSG for the works being done in effectively holding the government accountable for funds received from extractive industry on behalf of the

Filipino people. He praised the CSO representatives for their steadfast support to the government towards achieving EITI compliant status in 2016.

Mr. Miller shared USAID's conviction that the Philippine EITI represents the Filipino's hope for a future when more of the financial returns from extractive industries flow down to communities and benefit the people. He thus urged everyone to sustain commitment to the transparency and accountability and good governance as they engage in the EITI process.

- Mr. Stephen Lysaght, 1st Secretary & Head of the Political and Economic Team British Embassy Manila shared that from the perspective of UK government, EITI is there to help unleash the economic potentials in the Philippines. He reminded thought that there is a need also to look at agriculture and other sectors of the economy while issues in the mining sector continues to be addressed.
- The global trends on transparency and accountability was presented by Mr. Jelson Garcia, Asia Pacific Director of the Natural Resource Governance Institute. He discussed about several international initiatives that aim to strengthen and expand the framework for disclosure among which are: the EITI in 2003, the US Dodd-Frank Wall Street Reform Act and Consumer Protection Act in 2012, the EU Accounting and Transparency Directives in 2013, the Extractive Sector Transparency Measures Act of Canada in 2014, and the Swiss proposal for mandatory reporting standards for the extractive sector also in 2014.

Mr. Garcia also apprised about the rise of disclosure and accountability framework among Multilateral Development Banks of MDBs particularly those of the World Bank, Asian Development Bank and the International Finance Corporation. He also mentioned that other regional development banks like the African Development Bank and the European Bank for Reconstruction and Development are also following and building up on the initiatives taken by the MDBs.

In terms of emerging norms on contract disclosure, Mr. Garcia presented NREGI data which showed countries with systematic disclosure system.

1. Dr. Cielo Magno, National Coordinator of Bantay Kita, discussed on the Mining Development Framework where she presented the minimum recommendations for mining sector to be able to contribute to sustainable development: (1) there should be good governance; (2) there should be fair share in the EI; (3) Government should have the

capacity to manage the proceeds; and (4) the downstream industry has to be established and has to be linked with other sectors, to maximize the benefits of the extractive industry.

The following are the reforms needed in terms of governance: strengthen monitoring of IP royalties, institutionalize accountability mechanisms, strengthen regulatory capacity and develop the downstream industry.

2. A study on Black Sand Mining/Quarrying was presented by Atty. Jay Batongbacal, Associate Professor in UP College of Law. Based on the study, people think that black sand does not carry much value, but actually billions of dollars are made out of this material. Black sand is used principally in magnetic storage of data like hard drives, sim cards and other electronics. This can also be used in the manufacture of less high-technology materials such steel, machinery, tools and other electronics. Atty. Batongbacal presented the legal framework and current status of marine mining in the Philippines and highlighted the possible impacts if the activity is not properly managed and regulated.
 3. A presentation on Small Scale Mining done by Atty. Golda Benjamin, Instructor in Siliman University showed that while the trend in large-scale and non-metallic mining production value have increased trends, small scale gold mining showed a sharp drop from P42.9 Billion in 2010 to P0.3 Billion in 2013. Related issues on taxation, licensing, environmental regulation, best practices and other concerns that need attention in small scale mining were also discussed.
 4. Atty. Dante Gatmaytan, Professor in UP College of Law presented on the new opportunities for reform in the natural resource governance sector. He mentioned that there is an encouraging trend in the environmental and local autonomy case law by briefly discussing on 3 legal cases where Supreme Court decision led to the shutdown of operations of some mining companies. This is telling that the battle to stop irresponsible mining continues even after the grant of permits. Further this means that there are new opportunities in the struggle to protect communities from the harmful effects of large scale mining.
- The CSO initial and macro assessment of the 2nd EITI Report was presented by Starjoan Villanueva, Executive Director of the Alternative Forum for Research in Mindanao (AFRIM) and CSO Representative to the PH-EITI MSG. Among the assessment results are: 1) the 2013 contribution of the EI to the economy was not significant; 2) there is a problem with the IA materiality threshold of P1 Billion; 3) National government has the bigger share (vis-à-vis LGU) in mining revenue yet they do not host mining activities and is even not exposed

to risks; 4) Government received a small amount in relation to the industry take. This is not fair share.

- The Mining Transparency Index (MTI) was presented by Marco Zaplan, Communications and Research Analyst of Bantay Kita. The tool was developed to determine the level of transparency in the mining industry in the country and will be used to rank companies and government agencies based on their level of disclosure in the following areas: financial, social and environmental, operations, documentary and commitment to Transparency
- The Beneficial Ownership topic was discussed by Madeleine Aloria, Researcher in Action for Economic Reforms. The importance of disclosure of beneficial ownership was discussed with focus on enforcing foreign ownership restrictions and promoting accountability of public officials. The results of preliminary analysis on the beneficial owners of 15 mining companies was presented.
- Mr. Anton Miguel Ragos, Researcher in Action for Economic Reforms, presented a study on Social Development and Management Program (SDMP) including the regulatory framework, steps in implementation, projects and activities under Community Development Programs which make up 75% of the fund. Some observed issues and concerns were discussed, and recommendations were presented which included: allowing for direct LGU involvement, earmarking for social development, subjecting the SDMP fund to local public finance process to improve accountability and transparency, allowing for strategic use of funds under municipal jurisdiction and minimizing mining company discretion.
- Presentation on the Philippine Environmental Impact Statement System (PEISS) was done by Ms. Gina Tumlos, Legal Consultant in Bantay Kita. She discussed on the processes, stages where public participation can supposedly be done, the gaps and weaknesses in the system and finally the recommendations. According to Atty. Tumlos, the process should not always start with a question of whether the project is feasible or appropriate, but rather, the process should always start by comparing alternatives. Then all succeeding steps be continuously and carefully monitored. The goal of the EIS process is not to increase bureaucracy and paperwork, but to facilitate an informed decision-making in the proposal, implementation and monitoring stages of any mining activity.
- Mr. Melvin Lamanilao, Consultant on Ancestral Domain Natural Resource Governance presented Bantay Kita's experiences in subnational implementation of transparency and accountability initiatives, citing as models the ones currently implemented in the Compostela Valley (ComVal) and the South Cotabato.

The “Chain for Change” value chain can be adopted as the conceptual framework for the subnational initiative. Likened to a house, the framework has four interrelated pillars, in the absence of any one, the house will fall. These four interrelated pillars are: 1) Publish why you pay and how you extract; 2) Publish what you pay; 3) Publish what you earn and how you spend; and 4) Publish what you learn so that the champions will increase in number

The following are the important steps and milestones in subnational implementation:

1) Mapping the stakeholders; 2) Power relations or identifying who among the stakeholders are weak that needs to be empowered; 3) Empowering the powerless; 4) Multiplying the champions; and 5) Institutionalizing multi-stakeholder partnerships.

- Before the 1st day of the CSO conference ended, the nominees to the CSO representatives to the PH-EITI MSG were presented to the body. There were 15 nominees from the CSOs and 2 IP representatives.
- The 2nd day of the conference started with capacity building workshop where participants were divided into groups to work on the following topics: 1) FPIC, Community Based Agreements and Royalty Payments, MOA Renegotiation; 2) Monitoring Environmental Hazards of mining activities; 3) Legal framework of environmental monitoring in capacity building; and 4) Small scale mining.
- The 2015 accomplishments of Bantay Kita was presented by Bantay Kita Deputy National Coordinator Tina Pimentel. The accomplishments were in 3 areas namely: capacity building and advocacy, research and PH-EITI works.

In the area of Capacity Building and Advocacy, *Bantay Kita* intensified its efforts in capacitating and engaging with various stakeholders at the international, national, and local level. In Research, BK did a number of studies and published modules and popular materials. For PH-EITI, Bantay Kita actively participated in the meaningful dialogues and debates with multi-stakeholders and pushed for greater reforms in extractive governance, beyond payments and revenues. The 2nd EITI Country Report where BK, as part of the MSG, actively participated, has been issued in December.

- Dr. Cielo Magno, Bantay Kita National Coordinator presented the Bantay Kita Strategic Framework for the adoption of the coalition. The framework was presented in a logframe which showed the Problem Tree analysis summarizing the causes of the problem in mining

sector: Weak management and governance of natural resource, Fiscal management contributing poorly to development, weak monitoring of environmental compliance which negates economic gains of mining and impaired participation of small local players.

If the problems are addressed, then the benefits being derived from the extractive industries will be maximized. The Objectives Tree depicts the things that need to be done by Bantay Kita as a coalition and this should guide participants in the action planning workshop.

- For the Action Planning Workshop, participants were divided into 4 groups, Luzon, Visayas, Mindanao and IP groups. The expected outputs from the workshop include an Action Plan from each of the Island Groups and IP Communities and at least 1 Activity Proposal per group.
- The culminating point of the conference was the presentation of outputs from the action planning workshop.

CONFERENCE DOCUMENTATION

Day 1

The two-day CSO conference was officially opened at 9:25am with the facilitator acknowledging the presence of development partners from USAID, British Embassy in Manila, Christian Aid, and 11.11.11. CSO partners and Peoples Organizations partners from Luzon, Visayas, Mindanao and IP Communities were also acknowledged.

Overview of the Conference

Speaker: Ms. Maria Kristina Pimentel, Deputy Coordinator, Bantay Kita

Ms. Pimentel announced that participants can expect a series of presentations and opportunities for capacity building during the 2-day conference. Inputs gathered from the learning sessions will serve as inputs to the action planning workshop scheduled for the 2nd day. There will be a validation of the CSO strategic framework, and a presentation of the 2015 accomplishments of BK and plans for 2016. From the outputs of the action planning workshop to be held on the 2nd day, proposals will be drafted and submitted to BK partners who can help operationalize the validated strategic framework, support programs and projects, and help the coalition move forward.

Ms. Pimentel hoped for meaningful engagement and exchange; that participants would gain knowledge not only from the lecturers but also from one another, to help enrich the coalition's plans for 2016 and beyond.

Welcome Remarks

Speaker: Ronald Allan Barnacha, Vice President, Bantay Kita

Mr. Barnacha emphasized the need to grow the BK coalition and strengthen its cause. He mentioned that the 2-day affair is filled with meaningful activities, particularly the strategic framework validation. Mr. Barnacha concluded that while BK has accomplished much, many things still need to be done to strengthen the CSO cause.

Message from Development Partner

Speaker: Daniel Miller, Director, Office of Economic Growth, Democracy and Governance (OEDG), USAID/Philippines

Mr. Miller referred to the EITI National conference held a day earlier, which discussed issues and challenges related to the extractive industry (EI). These issues pertain to revenue sharing arrangements, reconciliation, and how to get other extractive companies to voluntarily participate and comply with EITI standards. For the CSO national conference and workshop, the focus will be on those challenges at the grassroots and community level and the important roles that CSO play in catalyzing EITI implementation at the level where extraction and exploration actively take place.

BK and CSO representatives to the PH-EITI MSG were commended for the work being done in effectively holding the government accountable for funds received from the extractive industry on behalf of the Filipino people. "You were the driving force behind the Philippine's candidacy to the EITI in 2013. You orchestrated the process in making extractives contracts publicly accessible. You demanded the inclusion of more useful information in the 2nd EITI country report which is now utilized in public debates in the Extractives industry." All these initiatives are crucial in the push for more transparent and accountable fiscal regime in the mining and extractive industry sector.

Mr. Miller praised the CSO representatives for their steadfast support to the government in achieving EITI-compliant status in 2016, emphasizing the importance of their role in the EITI process and overall reforms in the sector. CSOs help create demand for transparency and accountability in government. They act as change agents by mobilizing public opinion to shape policy reforms, benefiting society as a whole.

Mr. Miller stated that the Philippines' achievement in EITI is promising. Achieving EITI compliant status however is not an end by itself. The road to success is still long and there will be obstacles along the way. US government and the USAID remain fully committed to support the country in its journey to a more transparent and efficient governance of the extractives sector. They will help build capacity so people can do more better jobs in the future.

He mentioned that the action planning workshop is an important part of the development system to expand and promote more meaningful citizen engagements in the EITI process. The workshop agenda provides interesting learning activities and discussion as participants go through the strategic planning workshop.

Mr. Miller urged participants to take advantage and learn about the EITI process and available mechanisms that can be used to monitor mining and extractive operations in the communities and track revenues from extractives. The conference would also be a good avenue to learn from other CSOs' successes and lessons learned in engaging with extractive industries, and in mobilizing local communities particularly IPs, and in building consensus around good governance reforms.

Mr. Miller shared their conviction that the Philippines' EITI represents the Filipino's hope for a future when more of the financial returns from extractive industries flow down to communities and benefit the people. He urged participants to sustain commitment to the transparency and accountability and good governance as they engage in the EITI process.

Messages from Development Partner

Speaker: Stephen Lysaght, 1st Secretary & Head of the Political and Economic Team British Embassy Manila

Mr. Lysaght agreed to and supported the key points in the message delivered by USAID. According to him, the fruits of labor are evident by the number of people present in the conference..

From the perspective of UK government, EITI is would help unleash the Philippine economic potential. However, there is also a need to look at agriculture and other sectors of the economy while issues in the mining sector continue to be addressed.

Mr. Lysaght mentioned that the CSO conference would be an opportunity to take stock of all the learnings on various developments and other continuing trends in extractive governance.

Global Trends on Transparency and Accountability

Presenter: Jelson Garcia, Asia Pacific Director, Natural Resource Governance Institute

Presentation attached as Annex 1

Mr. Garcia mentioned emerging trends in transparency at the international front but limited his discussion to the extractive industry and the emerging lessons as observed in Southeast Asia. The context of why transparency and accountability matters were discussed from the perspective of Natural Resource Governance Institute (NRGI).

He informed the group that there was a comprehensive study done by NRGI to assess the quality of resource governance in 58 resource-driven economies. Among the Southeast Asian countries, in terms of ranking, Timor Leste ranked highest, followed by Indonesia while Philippines ranked 23rd. These 3 countries fall within the partial good governance level. Those that have weak governance includes China, Vietnam and Myanmar which is at the lowest end of the ranking.

The ranking considered 60 indicators within 4 dimensions of resource governance, namely: (i) Institutions and legal setting; (ii) reporting practices; (iii) safeguards and quality controls; and (iv) enabling environment.

Mr. Garcia stated that there were different risks associated with every step of the extractive value chain. These risks may come in the following forms: misallocating licenses, environmental and human rights abuses, corruption in terms of preferential contract terms, crude misselling by state owned enterprises (SOE), illicit party finance or how SOE funds are used to support political parties, illicit flight of revenues, and the way savings funds are misused to invest in crony projects, among others. In response to these circumstances, transparency was deemed essential.

