Signing away sovereignty

How investment agreements threaten regulation of the mining industry in the Philippines

AUTHORS: Cecilia Olivet, Jaybee Garganera, Farah Sevilla and Joseph Purugganan

EDITOR: Deborah Eade

DESIGN: Brigitte Vos

COVER: Ricardo Santos

Published by Alyansa Tigil Mina, Focus on the Global South and Transnational Institute

Amsterdam/Manila, May 2016

Contents of the report may be quoted or reproduced for non-commercial purposes, provided that the source is properly cited.

ACKNOWLEDGEMENTS

We would like to thank Judy Pasimio, Kinda Mohamadieh, Jamie Kneen, Nick Buxton, Pietje Vervest and Denis Burke for insightful comments on the draft. We are also grateful to Lyda Forero, Luuk Schmitz, Teuntje Vosters, Lavinia Steinfort and Luciana Ghiotto for their contribution to background research.

Index

Executive summary 4

1. Mining in the Philippines 6
2. Philippines' investment protection regime: the challenge of regulating foreign investors 7
3. New Philippine investment treaties will enhance mining companies' right to sue 8
4. The experience of the Philippines government with ISDS 11
5. The international expansion of investment treaty mining lawsuits 11
6. Regulating the mining sector is a costly business 12
7. Mining multinationals attack efforts to protect the environment or local communities worldwide 13
8. Other mining regulations targeted by ISDS 14
9. The right to refuse a mine: struggles in the Philippines could be undermined by ISDS 16
10. The struggles against large-scale mining should go hand in hand with those against international investment treaties 18
11. The Philippine government should consider reducing, not expanding, investor protection 19

Executive summary

In the last decade, the resource-rich Philippines has bet heavily on the mining industry as a development strategy, an approach that has come under growing scrutiny. With 47 large-scale mines in operation and growing evidence of their social and environmental costs, all the presidential candidates in May 2016 election were forced to explain their position on, and their financial ties to, the extractive industry. Most candidates, including President-elect Rodrigo Duterte, argued for "responsible mining" and an end to "exploitative contracts". Yet few candidates addressed whether a new government could effectively enforce new regulations on a largely foreign-controlled mining industry.

This briefing argues that the country's ability to properly regulate or close polluting mines will be severely constrained by a network of investment treaties the Philippines has signed, which provide excessive protection for foreign investors. This legal straitjacket will become still tighter if the government goes ahead with the EU–Philippines Free Trade Agreement and the Regional Comprehensive Economic Partnership (RCEP).

Human and environmental costs prompt national movement against mining

The need for further regulation of the mining industry in the Philippines has become ever more obvious since 2004 when mining was declared a priority for "national economic development". Despite promises of economic growth, industrialisation and jobs, the industry has contributed less than 1% of the country's Gross Domestic Product (GDP). Moreover, many mines have been found guilty of human rights violations including illegal demolitions, harassment of local residents, and of environmental impacts such as water pollution, as documented in the Rapu Rapu Gold Silver Copper and Zinc Mining Project and the Dipidio Gold and Copper Mine.

Indigenous communities have been particularly hard hit as it is estimated that two-thirds of officially recognised ancestral domains are covered with mining concessions. Environmental damage has also been a major concern as almost 50% of all key biodiversity and protected areas are affected by mining. The government has had to suspend several mining operations, such as those in operating in Surigao del Sur, Zambales and Cagayan, mainly as a result of investigations into their compliance with environmental policies.

Growing anger at the impacts of mining on the communities and environment, and the policies that allow it, led to the creation of the *Alyansa Tigil Mina* (ATM)—a coalition of organisations and groups that has decided collectively to challenge the aggressive promotion of large-scale mining in the Philippines. They initially sought the scrapping of the 1995 Mining Act (RA7942), an end to full foreign ownership, a stop to large-scale mining and the formulation of an alternative bill that would require strict regulations on mining. These demands became part of a national debate in the run-up to the national elections.

Mining industry protected by International investment agreements

As this briefing shows, however, the mining industry has a very effective line of defence against regulation, namely the existing network of investment treaties that the Philippines has ratified: 31 Bilateral Investment Treaties (BITs) and seven Free Trade Agreements (FTAs), all of which have an investment protection chapter. These include treaties with Australia, Canada, China, Japan, Malaysia, South Korea and the UK—all host nations of major multinational mining companies. All of these treaties, bar very few exceptions, allow investors to sue the government at international arbitration tribunals if they consider that their profits have been unduly affected. Extractive companies have been one of the sectors most given to launching arbitration lawsuits, and 52 current cases worldwide are relating to mining. Based on the 44 cases for which data are available, mining companies have sued governments for a total of USD 53 billion.

Denying or revoking mining permits because of environmental concerns or violation of the human and social rights of indigenous communities has already led to at least ten investment treaty cases. The governments of Bolivia, Indonesia, Mongolia, Peru and South Africa have all faced costly lawsuits after taking measures to tackle fraud within the mining industry, make mining companies comply with an agreed pollution clean-up, and remedy past discrimination. Indonesia and South Africa eventually lowered environmental standards in order to pre-empt such lawsuits.

The Philippines has yet to face a mining-related arbitration lawsuit, but has already experienced a very costly case launched by the German company, Fraport. Although the Tribunal eventually dismissed the case, the Philippines government ended up paying USD 58 million solely in legal fees, equal to the annual salaries of 12,500 teachers.

Time to roll-back not to extend investor protection

A growing number of countries are beginning to understand the financial, social and environmental costs of the system of investors' rights—with countries as diverse as Australia, Bolivia, India, Indonesia and South Africa revising their investment treaty policy.

That is why the Philippines government's move to negotiate RCEP and the EU–Philippines FTA, which will extend investors' rights with more countries, is a dangerous step that will prevent effective regulation of the country's mining industry. Worse still, unlike the existing BITs, it will be much harder for the Philippines to revise its investment policies in the future since regional trade agreements (unlike BITs) do not expire.

The stark truth that communities across the Philippines who are facing pollution in their rivers and destruction of their lands have realised is that they are up against some of the most powerful transnational mining companies, and that an international trading system is stacked against them. This complex web of trade and investment agreements has created an architecture of impunity that has made it increasingly impossible to reject or even effectively regulate mining operations. It is crucial that the Philippines starts to unravel this web by halting negotiations on further treaties and seeking to revise those that are already in existence.

1. Mining in the Philippines

The Philippines is believed to be one of five countries worldwide with the highest overall mineral reserves. Its estimated 9 million hectares of mineralised land, which is rich in gold, copper, nickel, aluminium and chromite, is worth 1.4 trillion USD.[1]

In 1995, the Republic Act 7942 or Philippine Mining Act was passed, which opened the way for the government to enter into contracts with mining companies interested in undertaking large-scale operations. A key change was to permit 100% foreign ownership through the Financial and Technical Assistance Agreement (FTAA).[2] Since then, the government has promoted foreign-controlled and export-oriented large-scale mining. In 2004, mining became a priority for "national economic development" and the mining industry received a new boost. Executive Order 270-A provided guiding principles for the revitalisation of the mining industry, including the formulation of a Mineral Action Plan for the exploration, development and use of the country's mineral resources.

Who is mining in the Philippines?

There are 47 large-scale mines operating in the country (see Annex 1) and a further 344 minerals agreements in the exploration and development stage.

Of the 47 operating mines, foreign investors, mainly from Australia, Canada, China, South Korea and the United Kingdom (UK) own 23. Japan's Sumitomo Metal Mining Co. continues its partnership with Nickel Asia Corporation, Philippines' largest nickel producer. Most of the ores extracted are transported and shipped to Australia, China, Japan and South Korea.

Glencore, a multinational commodity trading and mining company with a large share in the Tampakan Copper-Gold Mining Project, recently sold its shares,[3] allegedly to a local firm backed by a Chinese investment.

Local organisations in the Philippines[4] have questioned the argument that large-scale mining will spur economic growth, drive local development and fuel national industrialisation.[5] At best, the extracted minerals will be exported as raw products. While there is little proof that large-scale mining can be a poverty-reduction strategy and the claimed economic benefits seem dubious, there is evidence that these projects threaten sustainable agriculture, community-based upland development and coastal and fisheries resources.[6] Experience in the Philippines supports the fact that, in recent years, there is increased worldwide acceptance of the negative environmental and social impacts of multinationals' investment in large-scale mining.[7]

The Philippine economy is largely agricultural, and has considerable potential to guarantee food sovereignty. This indeed was the main strategy outlined in the 1987 Constitution—which promoted the social justice and asset reform agenda towards national industrialisation. The threat of large-scale mining operations endangers existing sustainable livelihoods in the affected area. Furthermore, the fiscal incentives[8] provided for in RA7942 leave the country with minimal economic benefits. According to the government's statistics, in the last five years, the mining industry contributed only between 0.6% and 1.0% of the country's Gross Development Product (GDP).[9]

In the Philippines, the impacts on livelihoods, sustainable environment, food security and on people's cultural identity are felt every day. For example, OceanaGold's open-pit gold and copper mine has been found by the Philippines Human Rights Commission to be guilty of illegal demolitions, harassment of local residents, and undermining indigenous communities' rights to culture.[10] Moreover, the Didipio community, where a copper, gold and silver mine is situated, has accused the company of polluting the water.[11] It is estimated that two-thirds of the officially recognised ancestral lands of indigenous peoples are covered with mining concessions, and almost 50% of all key biodiversity and protected areas are affected by mining.[12]

2. Philippines' investment protection regime: the challenge of regulating foreign investors

The belief that unregulated foreign direct investment (FDI) will improve a country's economic development has been widely discredited.[13] Regulation of foreign investment in general, and the mining sector in particular, is crucial in order to restrict the industry's negative social and environmental impacts and to guarantee some positive contribution to economic development. Greater government influence in the extractive industries is the current trend among resource-rich countries.[14] For example, African countries developed a regulatory framework for mining, the 'Africa Mining Vision',[15] aimed at enhancing development by supporting the industrialisation of natural resources.

International Investment Agreements (IIAs), however, have the effect of severely limiting a host government's ability to design a national investment strategy that involves a tighter and dynamic regulatory framework for foreign investors.[16] In particular, many IIAs prohibit or restrict the introduction of performance requirements for companies. The government cannot impose obligations for technology transfer, or demand a percentage of domestic content, that the supply of goods or services is provided by nationals, that the company employs a certain percentage of locals in order to promote job creation, introduce tax measures or demand a minimum investment in research and development (R&D) activities, among others. These rules can severely limit government sovereignty to direct investment flows towards sectors that support national industrial development objectives.[17]

The Philippines has a vast web of investment agreements. It is part of 31 Bilateral Investment Treaties (BITs) that are in force[18] and seven Free Trade Agreements (FTA) that include an investment protection chapter.[19]

Particularly relevant for the mining industry are the treaties with Australia, Canada, China, Japan, Malaysia, South Korea and the UK.

