

Philippine mining capitalism: the changing terrains of struggle in the neoliberal mining regime

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los & Tauli-Corpuz, 2012; Santos & Zaratan, 1997), social movement mobilization against the mining sector (Holden & Jacobson, 2007a), state violence on anti-mining communities (Holden, 2005; Holden & Jacobson, 2007b), the political economy of the mining sector (Camba, 2015; Gomez, 2012; Hatcher, 2014; Israel, 2010, 2011; Orfenio, 2009), local mineral governance (Holden, 2012; La Vina, de Leon, & Bueta, 2012), and everyday forms of resistance against mining projects (Nem Singh & Camba, 2016), there has been relatively little discussion on the shifting terrains of contention where disputes between the mining sector and anti-mining groups take place.

I argue that the transition to a neoliberal mineral regime has empowered the mining sector and weakened the anti-mining groups by shifting the terrains of struggle from protest in the streets into the domains of state agencies and industry networks. During the colonial (1901 to 1941), national (1945 to 1964), and authoritarian (1965 to 1985) mineral regimes, anti-mining communities across the Philippines resisted the state and mining capital's imperative to incorporate mineral lands into the circuits of extraction.² However, during the neoliberal era (1986-present), the mining sector devised two strategies to forward its economic interests. First, *technologies of subjection* elevate public institutions, such as the Mining Government Bureau (MGB), the National Commission for Indigenous Communities (NCIP), and the Department of Environment and Natural Resources (DENR) to elect and select the processes aimed at making mining accountable and sensitive to the demands of local communities. Though some branches of these institutions want to intervene to help local communities, they often refuse or lack the capacity. Second, *technologies of subjectivities* allow a selective group of industry experts to single-handedly determine the environmental viability of mining projects with no oversight. Mining consultants, specialists, and scientists chosen by mining companies determine the potential environmental damage on water bodies, air pollution, and soil erosion. Because of the mining capital's access to economic and legal resources, anti-mining communities across the Philippines have been forced to compete on an inherently unequal terrain for a meaningful social dialogue and mining outcomes.

I use what Aihwa Ong (2006) calls "neoliberal exceptions" to refer to how states in the Global South deviate from their usual practices of governing in order to become more attractive investment destinations and legitimate players in the global economy. Postcolonial states transform their often inefficient and rent-seeking government agencies into capable and effective ones in order to implement neoliberal policies. These agencies become "exceptions" from conventional governing principles and administration standards across the country. As a result of these changes, protest tactics have not only been inhibited by capital-intensive mineral extraction but also hindered by institutional constraints, diminishing the effectiveness of their anti-mining mobilizations and campaign efforts. To effectively compete for mining outcomes, the opponents of mining projects need to contest the implementation of the neoliberal mining frameworks on institutional grounds: adopting the language of the state and institutions and leveraging their own capacity to conduct science.

2 I draw on selected cases of anti-mining communities and social movements from my fieldwork conducted in the Philippines in 2009 and 2014. The two broad national movements include *Alyansa Tigil Mina* (Alliance to Stop Mining) and *Kalikasan* (Nature).

This study fosters a dialogue of political economy, political ecology, and the sociology of labor (Agarwala, 2013; Silver, 2003; Zhang, 2015). Specifically, it shows the shifts in the strategies of the mining sector and the subsequent adoption by anti-mining groups as they become integrated in global circuits of production and consumption (Elias, 2010; Nevins & Peluso, 2008; Ong, 2006). The neoliberal mining regime has not only invited capital to open up new lands for extraction (Nevins & Peluso, 2008; Ong, 2006; Peluso, 1992), but also generated enormous socio-ecological consequences for communities in the mining areas. As political ecology deals with the “chains of explanation to exploring marginalized communities” (Peet & Watts, 2004, p. 3) by situating the environmental problems in a broader context, a study of the shifting strategies of mining companies and the later adoption by anti-mining communities could further our understanding of the neoliberal restructuring of the extractive sector in the Global South.