There are several initiatives that aim to strengthen and expand the framework for disclosure:

- The Extractive Industry Transparency Initiative or EITI which was introduced in 2003. At present there are 31 compliant countries, 17 countries have candidate status (which includes the Philippines) while 2 countries are under suspension.
- The 2012 US Dodd-Frank Wall Street Reform Act and Consumer Protection Act. One section of this Act requires SEC to create a rule requiring issuers engaged in commercial development of petroleum/minerals the amount of payment by type, project and by government annually.

- The Extractive Sector Transparency Measures Act issued by the government of Canada in 2014. This is part of the government's economic action plan, and also of their international commitment in the fight against corruption. In particular for EI, they required companies to report payments on tax, royalties, fees and production entitlements.
- The EU Accounting and Transparency Directives issued in 2013 obliged large extractive and logging companies to report payments to governments. It also required EU member states to transpose directives into local law.
- Another important development in 2014 was the Swiss proposal for mandatory reporting standards for the extractive sector. But while this is aligned with the EU Directives, some groups highlight that companies solely active in the present commodity trading are not subject to this requirement. Disclosure in commodity trading is a new thing in the battle for transparency in the extractives.

The Rise of Disclosure and Accountability Framework among Multilateral Development Banks: Multilateral banks may not necessarily be the biggest sources of funds for extractives, but they have standards that were developed through series of consultations and pressure points from CSOs. There are good practices that can be derived from policy successes and how these are executed on the ground.

- The World Bank in 2009 developed a New Access to Information Policy, which covers investment and technical assistance and different lending modalities to extractives.
- The International Finance Corporation adopted the Sustainability Framework in 2009, which applies to all companies it lends/invests in.
- The Asian Development Bank introduced in 2009 a stronger safeguards system, including the transparency rule which required a 120-day disclosure of high-risk projects before Board approval. This provides opportunities for affected communities and CSOs also to assess, compare and even challenge some of the assumptions or information about the project before it gets approved. Also in 2011, they released a New Public Communication Policy which basically strengthened the previous policy by expanding the scope and type of automatically disclosed information.
- Other regional development banks like the African Development Bank and the European Bank for Reconstruction and Development are following suit.

Based on NRGIs studies and observations, results point towards greater disclosure. Many countries are disclosing contracts. These data come from a number of reports, like EITI, some are from those required under Freedom of Information (FOI) law, while others are from those required by their respective ministries. More countries are joining EITI. There are now 44

implementing countries. From the EITI reports submitted prior to 2013, there were over \$1 trillion worth in payments and revenues stated by 34 countries.

Mr. Garcia posed the following challenges:

- Monitoring and prevention of illicit financial flows
- Disclosure of beneficial ownership

He concluded with the following messages:

- Transparency is essential, but insufficient. It must be complemented by rule of law, economic and financial management and meritocracy.
- International initiatives and standards are not substitute to national laws but can complement and provide comparison to improve country systems.
- International commitment and execution need to be supported by an enabling environment.
- In some countries, like Indonesia and Myanmar, there is growing need to institutionalize EITI mechanisms with clearer and broader mandate. Transparency has to be mainstreamed.
- Reports should have clear mandate feeding into reform processes and EITI secretariat should also have power to monitor how recommendations are taken up. It is not just about giving them power, it is also an administrative capacity question. Staff should also be properly informed and exposed. Even ministries need to be informed of the EITI and disclosure mechanisms.
- There is need to localize and indigenize. People on the ground are not fully aware of EITI. There is growing movement to bring the EITI and other transparency mechanisms all the way to subnational level because they have stake in it. This is an area where more time, energy and resources are needed to effectively and creatively communicate the message.

Philippine Mining Development Framework

Presentor: Dr. Cielo Magno, National Coordinator, Bantay Kita

Presentation attached as Annex 2

The Mining Development Framework was developed using collective global experiences in establishing the minimum, that if such is not attained, then poverty alleviation cannot be achieved using mineral sector in the Philippines. Given this framework, the Philippine context is studied and assessed as to what needs to be done, what policies to push, how to translate the benefits of minerals extraction and then policy recommendations.

According to Dr. Magno, the mainstream paradigm says there is a need to attract investors in the extractive sector because investment is scarce and mining requires big capital. So when

mining companies come to an area, it is assumed that employment will be generated, downstream industry will be established, opportunities for economic development will be increased, average income will be increased – and poverty will be addressed.

The paradigm says that there is really no need for government intervention. The goal is for less intervention, less regulation to make it easy for companies to enter the area, reduced taxes so that area will be attractive for investors to come and invest in the Philippines and not to other countries.

In the 80s and 90s, some African countries subscribed to this idea. Angola, Equatorial Guinea, Nigeria and Sudan implemented competitive fiscal reforms like reducing their taxes and they became target for foreign direct investment in mineral sector. Despite the huge investments in the mineral sector, they remained to be one of the lowest in human development index. The investments did not contribute to poverty alleviation and sustainable development. Employment was limited because mining is a mechanized sector. This can be seen in the EITI report, where information include disclosure on employee population. Mining is not an employment generator.

Based on an UNCTAD conference, the context of developing countries is different from development experience of mineral-rich developed countries during the period due to the following: 1) high transportation cost, made it more attractive for developed countries to process locally and utilized the products domestically; 2) mineral extraction in developing countries takes place as a response to need of external users/countries and not their development needs; and 3) human resources in developing countries is limited in developing endogenous learning and innovation.

Dr. Magno stated that the recommendation from UNCTAD conference is that a different overall development strategy must be undertaken, like building a diversified economy and investing in human capital, infrastructure and productive capacity.

Dr. Magno went on to share the taxation principles for mining:

- The basic principles include certainty, fiscal stability and administrative convenience apart from neutrality. By neutrality, it means that one cannot decide to tax one sector and not the other. Convenience means it should be easy to collect. Finally, there has to be certainty in fiscal regime. No investor will risk their money in a business environment where tax regimes often change.
- Government should secure an appropriate share from its finite resource above regular tax.

- Taxation should be used as a tool to manage externalities. When there are positive externalities, incentives are given. But when there are negative externalities (like pollution), taxation has to account for this.

She then discussed options for mining royalty payments: ad valorem (based upon revenues), income tax (which is profit-based), economic rent (which is somewhere between profit and ad valorem), hybrid systems (where you have profit and ad valorem at the same time; this is implemented in a country so you can collect additional share in profit when prices are high, when there are windfall gains) and production sharing- fiscal units.

Dr. Magno presented a study done by Otto in 2002 compared and measured the effective tax rates in various countries. Countries were qualified from lowest to highest quartile and Philippines was in the 2nd lowest quartile. From an investor's perspective this is good. The tax collected is only about 30%, compared to countries like Mexico, Poland, Greenland, Mongolia, Indonesia and others which implemented higher tax rates. From a free market perspective this is good as Philippines really becomes attractive to investors, but from the perspective of fair share, this is not.

Comparing the various tax rates among Philippines, Papua New Guinea, Vietnam and Indonesia, the Philippines appears to be the most competitive in the region. In terms of corporate income tax rate, Philippines with its 30% is close to Vietnam with 32%-50% while Indonesia has the lowest tax rate at 25%. In mineral taxes, the excise tax Philippines collect is 2%, Vietnam has the highest with 15% and there is even a proposal for further increase. Only Philippines has IP royalty, which is 1% tax which goes to IP communities. Indonesia and Vietnam has export tax of 20% and 10% respectively.

Dr. Magno mentioned that since mining is an enclave economy and has very limited contribution to employment, there is incentive to link with downstream industry. In Indonesia, there is ban on export of raw ore and an imposition of 20% export tax on some minerals. Companies are also required to diversify investments. For example if a company cannot invest in the mineral processing facility, then they are required to sell their share to a local. In South Africa, they are legislating export tax on minerals because they want to develop a downstream industry in their country. They are already establishing their iron ore industrial complex. Similarly with Zambia, they have already banned export of raw ore.

In Canada, the mining association already recognized that they have very limited contribution, so they created an initiative that all procurement will come from locals to create added value in the upstream side.

Dr. Magno shifted her focus to mining in the Philippines. The country is the 5th most mineralized country in the world. It ranked 5th in nickel reserve, 4th in copper reserves, 3rd in gold reserves, and 1st in nickel production in 2013. Yet, total contribution of mining is 0.42% of GDP, 0.6% of total employment, and 6.0% of total exports.

The country's taxation framework provides for the mandatory shares that each level collects in terms of taxes and fees. National Government collects excise tax (2% of revenue), royalty in mineral reservations (5% of revenue), corporate income tax (30% of profit) and VAT. Local Government collects local business tax (1% of revenue), real property tax (maximum of 2 per cent of the assessed value of the real property), community tax, occupation fees, registration and permit fees. IPs gets a minimum 1% of gross revenue.

She said that there is a correlation between poverty and presence of mining in the Philippines. It is not that mining caused poverty in the area, but it did not help in poverty alleviation. Those areas that host majority of the mining activities in the country are still the poorest, like Eastern Samar, Zamboanga del Norte, Surigao del Norte, Leyte, Compostela Valley and others. At the local level, there is problem in utilizing revenues from extractive activities for poverty alleviation. This is because the LGUs' share in the national wealth generated from EI-related activities is less than 25% of their annual budget. This is not even enough to pay for health and education programs of municipalities. The rate is even lower at the provincial level (< 5%).

In summary, Dr. Magno enumerated the minimum recommendation for a mining development framework to ensure that the country secures its fair share:

5. Strengthen regulatory capacity. This includes institutionalizing governance mechanisms to demand for greater accountability.
6. Institutionalize fiscal reforms.
7. Government should have the capacity to manage the proceeds. There has to be a system to ensure that government invest in human development, infrastructure and social development.
8. Develop a downstream industry. There has to be linkages to maximize the benefits of the extractive industry.

OPEN FORUM:

Question/Clarification: Transparency and accountability have been discussed lengthily. But on the ground, most IP territories in CADTI are vulnerable to the extractive industry. There are no

representation from IPs. Traditional, organic leaders must be the one representing the IP sector.

Response from Dr. Magno: The inclusion of IP representative/s is Included in Bantay Kita's primary agenda, even in the MSG. Currently EITI recognizes 3 sectors only- business, CSO and government. Now the MSG is pushing for the inclusion of IP by allocating 2 seats in the EITI MSG. Bantay Kita can help and assist in capacity building, but IP should take the lead in IP coalition within the Bantay Kita. The goal is for IP to have its own coalition.

Question/ Suggestions: On the mining development framework, aside from the four, can Social Justice be added as another component of the framework, to ensure that human rights violations are not committed in the area.

Question/Reactions: The statistics and the trends in transparency have been presented. Are there pointers to help in monitoring the revenues and how these are spent? The participant who raised the issue came from an area affected by a typhoon/flash flood resulting from extraction activities. It wiped out their infrastructure, and even some of their barangays and many lives were affected. People in the area have very poor level of awareness about the law and about their rights. They think that they are not in the position to lobby because extraction agreement is between owner of private land and mining companies.

Response from Mr. Garcia: In terms of the meaning of numbers and figures presented, there may be a need to unpack the figures at multiple scale. For example, what is the value of the \$1 trillion coming from 34 countries? Using the 2013 report of Indonesia, numbers were translated and unpacked in various levels: 12.8% is total share of oil, gas and coal in total GDP. Translated into state revenue, petroleum and minerals has 30% contribution in the fund. Translated into jobs, extractive industry is directly employing 1.5 million population. It may not mean much, but this contributes hugely in job generation, still a key driver for Indonesia. This is at the national level.

At the local level, subnational resource fund is being set up in Indonesia. It could lead to something public. Fiscal management is also good and will be improved, as this will help ensure sustainable development

Response from Dr. Magno: Capacity building is part of Bantay Kita strategies. CSOs will actively participate in natural resource governance. Unfortunately in some areas, representatives of CSOs are not genuine representatives and are not functioning effectively. The role of the coalition is to build capacity so that at the local level, resources can be managed.

With recent developments in BLGF where there is now unbundling of revenues from mining, the utilization of funds can now be tracked. There is just the need to make existing policies operational. Initiatives need to be organized at the provincial level, so that the political issues in the area can be tackled and managed.

Study on Black Sand Mining/Quarrying

Presenter: Atty. Jay Batongbacal, Associate Professor, UP College of Law

Presentation attached as Annex 3

According to Atty. Batongbacal, people think that black sand does not carry much value, but actually billions of dollars are made out of this material. This is comprised of ferrous oxide or iron oxide and has magnetic properties, in fact, this is the most magnetic of all minerals. In the Philippines, this is so common and just carried away by waters and are deposited as sediments along riverbanks. In some areas like in Cagayan River Basin, where it just comes out in big volumes everyday, it may contain some exotic metals like titanium, which is considered one of the most valuable metals with many applications, and vanadium which is one of those rare earth, commonly used in most gadgets.

The principal use of black sand is in magnetic storage of data. This is used to make hard drives, sim cards and other electronics. This can also be used in the manufacture of less high-technology materials such steel, machinery, tools and other electronics.

Atty. Batongbacal discussed the legal framework of black sand mining. As a general rule, all minerals are owned by the state. When it comes to black sand which is part of foreshore, a public domain, it is actually covered by more specific paragraph in the constitution where it says that state shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipinos. This is part of the public domain that implies that this is covered by the 100% Filipino equity requirement.

The Mining Act (RA 7942) applies to all areas offshore, water, sea bottom, and subsurface from shore or coastline reckoned from the mean low tide level up to the 200 nautical miles exclusive economic zone (EEZ). All submerged lands within the EEZ have already been declared as mineral reservation site. In the near future, offshore marine mining can also take place.

However, the Mining Act also expressly excludes following areas from marine mining activities: i) mangrove areas on coast; ii) marine waters within declared national parks; iii) marine waters

included in the ancestral domain of IPs; iv) offshore areas within 500 meters and onshore areas within 200meters, of mean low tide level along coast; v) offshore areas within 1,500 meters of mean low tide level where seabed is below 30meters deep.

Based on the Mining Act, below is the standardized process followed for large scale mining:

- Securing exploration permit for 2 years
- If favorable & viable, one of 4 types of mineral agreements (MPSA, JVA, CPA, FTAA)
- Area coverage for offshore: 8,100 ha. maximum for individuals and 81,000 ha. maximum for juridical entities, but 162,000 ha. if FTAA
- Payment of 2% excise tax

There are still other laws that apply or that cover the activities because of the nature of these materials. It can actually be covered by other provisions of the Mining Act, particularly under quarrying permit provisions. This is already different from the mining permit system and process which is under national government regulation because quarrying activities are under local government.