All of these treaties, with very few exceptions,[20] not only grant investors ample protection rights, but also allow investors to bypass national courts and sue the government in international arbitration tribunals if they consider their profits have been affected.[21]

Through the mechanism known as Investor–State Dispute Settlement mechanism (ISDS), investors can challenge state regulation in almost any area, including environmental protection, public health, taxation, and regulations to provide affordable public services and protect labour rights. One regulatory area that has been particularly subjected to investors' attacks is that of oil, mining, and gas.

These cases take place before an international tribunal of arbitrators made up of three for-profit lawyers, usually riddled with conflicts of interest, who decide whether private profits or the public interest are more important.[22] These unaccountable tribunals have granted multinationals millions of dollars from taxpayers' money.

This system weakens the rule of law by shifting important decisions that have major implications well beyond "investment" into an unaccountable, unpredictable, self-serving, and secretive realm.

The threat of ISDS in numbers

- Investor–state cases have mushroomed from a total of three known treaty cases in 1995 to **696 known investment treaty disputes today.** A record number of disputes were filed in 2013 (66) and there were 70 new ISDS cases in 2015.[23]

- **Developing and transition countries** have been **the hardest hit** with 489 known investment treaty disputes **(70% of the total).**[24]

- **Investors have prevailed in 60%** of investor–state cases where there has been a decision on the merits of the case.[25] It is important to keep in mind that since governments cannot initiate an ISDS lawsuit the **state never wins.** The best scenario they can hope for is that the tribunal will dismiss the case and they will avoid having to pay compensation to the investor. Even so, they always incur millions in legal defence.

- **The financial cost of investment disputes is rising.**
  - **Demands by investors:** Between 2013 and 2014 there were 59 treaty disputes active where the investor was suing for at least USD 1 billion—including ten with stakes of at least USD 15 billion.[26]
  - **Awards against states:** In 2012, an investment tribunal issued the highest award in history against a government when it ordered Ecuador to pay USD 2.3 billion to oil company Occidental.[27] In 2014, another arbitration tribunal ordered Russia to compensate the former majority owners of oil and gas company Yukos for USD 50 billion.
  - **Legal costs:** On average each side will pay USD 4.5 million per case,[28] but the cost can be much higher. In 2011, the Philippine government disclosed that it had spent (so far) USD 58 million in costs related to the lawsuits by the German company, Fraport.[29] In the Yukos case, the Russian government paid its defence lawyers USD 74 million.[30]

- The **main financial beneficiaries** have been large corporations and rich individuals: 94.5% of the known awards went to companies with at least USD 1 billion in annual revenue or to individuals with net wealth of over USD 100 million.[31]

3. New Philippine investment treaties will enhance mining companies' right to sue

The Philippines government is also negotiating new International Investment Agreements (IIAs).

Negotiations for the Regional Comprehensive Economic Partnership (RCEP), a proposed free-trade agreement (FTA) between the ten member states of the Association of Southeast Asian Nations (ASEAN) and six other countries—Australia, China, India, Japan, New Zealand and South Korea—started in November 2012. ISDS is part of the negotiating agenda. It is worth noting that the six countries negotiating with ASEAN are the home countries of most of the foreign mining investors in the Philippines. The investment protection chapter in RCEP is therefore all the more important for the mining sector.

Negotiations on a Free Trade Agreement between the European Union (EU) and the Philippines were launched in December 2015.[33] The European Commission's mandate to negotiate includes a far-reaching investor-protection chapter

> "International arbitration is often the best dispute resolution choice for investors in the mining sector because it usually removes the dispute to a fair and neutral offshore forum like Singapore. Investors should also consider structuring their investments to take advantage of any protection available under BITs".
>
> Kent Phillips, head of international arbitration law firm Berwin Leighton Paisner[32]

and an ISDS mechanism. Despite rebranding the ISDS as an Investment Court System (ICS), the change in name and the Commission's PR exercise, legal analysis of the new proposals indicate that investors will be able to continue suing governments for measures destined to regulate in the public interest.[34]

An EU–Philippines FTA vs Philippines BITs with EU Member States

The Philippines already has Bilateral Investment Treaties (BITs) with 12 of the 28 EU Member States.[35] An FTA with the EU will replace the current BITs, most of which entered into force during the 1990s and early 2000s. This means that they have completed the initial period of validity after which either party can terminate them unilaterally.[36] An analysis of the termination clauses in all the Philippines BITs with EU member States indicates that seven treaties can be terminated at any time, and and another four will be ready for termination by 2023. This gives the Philippines government great discretion to make a cost–benefit analysis, as some other countries such as Australia, Indonesia and South Africa have done recently, to decide whether or not to maintain these agreements. After signing a new EU FTA with an investment chapter, the government will find it much more difficult to withdraw its commitment to the rights accorded to foreign investors. To terminate the clauses protecting foreign investors in a future EU–Philippines FTA, the government would have to put an end to the whole agreement, not only the investment protection chapter

Furthermore, a new investment chapter in the FTA would extend the coverage of rights provided to investors to the other 16 EU Member States that do not currently have a BIT with the Philippines.[38]

> "Discontinuing the whole chapters of FTAs or EPAs will certainly require much more extensive consideration of wider bilateral relations, as it may lead to more complicated implications. Consequently, so far, not much can be done with respect to investment chapters of FTAs or EPAs".
>
> Abdulkadir Jailani, Indonesia's Ministry of Foreign Affairs, referring to Indonesia's decision to terminate its investment protection agreements[37]

Finally, the Aquino government indicated its willingness to join the Trans-Pacific Partnership (TPP) agreement.[39] The treaty was signed in February 2016 among 12 countries[40]. If the Philippines joins, it will have to sign up to what others have already agreed, including the much criticised investment protection chapter.[41]

By signing these treaties, the Philippines government is willingly and wilfully creating the conditions that restrict or chill its own powers. By giving away sovereignty, the government goes well beyond its democratic mandate and binds not only local authorities but also indigenous peoples and future governments.

TABLE 1:
Mining companies' investment protected

Investment source/country of international affiliate	Investment agreement in force that protects mining investors	Potential future Investment Agreements (under negotiation or in discussion) that will protect mining investors
UK investors (1 mining project)	• Philippines–United Kingdom BIT	• EU-Philippines FTA
China investors (8 mining projects)	• ASEAN–China Free Trade Agreement (ACFTA) • Philippines–China BIT	• Regional Comprehensive Economic Partnership (RCEP)
South Korea investors (2 mining projects)	• ASEAN-Korea Free Trade Agreement (AKFTA) • Philippines–Republic of Korea BIT	
Australia investors (5 mining projects)	• Philippines–Australia BIT • ASEAN–Australia–New Zealand Free Trade Agreement (AANZFTA)	• Regional Comprehensive Economic Partnership (RCEP) • Trans-Pacific Partnership Agreement (TPP)
Japan investors (4 mining projects)	• Philippines–Japan Economic Partnership Agreement (PJEPA) • ASEAN–Japan Comprehensive Economic Partnership Agreement (AJCEPA).	
Malaysia investors (2 mining projects)	• ASEAN Free Trade Agreement (AFTA)	
Canada investors (5 mining projects)	• Philippines–Canada BIT	• Trans-Pacific Partnership Agreement (TPP)

NO TRESPASSING - PROTECTED INVESTMENT

4. The experience of the Philippines government with ISDS

The Philippines government is not among the most sued countries worldwide, but can be considered a veteran in defending itself in ISDS disputes. It has been sued four times at international investment arbitration tribunals, in each case by European investors. The first lawsuit was by the Swiss company SGS after the government discontinued the import-supervision services it provided. SGS operated for almost ten years assisting the government in verifying the quality, quantity and price of imports. The company claimed USD 140 million and the case was finally settled for an undisclosed amount.[42]

The longest-running lawsuit was with the German transport company, Fraport. It sued the Philippines government twice. The first time was in 2003 for USD 425 million when the government annulled the concession for the construction and operation of a new airport terminal in Manila.[43] The government claimed the concession contract was ill-conceived and the result of bribery. The Tribunal dismissed the case. In 2011, Fraport sued again for the same case and it was again dismissed.[44] Although the Tribunal had ruled twice against the investor's demands, the Philippines government was left with a hefty bill. In 2011, Jimmy Gianan, state auditor from the Commission on Audit (COA), disclosed that the arbitration cost incurred by the Philippines government (up to that point) had reached USD 58 million[45] for paying its local and foreign lawyers. In terms of the 2012 Philippines budget, that is the equivalent of a year's salary for 12,500 teachers; or the vaccination of 3.8 million children against diseases such as tuberculosis (TB), diphtheria and tetanus and polio (DTP).[46]

The fourth and latest arbitration case against the Philippines is from the Belgian company, Baggerwerken Decloedt En Zoon (BDC).[47] This case was brought after the government cancelled the company's contract for the dredging and rehabilitation of Laguna Lake. The contract was allegedly a midnight deal sealed by the previous government. The company is demanding compensation of USD 91 million. The case is still pending. It is worth noting that the government has hired the same international law firm, White & Case, it employed in the Fraport cases, despite the expense.

These experiences should serve to warn the government about the costs of locking itself in to current and new investment treaties.

5. The international expansion of investment treaty mining lawsuits

Investment treaty disputes have been steadily growing during the last decade (see Box on page X), and the mining industry has been one of the most active users of the system. According to the latest UNCTAD statistics, there are 52 known investment treaty cases related to the mining of coal and lignite (6), of metal ores (32) and other mining and quarrying (14).[48] Twenty-nine countries from the United States (USA) to Indonesia have defended themselves against mining companies before investment arbitration tribunals.[49]

Lawsuits related to mining cases have particularly intensified over the last five years. Between 1995 and 2009, there are records of only 19 investment treaty cases compared to 33 filed between 2010 and 2015[50].