I follow the tradition of global ethnography pioneered by Micheal Burawoy (1985, 2013) in order to understand how economic production, state strategies, and local histories constitute with, and form through, each other. Numerous scholars have presented cutting edge ethnography works on labor in different parts of the world but the extractive sector has largely been overlooked (Bickham-Mendez, 2005; Dreby, 2010; France, 2011; Parrenas, 2015). Though there are some ethnographies on mining and development (Kirsch, 2014), I aim to extend an ethnographic approach towards the Philippine mining industry to understand how the mining sector and anti-mining groups compete for mining outcomes since the neoliberal restructuring in 1986. A study of how new state strategies subdued resistance and how the subsequent adaptation of anti-mining communities to neoliberal restructuring has the potential to explore how people in precarious situations and informal labor conditions become more empowered social actors under particularly contentious conditions (Peet & Watts, 2004).

I draw on selected cases of anti-mining communities and social movements from my fieldwork in 2014 conducted in the provinces of Camarines Norte, Abra, Mountain Province, Romblon, and Bohol. Through interviews with community leaders, representatives of social movements, national and local government officials, and spokespersons of transnational mining companies, I attempt to reconstruct the terrains of struggle between the mining sector and the anti-mining groups. First, I develop a theoretical framework that examines neoliberalism as an exception in the extractive sector in the Global South. Second, I briefly discuss the Philippine mining sector prior to and during the neoliberal period. In the main section of the article, I analyze the two strategies that emerged after the shift towards a neoliberal mining regime in 1986: technologies of subjection in elevation of national state agencies and technologies of subjectivities through the power of industry experts. In both strategies, I briefly discuss how communities have adapted to the new terrain of contestation.

NEOLIBERALISM AS AN EXCEPTION: SUBJECTION AND SUBJECTIVITIES IN THE EXTRACTIVE INDUSTRY

David Harvey (2005, 2010), one of the prominent Marxist theorists in the 21st century, argues that neoliberalism was an elite-led project that successfully reversed capitalism's profitability crisis of the 1970s. Across Western Europe, states experienced tightening budgets, staggering economic productivity, and rising labor unrest. These conditions pushed political elites to restructure the economy around the principles of neoliberalism: privatization of state enterprises, deregulation of goods and services, and the liberalization of economic production. Neoliberal elites dismantled state regulations and empowered transnational companies across the world. Harvey (2006, 2010) also portrays neoliberalism as a knowledge paradigm that empowered dominant modes of governance employed by local and national governments, influencing civil society and non-state organizations, capitalizing on the ideological cleavages between labor and social movements, and most pivotally, subsuming economic and political elites into the rubrics of neoliberal ideology.

However, the neoliberal restructuring of economies varies across places and economic sectors. The extractive industry, a vast, interconnected, and multi-trillion dollar heavy sector, occupies a central position in the global neoliberal restructuring of economic production. Mining communities in Africa, Asia, and Latin America have resisted mining companies (Kirsch, 2014; Nem Singh & Bourgooin, 2013; Peet & Watts, 2004), but the vast networks of corporations facilitate transactions between the extractive sector and commodity producers, making the mining companies relatively anonymous and invulnerable to consumer boycotts, inter-state regulatory efforts, and labor unrest (Kirsch, 2014).

State actors and representatives of the mining sector justified the expansion of the industry by emphasizing the need to revitalize the economy and provide employment. A more recent example of these efforts is the branding of the sector as a 'promoter' of sustainable development (Recidoro, 2013). However, despite such investments, recent transformations in technology have weakened the employment capacity and environmental viability of the mining sector. Because mining companies rely heavily on machine-heavy, capital-intensive open-pit extraction, which minimizes the use of labor (Kirsch, 2014), they employ fewer permanent laborers and rely instead on contractual workers to construct infrastructure and protect them from protest politics. Even though capital-intensive mining extracts more minerals, it also produces 50 times the waste and tailing vis-à-vis underground extraction (Kirsch, 2014). Alongside this shift towards capital-intensive mining, the World Bank and the Asian Development Bank promoted the liberalization of the formerly protected mineral sectors across the world (Bridge, 2004; Camba, 2015). States in the Global South amended their mining codes, dismantled labor and environmental protection, and provided new institutions to expand mineral extraction (Bridge, 2004).