Based on the Mining Act, below is the standardized process followed for quarry resources:

- Securing quarry permit from LGU, valid for 5 years, renewable for successive 5 year periods up to a maximum of 25 years
- Procuring “Sand and gravel permits”

The other mining law that may apply is the People’s Small-Scale Mining (SSM) Act which applies to those utilizing manual labor, simple implements, no explosives or heavy equipment, and operates only within declared SSM areas. This should not be applicable to offshore marine mining, but arguably applicable to coastal marine mining, as there are black sand materials collected from beachfront and foreshore. Mining activities under this are regulated at local level by the Provincial or City Mining Regulatory Boards. The permits, if granted, carry non-transferable right to extract mineral ores and dispose of them commercially for a term of 2 years in an area not more than 20 hectares

Other related legislation that would apply are the following:

- EIS System Law which requires Environmental Impact Assessment
- Clean Water Act and Fisheries Code which both have provisions for pollution control
- Local Government Code which provides for consultation requirements, benefit sharing and others. But unfortunately such requirements only apply to large scale mining for black sand
- IPRA which provides for FPIC and benefit-sharing requirements

Current Status in Marine Mining: The information provided in the MGB shows that there are already a number of mining operations that exist. In the list of Mineral Production Sharing Agreements or MPSA, there are already 9 agreements for magnetite and associated mineral deposits, 3 of which are already at the commercial exploitation stage while the rest are in exploration stage. These are in the areas of Abra (1), Leyte (4), and Cagayan (4). The total land area involved is: 70,327.43 ha.

For Financial & Technical Assistance Agreements or FTAA, there is only 1 agreement for magnetite sand and other associated materials located in Ilocos Norte and Pangasinan involving a total land area of 9,588.24 hectares. This is still in the exploration stage.

Interestingly there are 10 Mineral Processing Permits or MPP that have been issued for magnetite sand located in Ilocos Sur (1), Ilocos Norte (1), La Union (1) and Cagayan (7). These businesses are receiving black sand material for processing.

DENR has a list of 149 Industrial Sand & Gravel Permits (ISGP) as of January 2016 covering a total area of 1,936.21 hectares located in several areas. The ISGP issued by the LGUs gives permission to extract but does not require disclosure as to where and how the materials will be used for. These materials can be used for construction, but can also be used to extract other sand.

The Possible Impacts are Huge:

- Coastal erosion can happen when extraction rate exceeds natural replenishment
- Saltwater intrusion into water table because seawater can start seeping in
- Increased turbidity that can lower water quality
- Loss of lagoons/estuaries' delicate salinity balance
- Loss of beach quality which is important for some areas like Cagayan which use their beach as tourist area
- Loss of access of people to the area itself

OPEN FORUM

Questions/Clarification: Based on figures shown in the presentation, the rule is that there should be no movement from shoreline (200meters) to offshore (500 meters). What law was used as basis of the prohibition?

Response: The basis of the prohibition is DAO– 2007-15 of DENR which was issued precisely to protect the sensitive coastal areas.

Questions: There are 17 applications for mining permit in our area in Cagayan. Are these permits legal? Our area has been mined-out already and the negative effects are being felt. But nothing has been done by the concerned people. How do we go after them if their permits are illegal?

For companies who have mined-out, only suspension order is served, not cancellation order. The reason MGB gives is that permit cannot be cancelled as there is no legal permit to be cancelled in the first place.

Response: There are only 3 commercial permits that have been issued. The rest are still in exploration stage. You can ask DENR if the operations in your area are already in commercial or still exploration stage. You can go to the MGB website and download the details of information that you want to know. You can also go to the concerned area to check or give to your friend in the affected area so they can check.

Questions/Concerns: 1) There are 2 sites in the Maasin River declared as cleanest water in the province. Where should we go to have the area checked if there is black sand in the area?
2) We have had 2 hearings already with the provincial government, regarding an old proposed secondary national highway for repair/construction and where quarrying activities are seemingly happening. According to DENR, we should talk to DPWH as it is the agency responsible. Where should we really go? Who should we approach?

Response: The easiest way to test presence of black sand is to use magnet. If substantial volume of materials stick to the magnet, then it is probably black sand. You should send it to nearest university to check and verify the contents.

On the 2nd question, DPWH's public works are given permits by DENR. If there are adverse impacts from activities, it is proper that DENR talks to DPWH because supposedly that has been studied already. You may also check with DENR if there is Environmental Impact Statement or EIS, as there should have been one already prior to approval of the project. If there is none, you can call directly the local DPWH for the local adverse effects in the area.

Questions/Concerns: In Aparri, we have already lost our seashore. What is left is just the river control/seawall but it has been penetrated too. This is why there are not much rice fields in the area. Also, we still see the presence of ship in the area. What shall we do?

Response: The descriptions provided seemingly are effects of overexploitation. As to the continued presence of the ship/s, there has to be monitoring/surveillance. It should be reported. Community must really be involved and be vigilant. Make your LGUs accountable as they are the ones who issue permits. Monitoring should be strengthened.

Question: In Dinagat Islands, there are mining activities done under the guise of dredging which was granted with permit by the provincial government. Who should be accountable? The equipment/tool that is being used appears like a suction pump and is destroying all the species in the mangrove areas where they are working.

Response: This is a relatively new activity and many are taking advantage of the loopholes. Yet lots of money are being made out of these because the value of black sand is not yet appreciated by many at this time.

Question: Mining companies do public consultation. There some who claims that public consultation is just one of the requirements. Whether or not the community agrees, the mining operations will still proceed.

Response: Per Local Government Code, public consultation needs to be done as community consent is a requirement.

SSM Taxation, Licensing, Environmental Regulation and Best Practices

Presenter: Atty. Golda Benjamin, Instructor, Siliman University

Presentation attached as Annex 4

According to Atty. Benjamin, over the years, the trend in gross production value in mining seems to be different. Large scale mining and non-metallic mining have increased trends, while small scale gold mining showed a sharp drop from P42.9 Billion in 2010 to P0.3 Billion in 2013.

She defined Small Scale Mining using the key words of the term: 1) Extraction of minerals. Small-scale mining is allowed for non-metallic minerals and only the following metals: gold, silver, and chromite. 2) Relies heavily on manual labor; 3) Uses simple implements and methods; and 4) No explosives or heavy mining equipment.

Atty. Benjamin stated that her presentation aims to provide inputs in determining the right intervention to advance the objectives of EITI on transparency and disclosure and to meet the requirements of a good mining framework.

She posed the following issues to consider: Where are they? Are they still engaged in SSM? Who are they working for/working with? Do they work on their own or are they workers of big mining companies? If they are employed, are they being protected? If they are under cooperative, are they genuine SSM cooperative or are they just being funded by the big companies? Are they still poor? Based on earlier presentation on Mining Development Framework, poverty level is still high in areas where mining operations exist. But why are they still poor?

Three things must be remembered under the 2015 rules: 1) SSM can only be undertaken inside a “Minahang Bayan”. If they have existing permits, it can be continued until expiration; 2) entities must have SSM contract; and 3) SSM must be registered with the Mining Board.

According to latest statistics, there are 19 approved “Minahang Bayan” all over the Philippines. The numbers are different as there are 415 registered SSM operations. Figures need to be reconciled as to which of these are covered by new contracts. Which of these are outside the “Minahang Bayan”? We need to know these information to determine the needed interventions.

Licensing and Registration of SSM: Small scale miners cite the following objections against the licensing and registration process: 1) it is expensive; 2) it is time consuming; and 3) there are not much incentives to legalize.

Is the process really difficult? Under the process, one needs to comply with 22 documents: 2 documents under the Registration step and more or less 10 documents under each of the steps for Licensing and Application for SSM contract.

Steps	Requirements
Registration	valid ID and proof of Filipino citizenship
Licensing	application form, payment of Php 1,000 application fee, and proof of registration with the SEC, Department of Trade and Industry, Cooperative Development authority or other appropriate government agency – these certificates require at least 5 documents before they will be approved
Application for Small Scale Mining Contract	application form, application fee, small-scale miner’s license, location map, sketch plan, proposed small-scale mining contract, application for survey order, proposed 2-year work program, PEIMP, Certificate of Exemption, CDMP, ASHP, sworn declaration of total are covered by the contract

Why is there a need to work with all sectors, including government? The reason is because we want to prevent a situation where the only entities registered are those cooperatives of large mining companies who do this only to avail of the incentives for cooperatives under the law. The strategy of big mining companies is to fund SSM in establishing cooperatives to take advantage of the benefits and incentives. This is one reason also why the revenue value of SSMs drops.

Atty. Benjamin stated that if we want to support, defend and protect small scale miners, then there is a need to know who the real small scale miners are. It is important to create a mechanism for transparency and disclosure.

One of the more common concerns in legalizing SSM is the financial obligations which most people find too many. These include income tax, special import tax, tariff duties, value added tax, real property tax, if applicable, excise tax, government production shares and occupation fee. But these are responsibilities of people and it should be ok to pay government because theoretically what is paid to government would also go and benefit the community.

There are many frustrations on the ground, many people do not want to pay government because they feel they do not get the benefits from government. This systemic problem cannot be solved overnight. But some things can be started, like electing the right leaders and demanding accountability from them. The hardest challenge is in a small scale mining industry that is dominated by politics, as it is doubly difficult to demand disclosure from people whose objective is really not to be transparent. The only way to address this is through organization, capacity building, and creation of awareness of the industry and the basic rights under the law.

The following are sample of 2 SSM cases that actually worked:

- Minahang Bayanihan in South Cotabato: From government to the CSOs and people in the mining communities, they found the value in legalizing operations, in paying the government and in working together. Until we find these values, it will be difficult to convince people to legalize.
- Mercury Free Mining in Ga-ang, Balbalan: From an environmental point of view, there is a need to eliminate mercury. This is still controversial because if a ban on mercury is not in the law, then ban order in simple Executive Order is illegal. But there are voluntary compliance in many and growing number of communities to shift from mercury to a more sustainable and environmentally friendly methods.

Mining industry will always begin mining debate with: “How can you prevent mining when you cannot prevent using cellphone?” The better question should be: “How can mining work for the people?” If people want reforms, then those on the ground should produce reliable data about the industry because this can influence policy reforms. Industry wins debate because they have data and information. If we will not join efforts and initiatives being done by Bantay Kita and other CSOs towards reforms, people working in the industry will suffer.

Opportunities for Reform in the Natural Resource Governance Sector

Presenter: Atty. Dante Gatmaytan, Professor, UP College of Law

Presentation attached as Annex 5

Atty. Gatmaytan began by stating that there is an encouraging trend in the environmental and local autonomy case law and the trend continues although national laws are involved. Supreme Court has been shutting down mining operations for a variety of reasons, and this is something new.

Case No. 1: SR Metals vs. Angelo T. Reyes in June 2014: SR Metals got an MPSA to mine nickel and cobalt. At some point government thought that they were extracting beyond the maximum that was allowed. There were two issues raised by the mining company: (1) violation of the equal protection clause. They argued that there is no substantial distinction between the miners who can extract as much ore as they can and those who were imposed an extraction limit; and (2) On the correct interpretation of the 50,000-MT limit. The mining corporations insist on their version of how to compute the extraction.

DENR issued SR Metals with a cease and desist order stating their violations. The case was brought up to the Supreme Court who later rendered its ruling on the two issues, as follows:

- On the first concern: Petitioners are governed by the annual production limit under Presidential Decree No. 1899. This was not repealed by Republic Act No. 7076. The former covers persons, partnership, and companies while the later covers cooperatives.
- On the second concern: The DENR, being the agency mandated to protect the environment and the country's natural resources, is authoritative on interpreting the 50,000- MT limit.

According to the Supreme Court, the rule on defining limits on how much can be extracted is for DENR to define. Unless there is proof of abuse by DENR, Supreme Court will stand by DENR. They reviewed the Mining Act and found that the definition of DENR is consistent with the Law. The court upheld DENR’s ruling and they shut down the operations of the mining company in the concerned area.

Case No. 2: Resident Marine Mammals of the protected seascape Tañon Strait vs. Angelo T. Reyes in April 2015: This is the case about “Dolphins went to court”, or the case about protecting the seascape where there was ongoing petroleum exploration activities. There were two issues in the case. 1) About the new litigants. SC said only humans can sue. Recently, the Court passed the landmark Rules of Procedure for Environmental Cases, which allow for a "citizen suit," and permit any Filipino citizen to file an action before our courts for violations of our environmental laws. 2) The second issue is on the legality and constitutionality of the contract. Petitioners insisted that the contract is null and void for having violated Section 2, Article XII of the 1987 Constitution which requires that the President himself enter into any service contract for the exploration of petroleum. SC-46 appeared to have been signed only by DOE Secretary contrary to the said constitutional requirements. Moreover, public respondents have not shown or alleged that Congress was subsequently notified of the execution of such contract.

Further the contract also violated the NIPAS Law in relation to the EIA system. Because it is a protected seascape, they should have had an ECC very early in the process. The public respondents admitted that the project only started to secure an ECC prior to the second sub-phase of SC-46, which required the drilling of an oil exploration well.

Since they violated the law, their contract was declared void and their operations were ordered to be shut down.

Case No. 3: Narra Nickel Mining and Development Corporation versus Redmont Consolidated Mines Corp. in April 2014: The only issue in this case is whether the corporation is foreign or not. The Supreme Court examined who was controlling the company and they found out it was Canadian. The Court held that petitioners, being foreign corporations, are not entitled to Mineral Production Sharing Agreements (MPSAs). The ruling is to shut down the company.

What do these cases tell us? The battle to stop irresponsible mining continues even after the grant of permits. Cases may be filed either because there were early defects in the licenses or there were subsequent violations committed by mining companies. This also tell us that monitoring of mining activities, as difficult as it is, can lead to information that can cripple or end mining activities. Examining the facts surrounding an application as well as the terms of licenses in relation to the requirements of the law can provide the bases for challenging the validity of these licenses.

What does this mean for the struggle to protect communities from the harmful effects of large scale mining? There are new opportunities. There may be a need to revisit the legal options

that are available, though this may require investment in legal and paralegal training. We need to train ourselves in studying contracts and the basic rules of interpreting these documents. We may need to know what acts constitute crimes or offenses.

Who do we turn to when we uncover violations of the law? Do we go straight to the Ombudsman or to the proper court? How do we go about asking government to terminate a license? What do we do if government agencies ignore our correspondence? Ideally our judges are learned and fair. But in reality, unfortunately, there are those who can be inept, careless, or decide to play politics. The approach has been to augment legal remedies with grassroots organization and training in the hopes that marginalized communities can learn to fight these battles on their own. Lawyers should be there just to assist. If the community is not organized, things may not end well too.

OPEN FORUM

Question: In the case of Marcventures Mining Corporation, the municipality never endorsed nor approved the project. So the company secured endorsement from the barangay then went and tried to secure endorsement from the Sanggunian Panlalawigan (Provincial Board). When they were refused, they went directly to the Provincial Governor who issued them a certification. We cannot equate a provincial certification with a Sangguniang Bayan (Municipal Board) endorsement/approval. But why did MGB or DENR accepted it and allowed the mining company to operate?