> "I think the mining companies have been a little late in becoming aware of these remedies [investment treaty arbitration]".
>
> Robert Wisner, co-chair of the international arbitration group, law firm McMillan[51]

Metals mining lawsuits in brief[52]

- The **countries that have faced the highest number of lawsuits related to mining** are Venezuela (9), followed by Kyrgyzstan (4), Indonesia (3), Ecuador (3) and Mongolia (3).
- While there are 52 recorded investment treaty disputes related to mining, most investors suing come from only a few countries: Canada is the **home country of the investor** in 17 cases, the USA in 11, the UK in 7, the Netherlands (usually mailbox companies)[53] in 4 and Australia in 3.
- Certain **types of mining project have been most subject to lawsuits,** in particular gold (17 cases), coal (6), copper (6) and silver (3).
- **ICSID tribunal and UNCITRAL rules**—mostly administered by the Permanent Court of Arbitration in The Hague—have been used in almost all known mining-related investment treaty cases.
- Most investors in mining disputes have claimed that the government's actions amounted to an **expropriation** (38 of 40 cases where data exist) and violated the **fair and equitable standard of treatment** (34 cases). Other clauses that investors have invoked include: full protection and security (19 cases), measures were arbitrary or discriminatory (14 cases), national treatment (13 cases) and most favoured nation (10 cases).

6. Regulating the mining sector is a costly business

Mining regulation in the interest of people and the environment has been under attack in investor–state disputes. Governments around the world that have pushed through regulatory measures of the mining sector have faced multimillion-dollar lawsuits.

Based on the 44 cases for which data are available, mining companies have sued governments for a total of USD 53 billion.[54] This staggering amount involves demands for damages for loss of future profits, not simply the recovery of actual investment.

Even if arbitration tribunals do not always award investors the compensation they demand, they have ordered governments to pay nine-digit amounts that represent a major dent in the public budget. The Canadian company Crystallex has, to date, been awarded the largest international arbitration compensation ever granted to a mining company in a treaty case. The Tribunal ordered the government of Venezuela to pay the company the astounding amount of USD 1.386 billion.[55] The second highest award in mining-related cases was also against Venezuela and in favour of a Canadian mining company. In the case of Gold Reserve, the Tribunal ordered Venezuela to pay USD 735 million. Venezuela also had to shoulder the burden of USD 5 million for Gold Reserve's legal defence and USD 13 million for its own legal defence. Gold Reserve sued Venezuela in 2010, after the government revoked a permit to operate a gold and copper mine, arguing that the project "raised critical environmental issues, since it was to be located in the environmentally fragile Imataca Forest Reserve, which was subject to a special management plan not to degrade the environment and to preserve the rights of indigenous peoples".[56]

As a result of awards or settlements, governments ranging from Canada to Bolivia, Burundi, Democratic Republic of the Congo (DRC), India, Kyrgyzstan, Mongolia and Venezuela have, so far, been ordered to pay mining companies the combined total of over USD 2.4 billion, not including the costs of defence lawyers and the arbitration tribunal.

7. Mining multinationals attack efforts to protect the environment or local communities worldwide

While a few cases are a consequence of a government's decision to nationalise and directly expropriate a mine, most mining investment treaty cases are the result of regulatory measures in the public interest.

Denying or revoking mining permits because of environmental concerns or the violation of the human and social rights of indigenous peoples has led to at least ten investment treaty cases.[57] Most cases relate to the exploitation of gold. These cases provide enough evidence to show how investors' right to sue at international tribunals poses a direct threat to environmental regulation of the mining industry.

> "[The decision on the Bilcon case] will create a chill on the operation of environmental review panels".
>
> Professor Donald McRae, dissenting arbitrator in the Bilcon case [58]

One emblematic example is that of US company Bilcon, which sued and won a case against the government of Canada. The company contested the government's decision to halt plans to create a large quarry and marine terminal to mine and ship basalt after an environmental assessment panel recommended against the project due to its likely negative environmental impacts. The amount that Canada will have to pay it is as yet unknown but the company is demanding USD 300 million in damages. This case shows how investment protection treaties enable direct attacks on environmental regulation, and can also undermine the effectiveness of environmental impact assessments.

The right to mine trumps environmental concerns

Besides the case of Bilcon and Gold Reserve (described above), there are several other cases where the decision of a government to deny or revoke a permit to mine due to environmental concerns has led to investment arbitration lawsuits.

Infinito Gold vs Costa Rica (gold): The government of Costa Rica revoked the license to exploit the open-pit gold mine due to concerns about the loss of tropical forest. There are allegations that the permit to mine was issued illegally. The Supreme Court of Costa Rica and 75% of the population who reject open-pit mining in the country backed the decision. Infinito demands USD 1 billion in compensation. The case is open.[59]

Gabriel Resources vs Romania (gold/silver): Romania denied the environmental permit to settle the mine on the understanding that Gabriel Resources' proposal to build Europe's largest gold mine would destroy the ancient site of Roșia Montană (today a UNESCO World Heritage candidate) and cause severe environmental damage. A local 15-year-long campaign against the project had warned that the mining project would produce a massive pool of cyanide and would destroy priceless archaeological sites dating back to the Roman Empire.[60] The company seems to want compensation for USD 4 billion.[61] The case is open.

Pacific Rim vs El Salvador (gold): Canadian mining company Pacific Rim (now OceanaGold) sued the Salvadorian government after it denied the company the extraction permits needed to dig for gold. Pacific Rim failed to complete the feasibility study and the Environmental Impact Assessment (EIA) and did not obtain the environmental permit. These are minimum requirements to obtain an exploitation permit. Most Salvadorians, aware of the country's clean water crisis (90% of its water is heavily contaminated), oppose mining. The company demands USD 315 million, which is equivalent to over 30% of the national education budget. The tribunal process has already cost the government of El Salvador over USD 12 million, a significant amount for a small, impoverished country. [62]

Glamis Gold vs USA (gold): Canadian mining company Glamis (now part of Goldcorp) was planning an open-pit mining project in the USA in an area sacred to the Quenchan Indian Nation. The project drew strong local opposition due to concerns about the impact on the environment and on the rights of the indigenous people in the area. The government approved the project but, hoping to preserve the land and ameliorate the environmental damage, requested all new mining projects (including Glamis) to backfill all future open-pit mines. This measure was considered too costly for the company, which sued for "indirect expropriation" and claimed USD 50 million in compensation.[63]

Investment arbitrators have repeatedly argued that regulating in the public interest does not exempt a government from responsibility in relation to investor protection. For example, the Arbitration Tribunal in the case of Corn Products International vs. Mexico claimed: "Discrimination does not cease to be discrimination, nor to attract the international liability stemming therefrom, because it is undertaken to achieve a laudable goal or because the achievement of that goal can be described as necessary".[64] This same argument was later cited in the case of Chilean mining company Quiborax, which sued the Bolivian government after it revoked 11 mining concessions (for more details see next section).[65]

Arbitrators have also explicitly argued that protecting the environment or local population is a legitimate goal, but that it does not justify violating the rights of investors.

These lawsuits are not only the result of action taken by national governments. Decisions taken by local authorities can (and have) led to mining-related lawsuits against the national government. Take the case of Glamis Gold vs USA. The lawsuit is the result of a decision taken by the state of California mining regulation. Similarly, in the case of St. Mary's vs Canada, the measures that led to the dispute stem from the government of Ontario's refusal to issue a license that would convert agricultural lands into an aggregate quarry.[67] So, for example, in the context of the Philippines, local ordinances either banning open-pit mines (e.g. Tampakan) or issuing a moratorium on mining activities (e.g. Mindoro) could very well lead to lawsuits against the Philippines government.

"The Tribunal acknowledges that a State has a responsibility to preserve the environment and protect local populations living in the area where mining activities are conducted. However, this responsibility does not exempt a State from complying with its commitments to international investors".

Tribunal in the case Gold Reserve vs Venezuela[66]

8. Other mining regulations targeted by investor–state disputes

Over the years, the governments of Bolivia, Indonesia, Mongolia, Peru and South Africa have taken measures that aimed to tackle tax fraud in the mining industry, make companies comply with an agreed pollution clean-up, and remedy past discrimination. They also have exerted their sovereign right to develop an industrial policy and increase taxes. All of these measures, while democratic and in the public interest, have led to costly investment arbitration lawsuits.

- **Annulment of mining concessions as a result of tax irregularities and fraud:** The case of Quiborax vs Bolivia is a clear example of how investment protection agreements can undermine governments' decision to tackle fraud and tax evasion. During an audit, the state found tax irregularities[68] and also evidence that the company had fraudulently amended board minutes to appear to be Chilean so it could take advantage of the protection of the Chile–Bolivia BIT.[69] These gave grounds for the annulment of the mining concessions. The Tribunal found that *"illegal conduct during the operation of an investment does not bar an investor from relying on guarantees under a BIT" and* ruled in favour of the company, ordering Bolivia to pay USD 50 million.[70]

- **Government orders the mining company to comply with pollution clean-up:** The Renco vs Peru case is an emblematic example of investors' ability to use investment treaties to avoid environmental responsibility and make the host government pick up the tab. In 1997 the metal-refining company Doe Run (part of the US-owned Renco Group) bought a lead and zinc smelter in the contaminated Peruvian town of La Oroya. As part of the agreement, it made a commitment to reduce the pollution in the area. But, instead, contamination of the air, land, and water increased. The town of La Oroya is considered one of the ten most polluted sites in the world, and 99% of its children have high levels of lead poisoning. Investment protection treaties have allowed the company to turn the table and sue at an international tribunal demanding USD 800 million, claiming it has been bankrupted by the Peruvian order to comply with the pollution clean-up, which it now argues is too expensive.[71]

- **Government takes measures to remedy discrimination and inequalities among the country population:** The case Foresti vs South Africa exposes what governments that are committed to expanding opportunities for historically disadvantaged peoples and promoting international human rights can face when tied by investment protection treaties. In 2007, European investors, who controlled some 80% of South Africa's stone exports, sued South Africa over its Black Economic Empowerment Act. This legislation was enacted to address the socio-economic inequalities created during the apartheid regime. It required mining companies to sell 26% of their investment to historically marginalised and disadvantaged South Africans. The dispute was discontinued in 2010, but only after South Africa agreed that the investors could receive new licenses, requiring a much lower divestment of shares.[72]

- **Government orders the mining company to contribute towards industrial development:** The Newmont Nusa Tenggara vs Indonesia case shows how investment protection agreements can undermine countries' efforts to become less dependent on the export of raw materials and promote national industrial policies. In 2014, the US mining company Newmont sued the Indonesian government, though its phantom (no employees, only a mailbox address) subsidiary registered in the Netherlands. This lawsuit resulted from the Indonesian government's effort to promote industrial development. A 2009 law required investors to process raw materials domestically before export. So, mining companies should refine and process minerals (for example, by establishing a smelter) in the country instead of shipping them abroad in their raw state. Newmont withdraw the case after Indonesia exempted the company from the new law.[73] This case is also a clear example of a government backtracking on regulatory measures in order to avoid lawsuits, also known as regulatory chill effect.