To understand the neoliberal restructuring at the local level, Aihwa Ong's (1999a, 1999b, 2006) formulation of "neoliberal exceptions" has been a more useful concept than macroeconomic theories and institutional approaches. In agreement with Harvey's assessment that neoliberalism empowered the state to implement neoliberal reforms, Ong examines the micro-level transformations of governance and govern-

ing fostered by the global shift towards neoliberal restructuring. Specifically, Ong's framework traces and locates how neoliberalism reconfigures the relationship between the state and the people, sovereignty and territoriality, as well as power and knowledge. She argues that neoliberalism re-conceptualizes state governance as apolitical and technical, territories as commodities, and knowledge paradigms as universally applicable. Ong suggests that states in the Global South need to transform the exceptions in their governing practices to compete for foreign direct investments. The monopoly of violence, which is the primary repertoire of the state, may attract unwanted international scrutiny and embolden resistance movements. Widespread use of state violence may also become ineffective due to the considerable costs on citizen morale, ideology, international reputation, and social order. In the Philippine mining sector, these practices become exceptions because the MGB, NCIP, and DENR become efficient agencies to implement neoliberal frameworks. Before restructuring, these institutions were inefficient by Western standards and controlled by rent-seeking elites, but they were transformed to forward global mining interest. Local, rent-seeking elites controlled mining production in the past. Under neoliberal restructuring, however, they need to follow the rules of the national government and relinquish control of production to the transnational companies.

In my reformulation of Ong's argument, neoliberal exceptions divert the terrains of struggle from protest in the street to state institutions and industry networks. Neoliberal exceptions assemble and constitute the new state strategies of subjection and subjectivities. Technologies of subjection regulate the behavior of the governed in particular matters of social and economic outcomes (Ong, 2006). These technologies not only privileged the MGB, the NCIP, and the DENR to determine and implement the procedures aimed at making mining socially accountable, but also monopolized important decision-making on mining claims at critical junctures, bypassing and ignoring democratic procedures in favor of expediting mining permits for mining companies. Furthermore, these institutions limit anti-mining groups within asymmetric decision making structures, preventing them from deploying other weapons in their repertoires. Technologies of subjectivities empower industry experts chosen by mining companies to determine the environmental viability of mining projects: water pollution, energy usage, mercury pollution, and soil erosion. Members of the networks – holders of particular credentials – police the boundaries of their own membership, hindering outsiders even with similarly competitive credentials from cross-checking their assessments. Not only are these practices dangerous, but they also prevent accountability measures by remaining inaccessible and unintelligible to the outside. Furthermore, these networks also monopolize the interpretation of particular modes of dominant knowledge paradigms to occlude other social groups with different sets of beliefs (Ong, 1999b, 2006). Environmental assessments neglect and do not take into account alternative forms of local and gendered knowledge (Nevins & Peluso, 2008; Peet & Watts, 2004), obscuring the concerns of indigenous communities, labor organizations, farmers, and environmental groups. Technologies of subjection by state agencies minimize anti-mining resistance through the emergence of state-led consultations and official registration. Technologies of subjectivities, in the form of industry networks, go hand-in-hand with the technologies of subjection, casting a cover of scientific legitimacy, accuracy, and neutrality onto the decision-

making structures of state institutions. Both technologies of subjection and subjectivities enable and deny options for the mining sector and anti-mining groups. These technologies not only assume that all governed citizens are and should be liberal subjects that can decide freely, manage rationally, and survive independently, but also privilege the role of state institutions that exalts the currency of economic, social, and cultural capital. For actors to successfully impede state power and the scientific credential, movements must therefore acquire the necessary economic, social, and cultural capital. Economic capital, in terms of access to law firms, information, and local officials, prefigures the outcomes of many legal cases across the world. Access to social and cultural capital, such as educational attainment and scientific literacy, increases the credibility of the actors. Indeed, cultural capital at many times becomes the 'proxy' for an empirically reflexive, careful scientific examination of processes. Because of the nature of the structures and rules of these institutions and networks, local communities and resistance movements ultimately lose out as a result of the mismatch of their strategies and tactics.