Response from Atty. Gatmaytan: 1) The SB should be the one to approve/endorse projects; 2) Retroactive decisions should not be allowed. Consent should be secured first before granting the approval. If there are deviations to these, people can challenge those companies even if they have ECC but without consent/approval yet.

Question: On public consultation, are there parameters to say that the consultation made is a faithful and substantive compliance to the requirements under the LGC?

Response from Atty. Golda: The standards used to determine if a valid consultation was made included the following: 1) Did they inform about the company? the contract? the benefits? 2) Was the language used understood by the people being consulted? 3) Was there notice or information about the consultation?

Questions: 1) Can you help us understand the meaning of exercise of priority rights? 2) Can we use this priority right to legalize small scale mining? 3) For illegal small scale mining activity, can it give benefits/shares to IP too?

Response from Atty. Golda: 1) Priority rights refer to the right to get the highest consideration and be prioritized. If IP land is involved, then IP community will be the priority. 2) Yes, priority rights can be used as jump off point to legalize SSM; and 3) Yes, IPs should have share from the production particularly because the land is theirs. But if there is no existing contract between company and IP, company can refuse to give share and instead go to court and give share. The only bullet which you may use is that you are IP and you have the right over the ancestral land.

Clarification regarding Priority Rights: Is it limited only to whenever there is queue in application where in such case, IPs will be given priority? Sometimes there are conflicting views. What is really the definition of priority rights?

Response from Atty. Golda: This is very challenging. Priority is inherent. If the concern is on IP land, then IP should be given priority. But if there are legal issues, those with legal documents are the ones prioritized. In the absence of documents, then it would be difficult to establish rights. As to the clear meaning of scope and priorities, government has the responsibility to address and harmonize conflicting interest.

Question/Concern: In Benguet there are no fees collected since miners claim they are IPs and they have been doing small scale mining before RA 7076. The Benguet Federation of small scale miners filed a case against DENR regarding the revised IRR of RA7076 where fees being collected are exorbitant for small scale miners.

Also in the revised IRR, it says that the issuance of SSM contracts will come from Central MGB and contract renewal is after 6 years. What happens to the Provincial Mining Regulatory Board (PMRB), will they lose their power? What if after 6 years and they are not able to renew, will they be considered illegal? Was the IRR issued valid? Can DENR change the law when laws are supposed to be done by Congress?

They are also questioning the enactment of RA7076 because prior to this, there are already small scale miners in Benguet that are not artisanal. So when the law was issued, it was not implementable. Many miners became illegal after the law was issued.

At Bantay Kita, this is also the issue posted to the Subnational. We should follow what is in the law as far as small scale mining. But while many small scale miners wants to apply to become

legal, to apply for Minahang Bayan, it is very difficult because there are already so many applications and many areas have already been awarded to large scale mining companies. So while there is law, it is not followed in the ground. All small scale miners in Benguet and in Compostela Valley are 90% are illegal. What is the value of the law if government cannot facilitate the operations of small scale miners.

Response from Atty. Golda: The issue is very challenging. Based on the law, the province still has a role and power, though the review process is now at the central. The issues are many and very challenging particularly about this concern, which unfortunately we have no answers at this point.

On the issue of legality of the fees being charged, local government has the power to impose certain charges as long as it is not beyond what the law requires. The excessiveness of the rates however is another question.

Input from Dr. Cielo: We encourage people to make a stand regarding small scale mining. In reality, SSM actually has more benefits to poor families. Artisanal mining is driven by poverty. So should we stop them? The issue that should be better addressed is how to formalize them? The current IRR imposes the same requirements to small scale miners as with the large scale miners. Everyone was encouraged to build their arguments, to build-up capacity so the policy issues can be raised.

CSO Assessment of the 2nd EITI Report from the CSO Perspective

Presentor: Starjoan Villanueva, Executive Director of the Alternative Forum for Research in Mindanao (AFRIM) and CSO Representative to the PH-EITI MSG

Presentation attached as Annex 6

Ms. Villanueva presented the CSO assessment on the EITI report. She clarified that the analysis done was preliminary and macro in approach because the goal is to capacitate the participants, and for the readers to do their own analysis and scrutiny of the reports, contracts, and other pertinent findings in the report.

Ms. Villanueva shared the following:

- The 2013 contribution of the extractive industry to the economy was not significant. Mining contributed 0.42% to the GDP; 1.23% to government revenues, and 0.6% to employment. Oil and gas contributed .33% to GDP; 1.94% to government revenues, and 0.004% to employment.

- In terms of participation from companies, there was a very slight decrease from 36 participating companies in the 1st report to 35 companies (31 from mining and 4 from oil and gas) in the 2nd report.
- CSO finds a problem with the IA materiality threshold of P1 Billion. This makes it appear that companies earning lower than the said amount are less important which is contrary to what CSO believes that it is important as well to cover non-material companies as materiality goes beyond the figures. If revenues and areas of operation of the companies classified as non-material are combined, the result will definitely be significant, and thus material. The contract expiration should be considered as well, as most of these companies have long term contract. If today people have been experiencing problems, then how much more in the future.

Another problem when materiality threshold is set at P1Billion, there is tendency for companies to understate their income. As an effect, there would be less number of companies to participate in the reconciliation. There are cases where companies who participated in the 1st report were no longer included in the 2nd report because of materiality threshold. Likewise, many LGUs did not join because of the issue, and thus they were not able to participate in the transparency process. When in fact, what is ideal is that when companies or LGUs start participating in the EITI, their coverage in the reconciliation process should be continuing.

- In terms of Mining Revenue Distribution, BIR had the biggest collection with close to P3.4 Billion while LGUs and NCIP had the least with P0.361 Billion and P0.242 Billion respectively. It has to be noted that LGUs had significant increase in revenue from 6% to 23%.

In the 2nd EITI report, we can see from the revenue distribution graph that national government gets the biggest share - 54% of royalty on mineral reservation and 60% of excise tax on minerals. National government has the biggest share when they do not host mining activities and is even not exposed to risks. This is one policy area where we can make recommendation- to increase the share of local government that hosts the mining activities.

Which region collected the most? CARAGA (Region 13) collected the highest among all the regions with P107 million as indicated in the 2nd EITI report. This is 60% from the P67 million collection registered in the 1st report. The second highest is Eastern Visayas (Region 7) with P93 million collection.

- In terms of MGB's monitoring of the Mandatory Expenditures and Environmental Funds, MGB had a very large share amounting to P2.6 Billion which is 4.3x total LGU share and 3x the mineral reservation royalties. The Mandatory expenditures are intended for: 1) Annual Environmental Protection and Enhancement Program; 2) Community Development Program; 3) Safety and Health Program; and 4) Social Development and Management Program. Meanwhile, the Environmental Fund is for: 1) Mine Rehabilitation Fund; 2) Mine Waste and Tailings fees Reserve Fund; and 3) Final Mine Rehabilitation and Decommissioning Fund.

The issue here is where the money was spent. In the 2nd EITI, it was noted that there was explicit reporting on the accomplishments related to the environmental protection and enhancement program. Further, the recorded variance was P89.5 million. This is one area we should take a close look.

- Penalty paid to MGB: Philex Mining paid a total fine of P1 Billion for the DAO 2010-21 provision that required payment of P50/MT of tailings. This was not yet disbursed and the issue here is again, where the money was spent.

According to MGB, there are no withdrawals from this amount. And any future withdrawals should be in accordance with the requirements of the DAO. The fine will form part of the Mine Waste and Tailing Fees Reserve Fund to be used to payment of compensation for damages caused by the mining operation.

- Royalties paid to IPs: A total of P242 Million from 6 companies were paid to IPs. There were more reconciled amount compared to unreconciled. However, no reconciliation was done for Apex Mining and TVI resources, which should have P17 million and P36.2 million respectively, for a total of P53M. This was not reconciled due to insufficiency of documents.
- Government Take versus Industry: Government received a much smaller share compared to industry. The issue is whether we are getting a fair share considering that we own the resource. Where is social justice?
- The Mineral Reservation Royalties paid to MGB reached a total of P897 million. We do not know how MGB spent the share from mineral royalties. This area needs to be looked into to determine what can be a good advocacy position of CSO.

- **Impact of Income Tax Holiday:** As reported, BIR collected a total of P3.4 Billion from the extractive industries. But figures would show that an almost equivalent amount of P3.2 Billion was lost due to income tax holiday.
- **Is our current fiscal regime not competitive, 2011-2014?:** Mining companies claim that globally prices are falling and this has affected their operations therefore the country should have more competitive fiscal regime, i.e., maintain tax rate level if it cannot be reduced. But a closer look at their figures will show that values are increasing in terms of production, exports, operating mines. Further, the number of applications for permits and licenses are increasing which just show that there is money in mining. We are therefore in the right tract in pushing for more reforms and improvement in our fiscal regime.
- **Revenues from Oil and Gas was recorded at P35.9 Billion.** The issue here is on how government spent the funds. There was particular concern on the Aquino administration's disbursements from the Malampaya Fund, supposedly directed to programs and projects of the National Defense and National Electrification Administration. Currently, the balance of the fund stands at P161 Billion.
- **For the Semirara Mining Corporation:** Considering the non-participation of Semirara, findings were based on the available data only. Record showed that payment made to DOE amounted to P1.305 Billion whereas Loss due to Income Tax Holiday was higher at P1.48 Billion. Also, their total expense seems to be too high recorded at P14 Billion which is about 85% of P17 billion revenue. Expenses include entertainment and doubtful accounts which showed significant amounts. These are gray areas that needs to be looked into.

Mining Transparency and Accountability Index

Presenter: Marco Zaplan, Communications and Research Analyst, Bantay Kita

According to Mr. Zaplan, market capitalization of mining companies amounts to P245 Billion pesos. These companies have deep pockets and they are very influential. They, including the government agencies, have legal, social and environmental obligations to the people hence we have to make them commit to transparency. They have to disclose not just financial information but social, environmental, operational and documentary information as well.

The Mining Transparency Index (MTI) was developed to determine the level of transparency in the mining industry in the Philippines. The tool will be used to rank companies, and soon government agencies too, based on their level of disclosure, particularly in terms of accessibility

of their information. Through the MTI, all EITI targeted companies were evaluated under 5 areas based on the nature of disclosure:

- Financial disclosure – refers to all payments made to BIR, MGB, IPs, etc.
- Social and Environmental disclosure – refers to information on SDMP spending
- Operations disclosure – refers to employment information
- Documentary disclosure – refers to availability of FBI report, MOA and the information in it
- Commitment to Transparency – refers to existence or availability of company website; did the company participate in EITI? did they submit filled-up and accomplished templates?

Companies were evaluated by asking 81 questions using the scoring: 1 for full disclosure; 1.5 for partial disclosure and 0 for no disclosure. A simple weighted average was used. The idea was that in 5-6 years, it will be easy to compare the index if the level of transparency is improving.

Scores were based from 3 sources: (i) PH-EITI templates; (ii) company website; and (iii) stock exchange. The general index score generated was 31% for 2012 and 23% for 2013. The results per area are broken down as follows:

	2012	2013
Commitment to Transparency	60%	
Social & environmental disclosure	8%	9%
Documentary disclosure	3%	9%
Operations disclosure	22%	23%
Financial disclosure	63%	61%
*The EITI implementation has raised financial disclosure		

Included in the 2012 Highlights were 9 mining operations with publicly-stated policy on transparency and 1 mining corporation with publicly-disclosed Memorandum of Agreement with IPs.

Three highest scores:

1. APEX got a score of 50%: 1.00 for commitment to transparency; 0.91 for financial disclosure; 0.10 for social and environmental disclosure; 0.42 for operations disclosure and 0.06 for documentary disclosure
2. BENGUET CORPORATION got a score of 49%: 1.00 for commitment to transparency; 0.90 for financial disclosure; 0.10 for social and environmental disclosure; 0.42 for operations disclosure and 0.06 for documentary disclosure

3. PHILEX got a score of 49%: 1.00 for commitment to transparency; 0.91 for financial disclosure; 0.10 for social and environmental disclosure; 0.33 for operations disclosure and 0.09 for documentary disclosure

All publicly-listed companies are high in financial disclosure but very low in all other areas. Most of the disclosures are minimum of what is required.

The three lowest scores:

1. ADNAMA got a score of 14%: 0.40 for commitment to transparency; 0.27 for financial disclosure; 0.04 for operations disclosure and 0.0 for social and environmental and documentary disclosure
2. RAPU-RAPU got a score of 13%: 0.40 for commitment to transparency; 0.23 for financial disclosure; and 0.0 for all social and environmental, operations and documentary disclosure
3. KROMINCO got a score of 8%: 0.40 for commitment to transparency and 0.0 for all financial, social and environmental, operations and documentary disclosure

Beneficial Ownership

Presenter: Madeleine Aloria, Researcher, Action for Economic Reforms
Presentation attached as Annex 7

Ms. Aloria defined beneficial ownership as natural persons owning and controlling a specific corporate entity. It is important to know about this in pushing for transparency and accountability in the sector.

As a brief timeline, starting 2013, Denmark and UK committed to institutionalize a public registry of companies' beneficial owners. This was followed by the release of the "Guidance on Transparency and Beneficial Ownership" by FATF in the following year, and the EU announcement in 2015 that its member-states will be required to create beneficial ownership information registries.

Disclosure of beneficial ownership is important for the following reasons: (i) to ensure proper tax payments; (ii) to enforce foreign ownership restrictions; (iii) to promote accountability of public officials; and (iv) to detect illicit cash flows.

- Enforcing foreign ownership restrictions: Article XIII of the 1987 Constitution provides for the allowable participation of foreign entities in mining to protect Filipinos rights over the country's natural resources. But in recent years, firms are found to commit diminution strategies to evade such ruling.

Sometimes we stop analyzing at the first level when we see for example that majority of the company is Filipino owned. (for example Company A is 60% owned by Filipino-owned Company B and 40% owned by Foreign-owned Company B).

But the common strategy used by foreign entities is to layer under dummy Filipino corporations. Recently, there are legal debates in the definition of foreign ownership, if the 60-40 ownership level is ok. This is the Control test. Basically you understand what the nationality of the company is. The Grandfather test on the other hand analyses further the citizenship and information of natural persons until the last layer/level of corporate ownership to analyze the overall percentage of corporation that is controlled by either a Filipino or foreign entity.

- Promoting accountability of public officials: There are some laws that promote accountability among public officials, two of these include the 1987 Constitution and Republic Act 3019 or the Anti-Graft and Corrupt Practices Act.

While there are no prohibitions for people in public office to be owners of mining companies and vice-versa, it is just that we want them to be transparent and accountable to the people. Needless to say, there are many possible conflict of interest when people holding public office are at the same time owners of mining companies.

A preliminary analysis was done on 15 Companies whose combined production values comprised more than half of the total production value for the 1st quarter of 2015. The study focused on metallic mining companies not involved in processing. The objective of the study was to look into the beneficial owners of the 15 companies.