- **Government increases taxes (windfall tax) to benefit from high mineral prices:** The case of Sergei Paushok vs Mongolia shows how investors can use investment arbitration to try to undermine the legitimate prerogative of governments to determine their tax system. In 2006, after five years during which the price of gold continued to rise to unprecedented levels, the Mongolian parliament introduced a 68% tax on gold sales of over USD 500 an ounce. With this measure, the government aimed to increase its revenue from the extractive industry. Even when the Tribunal finally dismissed the claim, arguing the tax was not tantamount to expropriation, the government of Mongolia still had to pay the lawyers' and arbitrators' bills.[74]

- **Government demands the hiring of locals to support job creation:** Investor Sergei Paushok in the claim against Mongolia (described above) also objected to the government's demand that 90% of employees should be Mongolians.

Investors' rights as they are currently enshrined in international investment agreements undermine democratic legislation in the interest of people and the planet, and entitle corporations to obtain billions of dollars in taxpayers' money as "compensation" for their "(future) losses". The financial risk associated with investment treaty arbitration also has the power to twist the arm of governments into abandoning desirable policies or exempting the suing investors from regulatory measures.

> **"A referral to ICSID is a powerful weapon against a state, particularly for those less well off countries who receive foreign aid".**
>
> Jane Marsden, lawyer with Memery Crystal LLP who regularly advises mining companies

The lawsuits by company Newmont and Italian investors in Foresti caused a regulatory chill in government policy. In both cases, the governments of Indonesia and South Africa put an end to the investment disputes by granting the investors more favourable conditions, and lowering the their initial requirements. Peter Leon, a lawyer representing the company in the case of Piero Foresti vs South Africa case, acknowledged that "No other mining company in South Africa has been treated so generously since the advent of the MPRDA [the 2004 Mineral and Petroleum Resources Development Act], let alone been afforded an equity offset of this magnitude".[75]

9. The right to refuse a mine: struggles in the Philippines could be undermined by ISDS

Resistance to the aggressive promotion of large-scale mining in the Philippines has increased during the last decade. A broad coalition brings together mining-affected communities, including indigenous and rural communities, and their support groups such as non-government organisations (NGOs), popular organisations, church groups and academic institutions.

Opposition is mainly due to conflicts over land use—mining tenements are usually found in protected areas such as watersheds and primary forests, ancestral lands/domains, and prime agricultural lands—interlinked with mining's negative impacts on their source of food, land and communities.

Local groups denounce the fact that the rights of miners take precedence over laws that protect people and the environment. The Philippines government is placing the mining law (RA7942)—which paved the way for foreign mining companies to exploit and use the resources of the Philippines)—over laws that protect people and the environment such as the Indigenous Peoples' Rights Act, the Local Government Code, the Water Code and many other environmental laws.

Widespread community opposition has strengthened after the perceived dangers of environmental disasters and impacts on indigenous rights started to become a reality. For example, the Rapu Rapu Gold Silver Copper and Zinc Mining Project, owned by Australian mining company Lafayette, started operations in 2005 and soon after, experienced two cyanide spills that contaminated the sea and killed the fish in the area.[76] In 2011, the Commission on Human Rights found that mining operations in Dipidio, owned by Australian company OceanaGold, caused the violation of indigenous peoples' rights.[77] In the past two years, the government has had to suspend mining operations in Surigao del Sur, Zambales and Cagayan, mainly as a result of investigations into compliance with environmental policies.[78]

However, these mining operations, which destroyed the environment and affected local communities, were allowed to continue. The companies involved got nothing more than a slap on the wrist in the form of fines or temporary suspensions.

Advocates and community leaders are seeking the scrapping of the 1995 Mining Act (RA7942), a stop to large-scale mining and the formulation of an alternative bill. They favour laws that would make it difficult for large-scale mining companies easily to exploit natural resources without the necessary obligations that go with it.

In January 2004, it seemed that local groups had struck a victory when the Supreme Court ruled that full foreign ownership of large-scale mines (Republic Act 7942) was unconstitutional and void. But, less than a year later, and due to political pressure from the Arroyo government, the High Court reversed its own decision.[79]

It is striking that neither the warnings of environmental groups and advocacy organisations, nor local opposition or actual environmental and social disasters caused by large-scale mining, have ever been used as grounds to cancel mining licenses or promote tighter regulation of the mining industry.[80]

This is consistent with the current government's aim to attract new large-scale mining projects through increased incentives, and it fears that greater regulation of the mining industry would drive foreign companies away. If it did decide to regulate the mining industry and implement its existing environmental and other pertinent laws, it could face a swathe of lawsuits at international arbitration tribunals. The possibility of expensive lawsuits might not explain why the government has failed to regulate the mining sector, but it certainly it is not an incentive to do so. Investment lawsuits are known to be a major deterrent to a government's regulatory action.[81]

The risk of regulatory chill

Potentially enormous pressure on public budgets means the mere threat of a multi-million dollar international arbitration lawsuit can make governments reluctant to implement social or environmental protection measures that could affect the interests of foreign investors. For example, the government of New Zealand decided to postpone their plans to introduce stricter rules on cigarette packaging until they know the results of the investment arbitration lawsuit initiated by Philip Morris against the governments of Uruguay and Australia for their decision to change regulation on warnings in cigarette packaging.[82]

Critics of ISDS are not alone in describing investment arbitration in this way. Investment lawyers accept that investment arbitration is a "lobbying tool" that can act as a "powerful means of putting pressure" on governments and advise clients to use it as such. Also, there is evidence that multinationals such as Chevron have argued that the power to use investment arbitration as "a deterrent" against governments regulating in the public interest is a key reason they defend the system.[84]

> "It may well be possible to use investment treaty protections as a tool to assist lobbying efforts to prevent wrongful regulatory change".
>
> Law firm Steptoe & Johnson[83]

> "It's a lobbying tool in the sense that you can go in and say, 'Ok, if you do this, we will be suing you for compensation.' It does change behaviour in certain cases".
>
> Peter Kirby, law firm Fasken Martineau [85]

The experience of other countries is not encouraging. The governments of Bolivia and Canada have been sued after they decided to revoke mining concessions in response to strong public opposition. For example, the government of Bolivia was sued by Canadian South American Silver for USD 386 million after it decided to nationalise the Malku Khota mine, one of the world's largest silver deposits, after weeks of protests and immense pressure from local indigenous groups who were against the project.[86] The case is still ongoing. As mentioned earlier, the government of Canada was also sued by US company St. Mary's for USD 275 million after the local government of Ontario, following the will of local residents who rejected the project, negated a permit to convert agricultural lands into an aggregate quarry. The case was withdrawn after the government settled and agreed to pay USD 15 million.[87]

Demands to halt the Tampacan copper and gold mining project could be hampered by international investment treaties

The Tampakan copper and gold mine in Southern Mindanao, if allowed to operate, is touted as the "largest open-pit mine" and "largest ever foreign investment" in the Philippines.[88] It is estimated to have reserves of 15 million tons of copper and nearly 18 million ounces of gold. The investors are in the exploration phase and are still in the process of securing government approval.[89]

But the mine has faced strong opposition from church, community and environmental groups because of its potential impact on the environment, including contamination of major rivers in Mindanao, agricultural production, and the displacement of people living in the area.[90]

If the government chose to listen to local people and stop the project, the investors could demand millions in compensation (including for future profits) at an international arbitration tribunal using the Philippines–Australia BIT or the ASEAN–Australia–New Zealand Free Trade Agreement (AANZFTA).

Finally, it is worth noting that some of the mining companies operating in the country have already had recourse to international investment agreements to sue other governments and would probably do so again if they felt their profits were hampered by government measures. Take the case of OceanaGold. The Australian company operates the Didipio open-pit gold and copper project in the Philippines. The residents of Didipio resist large-scale mining in their area arguing the project has displaced indigenous communities and is having adverse economic and environmental impacts on their community.[91] Even the Philippines Human Rights Commission recommended the withdrawal of the concession "in view of the gross violations of human rights it has committed",[92] which fell on the government's deaf ears. But in 2004, OceanaGold launched a massive investment arbitration lawsuit against the government of El Salvador. The company is demanding USD 315 million after the government denied an environmental permit and the mining concession for a gold project (see details of the case on page 13).[93]

10. The struggles against large-scale mining should go hand in hand with those against international investment treaties

Concerns about the dangers of large-scale mining for the environment and the rights of local communities have often failed to appreciate how international investment agreements threaten regulation of the mining industry and can undermine local struggles against mining. Yet the two are directly connected.

The struggles against large-scale mining and those against corporate rights in investment agreements should therefore go hand in hand, for the following key reasons:

1. Communities facing pollution of their rivers and destruction of their lands are not just up against some of the most powerful transnational mining companies, but also an international investment regime stacked against them.

2. International investment treaties and the ISDS mechanism are major components of the legal architecture that protects transnational mining corporations and allows them to operate with impunity.

3. The investment protection system places a heavy price tag on governments' ability to deny or revoke mining permits if there are concerns for the safety of the environment or the rights of local communities. It also could cost a government millions of dollars if it tries to amend regulations such as by increasing taxes, enforcing performance requirements or the employment of local people, to ensure that the mining industry contributes to local development.

4. Large mining companies are avid users of investment treaty arbitration and have already sued 29 countries from the USA to Indonesia in at least 52 instances for a total of USD 53 billion.

5. As long as investors can threaten to sue a government for millions of dollars when they consider their (future) profits are affected by regulatory measures, there is a latent danger that authorities will think twice (the so-called chilling effect) before pushing through with the reforms, given that the legal costs will deviate public resources away from critical social investment.

6. Investment agreements have the effect of locking in pro-mining policies. Once a government has established certain incentives or has granted mining permits (even if those did not take into consideration environmental concerns), future governments will find it hard to revoke such policies without the risk of being sued at international investment tribunals. Investment agreements make it difficult for governments to adapt their policies according to the changing needs of the country or to respond to bad corporate conduct. Amending the tax system or withdrawing mining permits, even if a company is guilty of environmental and human rights violations, could still lead to costly lawsuits.