FROM THE COLONIAL TO THE NEOLIBERAL MINING REGIME

This section presents a critical historical overview of Philippine mineral industry: late colonial (1901-1941), national developmental (1945-1964), and state authoritarianism (1965-1985). I present the historical development of Philippine mining to show the key changes under the current neoliberal mineral regime (1986-present). In the colonial mineral regime, the US army ravaged the mountainous provinces of the non-hispanized Philippine provinces. The Northern Mountain Province and Moro regions in Mindanao were targeted because the previous colonizer, the Spanish government, had never controlled them. By 1903, a colonial mineral law was passed and over five hundred foreign investors applied to explore and extract minerals and export them to the global market. In 1921, the Philippines evolved as a major gold exporter, which shipped a total amount of USD 3,217,843 during that year (Camba, 2015). After the Great Depression, the US economy needed nickel, chromium, iron, and zinc from the Philippines to manufacture products and build infrastructure under the state-led New Deal program. Near the end of the 1930s, there were 19 large mineral infrastructures owned by major foreign mining companies and more than five hundred smaller companies that operated a thousand mines of various size. These mines directly employed approximately 75,000 laborers and hundreds of thousands of other people for supporting auxiliary work. In 1940, the Philippines exported precious and gold metals worth USD 39,229,352 (Camba, 2015). In the course of this expansion, hundreds of communities were dispossessed of their lands and waves of soil erosion and deforestation occurred, while Philippine elites consolidated political and economic power (Camba, 2015). As mining operations expanded across the country, approximately 50,000-75,000 Filipinos were turned into laborers for the mining industry. This transformation expanded their power as they occupied a position at the point of production.³ Protest and resistance could, at times, stop mineral-related

3 Beverly Silver's (2003) *Forces of Labor* and Lu Zhang's (2015) *Inside China's Automobile Factories* argue that labor's position at the point of production empower them to resist exploitation and bargain for better conditions.

operations and induce conflict in these mines (Camba, 2015). Before World War II, numerous rallies and strikes occurred in the major mining companies of Benguet and Lepanto, and at the Marsman Corporation, which increased the cost of labor for companies (American Chamber of Commerce, 1937, 1939a, 1939b; Brimo, 1953, 1961). Labor started to acquire more attention from the state, but the interruption of war delayed working hour regulations and other demands into the post-war period. Though laborers and peasant organizations fought for different reasons, they both mobilized and campaigned against the colonial mineral regime (American Chamber of Commerce, 1937, 1939a, 1939b).

After World War II, during the national mining period (1945-1964), the capacity of workers to stop production by leaving their work and taking the fight to the streets had limited the mining industry's ability to capitalize on cheap labor. The mineral industry maintained steady profits, but could not bring back the conditions of profitability from the 1930s. The Philippine senate and congress mandated the industry to pay the minimum wage and threatened to impose taxes on mining licenses, corporate tax, and real estate, making the political and economic situation for mining companies more costly (Sanders, 1963).

As domestic business interests purchased most of the major mining companies during the 1950s, Filipino-owned mining companies such as Benguet, Atlas, Marcopper, Lepanto, and Philex began to export minerals mainly to Japan (Alyansa Tigil Mina, 2010; Orfenio, 2009). But it was only under Ferdinand Marcos (1965-1986) that the state sought to extract state revenues from the mining industry and subsequently altered the rules of the game in favor of large-scale mining (Lopez, 1992; Orfenio, 2009). The state supported the capitalization of domestic firms and aggressively promoted mineral exploration in peripheral regions. From a passive, non-interventionist policy framework based on the colonial treaties arranged with the US, Marcos shifted the mining regime towards an "active, state-led" development model in 1974. He enacted Presidential Decree 464, which favored established business interests that could mobilize financial resources to explore, develop, and exploit minerals. The active promotion of large-scale domestic capital, however, also meant restricting the rules of foreign ownership (e.g., a cap of 40% equity ownership in companies), thereby effectively preventing the entry of foreign mining companies (Lopez, 1992).

During the national and the Marcos period, communities were able to strike a bargain with the state and domestic capital through the political conditions of that time. For example, the Benguet Mining Corporation provided workers with a fair share of compensation in health benefits, education plans, and retirement packages in return for their labor and support (M. Dempste Baluda, Geological Society of the Philippines, Quezon City, 3 April 2010). Provincial officials in Benguet recognized Marcos' rule in exchange for some level of autonomy over economic production. Protest politics and various strategies limited the capacity of the state and capital to expand mineral operations. The Ikelahans in Nueva Vizcaya, for example, resisted Marcos' plans to transform the province into a giant tourist city (D. de Vera, executive director, Philippine Association for Intercultural Development, Quezon City, 6 June 2014).

The key point is that the incorporation of workers into the developing mining economy simultaneously increased their power to protest and resist exploitation. Despite the US colonial and Marcos regimes' monopoly over the use of force, the

need to maintain legitimacy and keep ties to the provincial elites limited the use of military violence. There were certainly human rights violations and the impunity of violence, but they were concentrated on the anti-Marcos activist groups, Islamic separatist movements, the New People's Army, and the oppositional political parties.