The data on production and operation were sourced from MGB; company profiles and shareholders information were sourced from SEC, PSE and company websites. GIS or government information system was also utilized; company owners' relationship with politically-exposed persons were sourced from various news articles, DILG, Official Gazette, LGU websites; and finally tax payments information were sourced from BIR and EITI. The challenge was how to establish the relationship and linkages.

RESULTS

On Corporate Ownership layers: Multiple layers have to be scrutinized in order to arrive at the names of natural persons owning the company. The study came to a point of looking at the 6th level before finding the names of natural persons. The 15 companies under study had an average of 4 layers before beneficial owners were determined.

Filipino-Foreign Ownership: There are discrepancies between foreign ownership declared in the GIS and when grandfather test is used. Out of the 15 companies under study, only 3 companies matched their declaration in the GIS with the result of grandfather test. These were SR Metals Inc., Eramen Minerals Inc., and LNL Archipelago Minerals Inc. There were three companies who declared 60% Filipino ownership in their GIS, but when subjected with the grandfather test, results showed way below 60% Filipino ownership.

There are challenges in using grandfather test as others claim that it is still the control test that should be used as the main determinant if companies comply with equity ruling of government. There are legal requirements before the grandfather test rule should be used. There has to be an established doubt which could be in the form of having same foreign investors, or there are similarity in corporate structure.

Social Development and Management Program

Presenter: Anton Miguel Ragos, Researcher, Action for Economic Reforms
Presentation attached as Annex 8

Mr Ragod stated that SDMP is a 5 year plan that requires mining companies to take part in the development of host communities by directly financing development programs that benefit host and neighboring communities. The objective is to improve living standards, towards a responsible and self-reliant communities under the framework of sustainable development.

SDMP mandates companies to participate in the social development of communities. This is different from corporate social responsibility or CSR which has a prerogative nature.

Regulatory Framework: The Philippine Mining Act of 1995 requires operators to assist in programs that will develop host communities, promote welfare of locals and advance science and mining technology. There are also various DENR administrative orders which prescribe details on how SDMP should be operationalized.

As part of the regulatory framework, below are the steps observed in the SDMP implementation:

- Preparation – the stage where companies consult host and neighboring communities
- Processing and Approval - MGB evaluates the submitted SDMP; Highlights of the plan are presented in technical conference with companies and the community; Parties enter into a MOA on how SDMP should be operationalized; Companies submit Annual SDMP plan
- Monitoring, Auditing Review and Evaluation
 - Community Relations Officer (CRO) and communities representatives monitors implementation
 - CRO submits quarterly reports on annual SDMP
 - MGB conducts semi-annual monitoring, and impact evaluation by end of the programs
 - Representatives from MGB, companies, communities can call for review and see if there are changes needed.

The allocated fund for SDMP is 1.5% of the operating cost of the company. The types of projects and activities under SDMP with their corresponding fund allocation are as follows:

- Community development– 75%
- Mining Technology Advancement - 15%
- Information, education communication or IEC - 10%

Projects and Activities under Community Development Programs (75% of SDMP fund):

- Infrastructure - School and health facilities; construction or repair of waters systems, road, seawall, multi-purpose halls, barangay office, chapels, other buildings for various purposes, street lights
- Education– School supplies and equipment; construction of educational facilities; college and technical/vocational education scholarships; financial assistance to schools (e.g. support for teachers’ salary, school grant, etc.); other capacity building and human development seminars, trainings and conferences
- Health– Medical outreach and feeding programs; construction of health facilities; provision of medicines and medical supplies
- Livelihood– Agricultural livelihood programs (e.g. crop production, fishery, livestock, poultry, etc.); support for cottage industries; livelihood skills trainings and seminars; various financial support (e.g. support to local businesses and local cooperatives, microfinancing, etc.)
- Socio-Cultural– Support for religious institutions or cultural and religious activities (e.g. fiestas, celebrations, sports tournaments, values formation seminars, etc.)

- Others– Environmental protection seminars and other environment-related projects and activities; emergency relief assistance; financial assistance to local government; support for youth activities; information, education, and communication programs

SDMP can be a significant resource to finance local development programs of LGUs. The planned SDMP spending can go as big as 13.42% of the municipality’s operating expense, as in the case in Cagdianao or 10.13% as in the case of Carrascal. But it can also be as low as only 0.48% of the municipality’s operating expense as in the case of Guianan.

There are issues and concerns that can be observed just by looking at the regulatory framework in which these SDMP programs operate. There are questions on how responsive the programs are to the needs of the community and how accountable the companies are in providing and addressing the concerns of the host community.

- Are the guidelines sufficient to ensure that SDMP plans capture the community concerns?
- Do critical stakeholders have ensured participation in the consultation?
- Are recipients identified based on systematic selection process? (It should target the barangays affected by the mining operations)?
- What is the role of communities in project implementation?
- Is SDMP spending effectively assessed for its soundness and efficiency? Unfortunately, there is no assessment done.
- Is SDMP spending coherent with the spending program of LGUs?
- Do programs rely largely on continuous company support?
- Do programs fall under coherent long-term development framework?
- Are the programs consistent with the objective of creating self-sustaining, self-reliant communities?

Concluding remarks:

- SDMP could be significant source for financing local development program
- Concerns on adequacy of regulations on community consultations and inclusion
- Large discretion of mining companies particularly in terms of implementation of identified projects
- Lacks assessment of soundness and efficiency conducted by mining companies

Some recommendations:

- Allow for direct LGU involvement to capacitate and empower communities

- Earmarking for social development
- Subject funds to processes of local public finance to improve accountability and transparency
- Allow for strategic use of funds under municipal jurisdiction, right now it is under barangay jurisdiction.
- Minimize company discretion to safeguard communities from dependence.

Review of the current monitoring mechanisms of mining operations and presentation of the Mining Monitoring Tool Output

Presenter: Gina Tumlos, Legal Consultant, Bantay Kita

Presentation as Annex 9

According to Ms. Tumlos, Environmental Impact Assessment or EIA is a process of sustainable development to reduce and mitigate anticipated impacts of development projects. It helps government, communities and other stakeholders in the decision making process.

EIA has 5 primary mechanisms:

- Reliance on participatory approaches
- Application of the precautionary principle
- Application of the principle of intergenerational equity
- Conservation of biological diversity and ecological integrity is a primary consideration
- Improved valuation, pricing and incentives

Central to the process of EIA is public participation. In all stages of the EIA process, the public can be involved: i) screening; ii) scoping; iii) preparation of EIA report by the EIA consultant; and iv) post-approval monitoring, compliance and enforcement

Philippine Environmental Impact Statement System (PEISS): PD 1586 mandated all government agencies including GOCCs and private corporations to prepare an EIS for any project that significantly affects the quality of the environment. It is anchored on the principles of sustainable development and is implemented to ensure a rational balance between socio-economic development and environmental protection and sound management of natural resources. This was followed by Proclamation 2146 which defined Environmentally Critical Projects (ECPs) and Environmentally Critical Areas (ECAs). All mining projects are ECPs.

The PEISS Process:

1. A company/proponent will prepare the Environmental Impact Assessment (EIA) to determine the possible impacts of a proposed project on the environment and community.

Based on the DENR guidelines, EIA should contain the following: project description; baseline environmental description of land, water, air and people; environmental impact prediction and evaluation; environmental impact management plan.

2. Results of EIA are reported in a document called Environmental Impact Statement (EIS).
3. Once the EIS is approved, an Environmental Compliance Certificate (ECC) is issued, certifying that the proposed project will have minimal impacts on the environment and community. ECC is not a permit to operate for mining companies. It is just one of the requirements in securing the Declaration of Mining Project Feasibility. It is valid and active for the lifetime of the project.

Stages of the PEISS Process:

- Screening done by company
- Scoping done by company
- EIA study and report preparation done by company
- EIA review and evaluation done by DENR-EMB
- Decision making by DENR EMB
- Post-ECC Monitoring done by company
- Validation and evaluation/audit stages done by DENR-EMB and MMT

To complete and comply with the ECC, one has to comply with several other laws like the Clean Water Act, Clean Air Act, Mining Act, Toxic Substance Waste Act and Ecological Solid Waste Act. Otherwise, through a formal request, an ECC can be revoked which can lead to the cancellation of the mining permit and ultimately, project cancellation.

Gaps/Weakness in PEISS

- No public participation in project screening which is the step where you determine whether project has significant impact to the environment. When there is no public participation in the screening step, EIA process becomes just a formality.
- EIA does not provide cost-benefit and opportunity-cost analysis vis-a-vis other economic activities such as tourism, fisheries and wildlife conservation. This denies the local communities the opportunity to make informed decisions.
- Public hearing is being used as forum for mining companies to explain their side, get feedback, comments. But there is no assurance if inputs from public are considered in the decision making process. Also, public hearing can be waived. It may even be replaced with

public consultation where results and reports are prepared by the company/proponent and hence may be subject to manipulation.

- Absence of grievance mechanism in the PEISS. Proponents are not required to establish any grievance mechanism. There is no avenue for redress if EIS process is not followed.
- Access to project information and EIA reports is limited. Stakeholders are not given the full report and it is unclear how much time is given to stakeholder to review and understand the project and its issues
- Direct and indirect impact areas serve as the main reference for the determination and selection of stakeholders, unlike in Thailand where stakeholders are carefully studied, identified and selected.
- PEISS allows/tolerates the non-signing of the Post Scoping Checklist which is where agreements and issues raised in the scoping process is integrated. This constitutes the formal conclusion of the entire scoping exercise. Guidelines says that the proponent shall “attempt” to have the list signed off and that the non-signing will not adversely affect or delay the conduct of the Technical Scoping of the Review Team on site.
- There is no accreditation process for EIA preparers.
- Guidelines for public consultation and participation in the EIA process generally end when the ECC is approved.

The following are observed gaps in the MMT:

- Not all MMT reports are disseminated to community or interested stakeholders despite being set in AOs.
- Only a few reports follow the template set in the revised DAO 03-30 guidelines making review and evaluation difficult.
- Only a few report contain air, soil and land sampling which is supposed to be included.
- Template does not respond to the monitoring duties of MMT
- No monitoring of submission of quarterly MMT report and there are no corresponding penalties
- Unclear what happens to the Audit Report of the EMB-Central Office
- No CSO accreditation guidelines to be MMT member
- No training on the protocols of monitoring given to MMT members by EMB

- Not all projects with ECCs are required to form a MMT; MMTs are now only required for ECPs

Recommendations:

- Develop detailed guidelines for public participation in each of the PEISS stage
 - timing of public participation/ number and type of meetings/ consultations
 - documents made accessible to the public
 - dissemination of information and capacity-building for communities
 - integration of feedbacks in the PEISS
- Recalibrate the thinking that PEISS is a process and not just a planning tool
- Strengthen institutions, agencies and communities
 - MMT- should be trained to build capacity
 - EMB – should have more stringent rules and better record keeping
 - CSOs/ local stakeholders

Recommendations: On Legal redress

- If still in the application process and EIS is not followed: adverse claim can be filed, or protest or opposition can be filed with Panel of Arbitrators
- If permit is already granted: request for cancellation of existing permits can be filed with the MGB, using any of the following grounds:
 - Violation of any of the terms and conditions of the permits or agreements (ECC, EPEP etc.)
 - Falsehood or omission of facts in the application for permits and agreements, which may alter, change or affect substantially the facts set forth in said statements

There are also some easier ways to file protest:

- Citizen suit- which allows any Filipino citizen to represent others
- Writ of Continuing Mandamus - where court give orders to agencies to do their jobs/fulfil their mandates under environmental laws
- Environmental Protection Order or EPO
- Writ of Kalikasan (2009) – this is easier, quicker and faster. Within 3 days after the writ is lodged at the Court of Appeals, order of either grant or deny should be served.

The question should not always be whether the project is feasible or appropriate. But rather, the process should always start by comparing alternatives, followed by continuous monitoring. The goal of the EIS process is not to increase bureaucracy and paperwork, but to facilitate an

informed decision-making in the proposal, implementation and monitoring stages of any mining activity.

Experiences with Subnational Implementation of Transparency and Accountability Initiatives

Presenter: Melvin Lamanilao, Consultant on Ancestral Domain Natural Resource Governance
Presentation attached as Annex 10

Bantay Kita has a very long experience in subnational implementation which started in 2010. There are already Initiatives in Compostela Valley (ComVal) and also in South Cotabato.

Subnational initiatives are important because of the following:

- It provides opportunities to create collective action beyond EITI standards.
- It enhances spaces for multi stakeholder dialogue to discuss site-specific concerns and issues
- It can expand community participation.
- It enables stakeholder to develop specific goals and autonomous actions to respond to local issues and concerns like social injustices, environmental protection, and others.

How do we benchmark the national initiative on the ground? It is important that the framework and the process of getting it done are clear. The EITI should be seen and considered as minimum standard in pursuing the initiative. Such standard can be expanded to be appropriate to what is being done on the ground. The “Chain for Change” which is Publish What You Pay (PWYP)’s value chain can be adopted as the conceptual framework for the subnational initiative.

The Chain for Change Framework is likened to a house with four pillars. These pillars should be balanced because in the absence of any one, the house will fall. These four interrelated pillars are:

- Publish why you pay and how you extract
- Publish what you pay
- Publish what you earn and how you spend
- Publish what you learn so that the champions will increase in number

The foundation for the framework is still transparency and accountability. This is what can be done at the subnational level.

The following are the important steps and milestones in subnational implementation:

- Mapping the stakeholders – who are the important stakeholders and what are their interests and concerns?
- Power relations- who among the stakeholders are weak that needs to be empowered?
- Empowering the powerless- whom shall we focus our capability-building intervention?
- Multiply champions - who among the stakeholders can be our partner in promoting transparency?
- Institutionalize multi-stakeholder partnership – it is important to have legal basis, either through EO or ordinance.

Two models of Subnational Initiatives:

1. Compostela Valley (Comval) Initiative: The initiative was triggered by IP conflict on royalty management/ancestral domain development which is common in many areas. A conference was held among IPs hosting mining operations who, it turned out, were experiencing similar problems and had common issues which focused mainly on transparency. They looked into the FPIC process, revenue payment and collection and demanded disclosure on all these concerns.

As a legislative measure, ordinances on Natural Resources Utilization Transparency Mechanisms and Ancestral Domain Revenue Code have been started. This is ongoing and is now in the 2nd reading. This is an improvement as instead of transparency in mining alone, they covered the whole natural resources - from mining to logging, use of water, energy, large scale plantation, these are all covered by the ordinance. Further, they are now also enacting an ordinance about a special tax code which provides benefits to IPs from taxes, aside from royalties.

2. South Cotabato Initiative: The context of the South Cotabato initiative is on small scale mining in the ancestral domain with focus on revenue management and community development planning. They wanted to make sure that the whole process of community development planning is very inclusive and how funds from mining operations will be utilized. In terms of legislative action, they are pushing for the strengthening small scale mining regulation and environmental protection and management.