7. Investment agreements reinforce the current situation whereby investors are protected by hard law, while the environment and communities are protected only by soft law. ISDS is a one-way system in which only investors can sue and only investors' rights are considered. Investors are not held to any binding obligations and there is no similar enforceability mechanism to defend human and environmental rights.

It is time to build solidarity between those who are campaigning on trade and investment and those who are campaigning on mining. Both struggles can learn from and reinforce each other. Together, we can ensure that environmental protection and people's rights come first and are never undermined by trade and investment rules, and that trade and investment rules are rejected if they harm people or undermine environmental rights.

11. The Philippine government should consider rolling back, not expanding, investor protection

A growing number of countries are beginning to understand the financial, social and environmental costs of the system of investors' rights—with countries as diverse as Australia, Bolivia, India, Indonesia and South Africa revising their investment treaty policy.

The Philippines already has an extensive set of investment protection treaties that allow companies to sue the government over any new law or regulation—from tough environmental regulations to stricter rules for banks—that impinge on their profits. The corporate lawsuit against the Philippine government has given a hint of the scale of the costs involved and the uphill battle that governments face in defending themselves in such cases.

The government is currently embarking on new negotiations for the Regional Comprehensive Economic Partnership (RCEP) and the EU–Philippines FTA, and is considering joining the Trans-Pacific Partnership (TPP). All of these will extend investor rights to companies from many more countries, and will further prevent effective regulation of Philippine's mining industry.

Civil society groups and campaign networks have consistently raised serious concerns about the investment chapter of these agreements. Yet, the Philippine government continues to take the position that the country has sufficient domestic regulations to protect its interests. Furthermore, the Department of Trade and Investment (DTI) asserts that the government already has a template for how to deal with investments in international agreements (for investment chapters in both FTAs and BITs), particularly with regard to the threat of investment litigation, but it has not been made public. Given the far-reaching implication of these agreements on the government's regulatory powers, it is imperative to subject this template to further public scrutiny and debate.

In light of the ample evidence that these treaties are a direct attack on democracy, weaken the government's policy space to implement social and environmental regulation, and place a major burden on public budgets, the new Philippines government would be wise to halt negotiations on further treaties and seek to revise those already in existence. The first step would be to undertake a comprehensive and open review of the country's investment protection system.

ANNEX 1:

Large-scale operating mines and source of investment (as of February 2015)

Foreign Investment

Project Name and mine location	Minerals extracted	Company/ies involved (international affiliate)	Investment source
Masbate Gold Project, Aroroy, Masbate	Gold with Silver	Filminera Resources Corporation (subsidiary of Open Pit Holdings Ltd, 40% owned by Thistle Mining)	Canada
Masbate Gold Project, Aroroy, Masbate	Gold with Silver	Philippines Gold Procesing and Refining Corporation (acquired by B2Gold from CGA mining in2013)	Canada
APEX Maco Operation, Maco, Compostella Valley Province	Gold with Silver	Apex Mining Company In (Crewgold Corporation sold its shares to Mindanao Gold, a fully owned subsidiary of ASVI Technical Services Group)	Malaysia
Co-O Gold Project, Rosario, Agusan del Sur	Gold with Silver	Philsaga Mining Corporation (merged with Medusa Mining Limited)	Australia
Siana Gold Project	Gold with Silver	Greenstone Resources Corporation (Red 5 Limited affiliate)	Australia
Canatuan Mining Project, Tabayo, Siocon, Zamboanga del Norte	Copper with gold and silver	TVI Resources Development Philippines, Inc (affiliate of TVI Pacific Inc)	Canada
Didipio Project, Kasibu, Nueva Vizcaya	Copper with gold and silver	Oceana Gold Philippines Inc (subsidiary of OceanaGold Corporation)	Australia, Canada
Rapu-rapu Polymetallic Project, Rapu-rapu, Albay	Copper, Gold, Silver and Zinc	Rapu-rapu Minerals, Inc (then owned by Lafayette Mining Inc, now Korea Resources Inc and LG International Corp, with shares by Malaysia Smelting Corp Bhd)	Australia, South Korea, Malaysia
Homonhon Chromite Project, Guiuan, Eastern Samar	Chromite	Cambayas Mining Corporation (partially owned by South Korean consortium Korea Resources Corp. (KORES), Korea Infrastructure Investments Asset Management (KIAMCO) and K&P Partners Investment)	South Korea
Berong Nickel Project, Quezon, Palawan	Nickel	Berong Nickel Corporation (joint venture of Atlas and Toledo Mining Corporation 21.3% and European Nickel-18.7%)	UK

Rio Tuba Nickel Project, Bataraza, Palawan	Nickel	Rio Tuba Nickel Mining Corporation (60% owned by Nickel Asia Corporation, which is partly-owned by Sumitomo Metal Mining Co Ltd)	Japan
Dinagat Chromite-Nickel Project, Basilisa and San Jose, Dinagat Island	Nickel	AAM-Phil Natural Resources Exploration and Development Corporation (also known as project of United Philippines China Mining Corporation)	China
Cagdianao Nickel Project, Cagdianao, Dinagat Island, Surigao del Norte	Nickel	Cagdianao Mining Corporation (100% owned by Nickel Asia Corporation, which is partly-owned by Sumitomo Metal Mining Co Ltd)	Japan
Tagana-an Nickel Project, Tagana-an, Surigao del Norte	Nickel	Hinatuan Mining Corporation (100% owned by Nickel Asia Corporation, which is partly-owned by Sumitomo Metal Mining Co Ltd)	Japan
Nonoc Nickel Project, Nonoc Island, Surigao del Norte	Nickel	Pacific Nickel Philippines, Inc (in JVA with Jinchuan Nonferrous Metal Corp)	China
Cagdianao Nickel Project, Claver, Surigao del Norte	Nickel	Platinum Group Metals Corporation	China
Taganito Nickel Project, Claver, Surigao del Norte	Nickel	Taganito Mining Corporation 65% owned by Nickel Asia Corporation, which is partly-owned by Sumitomo Metal Mining Co Ltd)	Japan
Carrascal Nickel Project, Carrascal, Surigao del Sur	Nickel	Carrascal Nickel Corporation	China
Bel-at Nickel Project, Loreto, Dinagat Islands, Surigao del Norte	Nickel	Oriental Synergy Mining Corporation	China
H. Y. Nickel-Chromite Project, Loreto, Dinagat Islands	Nickel	Sinosteel Phils. H.Y. Mining Corporation	China
Agata Nickel Laterite Project, Municipalities of Tubay, Santiago and Jabonga, Agusan del Norte	Nickel	TVI Resources Development Inc and Minimax Mineral Exploration Corporation (affiliate of TVI Pacific Inc, in JV with Mindoro Resources Limited)	Canada, Australia
Leyte Magnetite Project, MacArthur and Javier, Leyte	Iron	Leyte Ironsand Corporation (was known before as Nicua Mining Corporation, merged with Strong Built (Mining) Development Corporation)	China
Strong Built Leyte Iron Sand Project,Dulag and Mayorga, MacArthur, Javier and Abuyog, Leyte	Iron	Strong Built (Mining) Development Corporation	China

Philippine investment

Project Name and mine location	Minerals extracted	Company/ies involved (international affiliate)
Victoria Gold Project, Mankayan, Benguet	Gold with silver	Lepanto Consolidated Mining Company
Paracale Gold Project, Jose Panganiban, Camarines Norte	Gold with Silver	Johson Gold Mining Corporation
Padcal Copper-Gold Operation, Tuba, Benguet	Copper with gold and silver	Philex Mining Corporation
Toledo Copper Project, Toledo City, Cebu	Copper with gold and silver	Carmen Copper Corporation (wholly-owned subsidiary of Atlas Consolidated Mining and Development Corporation)
Elluvial Chromite Mining and Concentration Project, Guiuan, Eastern Samar	Chromite	Mt Sinai Mining Exploration and Development Corporation
Sta. Cruz Candalaria Project, Sta. Cruz, Zambales	Nickel	Zambales Diversified Metals Corporation
Sta. Cruz Nickel Project, Sta. Cruz, Zambales	Nickel	Benguet Corporation Nickel Mines Inc
Sta. Cruz Nickel Project, Sta. Cruz, Zambales	Nickel	Eramen Minerals, Inc
Gunalbon Nickel Project, Sta. Cruz, Zambales	Nickel	LNL Archipelago Minerals Inc
Toronto and Pulot Nickel Projects, Narra and Sofronoi Espanola, Palawan	Nickel	Citinickel Mines and Development Corporation (sole subsidiary of Oriental Peninsula Resources Group, Inc)
Adlay Nickel Project, Adlay, Surigao del Sur	Nickel	CTP Construction and Mining Corporation
Dahican Nickel Project, Adlay, Surigao del Sur	Nickel	CTP Construction and Mining Corporation
Cantillan Nickel Project, Cantillan, Surigao del Sur	Nickel	Marcventures Mining and Development
Tubay Nickel-Cobalt Mining Project, Tubay, Agusan del Sur	Nickel	SR Metals, Incorporated
Urbiztondo Nickel Project, Claver, Surigao del Norte	Nickel	Adnama Mining Resources Incorporated
Wellex Parcel 1 Nickel Mining Project, Dinagat Islands	Nickel	Wellex Mining Corporation

Palhi Nickel Project, Tubejon, Dinagat Island	Nickel	Norweah Metals and Minerals Company, Inc (in MOA with Nickel Asia's CMC)
Casiguran Nickel Project, Loreto, Dinagat Island	Nickel	Century Peak Corporation (100% subsidiary of Century Peak Metals Holdings Corporation)
Esperanza Nickel Project, Loreto, Dinagat Island	Nickel	Century Peak Corporation (100% subsidiary of Century Peak Metals Holdings Corporation)
Dinagat Chromite Project, Dinagat Island, Surigao del Norte	Chromite	Krominco Inc
Libjo Nickel Laterite Mining Project, Tunejon and Libjo, Dinagat Island	Nickel	Libjo Mining Corporation / East Coast Mineral Reources Co, Inc (previously connected with CMC under a MOA)
Camachin Iron Ore Mining Project, Dona Remedios Trinidad, Bulacan	Iron	Ore Asia Mining and Development Corporation (contractor of Oro Development Corp.)
Lasap Iron Project, Jose Panganiban, Camarines Sur	Iron	Investwell Resources, Incorporated
Vitali Iron Ore Mining Project, Vitali, Zamboanga City	Iron	Atro Mining – Vitali Inc. / Hard Rock Mineral Trading Inc

Endnotes

1 Arangkada Philippines (2011) 2010: A Business Perspective, http://www.investphilippines.info/arangkada/wp-content/uploads/2011/06/16.-Part-3-Seven-Big-Winner-Sectors-Mining.pdf

2 Before RA 7942 and the Financial and Technical Assistance Agreement (FTAA), the Constitution (Article XII, national economy and patrimony) provided for a maximum of 40% ownership by foreign investors.