The fall of Marcos paved the way for neoliberal restructuring at the beginning of Corazon Aquino's presidency (1986-1992). The post-Marcos governments consolidated the neoliberal model in the context of political instability and economic indebtedness. In 1987, Corazon Aquino approved the National Economic and Development Authority's Medium-Term Philippine Development Plan (1987-1992) that stressed the role of foreign companies in national recovery by dismantling state monopolies. Furthermore, she adopted the Executive Order (EO) 266 – an investment omnibus code – and strengthened administrative reforms (Bowie & Unger, 1997). EO 266 awarded generous tax holidays, duty-free import, and tax exemption for the first five years for any foreign investment (Orfenio, 2009). Beyond shifting the principle of land ownership away from the traditional leasehold system, the new code regarded the state as the initial tender that would treat land as a commodity for mineral exploration and extraction.

President Fidel Ramos (1992-1997) embraced sweeping liberal economic reforms as a way of catching up with the country's neighboring Asian tigers. In particular, he secured multilateral investment treaties and promoted privatization of public services. President Gloria Macapagal-Arroyo (2001-2009), during her period as senator, was the principal author of the Philippine Mining Act of 1995 (RA 7942), which became the state's answer to foreign mining investors' demands to reduce uncertainties in the extractive industries (Orfenio, 2009; Vivoda, 2008). At the same time, more progressive political reforms were implemented, for example, the recognition of indigenous peoples' rights through the Indigenous Peoples Rights Act of 1997 and the decentralization of power towards local government units to strengthen regional autonomy especially in mineral-rich Mindanao. The neoliberal restructuring transformed the power of the mining sector over anti-mining organizations through shifting the terrains of struggle from the streets to the domain of state institutions: the passive NCIP, the pro-mining stance of the MGB, and the conflicting interest of the DENR, as well as the power of industry experts in deciding a mining project's environmental viability. This is discussed in the following section.

TECHNOLOGIES OF SUBJECTION: ELEVATION OF STATE INSTITUTIONS

To begin with, the 1995 Mining Act has been shown to have weak mechanisms for local communities (together with civil society organizations) to channel their grievances towards state institutions. The expansion of large-scale mining has delegated the safeguards for political consent and social acceptability to the NCIP and the DENR. The primary instruments of local accountability in the mining industry are the social acceptability clause for *barangays* aided by local governments and the process of Free, Prior and Informed Consent (FPIC) for indigenous peoples groups facilitated by the NCIP. More importantly, the social acceptability clause and FPIC are susceptible to self-interested individuals in mining, leading to numerous allegations that both consultation processes are largely hollow (congressional staff, Committee on National

Communities, Quezon City, 19 October 2013). Some problems identified by critics include the arbitrary selection of *barangay* captains or new leaders in the indigenous communities who are supportive of large-scale mining, the numerous consultations with the communities until they acquiesce to mining, the treatment of minority support from few members of the community as majority vote or consent, and the lack of specific procedures for the FPIC that subject the consent-building process to multiple and often competing interpretations (R. Halip, Asia Indigenous Peoples Pact, Bangkok, 12 June 2014). Because of the numerous, repetitive, and arbitrary consultation procedures, multinational firms and local elites are given opportunity to exploit the social acceptability clause of the FPIC process, pushing numerous communities to acquiesce to mineral industry demands.

Though NCIP and local governments weaken the acts of protest in the streets and constitute the legitimacy of due process to determine mining outcomes, indigenous people face more inhumane kinds of historical and contemporary violence. To begin with, the Mining Act fails to delineate government land, ancestral domains, and protected areas, on the one hand, and appropriates land with mining potential for exploitation, on the other hand. Using the absence of documentary evidence as an excuse, state agencies have weakened indigenous peoples' claim to systematic ancestral domain, landownership, and property protection (congressional staff, Committee on National Communities, 19 October 2013). According to a policy paper from the Samdhana Institute (2011), the NCIP funnelled the majority of its budget to education, health, and development projects for indigenous peoples. The main responsibilities of protecting ancestral land from outsiders, registering landownership, and systematizing ancestral land domains were ignored. Around 60% of the budget went to the salaries of personnel and only 40% went to administrative expenses and programs for indigenous people. From 2006 to 2009, only 17% was channelled directly to indigenous peoples and intercultural communities, which paid for scholarships, trainings, health programs, livelihood, and legal services. Instead of recognizing indigenous peoples' legitimate right to their lands, the NCIP became a container of poverty. Furthermore, the mining companies pay for the FPIC procedures themselves, which undermines the NCIP's capacity to facilitate FPIC. If mining companies supplement the income of underpaid NCIP officials to conduct the FPIC process, the process becomes a conflict of interest that erodes the legitimacy of the NCIP and the Philippine government (Samdhana Institute, 2011). There is currently no single standard for financial transparency regarding the transfer of finances from the mining companies to the NCIP, making it difficult for anti-mining groups to acquire information and documentary evidence regarding the unfair situation. The refusal of indigenous people to participate in the preparation of NCIP's budget exacerbates the situation, accentuating the institutional rigidities of state agencies and the marginalized political participation of those in the peripheries.