Based on ground experience in the subnational level, the following are observations as regard to engaging small scale mining in the transparency mechanism:

- Particularly in the context of ComVal, which may also be similar with other areas, SSM showed a very complex value chain compared to large scale operations. Each link in the value chain has different players and industry dynamics.
- The “Minahang Bayan” (Minahang Katutubo) is just a declaration of “special land use” or “special economic zone” for SSM development. It is not a complete regulatory instrument. Whether or not all SSM operations are held within declared Minahang Bayan, the revenue stream is still difficult to fully track.

SSM is a not so small yet complex industry where there are multiple players. Revenue tracking in SSM is likened to a “plumbing work that has so many leaks”. In ore extraction based on the subnational experience in Mindanao for example, the extraction and processing may be regulated activities but the trading of commodity is not.

Key lessons based on ground or grassroots experience:

- The support of the local chief executive is very crucial. No subnational initiative will prosper without the support of the LGU head and the whole structure.
- The goal of promoting transparency should be harmonized with the diverse interest of key stakeholders –i.e. IPs, large-scale and small-scale miners
- The interest of stakeholders should be sustained by responding to their capacity building needs and concerns
- Direct engagement must be continued to develop more champions that will sustain the initiative in the area

It is important to recognize CSO diverse interest and advocacy agenda in the EI, particularly in mining. There are those who attend forums to gather information on EI and knowledge building to support respective advocacies. There are also advocates for EITI transparency and accountability who may not necessarily proceed to actual implementation. And there are also the initiators who are ready to engage all stakeholders. With the subnational initiative for transparency and accountability, these are the diverse advocacies and interests and we cannot enforce everyone to support all advocacies and interests.

OPEN FORUM

Following are the questions, comments, concerns and reactions raised by participants in the plenary following the presentations made on various topics:

1. On Social Development and Management Program (SDMP)

- i. LGU has been used as mouthpiece of mining companies in the implementation of SDMP. This has also been used to commit human violations. In Tampacan project, a big percentage of SDMP is used to fund for salary of CAGFUs and allowance of soldiers deployed in mining area. How can this be used?
- ii. Is grant of SDMP contingent with the condition of withdrawing legal cases against mining operations?
- iii. We agree on the recommendation to come up with study on where SDMP is utilized. Contribution of companies to SDMP is very big. In Carrascal, the fund is used to pay for artists and dancers during fiestas. It is also used to bribe in the withdrawal of legal cases. Who are accountable where SDMP money goes?
- iv. Particular to the remarks on allowing LGU to participate in capacity building and empowerment of communities, we believe that LGUs have the patriarchal duties over their constituents. Instead of just “allowing” can this be “mandating”, so that manipulations from mining companies will be avoided. Better yet, suggest that LGUs be strengthened to implement the SDMP without being influenced by mining companies.
- v. We disagree with the proposal of transferring SDMP funds to LGU because there are LGUs who manipulate this fund. Since we advocate for transparency, it should be multi-sectoral signatories. There should be rules before funds are released or used. There should be feasibility study and plans on how to spend this, with consent of communities and stakeholders.

2. On PEISS

- i. Is it mandatory or discretionary for the extractive industry to comply with the PEISS?
- ii. What are the legal effects of non-compliance and non-observance of ECC?
- iii. Particular to the cancellation of ECC needing formal request if found to be violative: Can we make it “motoproprio” for the monitoring agency or EMB to cancel and not wait for formal request?
- iv. The 3-day required action on the Writ of Kalikasan does not happen in reality. By experience, in region 9, a case was filed and it took 11 months to recognize that there was such case and to reconstitute the inactive panel. It took 2 years to recognize the

case. Yes, there is legal redress, but how should these be strengthened to become more effective?

3. On Small Scale Mining/IPs/Capacity Building

- i. In South Cotabato, we helped the provincial government fix their SSM. But the operations in T'boli area caused siltation, and even flooding in some municipalities in Sultan Kudarat municipality which damaged crops and properties. It should be said that the economy of South Cotabato does not depend on mining. We became first class municipality because of agriculture. There is a need to raise this to EITI through the MSG to capacitate community and make them aware of opportunities and options for their sustainable development other than mining.
 - ii. Our area is declared as watershed. But some politicians are backing up IPs to remove our ancestral domain in the watershed area because they want the "Minahang Bayan". They have lodged the request to national regulatory authorities and manipulated many of people and many processes in government. How do we demand accountability and how do we lobby for stricter observance and compliance to the law?
4. On CSO Participation. The framework is not clear on the participation of CSO in the planning and monitoring of implementation like of SDMP. When money is given, it ends there. Next thing is a play just between mining companies and LGUs. In the framework, we would like to see how CSO's can also participate in the activities and process.
5. On Capacity Building: The last time we had training on how to track finances and how to make paper trailing was way back in 2008. In Sibuyan Island, we were able to kick out the largest nickel mining company in the world. They applied in 2009, they left in 2011. This was done through financial tracking and document trailing. Previously a recommendation was made to train community on how to trace and track documents and finances. At the national level, this has been done and such is why we were able to come up with a very good 2nd EITI Country Report. The question is how to transfer this capability at the community level. Have we done this or are there plans to conduct capacity building of communities?
6. On Monitoring and Evaluation: What are the case studies on M&E that have produced results which we can use as basis for our promotion and advocacies so that mining companies will give their fair share to the communities? The process has not changed through the years, but let us evaluate if there have been cases where concrete results or

outcome have been achieved or where concrete actions have been taken based on the results/recommendations?

7. On Mining Development Framework: People are getting death threats especially on mining issues. Instead of “Business and Human Rights”, can we push for “Human Rights above Business”. Instead of “Respect... Protect... Remedy” which is quite weak, it should be “Respect... Protect... Remedy... Fulfill”. Mining companies should be made accountable for all their violations, especially on human rights violations. This should be pushed by Bantay Kita. Human rights should be included in the transparency and accountability mechanisms.
8. On other issues. We do not care if income from mining is material or immaterial if it is at the expense of our environment and human resource where violations are being committed. There is also element of deceit as income from mining is already subsumed in the IRA. There is also a case then governor signs a small scale mining permit when the municipality concerned has not yet even endorsed the project.

Following are the responses given on the various concerns raised:

1. On SDMP

- i. In a paper written on SDMP, the proposal was to change framework such that instead of having the company directly financing the SDMP projects, funds can be transferred to LGUs as form of levy, like additional payment to LGU. If it is in the form of levy, companies have no choice but to give it to LGUs who then decides how and where these should be spent.

Then LGUs can be mandated to spend it for social and development projects. If LGUs hold the money, they can be made accountable for the resources. Citizens can rely on COA who reviews LGU spending. This will tilt the balance of power from mining companies to LGUs.

- ii. On the non-agreement to the proposal to transfer SDMP fund to LGU: This is just an option that can be considered to improve the framework. We appreciate inputs. Multi-stakeholder fund management can be considered.

2. On PEISS

- i.* On non-compliance with ECC: Yes there are cases of complaints lodged against non-compliance of mining companies in the ECC requirements and these are grounds for ECC cancellation.
- ii.* On legal redress: It would be good if Bantay Kita can have another venue where we can constitute several legal people to delve deeper on how these legal redress can be implemented. We can talk about other routes in addressing institutional barriers. As to whether MMT can bring these suits, yes, this is part of their duties. They themselves should be able to resolve complaints, they can investigate on complaints brought to their attention, we can bring citizen suit which can be lodged by any concerned citizen.
- iii.* On whether we can say no to mining companies. Yes we should be able to say no, but it is a long way to go. We should be able to oppose. But it is also recognized this can also be manipulated as a process.

3. On SSM/IP issues

- i.* There is already a Supreme Court decision on this. Governors and mayors cannot approve SSM permits, unless this is approved by Provincial or City Mining Regulatory Board who issues appropriate resolution pertaining to a particular SSM contract having been approved. No more debate on this.
- ii.* IP has the right and the discretion whether they want to be registered or not. In the issue of Cantillan, where it was declared a watershed area, if IP wants to exercise their priority right over the area inside the ancestral domain, this is valid. But if they are being used by other people to manipulate the process, that is another story.

On other options offered to IPs (other than mining). BK promotes Chain for Change framework. Mining industry has their own value chain. As a framework, BK wants to promote in the whole transparency and accountability mechanism, for IPs to “know first what your natural resources are and what is the legal framework”. Consider all these before coming up with decision.

- 4. On CSO participation: EITI provide the platform for disclosure to be mutually beneficial. In the unholy alliance between mining companies and CSOs, our role is really to be watchdogs. This is what we are doing now.

CSOs should be united. Admit the reality, in your own communities, your people also benefit from mining. We should look at the enemy at a multi-disciplinary approach. We need to have a campaign strategy. Battle will stretch to the long term.

We need to strengthen the subnational implementation. There is already a platform at the national level that just have to be adopted in the local level. How to contextualize CSO participation? What we are doing at the national will similarly be done in the local level. This is not the “be-all”. It is important that we are united.

On capacitating ourselves and the communities, it should not be limited to just how to compute but also how to manage. How to be more assertive and demand transparency and accountability.

5. On Capacity Building: What are the capacity building activities that has been done? Host community of Apex Mining Company has compelled the company to report gross output including production including information where gold was sold from 2009 to 2013. At this time, IP had issues on royalty payments which was lodged at the NCIP. With the capacity building that has been conducted, they had opportunity to compute if the royalty received is right already. We also helped them to argue and negotiate.
6. On Monitoring and Evaluation: There have been pockets of experiences. We have seen progress and achievements, though these have not been integrated yet. Reports on this are not yet disclosed. We encourage participants to also share their success stories so these can be documented and so learnings will be shared. Rich experiences of CSOs. Sharing of best practices, there is structure, there is framework. Communications and research of BK will be very open to work on it. If we can make it more visual, we are willing to do our share so that we can communicate it better.
7. On Mining Development Framework: First, EITI standard are just financial disclosure. But globally, Philippines is first to make environmental and social disclosure. If needed, PWYP will protest outside the EITI convention that human rights should prevail. In EITI it is a consensus building process. But as much as we can, we will push. If we cannot push within EITI, we will do it outside EITI.
8. On other issues: LGU share in the national wealth- from the 2% excise tax, local government gets 40% of this. The local government code has very clear guidelines on this. The national wealth should be used by LGUs for socio economic development and

environmental protection. This should be utilized 100%. But when this is put or mixed in the general fund, it will be difficult to track.

Introduction of CSO Representatives to the PH-EITI MSG

10 individuals expressed their interest to be considered as CSO representatives to the PH EITI MSG. Of the 10 candidates, 8 are currently sitting as CSO representatives to the PH-EITI.

1. Ronald Allan Barnacha - National Trustee of Philippine Rural Reconstruction Movement (PRRM); Regional Advisory Council (RAC) member for Luzon of the Foundation for Philippine Environment (FPE); Vice President of Bantay Kita; CSO Representative to the MSG of the PH-EITI, January 2013-January 2016
2. Atty. Jay Batongbacal – Associate professor, UP Law; Director, UP Institute of Maritime Affairs and Law of the Sea; CSO Rep to the MSG of the PH-EITI, January 2013-January 2016
3. Chadwick Llanos – Board member of the United Sibonga Residents for Environmental Protection and Development; CSO Representative to the MSG of the PH-EITI, January 2013-January 2016
4. Cielo Magno – National Coordinator, Bantay Kita; Assistant Professor, UP Economics; CSO Representative to the MSG of the PH-EITI, January 2013-January 2016
5. Merian Mani- Marinduque State College President; Bantay Kita Board member; CSO Representative to the MSG of the PH-EITI, January 2013-January 2016
6. Filomeno Sta Ana- Coordinator and Founding Member, Action for Economic Reforms; CSO Representative to the MSG of the PH-EITI, January 2013-January 2016; President, Bantay Kita 2009-present; Treasurer and Trustee, The Samdhana Institute, 2004-present
7. Maria Aurora Teresita Tabada – ISRDS, VSU Director; Associate Professor at Visayas State University; Bantay Kita Board member; CSO Representative to the MSG of the PH-EITI, January 2013-January 2016
8. Starjoan Villanueva- Executive Director of the Alternate Forum for Research in Mindanao (AFRIM), Inc; CSO representative to the MSG of the PH-EITI, January 2013-January 2016; Bantay Kita Board Member
9. Evelyn Lacambra – President, CLAIM
10. Jose Melvin Lamanilao – Member of the Project Awards Committee for the Alternative law Groups; Former Board Member of MinCode and Bantay Kita; Worked as Executive Director of PBPF; Consultant for the Kematu Unified tribal Council

Additional nominees:

11. Mr. Ben Maata - Dinagat Island
12. Ms. Victoria Cajandig of PDSI - Region 9
13. Atty. Robert Chan - Palawan
14. Mr. Rodne Galicha
15. Fr. Edion Febrero

The two IP representatives who will be considered in addition to the CSO Representatives:

1. Augusto Blanco
2. Datu Umbo from Trento Agusan Del Sur

Current CSO representatives to the PH EITI-MSG were requested to share highlights of their experience:

Prof. Tabada:

“In 2013, when we were choosing representatives to the MSG, we did it by consensus, not by votation. That time, there was need to have gender balance and geographical balance, including multi-discipline. When we got to MSG, it was required that in the next representation, some old members need to be retained to ensure continuity. That was the context.

Today, we can sit with business and government and discuss issues where they listen and are not just compelled to sit with us. We need to go out of our way, to prepare for meetings, to study so we can contribute productively. If there are important issues where CSOs need to stand up and take position, CSOs meet and decide on concerted actions. It is a balancing act, because not all the time, you or your ideas will prevail. It was a happy experience for me, despite the many insufficient sleep i experienced. I treat this as my contribution to country’s development and my commitment to empower communities.

Dr. Mani:

“In my 3 years in MSG, I have 3 things/lessons to point out: 1) Selflessness- you forget about your own interest, you think about what is good for the group; 2) Sacrifice – you prepare for the meeting and attend the meeting because if not, it is not only yourself who loose, but your representation. It is not only your presence, but participation that is most important; and 3) my heart dances with the enemy – it is complementation and blending. You can still continue your advocacy, in front of your enemies”.

Mr. Barnacha:

“It was not easy to work at the MSG. But it was an opportunity to talk, not only with the government but with the industry as well. It has been a learning experience, filled with sacrifice and selflessness as you need to speak for the whole country, not just for your organization and not just for yourself. There are thousands of emails to address. It has been a stressful but challenging experience but this is for the good of all”.

Dr. Magno:

“The experience has been more of strategic engagement since EITI is a consensus building process, you will learn how to strategize. It is a balancing act, like sleeping with the enemy to strategize. Let us all be open. This is good avenue as we get the information that we want and we need. Collegiality is promoted. Know when to use your “bullet”.

After the sharing of MSG members, Ms. Lacambra backed-out due to health reasons.