3 Glencore (2015) Sale of Glencore Stake in Sagittarius Mines and Tampakan Project, press release, 24 June, http://www.glencore.com/assets/media/doc/news/2015/201506240930-Sale-of-Glencore-stake-in-Sagittarius-Mines-and-Tampakan-project.pdf

4 The Alyansa Tigil Mina (ATM) is a coalition of organisations and groups who collectively challenge the aggressive promotion of large-scale mining in the Philippines. Composed of NGOs, popular organisations, church groups and academic institutions, the ATM is both an advocacy group and a people's movement, working in solidarity to protect Filipino communities and natural resources that are threatened by large-scale mining operations. More information at http://alyansatigilmina.net

5 Senate Economic Planning Committee (2013) Realizing the Philippines' Mining Potential, Policy brief, December, http://www.senate.gov.ph/publications/PB%202013-12%20-%20Mining_Policy%20Brief_final_revised_010614.pdf;
Paje, Ramon J.P. (2011) Philippine minerals: beckoning the world's responsible miners/investors, Speech, Asia Mining Congress, 6 April, Singapore, http://denr.gov.ph/index.php?option=com_content&view=article&id=134:philippine-minerals-beckoning-the-worlds-responsible-minersinvestors&catid=13

6 Christian Aid and PIPLinks (2004) Breaking promises, making profits. Mining in the Philippines, http://www.piplinks.org/system/files/philippines_report.pdf; Doyle, Cathal; Wicks, Clive and Nally, Frank (2007) Mining in the Philippines Concerns and conflicts, Report of a Fact-Finding Trip to the Philippines July-August 2006, http://www.piplinks.org/system/files/Mining+in+the+Philippines+-+Concerns+and+Conflicts.pdf

7 Miranda, Marta, Chambers, David and Coumans, Catherine (2005) Framework for responsible mining: a guide to evolving standards, p.47, http://www.frameworkforresponsiblemining.org/; Mining Facts (2016) How Does Large-Scale Mining Affect Agriculture?, http://www.miningfacts.org/economy/how-does-large-scale-mining-affect-agriculture/

8 There is a long list of tax incentives that the mining industry enjoys. Some of those include: income tax holidays, deduction of labor expense from taxable income, tax and duty exemption on imported capital equipment and parts, and a tax credit on domestic capital equipment). There are also important non-tax incentives such as access to bonded warehouses, simplified customs procedures, unrestricted period of use of consigned equipment, and the right to employ foreign nationals. For more details see: Monsod, Christian (2012) Mining is a social justice issue, Rappler, 4 March, http://www.rappler.com/thought-leaders/2065-mining-is-a-social-justice-issue

9 The Mines and Geosciences Bureau (MGB) (2016) Mining Industry Statistics, 10 March, http://www.mgb.gov.ph/attachments/article/162/MIS%282015%29%20%281%29%20%281%29.pdf

10 Mines and Communities (2011) Philippine Human Rights Commission calls for end to mining deal, January 25, http://www.minesandcommunities.org/article.php?a=10659 and Commission on Human Rights of the Philippines (2011) Resolution CHR (IV) No.A2011-004, http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/position%20papers/pdf/reso2011-004.pdf

11 Moore, Jen et al. (2014) Debunking eight falsehoods by Pacific Rim Mining/OceanaGold in El Salvador, http://miningwatch.ca/sites/default/files/eight_falsehoods_2014-03-18.pdf

12 De Vera, Dave (2015) Ancestral Domains, KBAs, Protected Areas & Mining in the Philippines: A spatial overview, power point presentation, PAFID

13 Reiter, S.L. and Steensma, H. (2010) Human Development and Foreign Direct Investment in Developing Countries: The Influence of FDI Policy and Corruption, World Development Vol. 38, No. 12, pp. 1678–1691; Vander Stichele, M. and van Dijk, M. (2008) Is Foreign Investment Good for Development? A Literature Review, SOMO http://www.somo.nl/publications-en/Publication_2478; http://www.ase.tufts.edu/gdae/Pubs/rp/FDIWorkingGroupReportMay08_ES.pdf; Gallagher, Kevin P. and Chudnovsky, Daniel (2009) Rethinking Foreign Investment for Sustainable Development: Lessons from Latin America, Anthem Press, http://ase.tufts.edu/gdae/WorkingGroup_FDI.htm

14 UNCTAD (2012) World Investment Report 2012, page 79, http://unctad.org/en/PublicationsLibrary/wir2012_embargoed_en.pdf

15 African Union (2009) Africa Mining Vision, February, http://www.africaminingvision.org/amv_resources/AMV/Africa_Mining_Vision_English.pdf

16 Mohamadieh, Kinda and Uribe, Daniel (2016) *The rise of investor-state dispute settlement in the extractive sectors*: *challenges and considerations for African countries*, Research Paper 65, South Centre, http://www.southcentre.int/wp-content/uploads/2016/02/RP65_Rise-of-investor-state-dispute-settlement-in-extrative-sectors_EN.pdf; Anderson, Sarah and Pérez Rocha, Manuel (2013) Mining for Profits, Institute for Policy Studies, http://www.ips-dc.org/wp-content/uploads/2013/05/Mining-for-Profits-2013-ENGLISH.pdf

17 Mohamadieh, Kinda and Uribe, Daniel (2016) *The rise of investor-state dispute settlement in the extractive sectors*: *challenges and considerations for African countries*, Research Paper 65, South Centre, http://www.southcentre.int/wp-content/uploads/2016/02/RP65_Rise-of-investor-state-dispute-settlement-in-extrative-sectors_EN.pdf; Nikiema, Suzy (2014) Performance Requirements in Investment Treaties, International Institute for Sustainable Development, http://www.iisd.org/sites/default/files/publications/best-practices-performance-requirements-investment-treaties-en.pdf; International Institute for Sustainable Development (2012) Investment treaties and why they matter for sustainable development, page 28-29. http://www.iisd.org/pdf/2011/investment_treaties_why_they_matter_sd.pdf

18 UNCTAD (2016) List of Philippines' other Investment Agreements, http://investmentpolicyhub.unctad.org/IIA/CountryOtherIias/166#iiaInnerMenu

19 Philippines–Japan Economic Partnership Agreement (PJEPA), ASEAN Free Trade Agreement (AFTA), ASEAN–Australia–New Zealand Free Trade Agreement (AANZFTA), ASEAN–China Free Trade Agreement (ACFTA), ASEAN–India Free Trade Agreement (AIFTA), ASEAN–Japan Comprehensive Economic Partnership Agreement (AJCEPA), ASEAN–Korea Free Trade Agreement (AKFTA).

20 Philippines-–Japan Economic Partnership Agreement (PJEPA) and ASEAN–Japan Comprehensive Economic Partnership Agreement (AJCEPA) do not include investor–state dispute settlement (ISDS) provision.

21 For information on the content and effects of IIAs, see International Institute for Sustainable Development (2012) Investment treaties and why they matter for sustainable development, http://www.iisd.org/pdf/2011/investment_treaties_why_they_matter_sd.pdf ; Olivet, Cecilia (2011) The Dark Side of Investment Agreements, Transnational Institute https://www.tni.org/en/article/dark-side-investment-agreements

22 Eberhardt, Pia and Olivet, Cecilia (2012) Profiting from injustice: How law firms, arbitrators and financiers are fuelling an investment arbitration boom, Transnational Institute and Corporate Europe Observatory, https://www.tni.org/en/briefing/profiting-injustice

23 UNCTAD (2016) Investment policy hub, Investment Dispute Settlement Navigator, http://investmentpolicyhub.unctad.org/ISDS

24 UNCTAD (2016) Investment policy hub, Investment Dispute Settlement Navigator, Advanced search results, search by nationality of the parties http://investmentpolicyhub.unctad.org/ISDS/AdvancedSearch

25 UNCTAD (2015) World Investment Report, p 116 http://unctad.org/en/PublicationsLibrary/wir2015_en.pdf; Mann, Howard (2015) ISDS: Who Wins More, Investors or States?, IISD http://www.iisd.org/itn/wp-content/uploads/2015/06/itn-breaking-news-june-2015-isds-who-wins-more-investors-or-state.pdf

26 Goldhaber, Michael D. (2015) Deciding the world's biggest disputes, 2015 Arbitration Scorecard, American Lawyer, Focus Europe, July

27 Cheng, Tai-Heng (2012) ICSID's Largest Award in History: An Overview of Occidental Petroleum Corporation v the Republic of Ecuador, Kluwer Arbitration Blog, 19 December http://kluwerarbitrationblog.com/2012/12/19/icsids-largest-award-in-history-an-overview-of-occidental-petroleum-corporation-v-the-republic-of-ecuador/

28 Matthew Hodgson, "Counting the Costs of Investment Treaty Arbitration", Global Arbitration Review, 24 March 2014, http://www.allenovery.com/SiteCollectionDocuments/Counting_the_costs_of_investment_treaty.pdf

29 House of Representatives Philippines (2011) Minutes from the Committee on Transportation, http://www.congress.gov.ph/download/commdaily/CDB%20Vol%201%20No.%2089%20%2803.15.11%29.pdf

30 Perry, Sebastian (2014) The cost of Yukos, Global Arbitration Review, 29 July, http://globalarbitrationreview.com/news/article/32852/the-cost-yukos/

31 Van Harten, Gus and Malysheuski, Pavel (2016) Who has benefited financially from investment treaty arbitration? An evaluation of the size and wealth of claimants, Osgoode Legal Studies Research Paper No. 14, 12:3, 2016, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2713876

32 Phillips, Kent (2015) Churchill vs Indonesia: managing costs in international arbitration, Mining Journal, 24 September, http://www.mining-journal.com/services/legal-services/churchill-vs-indonesia-managing-costs-in-international-arbitration/

33 European Commission (2015) EU and the Philippines launch negotiations for a free trade agreement, Press release, Brussels, 22 December, http://trade.ec.europa.eu/doclib/press/index.cfm?id=1429