While the budget was channelled mainly to salaries, the overall state budget allocation for the NCIP was arguably inadequate. NCIP officials bemoan their inability to do their duties properly because of the lack of financial support from the government. In 2004, NCIP provincial officers were paid around USD 210 every month. For instance, Attorney Jake Dumala, an NCIP officer in the southern province of Davao del Norte, said that they end up using their own vehicles, salaries, and time while

their support for indigenous groups “is being hampered by their meagre budget” (Alama, 2004). Dumala appealed for a small increase “for travel allowances to better serve our Lumad brothers, an IP group in the South, who are almost living in far-flung areas” (Alama, 2004), but the Philippine government did not give them any financial redress. In 2015, the results of the NCIP’s failure to protect indigenous people in Davao del Norte became clear. The Lumads, the major indigenous group in the province, started to evacuate their lands due to the fighting between leftist groups and the Philippine military. The clashes were reportedly over potential mineral lands that mining companies wanted to open up.

Another research conducted by academics from the University of the Philippines Baguio (UPB) complements the Samdhana study. During the four-day gathering of indigenous peoples in 2011, the UP Baguio academics suggested that the NCIP’s budget management and internal financial mechanisms have been faulty, inefficient, and wasteful (Sinumlag, 2011). They showed that the NCIP has received donations from international donors and direct funding from the Department of Budget and Management, but has had “unliquidated cash advances worth P 36.6 million, as well as an additional P 9.5 million” since 1997 (Sinumlag, 2011). The research also indicated that the NCIP has been significantly quicker to grant FPIC approval for mining companies than to issue Certificates of Ancestral Domain Titles (CADT) and Ancestral Domain Sustainable Development and Protection Plans (ADSDPP). Indigenous people need to have titles registered in NCIP for the legal protection of their lands. Since the formation of the NCIP in 1997, it has only granted a total of 159 CADT and 89 ADSDPP in contrast to 312 FPIC approvals (Sinumlag, 2011). Indigenous people who failed to register their lands with the NCIP (or where the NCIP was too slow) were not given the right to participate in the FPIC process, which led to expedited mineral applications, exploratory mineral testing, and numerous other operations (congressional staff, Committee on National Communities, 19 October 2013).

My own fieldwork shows that the FPIC process gives the leader or the council of the indigenous peoples the freedom to choose what kind of operation to allow and under which conditions (Alyansa Tigil Mina, 2010; National Commission on Indigenous People [NCIP], 2012; Philippine Congress, 2013). However, questions of leadership and location of ancestral domains remained vague. The law not only prefigures a liberal logic, reducing people to individual subjects with ‘free’ choices like consumers in markets, but also violently abstracts the historically tenuous experience of the autonomous indigenous peoples from the ‘sin’ of Philippine nation state formation.

However, the inadequacy of the NCIP does not come as a surprise. From 1997 until 2011, the NCIP was under the office of the Department of Environment and Natural Resources. What is striking is that the ministry in charge of protecting the environment is also the state agency responsible for signing and approving mining leases. In other words, the neoliberal policy framework brought together irreconcilable objectives within a weak state that created frictions within the bureaucracy. In 2011, the NCIP was finally transferred to the Office of the President and mandated to formulate new FPIC guidelines (NCIP, 2012). Some state actors have said that in the first 10 years of the NCIP, the state barely gave support to fund the FPIC. For example, a local government official in Cotabato City reported that the NCIP only had a staff of four people and an annual budget of USD 3,000 for traveling to remote

areas, supporting indigenous peoples' livelihoods, and conducting counter studies (congressional staff, committee on National Communities, 19 October 2013). Many supporters of the anti-mining groups know of the NCIP's historical inability to protect indigenous peoples. In a privilege speech given to the 15th Philippine Congress, representative Teddy Brawner Baguilat (2011) said:

The government's obsession for 'mining at all costs' stems from the perpetuation of Executive Order No. 270-A, issued on January 2004, which provided for guiding principles for the revitalization of the mining industry. This EO has led government agencies to violate indigenous peoples' right to free prior and informed consent recognized in the IPRA [Indigenous Peoples Rights Act] but undermined by none other than the National Commission on Indigenous Peoples (NCIP) with their issuance and implementation of the 2006 NCIP guidelines on FPIC, which has been criticized by indigenous peoples' leaders and their support groups, more favourable to mining corporations and violative of the right to self-determination of the indigenous peoples. . . . Another observed cause of conflict is the flawed or defective implementation of the free prior and informed consent requirement for indigenous peoples. In many cases, regulating agencies either bypass this requirement or the implementing agency in connivance with companies manipulated the acquisition of consent of the affected communities.

At the end of the speech, Baguilat (2011) called on "President Simeon Benigno Aquino III to immediately issue an executive order calling for the moratorium while we are in the process of improving our mining policies".

In sum, technologies of subjection elevated the NCIP and the DENR to elect and select processes to protect *barangays* and indigenous people by (1) disengaging from social conflict; (2) abetting the mining sector over indigenous people and *barangays*; and (3) denying state support to effectively protect indigenous peoples from outside actors.

TECHNOLOGIES OF SUBJECTIVITIES: THE RISE OF INDUSTRY EXPERTS

Technologies of subjectivities empower industry experts and constrain public participation in emerging scientific networks. To begin with, the 1995 Mining Act requires the DENR to implement pre-extraction monitoring measures (Environmental Work Program, Environmental Compliance Certificate, Environmental Protection and Enhancement Program). Mining companies also need to submit post-extraction measures (Final Rehabilitation and Decommissioning Plan). Apart from these mining specific policies, several other laws (e.g., the National Integrated Protected Areas Act or the Wildfire Resource Conservation Act) reinforce environmental protection (Rovillos et al., 2003). After the Environmental Impact Assessment (EIA), mining companies need to acquire an Environmental Compliance Certificate from the DENR. The Environmental Management Bureau of the DENR together with the Mine Environmental Protection and Enhancement Office review proposals and create an Environmental Assessment Review Committee to conduct scheduled inspections, public hearings, and open house testing of environmental impacts. Within 120 days, the

proponents of the project need to submit the EIA to the Environmental Management Bureau. Unless explicitly rejected, the proposal is considered accepted. After submitting the EIA, the Provincial Environmental Board of local governments needs to verify the study through various standards. Pro-mining local governments delegate their members to the provincial board, keeping anti-mining groups away from important positions of influence. Membership in the board requires political connections, economic resources, and social capital in the provinces. In case indigenous peoples protest against the result of the EIA, their grievances go through the NCIP's regional heading office instead of the indigenous peoples' own socio-political systems.

Criticism on the procedures of the EIA has been widely voiced. The requirements of public information have been narrowed, the processing timeframes reduced, and the decision-making concentrated to the Environmental Management Bureau (Rovillos et al., 2003). Mining companies conduct the EIA themselves by contracting industry experts. Since the mining company pays for the EIA, the contractor-payee relationship spawns doubt on the authenticity, sincerity, and neutrality of the study. Industry experts rely on the mining companies to pay for their services, producing a perverse incentive to present a rosy picture of the mining project and erode the findings of the EIA (congressional staff, committee on National Communities, 19 October 2013). With civil society organizations and communities unable to participate in adjudicating and externally verifying the findings, the EIA becomes an ineffective tool to protect *barangays* and indigenous peoples (M. Diego, Mangyan Taga-Bukid, Atsmata Indigenous Group, Quezon City, 6 June 2014).

The dynamics amongst industry experts, juridical procedures, and the mining companies constrain the opposition of indigenous peoples and social movements. NCIP's regional offices and the Provincial Regional Courts act as the institutional mechanisms for hearing indigenous peoples' grievances. The regional offices work like a regular trial court and quickly facilitate cases and favor those who have political connections to the local governments (congressional staff, committee on National Communities, 19 October 2013). In some cases, members of the local government bodies hunger for the potential foreign direct investments in the mining sector, believing in credentials of industry experts and deferring to their understanding of the soil, wind patterns, water bodies, and many others (former local government unit staff, Bayombong, 26 June 2014). Both courts subsequently dismissed alternative governing standards, such as respect for ancestral domains and indigenous peoples' livelihoods, as backward, superstitious, and 'anti-development'. They lack the capacity to conduct their own independent studies and externally check the findings of industry experts, constraining the effectiveness of the procedures (D. de Vera, 6 June 2014).