Day 2

The second day of the national conference was intended for capacity building and action planning. The day officially started at 8:57 am with a narration of the highlights of the previous day’s activities. It was followed immediately with the break-out sessions for the capacity building workshop.

Capacity Building Workshop and Outputs

Originally, the following six topics were intended to be conducted in parallel sessions:

1. FPIC, Community Based Agreements and Royalty Payments, MOA Renegotiation
2. Macroeconomic framework on natural resource management
3. Monitoring Environmental Hazards of mining activities
4. Cost Benefit Analysis
5. Legal framework of environmental monitoring in capacity building
6. Small scale mining.

However, very few participants signified interest, for topics 2 and 3, hence they were dropped. The following are the results of the workshop:

On FPIC, Community Based Agreements and Royalty Payments, MOA Renegotiation

The session which was facilitated by Atty. Christine Antoniette Ramos, Deputy Coordinator of the Alternative Law Group (ALG), developed as a policy recommendation discourse aiming towards the truthful representation of the IP concerns and interests in the conduct of FPIC and Community Based Agreements. Each participant shared their local experiences and challenges while Atty. Ramos guided the discussion by providing legal inputs according to FPIC guidelines and existing laws. The group was able to highlight the shortcomings and problems of the FPIC process and came up with policy recommendations to intensify and advance their rights over their Ancestral Domain which was oftentimes violated and disregarded by the other parties to the contract.

The following are highlights of the discussion:

- The right of the IPs to enter into contracts with non-IPs emanates from their novel right to develop, control and use the lands and natural resources within their Ancestral Domain provided that a formal and written agreement is entered with the IPs concern.
- Elements of a Community Based Agreements or MOA
 - Consent. The Mining Act prohibits mining operations inside an ancestral land without prior consent. Free Prior Informed Consent or FPIC means:
 - Free or “Malaya” means that IPs are supposed to be free from external manipulation or coercion in giving their consent.
 - Prior means that the consent should be first sought before any mining activity is undertaken.
 - Informed means the project must be explained in the language and process understandable to the IP community.
 - Subject Matter refers to the project or activity in the Ancestral Domain
 - Extractive, intrusive or large scale projects, as well as non-extractive or small-scale programs require an FPIC
 - FPIC exemption applies to areas of sacred grounds and burial sites, heritage sites, critical areas identified by ICCs/IPs, and/or areas identified in the IP’s Ancestral Domain Sustainable Development and Protection Plan or ADSDPP.
 - FPIC exemption also applies to community-solicited activities for the delivery of basic services as validated and NCIP projects by itself or with other LGUs as validated.
 - The validation process, as suggested by one of the participants must be a process led and decided by the IP community, not NCIP.
 - Foreign funded projects undertaken with NCIP as validated

- Exercise of traditional resource-use rights
 - Emergency cases in response to emergency situations i.e. hot pursuit military operation, securing vital government installations, programs and projects
 - NCIP guidelines on emergency case is perceived as an imposition and should be revised to consider prior consultation with the IP community.
- Consideration. The royalty payment on the utilization of the minerals should not be less than 1% of the gross output amount.
 - IPs must not confuse funds classified under Corporate Social Responsibility, Royalty, and projects under IP Development Plan. They must do an inventory of all their benefits according to the contract and must demand for transparency to properly account for such.
 - Form. The MOA should strictly reflect what was agreed upon by the parties. The document should be written in the language or dialect of the ICC/IPs concerned before it gets translated to English. NCIP requires the MOA to be notarized, thus an English translation of such will have to be produced.
- To eliminate gaps during translation, the group suggested that it will be ideal to engage a documenter or translator who speaks the same dialect. An alternative will be for the documenter/translator to engage IP assistance in the process. This is to ensure that the IP community's concerns are well transcribed in the MOA.
 - The IP group raised concern over the NCIP team's ability in carrying out the FPIC process arising from the agency's lack of cultural knowledge and failure to reach out to the tribe's righteous leader/s for consultation and negotiation:
 - The consent process in the 2012 NCIP guidelines is limited to 55 days-span. This span should be adjusted to consider the tribe's conduct of 'ritwal' prior to giving their consent (i.e. full moon).
 - Arbitration management by NCIP is critiqued. In cases of two or more clans within the Ancestral Domain, NCIP fails to seek consensus from all parties with claim and in several occasions rather ask the wrong leader to mediate.
 - Further, the group also raised concern over the credibility of NCIP officials who are biased and are too reliant to the funds given by the mining company for the conduct of the FPIC process.

- In an example, the NCIP allegedly let a mining company draft and print a MOA on its own will resulting to a very one-sided contract that is disadvantageous to the IP community.
- The IP group is convinced that the FPIC guidelines are generally created to advance their welfare. However, such guidelines are to be revisited to change the funding source of the FPIC process and instead involve larger government fund to free NCIP from its systemic problem.
 - NCIP's financial statement needs to be audited because their claim of having insufficient fund is contrary to the claim that huge foreign fund is granted to the office. NCIP must be more transparent about its finances.
 - NCIP office needs to be rationalized as well. Although majority of the group does not recommend that the office be abolished, the group is unified with the claim that the office must be an institution who can be true to its mandate.
- MOA signing per FPIC guidelines must be held within the Ancestral Domain by those duly authorized to sign during a General Assembly called for the purpose. The contents must be fully read and explained by the FPIC team and must be understood and affirmed by the community.
 - The IP's experience is otherwise. In the process, IP leaders are brought to hotels by either the mining company itself or by some interested politicians. A particular example was in Tampakan where IP leaders were brought to General Santos for MOA signing as recommended by NCIP.
- The guideline permits the IP communities to choose legal counsel/third party representative in the drafting of MOA. However, utmost caution must be observed to ensure that the third party individual is really advancing the community welfare—not his/her self-interest i.e. case of Mamanwa at Taganito mines.
- Tribes must prioritize securing the Indigenous Political Structures (IPS) and ADSDPP to guide the drafting of MOA. Through the IPS, each IP community can establish documents pertaining to their true governance system. Securing ADSDPP will also help the IP community draw their development path based on their customary beliefs and practices.
 - NCIP must honor both documents and at the same time, check for the veracity of each.
 - Irrespective of the stage in project implementation (i.e. ECC has been granted to the mining proponent) if the FPIC is not yet sought, the project should never touch the Ancestral Domain and the IP must assert their right on this in protecting their resources.

- The group suggested that the 2006 guidelines must be considered null and invalid already. This will be an amendment to the existing guideline which obliges the use of the old guideline for communities with FBIs. The 2006 guidelines is generally perceived to be disagreeable for so many reasons.

The whole group is hoping that the policy recommendations formed in the break out session will reach the Chair of Committee on Indigenous People in Congress and be translated to change in policies under the existing guidelines.

On Monitoring Environmental Hazards of Mining activities

The session, facilitated by Joshua Lopez, a Mining Engineering Student, UP College of Engineering and Researcher of Bantay Kita, had the following objectives:

- To conduct a focused group discussion (FGD) and solicit inputs/comments from the participants on the environmental monitoring tool/handbook being developed by BK. The tool aims to be simple enough for the CSOs and communities to use and shall aid them in validating the findings of the Mining Monitoring Team (MMT); and
- To collaborate with and tap the expertise of technical people (e.g. Mining Engineers) to help BK in developing a monitoring tool/handbook for use of CSOs and the community to better monitor the mining activities in their area. This also aims to capacitate and develop the skills of CSOs and communities in monitoring mining activities

Highlights, Issues and Suggestions:

- Managing environmental impact of mining
 - Mining can cause environmental destruction, however, if managed correctly, it can be mitigated
 - Ideas from the participants on how to manage the environmental impact of mining:
 - There exist the laws, however, the issue is on the implementation/enforcement of such laws
 - The community should be aware where to mine or not, so they can monitor closely and even create ordinances (at the barangay level)
 - Monitor and ensure compliance of companies with their ECCs
 - The need for thorough research before allowing the mining companies to operate in the area
 - There are also alleged bribery cases

- The companies should engage mining engineers in the operations areas
 - The need to identify and assess both the positive and negative impacts of mining (cost-benefit analysis). There should be a dedicated team to do the survey in the affected area.
 - The mining companies should provide copies of their concession plans to enable the community to monitor the forest resources.
 - Formulate mechanism on resource valuation research done by international unions
- Environmental Monitoring. This involves the processes and activities done to characterize and keep track of the quality of the environment. Environmental monitoring is important so the community would know what to monitor and for them to know how to mitigate and solve environmental issues

Steps in Environmental Monitoring (as implemented by both mining companies, EMB and MGB):

- a. Preparation of monitoring plan
 - b. Collection of samples – sampling methods
 - c. Field testing – measurements taken in the field, e.g. temperature, pH, acidity
 - d. Recording of field observations
 - e. Pre-treatment and transport of samples
 - f. Analysis in laboratory
 - g. Data processing
 - h. Reporting
- Issues raised:
 - The results environmental monitoring are supposed to be publicly available, however, there are claims that the same are not being disclosed to the public
 - There is an issue on the availability of equipment for monitoring
 - Semirara: there is a need for concrete mitigating measures
 - Rehabilitation and implementation issues
 - Suggestions from the participants:
 - The first step should be the validation of baseline – where is the EIS?
 - It should not be just Monitoring but “Monitoring and Evaluation”; there is a need to create a schematic M&E diagram
 - Include in the steps the document review process; thresholds should be identified
 - Suggest to include threshold value on biodiversity
 - Suggest to provide separate monitoring equipment to CSOs

- What to monitor: Water, air and soil quality
- Testing parameters
 - It is important to monitor the air quality, especially the dust level since it is the main cause of pulmonary diseases
 - Mining companies should be aware of any toxic gases released due to their operations
 - In testing soil quality, it is important to know the salinity level; it identifies the ability to grow plants
- Some things to consider in environmental monitoring
 - Background values
 - It is important to measure the values, in water or soil, prior to mining which can be seen in the EIS of the mining companies or can be done through testing; these values depend on the natural state in the area
 - Noise pollution should also be considered/measured, however, it is difficult to quantify
 - Sampling points/sampling methodologies
 - Effectiveness in controlling the pollution
 - Suitability of measuring technique
 - Needs accuracy and proper equipment
 - Recording and tabulation of data
 - E.g., streamflow and turbidity of river
- Other input/suggestion from the participants:
 - There is a need to ensure the independence of monitoring team and their integrity and objectivity

On Legal Framework of Environmental Monitoring in Capacity Building

The session was facilitated by Ms. Gina Tumlos from Bantay Kita. The group which was comprised of 11 participants was further divided into three small groups to discuss the 3

sections on (i) Project Description; (ii) Environmental Performance; and (iii) Environmental Risk Assessment for 3 companies, namely APEX, TVI and CAGDIANAO.

Below are the highlights of the discussion:

- There was a question on whether the EIA, which contains the proposed mitigation plans and measures, match up with the reality? The general and unanimous response among the group members was that Environmental Impact Assessment (EIA) does not match up with the reality.
 - EIAs are very difficult to access. Request for copy of documents usually leads to pointing to another agency or asking for various endorsements from the LGU/NGA, and if such information is granted/acquired, the information provided is usually highly technical, that a common person would have a hard time understanding the report. Data appear to be “hiding” something from the public by using jargons that are not easily understood by the users, let alone the concerned communities where the extraction is being made.
 - There was a point raised that some people does not care about EIS or ECC, instead they are fixated with the promises of the company to the community: poverty alleviation within the mining site and that people’s lives will be better off with the mining activity.
- Are the proposed mitigation measures effective? What are the recommendations?
 - The mitigation measures proposed were not effective because provisions were general, and have discounted the peculiarity of each community where extraction was done. Although implementing mitigation measures is a good start, there is still a lot of fine tuning to be done. The recommendation is to choose a number of communities from small to large scale mining, immerse with the people, ask what the community needs as far as the mitigation measure is concerned.
 - People in the community are overwhelmed by the information presented, and most of them cannot understand it. It is as if EIS is being used as a blanket to cover the real issues that the community needs to know. The EIS is not conducted the way it should be. Beyond regulations and the legal framework, monitoring should be done stringently.
 - BK and EITI should help the MSG how to popularize the information to educate the community.

- On the IP level, and even in some of the communities, the big companies usually hold dialogue but would lure the attendees with free rice, and sumptuous food, then ask them to sign an “attendance sheet” that would later on be presented as an acceptance paper signifying that they agree with the terms of the mining companies. There should be a local MSG that will help in monitoring this as well.
- Multisectoral workshop should be conducted before the EIS. Participants of the break-out session asked “Who will do it?” Validating the scoping per household should be conducted. It may be too tedious and laborious but it is the only way to validate, so funds must be devoted to it.
- After the final documents are submitted, endorsements to the community should be official, if possible, an event in itself so that the mining companies would know that they will be checked and that the community have the right to ask questions and that the companies are obliged to provide answers.
- Recommendations on how to effectively monitor the negative impacts of mining.
 - There should be a standard checklist that encompasses the potential dangers/impacts of mining: from the initial construction of facilities, to the wastes/discharges from the mining sites.
 - Data submitted should be validated, cross-checked with EIS, and more importantly, be validated on the ground. This should also be made available to any person interested to look at the data/reports, with less red tape.
 - An archive was also recommended so that there is a central data storage that anyone interested can check. This would discourage tampering of data, and may be used as reference in any future projects. The academic institutions can also benefit from the archiving.
 - Collection of data should involve the MSG more actively, as their participation may help validate the data and effectively monitor the negative impacts of mining. A representative to the IP community should be able to explain extensively the effects of mining, monitor the impacts through regular site visits and discussions with the communities surrounding the mining area.

- It was also recommended that BK and EITI should help in popularizing the data. The academe may also supplement the efforts.
- Data presentation should be reader-friendly, graphs and flowcharts must be presented in a simple but interesting and understandable manner. To achieve this, one recommendation is to present first to the academe, for it to have a fresh perspective.
- A step-by-step procedure on how to get the reports should be issued to the involved communities. It should be made clear to the concerned communities that an effective representative to any gathering is important so that they would be entitled to the information. In its current situation, it was suggested that the community should form a coalition and formalize it by registering so that they would have a right to the information. Disclosure will no longer be a problem if they are member of a network.

There was also a comment that the reading material is too long to process at such a short time. The reading materials were voluminous for a limited workshop time. Summary on what to look for in monitoring, information on mitigating measures (back of the ECC manual) should be in bite-size for easy appreciation so that understanding them will not be “such a pain.”

On Small Scale Mining (SSM)

This workshop was facilitated by Atty. Gilda Benjamin, Instructor from Siliman University. Small Scale Mining has been existing for a long time. The current trend in SSM is no longer limited to the traditional way of mining but involves a mixed process complemented with blasting or cyanidation.