34 Van Harten, Gus (2016) Key Flaws in the European Commission's Proposals for Foreign Investor Protection in TTIP (November 17, 2015), Osgoode Legal Studies Research Paper No. 16/2015, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2692122 ; S2B (2015) ISDS: Courting foreign investors, http://www.s2bnetwork.org/isds-courting-foreign-investors/ ; Eberhardt, Pia (2016) The zombie ISDS, Rebranded as ICS, rights for corporations to sue states refuse to die, Corporate Europe Observatory et.al, https://www.tni.org/en/publication/the-zombie-isds

35 Austria, Belgium, Luxembourg, Denmark, Finland, France, Germany, Italy, Netherlands, Portugal, Spain, and UK

36 UNCTAD (2016) List of Philippines' Bilateral Investment Treaties, http://investmentpolicyhub.unctad.org/IIA/CountryBits/166

37 Abdulkadir Jailani (2016) Indonesia's Perspective on Review of International Investment Agreements, in Eds. Singh and Ilge Rethinking Bilateral Investment Treaties: Critical Issues and Policy Choices, Both Ends, Madhyam, SOMO, http://www.madhyam.org.in/wp-content/uploads/2016/03/Rethinking-BIT-Book-PDF-15-March-2016.pdf

38 Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Sweden

39 Parameswaran, Prashanth (2015) Confirmed: Philippines Wants to Join TPP, The Diplomat, 25 June, http://thediplomat.com/2015/06/confirmed-philippines-wants-to-join-tpp/

40 Signatories' countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, and Vietnam.

41 The text of the TPP investment protection chapter can be read at https://medium.com/the-trans-pacific-partnership/investment-c76dbd892f3a#.73imeeyrh For critical analysis of the text of this chapter, please see: Bernasconi-Osterwalder, Nathalie (2015) How the Investment Chapter of the Trans-Pacific Partnership Falls Short, IISD, 6 November, https://www.iisd.org/blog/how-investment-chapter-trans-pacific-partnership-falls-short; Tucker, Todd (2015) The TPP has a provision many will love to hate: ISDS. What is it, and why does it matter?, The Washington Post, 6 October, https://www.washingtonpost.com/blogs/monkey-cage/wp/2015/10/06/the-tpp-has-a-provision-many-will-love-to-hate-isds-what-is-it-and-why-does-it-matter/ ; 100 Jurists (2012) An open letter from lawyers to the negotiators of the Trans-Pacific Partnership urging the rejection of investor-state dispute settlement, https://tpplegal.wordpress.com/open-letter/; Johnson, Lise and Sachs, Lisa (2015) The TPP's Investment Chapter: Entrenching, rather than reforming, a flawed system, Columbia Center on Sustainable Development, http://ccsi.columbia.edu/2015/11/18/the-tpps-investment-chapter-entrenching-rather-than-reforming-a-flawed-system/; Public Citizen (2015) Secret TPP Investment Chapter Unveiled: It's Worse than We Thought, https://www.citizen.org/documents/analysis-tpp-investment-chapter-november-2015.pdf

42 UNCTAD (2016) SGS v. Philippines case details, http://investmentpolicyhub.unctad.org/ISDS/Details/80

43 UNCTAD (2016) Fraport v. Philippines (I) case details, http://investmentpolicyhub.unctad.org/ISDS/Details/125

44 UNCTAD (2016) Fraport v. Philippines (II) case details, http://investmentpolicyhub.unctad.org/ISDS/Details/445

45 House of Representatives Philippines (2011) Minutes from the Committee on Transportation, http://www.congress.gov.ph/download/commdaily/CDB%20Vol%201%20No.%2089%20%2803.15.11%29.pdf

46 Aquino III, Benigno S. (2011) President Aquino's 2012 Budget Message, http://www.gov.ph/2011/07/26/president-aquinos-2012-budget-message/

47 UNCTAD (2016) Baggerwerken v. Philippines case details, http://investmentpolicyhub.unctad.org/ISDS/Details/443

48 UNCTAD (2016) Investment Dispute Settlement Navigator, Search by economic sector, http://investmentpolicyhub.unctad.org/ISDS/FilterByEconomicSector

49 Armenia, Bolivia, Burundi, Canada, Colombia, Costa Rica, Democratic Republic of the Congo, Dominican Republic, Ecuador, Egypt, El Salvador, India, Indonesia, Kazakhstan, Kenya, Kyrgyzstan, Mongolia, Oman, Pakistan, Peru, Poland, Romania, Russia, Serbia, Slovak Republic, South Africa, United States of America, Uzbekistan, and Venezuela

50 Collected from data from UNCTAD database http://investmentpolicyhub.unctad.org/ISDS/

51 Hiyate, Alisha (2014) Gold Reserve wins US$740M in 'stunning victory' against Venezuela, The Northern Miner, Volume 100 Number 37, http://www.northernminer.com/financial-matters/gold-reserve-wins-us-740m-in-stunning-victory-against-venezuela/1003305097

52 Collected from data from UNCTAD database http://investmentpolicyhub.unctad.org/ISDS/

53 Vervest, Pietje, van der Pas, Hilde, van Os, Roos and Knottnerus, Roeline (2015) Socialising Losses, Privatising Gains. How Dutch investment treaties harm the public interest, Transantional Institute, Both Ends, SOMO and Milieudefensie, https://www.tni.org/en/DutchBITs

54 Based on authors' compilation of information based on UNCTAD database http://investmentpolicyhub.unctad.org/ISDS/ and other public sources.

55 Koven, Peter (2016) Venezuela ordered to pay Crystallex US$1.386 billion in arbitration ruling, Financial Post, 5 April http://business.financialpost.com/news/mining/venezuela-ordered-to-pay-crystallex-us1-386-billion-in-arbitration-ruling

56 Gold Reserve Inc. and Bolivarian Republic of Venezuela (2014) Award, ICSID Case No. ARB (AF) /09/1, paragraph 283, http://www.italaw.com/sites/default/files/case-documents/italaw4009.pdf

57 Cases related to revoking of permit: Bilcon vs Canada (UNCITRAL, PCA-Case No. 2009-04); Infinito Gold vs Costa Rica (ICSID ARB/14/5); Gold Reserve vs Venezuela (ICSID ARB(AF)/09/1); Commerce Group vs El Salvador (ICSID ARB/09/17); South American Silver vs. Bolivia (UNCITRAL PCA Case No. 2013-15). Cases related to denying of permit: Gabriel Resources vs Romania (ICSID ARB/15/31); Pacific Rim vs El Salvador (ICSID ARB/09/12); St. Marys vs Canada (UNCITRASL/PCA); EcoOro v Colombia (threat of lawsuit). Other measure: Glamis Gold vs USA (UNCITRAL)

58 Clayton/Bilcon vs Government of Canada (2015) Dissenting Opinion of Professor Donald McRae, 10 March, para 48, p.18, http://www.italaw.com/sites/default/files/case-documents/italaw4213.pdf

59 Read more about Infinito vs Costa Rica case at: Hamilton, Tyler (2013) All that glitters, Corporate Knights, Summer Issue, http://www.corporateknights.com/channels/mining/all-that-glitters-13807960/; Leadnow (2015) Costa Rica said "no" to this Canadian mining company 3 times. Let's make sure it listens this time, https://you.leadnow.ca/petitions/costa-rica-said-no-to-this-canadian-mining-company-3-times-let-s-make-sure-it-listens-this-time; Mining Watch Canada (2015) Good Riddance Infinito Gold, A Long Overdue Farewell to Costa Rica, 22 July, http://miningwatch.ca/blog/2015/7/22/good-riddance-infinito-gold-long-overdue-farewell-costa-rica

60 Read more about Gabriel Resources vs Romania case at: Salivate Rosia Montana (2016) All about Rosia Montana mining project, http://www.rosiamontana.org/node/1825?language=en; No dirty gold (2016) Rosia Montana, http://nodirtygold.earthworksaction.org/voices/rosia_montana; Cernea Clark, Adam (2015) Whose Sovereignty? Gabriel Resources vs Romania, The Huffington Post, 8 June, http://www.huffingtonpost.com/adam-cernea-clark/whose-sovereignty-gabriel_b_7939596.html

61 Reguly, Eric (2013) Gabriel threatens Romania with billion-dollar lawsuit, The Globe and Mail, 11 September, http://www.theglobeandmail.com/report-on-business/international-business/european-business/gabriel-resources-ceo-vows-to-sue-if-romania-kills-europes-biggest-gold-mine/article14240950/

62 Read more about Pacific Rim vs El Salvador case at: Holland, Lynn (2015) For the Love of Water: El Salvador's Mining Ban, Counter Punch, 3 September, http://www.counterpunch.org/2015/09/03/for-the-love-of-water-el-salvadors-mining-ban/; Moore, Jen et.al (2014) Debunking eight falsehoods by Pacific Rim Mining/OceanaGold in El Salvador, http://miningwatch.ca/sites/default/files/eight_falsehoods_2014-03-18.pdf; Westervelt, Amy (2015) Lawsuit against El Salvador mining ban highlights free trade pitfalls, The Guardian, 27 May, http://www.theguardian.com/sustainable-business/2015/may/27/pacific-rim-lawsuit-el-salvador-mine-gold-free-trade; Center for International Environmental Law (2011) Pac Rim Cayman LLC v. Republic of El Salvador, Submission of Amicus curiae brief, http://www.italaw.com/sites/default/files/case-documents/italaw1208.pdf

63 Read more about Glamis Gold v USA case at: Public Citizen (N/A) Summary of Glamis Gold NAFTA Case, Background Paper, http://www.citizen.org/documents/GlamisBackgrounderFINAL.pdf; Whitsitt, Elizabeth and Vis-Dunbar, Damon (2009) Glamis Gold Ltd. vs United States of America: Tribunal sets a high bar for establishing breach of "Fair and Equitable Treatment" under NAFTA, Investment Treaty News, IISD, 15 July, https://www.iisd.org/itn/2009/07/14/glamis-gold-ltd-v-united-states-of-america-tribunal-sets-a-high-bar-for-establishing-breach-of-fair-and-equitable-treatment-under-nafta/

64 Corn Products International Inc. vs United Mexican States (2008) Decision on Responsibility, 15 January, para. 142, http://www.italaw.com/sites/default/files/case-documents/ita0244.pdf

65 Quiborax v Bolivia (2015) Award, 16 September, para. 253, p. 88, http://www.italaw.com/sites/default/files/case-documents/italaw4389.pdf

66 Gold Reserve Inc. and Bolivarian Republic of Venezuela (2014) Award, ICSID Case No. ARB (AF)/09/1, 22 September, para.. 595, p. 150 http://www.italaw.com/sites/default/files/case-documents/italaw4009.pdf

67 UNCTAD (2016) St. Mary's v. Canada case details, http://investmentpolicyhub.unctad.org/ISDS/Details/442

68 Quiborax S.A. vs Plurinational State of Bolivia (2012) Decision on Jurisdiction, ICSID Case No. ARB/06/2, 27 September, para. 242, p. 82, http://www.italaw.com/sites/default/files/case-documents/italaw1098.pdf

69 Quiborax S.A. v. Plurinational State of Bolivia (2012) Decision on Jurisdiction, ICSID Case No. ARB/06/2, 27 September, para. 39, p.19; para. 72, page 26, http://www.italaw.com/sites/default/files/case-documents/italaw1098.pdf

70 For more information about the Quiborax vs Bolivia case, see: Brauch, Martin Dietrich (2016) Quiborax awarded US$50 million against Bolivia, one-third of initial claim, Investment Treaty News, 29 February, https://www.iisd.org/itn/2016/02/29/quiborax-awarded-us50-million-against-bolivia-one-third-of-initial-claim-quiborax-sa-and-non-metallic-minerals-sa-v-plurinational-state-of-bolivia-icsid-case-no-arb-06-2/

71 For more information on the Renco v Peru case, see: Martin, Andrew (2013) Coup d'Etat to Trade Seen in Billionaire Toxic Lead Fight, Bloomberg, 10 May, http://www.bloomberg.com/news/articles/2013-05-09/rennert-800-million-toxic-lead-fight-roils-global-trade; Public Citizen (2012) Renco Group Uses Trade Pact Foreign Invest or Provisions to Chill Peru's Environment and Health Policy, Undermine Justice, http://www.citizen.org/documents/renco-memo-03-12.pdf; Waren, Bill (2012) Pay the polluter $800 million! Trade deal injustice for the children of La Oroya, Friends of the Earth, http://www.foe.org/news/archives/2012-04-pay-the-polluter-800-million-trade-deal-injustice-fo

72 IAPP (2011) Foresti v South Africa (Italy–South Africa BIT), February http://iiapp.org/media/cases_pdfs/Foresti_v_South_Africa.rev.pdf

73 Read more about the Newmont Nusa Tenggara v Indonesia case at: Damanik, Riza and van der Pas, Hilde (2014) The case of Newmont Mining vs Indonesia Netherlands – Indonesia BIT rolls back implementation of new Indonesian mining law, Indonesia for Global Justice (IGJ), Transnational Institute (TNI) and the EU-ASEAN FTA Network, https://www.tni.org/en/briefing/netherlands-indonesia-bit-rolls-back-implementation-new-indonesian-mining-law

74 Read more about the Sergei Paushok v Mongolia case at: Vis-Dunbar, Damon (2011) Mongolia not in treaty-breach over windfall tax on gold, Investment Treaty News, 12 July, https://www.iisd.org/itn/2011/07/12/awards-and-decisions-4/; Sergei Paushok, vs The Government of Mongolia (2011) Award on Jurisdiction and Liability, ITA Law, http://www.italaw.com/cases/816

75 Webber Wentzel (2010) ICSID Tribunal awards South African Government 7.5 per cent of its Euro 5.33m costs claim, Announcements, http://www.webberwentzel.com/wwb/content/en/news-newsletters-current?oid=27715&sn=detail&pid=1847

76 Mineral Policy Institute (2006) Backgrounder on the Rapu Rapu Mining Operation, http://www.banktrack.org/download/backgrounder_on_rapu_rapu_mine/0_060701_mpi_backgrounder_on_rapu_rapu.pdf; Greenpeace (2007) Mining in Rapu Rapu: A Countdown to Disaster, http://www.greenpeace.org/international/Global/international/planet-2/report/2007/8/mining-in-rapu-rapu-a-countdo.pdf

77 Commission on Human Rights of the Philippines (2011) Resolution CHR (IV) No.A2011-004, http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/position%20papers/pdf/reso2011-004.pdf

78 Rappler (2014) 4 mining firms suspended over 'unsystematic' methods, 14 July, http://www.rappler.com/business/special-report/whymining/whymining-latest-stories/64247-4-mining-firms-suspended-unsystematic-methods; Cultura, Rodge (2014) Mining company sanctioned in Surigao del Sur, ABS-CBN News, 25 April, http://rp3.abs-cbnnews.com/nation/regions/04/25/14/mining-company-sanctioned-surigao-del-sur

79 Khee-Jin Tan, Alan (2006) All That Glitters: Foreign Investment in Mining Trumps the Environment in the Philippines, 23 Pace Envtl. L. Rev. 183, http://digitalcommons.pace.edu/pelr/vol23/iss1/6

80 In the country's history, only one mining contract has been cancelled. In 2011, the Aquino administration cancelled a contract for large-scale mineral exploration in Palawan with three mining firms (McArthur Mining, backed by Canadian-owned MBMI Resources; Narra Nickel Mining and Development Corp.; and Tesoro Mining and Development) arguing it was the result of a midnight deal entered into by then President Arroyo. The companies contested the decision and even threatened investment arbitration. This, however, did not happen. In 2014, the Supreme Court decided that the three firms cannot operate because of violating constitutional limits of foreign ownership after it was found that MBMI Resources owned 60% of common stocks of the three firms. More details at: Ramos, Marlon (2012) 3 mining firms question Aquino cancellation of FTAA in Palawan, Philippine Daily Inquirer, 1 May, http://newsinfo.inquirer.net/185771/3-mining-firms-question-aquino-cancellation-of-ftaa-in-palawan

81 Tienhaara, Kyla (2010) Regulatory Chill and the Threat of Arbitration: A View from Political Science in Evolution in investment treaty law and arbitration, Chester Brown, Kate Miles (eds.) Cambridge University Press. http://ssrn.com/abstract=2065706

82 Tariana Turia, Government moves forward with plain packaging of tobacco products, 19 February 2013, http://www.beehive.govt.nz/release/government-moves-forward-plain-packaging-tobacco-products

83 Steptoe & Johnson (2014) Foreign Investors' Options to Deal with Regulatory Changes in the Renewable Energy Sector, September, http://www.steptoe.com/publications-9867.html

84 Nelson, Arthur (2016) TTIP: Chevron lobbied for controversial legal right as 'environmental deterrent', The Guardian, 26 April, http://www.theguardian.com/environment/2016/apr/26/ttip-chevron-lobbied-for-controversial-legal-right-as-environmental-deterrent

85 Keen, Kip (2013) Landmark Canada/EU trade agreement could have major implications for miners, Mineweb, 23 October, http://www.mineweb.com/archive/landmark-canadaeu-trade-agreement-could-have-major-implications-for-miners/

86 Garces, Celia (2012) Mallku Khota: A Briefing on South American Silver's Actions in Bolivia, The Bullet, E-Bulletin No. 646, 5 June, http://www.socialistproject.ca/bullet/646.php and South American Silver v Plurinational State of Bolivia (2015) Objections to jurisdiction, admissibility and counter-memorial on the merits, 31 March, http://www.italaw.com/sites/default/files/case-documents/italaw4262_0.pdf

87 Saint Mary's VCNA, LLC v. Government of Canada (2011-2013) Tribunal documents, http://www.italaw.com/cases/1196

88 Hamm, Brigitte, Schax, Anne and Scheper, Christian (2013) Human Rights Impact Assessment of Tampakan Copper-Gold Project, Mindanao, Philippines, Institute for Development and Peace (INEF), commissioned by MISEREOR and Fastenopfer, http://www.misereor.org/fileadmin/redaktion/HRIA_Human_Rights_Impact_Assessment_Tampakan_Copper-Gold_Project_August2013.pdf

89 ndophil Resources (2016) Tampakan overview, http://www.indophil.com/projects/tampakan/overview; Banktrack (2015) Tampakan Copper and Gold Mine project, http://www.banktrack.org/show/dodgydeals/tampakan_copper_and_gold_mine_project

90 Espiritu, Belinda F. (2015) The Destructive Impacts of Corporate Mining in the Philippines: The Tampacan Copper-Gold Mining Project in Mindanao, Global Research, 14 March, http://www.globalresearch.ca/the-destructive-impacts-of-corporate-mining-in-the-philippines-the-tampacan-copper-gold-mining-project-in-mindanao/5436594; Hamm, Brigitte, Schax, Anne and Scheper, Christian (2013) Human Rights Impact Assessment of Tampakan Copper-Gold Project, Mindanao, Philippines, Institute for Development and Peace (INEF), commissioned by MISEREOR and Fastenopfer, http://www.misereor.org/fileadmin/redaktion/HRIA_Human_Rights_Impact_Assessment_Tampakan_Copper-Gold_Project_August2013.pdf; Banktrack (2015) Tampakan Copper and Gold Mine project, http://www.banktrack.org/show/dodgydeals/tampakan_copper_and_gold_mine_project

91 Woods, T. Ron (2012) OCEANA GOLD STAY OUT In Didipio! The Continuing Story Of Indigenous Resistance To Large Scale Mining In The Philippine Highlands, https://unitedmedianetwork.wordpress.com/2012/03/20/oceana-gold-stay-out-in-didipio-the-continuing-story-of-indigenous-resistance-to-large-scale-mining-in-the-philippine-highlands/

92 Commission on Human Rights of the Philippines (2011) Resolution CHR (IV) No.A2011-004, http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/position%20papers/pdf/reso2011-004.pdf

93 Moore, Jen et al. (2014) Debunking eight falsehoods by Pacific Rim Mining/OceanaGold in El Salvador, http://miningwatch.ca/sites/default/files/eight_falsehoods_2014-03-18.pdf

NO TRESPASSING - PROTECTED INVESTMENT

Alyansa Tigil Mina (ATM) is a coalition of mining-affected communities and their support groups, collectively challenging the promotion of destructive large-scale mining in the Philippines. ATM works to protect Filipino communities and natural resources that are threatened by large-scale mining operations. Human rights is a central basis for ATM's work, particularly in defending community and individual rights.

www.alyansatigilmina.net

Focus on the Global South is an activist think tank in Asia providing analysis & building alternatives for just social, economic & political change. Founded in 1995, Focus combines policy research, advocacy, activism and grassroots capacity building in order to generate critical analysis and debates on national and international policies related to trade and investment, climate and environmental justice, the commons, and power and democracy.

www.focusweb.org

The Transnational Institute (TNI) is an international research and advocacy institute committed to building a just, democratic and sustainable planet. For more than 40 years, TNI has served as a unique nexus between social movements, engaged scholars and policy makers.

www.tni.org