Based on the workshop discussion, SSM is a fragmented activity such is why monitoring its impact to the community has been a challenge. The SSM operations in some areas in Mindanao are very individualistic endeavour because most of the groups operating there are migrants. Participants shared that some SSM activities in Mindanao and in other areas have contributed to prostitution, drugs, and use of guns and violence.

Despite the negative image of SSM, however, its contributions cannot be underestimated. SSM has been an important source of livelihood for the community. The money people get from SSM is being used to fund farming activities and other livelihood activities as well. It has also assisted some communities to recover from typhoons. In Compostela Valley, SSM enabled the absorption of surplus labor from Mindanao.

Although most of them are illegal and although there have been cease and desist order, SSM activities still continue. Another highlighted issue during the discussion was that most SSM activities are in a way being “legitimized” because of the donations/fees being paid to the LGUs and even to armed groups. They also give contributions to the local communities.

Given all of these, the group noted that the government and the other groups (CSOs) should consider organizing and formalizing these kind of activities. This would give way for more transparency and accountability not just to the community but to the environment as well. Since SSM has been found to contribute to livelihood generation for the local communities, the group noted that the government should work towards strengthening their capacity.

Government should also look into the impact to the community of some laws that they implement. For example, if the use of mercury is to be totally banned without consultation and/or financial assistance from government, the small scale miners will be largely affected. The government should, instead, be thinking of solutions like capacitating SSM on how to improve their methods and introduce environmentally friendly and safe technology.

As regards specific recommendations by the group, they came up with the following:

- EITI to assist first in the organization/formation and strengthening of SSM
- Recognize/Study the “legitimization” of LGU’s innovations, ie. collection of donations from SSM which is justified in areas where presence of government is hardly felt. SSMs have been contributing to the local economy, therefore eradication or elimination should not be an option. What needs to be done is to increase transparency and accountability in SSM activities.
- Conduct site-/context- specific studies on SSM. Intensive scoping has to be done in all areas where SSM operates and not just on the usual concentrated area.
- EITI templates should also consider the dynamics in different areas. While there should be a general study, there should also be per area/per commodity study.
- Strengthen the SSM organization so they will be accountable and they will self-monitor their area. SSMs should be formalized and strengthened.

- Capacity building should be for all stakeholders, (LGU CSO and Miners). LGUs should be required to be transparent with their collections. SSMs should be capacitated to monitor where the funds are spent.
- Monitor licenses issued by LGUs and quantify the production. This will lead to easier monitoring of activities.
- If LGUs are collecting donations, demand from LGUs transparency as to where money is spent or how it is utilized. Increase transparency initiative for SSM by having more series of consultation.
- Conduct In depth study of beneficial ownership of SSM instead of just having a scoping study only.
- Formalize SSM so as to stop the illegal payments to armed groups etc. This will also help in minimizing underground and informal economy of SSM.
- Expand study on the trading of gold. The study should consider the whole value chain and not just on extraction. Identify “Minahang Bayan” as part of the study. Develop local economy to grow and for SSM to further improve the downstream economy.

2015 Accomplishment Report of Bantay Kita

Presenter: Tina Pimentel, Deputy National Coordinator, Bantay Kita

Presentation attached as Annex 11

The 2015 accomplishments of Bantay Kita was presented in 3 highlight areas: i) capacity building and advocacy, ii) research; and iii) works in Philippine EITI.

Capacity Building and Advocacy: Bantay Kita has always put emphasis on expansion, strengthening and capacitating stakeholders towards reform agenda, particularly on transparency and accountability in the extractive industry to ensure that communities and the Philippines as a whole gets its fair share. Bantay Kita intensified its efforts in capacitating and engaging with various stakeholders at the international, national, and local level.

At the International level: Bantay Kita participated in 19 activities in the form of organization, support, presentation, and/or attendance. Most of the activities were through Publish What

You Pay (PWYP), EITI, NREGI and Open Government Partnership (OGP). Bantay Kita presented and/or served as resource speaker in 12 events, participated in 7 events, and organized 1 learning session. The organization has been recognized as a frontrunner, a model coalition in the extractive industry.

At the National or Local level: Bantay Kita got involved in 38 national activities in the form of organization, support, presentation and/or attendance. In 19 of the 38 activities, BK shared its insights and expertise as resource persons. Also of the 38 activities, 9 activities were either fully or partially organized by the BK Secretariat. Highlights of monthly accomplishments for 2015 particularly where Bantay Kita made active involvements were noted.

In terms of Subnational Initiatives: Efforts were focused on IPs mostly in Mindanao, local government units, regional offices, and other civil society organizations in the coalition's bid to expand network and build more capacity within the level. BK had 41 subnational activities where the coalition organized and presented in 27 of them, supported 8 and participated in 4 events. BK also conducted transparency and accountability workshops, with focus on different IP groups and local government partnerships.

Ongoing initiatives include capacity building on extractive industry and indigenous peoples concerns, implementation of monitoring tools for operations in Cebu (on Carmen Copper), validation of the implementation of monitoring tools for FPIC, and scoping study on Iloilo's Extractive Industry.

Research: Bantay Kita did a number of studies and publication of modules and popular materials. The organization's wealth of knowledge under its research arm has been growing. For 2015, 7 papers and publications were added, 4 modules and manuals for training, 4 popular materials, 3 tools, and 4 avenues for communications.

Publications and papers are mostly published and are also available online in Bantay Kita website. The coalition has manuals and models on various contracts (Training Modules on Policies Governing All Phases of Mining, ComVal EI Transparency and Accountability Handbook, Manual on Model Coal Contract, Manual on Model Petroleum Service Contract). They also made available the Initial findings on Tools and their implementation (on Mining Transparency Index and Mining Monitoring Tools). Likewise, Bantay Kita has started database of mining industry in their website, though this is still for enrichment.

Other ongoing studies include:

- Economics of quarry/black sand mining

- Book on small scale mining
- Research on beneficial ownership
- Assessment of Compostela Valley (ComVal) initiatives
- Development of gender-sensitive downstream industry framework
- Case study of Rapu-Rapu Mine
- Scoping study on Iloilo's extractive industry
- Infographic video on mining development framework
- Video on Compostela Valley
- Environmental monitoring handbook
- Training modules on FPIC and Community Based Agreements (CBAs)

Work in Philippine-EITI: Bantay Kita actively participated in the meaningful dialogues and debates with multi-stakeholders that aimed to continuously push for greater reforms in extractive governance, beyond payments and revenues.

The 2nd EITI Country Report has been issued in December 2015. Likewise important documents such as contracts, SDMP documents, IP MOAs, and mining monitoring reports were released. CSOs made their presence felt through their representation (10 posts) in the PH-EITI MSG and continuously push for IP representation as well in the MSG. Finally, the pressure from CSOs on Semirara Mining Corporation to participate in the EITI never stops.

Bantay Kita Strategic Framework

Presenter: Dr. Cielo Magno, National Coordinator, Bantay Kita

Presentation attached as Annex 12a and 12b

Earlier, the Mining Development Framework was presented which used the assumption that the country has mineral resources and the aspiration is for these resources to contribute to sustainable development.

The criteria and requirements for mining to be able to contribute to sustainable development were identified and an assessment was done on whether the country has met the requirements in so far as the framework is concerned. Philippines has not yet, particularly in terms of government's capacity to protect human rights and to regulate the environment.

If government fails in these areas and if they cannot ensure that an activity will benefit the public in general, then doing mining becomes questionable. These issues have to be fixed.

The Problem Tree analysis (Annex 12a) summarizes the causes of the problem in mining sector.

- Natural resource management is weak and non-inclusive due to the following: i) lack of community participation in natural resource management; ii) lack of significant political influence due to fragmented efforts of stakeholders; and iii) the mandated governance in natural resource management is either inactive or missing;
- Fiscal management contributes poorly to development because of government's lack of capacity to monitor collection and disbursement of mining-related revenues and because fiscal policies are skewed towards the business sector;
- Weak monitoring of environmental compliance negates economic gains of mining because community members lack technical capacity for meaningful engagement in environmental monitoring.
- Impaired participation of small local players.

Dr. Magno encouraged the participants to give comments and add inputs as the framework presented will be Bantay Kita's strategic framework, the "theory of change". This will be use as basis of analysis on whether mining can really contribute to sustainable development. This will also tell that if development is not happening, it is because of the problems identified.

The assumption is that if problems are addressed, then the benefits being derived from the extractive industries will be maximized, such that this will ultimately lead to an improved national and local economic development and an enhanced environmental sustainability. The Objectives Tree (Annex12a) depicts the things that need to be done and this should guide participants in the action planning workshop.

Dr. Magno noted that in terms of organizing strategy, Bantay Kita's approach is to involve academe for the technical and civil society, so that at the community level, there will be complementation of expertise of academe and civil society. This is what is done at the national and also at the local levels. The goal is to expand the network of Bantay Kita, the membership strategy is to have both the academic and community organization. In terms of advocacy, Bantay Kita's strategy at the national level is to develop trainings and training modules in order to provide capacity building to members, and then legislative engagements like proposing bills (e.g. bills on taxation, to institutionalize EITI, to review coal).

At the international level, we share what we do in the Philippines with other CSOs in neighboring countries so there can be knowledge sharing and exchange too.

What we need to to do and learn, is how will be the strategic engagement at the subnational level. If these are the task that we would like to address at the national as a coalition, how

what strategy or approach to do at the subnational. What will be our entry point to start engagement.

Open Forum:

Question: The objective tree is excellent. While we have include fiscal and environmental considerations, we have forgotten social aspect. Can we include it here now?

Response: This will be included in BK's initiatives. We will also focus, monitor and figure out how to raise issues and find solutions to these social aspects.

Question: Since these items are already identified during the many planning sessions, are all the issues of stakeholders included already in the problem analysis?

Response: Yes all issues of stakeholders are included already. The framework is a product of integrating all the issues identified from the many series of meetings, consultations we have had. This has just been formalized and presented in this way.

Question: Is the focus of the analysis on sustainable development? Who will be the actors or responsible people for all activities, is it the members or the communities? Because the logframe appears to be that of BK, not the logframe of the general membership.

Response: It is the members, but the goal of members is to stimulate the communities and work with other stakeholders like the government. The Key Performance indicators as contained in Annex 12b will be done not just by the Secretariat, but by the whole membership of the BK as a coalition.

During the breakout session, we can still add in the logframe. We can still add particularly if it is consistent with the strategic framework.

To be more specific, we have a short term strategy on how to engage at the subnational level. We will engage in the Provincial Mining Regulatory Board (PMRB), Mining Monitoring Team (MMT) and the Mine Rehabilitation Fund Committee (MRFC). The assumption is that when we engage with them, we have genuine civil society representation in those committees. To be able to do that, we have to organize ourselves as a coalition at the provincial level, we have to go beyond BK, we have to involve as many civil society as possible including the academe, community-based organizations and NGOs at the provincial level, so that the coalition will have the mandate to engage. We can focus on revenue management. The local government code

allows us to participate in local development council, so we can influence on how the money should be spent and we can track how it is being spent.

Question: On problem tree in the logframe, the term “net benefit” in the statement “net benefits from extractive industries are not maximized” is not right because this assumes that we are already getting the benefits though these are not maximized. Based on earlier discussions, we are not yet getting the fair share from the extractive industry. The statement should be clearer.

Response: The problem statement will be rephrased to reflect that we are not getting the fair share.

Presentation and Discussion of Mechanics and Scope for the Action Planning Workshop

The participants were divided into 4 groups, Luzon, Visayas, Mindanao and IP groups. They were guided by the following points and instructions:

The objectives of the Action Planning activity were as follows:

- For the IP communities: (1) to facilitate and capacitate those that have signed agreements with mining companies for the development of transparency and accountability mechanisms in resource extraction; and (2) to strengthen the IP coalition to offer IPs an avenue for greater participation in extractive governance
- For the Island groups: to spearhead the operationalization of a credible selection process for mining oversight committees. This will include capacity building, and organization of caucuses for the selection process of representatives in the oversight committees and, setting up of a governance structure that will establish accountability between the CSO representatives and their provincial constituency.

The expected output from the workshop are: 1) an Action Plan for the Island Groups and IP Communities and 2) at least 1 proposal per group.

The Action Plan from the island groups should contain, at the minimum, capacity building and coalition building activities. For the IP groups, it could be focused more on the capacity building activities for meaningful engagement. The action plan will be for one year, i.e. April 2016 to March 2017. It should contain duration, activities and deliverables

On the other hand, the Proposals will have a timeframe of 3-4 months maximum, i.e. April to July 2016. The project implementor or proponent would have to meet certain minimum requirements, such as: (1) it has to be SEC-registered; (2) with established financial process which is sound and with proven track record. It would be preferable if there is counterpart contribution which could be in the form of time, labor/efforts, or staff which the proponent may already have.

Group participants were requested to provide or indicate even estimates of budget breakdown in the Proposal. Though operationally it will be the CSO who will implement, the technical expertise will be provided or recommend by BK. As to the budget, there is no ceiling specified. This do not mean though that the proposal will be surely approved and funded. The outputs will be checked if there are areas for improvement and if these can be packaged for presentation to donors.

The items that cannot be funded include: (1) international travels; (2) per diem; and (3) equipment and furniture.

For the IP or Island groups which may have no SEC registered CSOs yet, they can borrow and/or be represented by, for example, a Mindanao-based CSO that is already registered. Ideally, that CSO should have focus on IPs so there is no more learning curve. Nonetheless, it should be IP who should determine the contents of the proposal and they should be the beneficiary.

The Action Plan and the Proposal should be focused on: i) capacity building; and ii) establishment of governance structure and mechanism within the group. This is in preparation for a meaningful participation in mining oversight committees.

Presentation of Planning Session Outputs

- Island Group: LUZON
Outputs attached as Annex 13, 13a.1 and 13a.2
- Island Group: VISAYAS
Outputs attached as Annex 14
- Island Group: MINDANAO
Outputs attached as Annex 15 and 15a
- INDIGENOUS PEOPLES Group

Outputs attached as Annex 16, 16a.1, 16a.2, 16b.1, 16b.2, 16c.1, 16c.2

Closing of the Conference

Bantay Kita President Mel Sta. Ana delivered a short but important message for the activity closing. According to Mr. Sta. Ana, the plans, programs and strategies have all been prepared and laid out. But life and future are very uncertain. The programs and advocacies will definitely be affected by the coming elections. And while the plans are good, everything will still largely depend on the leaders who will win and the administration approach that will be implemented.

But in Bantay Kita there will be a chance to discuss on matters that have been decided or agreed on, in all levels from national down to the community. The more important concern now is on the impact of elections on the plans and programs that have been prepared.

Bantay Kita leadership should lead in the discussion and debates. Mining industry will support candidates, so this is a thing to watch out for. Leaders and members should all be vigilant.

Bantay Kita National Coordinator Cielo Magno likewise gave a brief message of thanks to everyone who attended and participated in the convention.

The 4th Bantay Kita National Conference officially ended at 5:45pm.