Even when trials take place, they require year-long attendance in the courts of the provincial capital (D. de Vera, 6 June 2014). While mining companies can access expensive law firms that have a firm grip on the legal system of the land and the patronage networks across the country, civil society organizations, local communities, and indigenous groups need to pool their financial and social resources together in order to attend the trials (D. de Vera, 6 June 2014). Since many of these people rely on cultivating their land for livelihood, they gruelingly need to adjust their schedule to accommodate the court trials (T. Fernando Daing, indigenous group leader, Quezon City, 18 June 2014). It may be convenient for mining company officials to drive to

the courthouse from their hotels but it takes half a day for indigenous peoples' leaders to walk from their lands to the provincial capital (D. de Vera, 6 June 2014). Time taken away from farming and put into court attendance disrupts livelihoods and the already limited material reproduction of indigenous peoples. The courts neglect the asymmetric economic and political conditions between indigenous peoples and mining companies, ostensibly treating them as equal before the law.

In the province of Nueva Vizcaya, the regional branch of the Mines and Geosciences Bureau approved a mineral exploration permit prior to the company's FPIC process. Titan Mining Corporation, the mining applicant, at that time, bypassed the FPIC process with the Ikelahans, the main indigenous group in the province (former local government unit staff, 26 June 2014). The Nueva Vizcaya branch of the bureau ostensibly gave the final permit even if it did not have the power to do so because of the size of the potential mining area. Instead of scrutinizing the application, the bureau's main office in Manila quickly approved the permit in less than 30 days (D. de Vera, 6 June 2014). Other concerns such as the ancestral domain, community beliefs, and livelihood concerns were deemed irrelevant to national development (M. Diego, 6 June 2014). The Ikelahans were unable to present a viable environmental study to the bureau to rebut the findings of Titan Mining Corporation (D. de Vera, 6 June 2014).

The Tampakan mining project in South Cotabato – with USD 5.8 billion the biggest investment in the Philippine mining sector – serves as another example. The project exists in a quad-boundary with three other provinces: Agusan del Sur, Davao del Sur, and Sultan Kudarat. According to local government unit staff, SMI-Xstrata, the mining applicant, submitted a tampered and incomplete EIA, which lacked geographic simulation information of the river basins of the surrounding provinces. Regardless of the incomplete and manipulated data of the report, the 'expertise' and credentials of the industry experts railroaded the mining application through the Provincial Environmental Board, the Mines and Geosciences Bureau, and the Department of Environment and Natural Resources (former local government unit staff, 26 June 2014). In a meeting facilitated by the state, SMI-Xstrata used the impeccable scientific studies and the projected monetary gain to justify the project. Exclusive membership in the industry networks and the state support enabled the mining companies to manufacture studies on the environmental viability of their operations. Technologies of subjectivities enabled them to bypass the ancestral knowledge of the indigenous groups that was framed as suppositious and premodern.

Though technologies of subjection and subjectivities weaken opposition, anti-mining groups began to adapt their strategies to limit the mining sector's growing power (F. Sevilla, policy and research officer, Alyansa Tigil Mina, Quezon City, 19 June 2014). Groups started to build broad, multi-sectoral alliances amongst interested parties. The Ikelahans not only protested in the streets in Manila and contested the legality of the mining application in the court, but also contacted legislators and other social movements to pressure relevant state institutions.⁴ The Ikelahans contacted the local parliamentary representatives and key allies in congress that led to

4 After their experience of protesting against the incursions of the Marcos regime, descendants of the Ikelahans moved to white-collar careers in law and medicine in the cities. Some of their members acquired their own networks to contest the Titan Mining Corporation (D. de Vera, 6 June 2014).

several interventions from congressional representatives, which pressured the DENR to retract the mining application due to shaky conditions. Subsequently, and in a possible act of vengeance, Titan Mining Corporation sued the Ikelahan leaders for libel and economic sabotage that led to year-long and costly meetings for the indigenous peoples: legal harassments, court hearings, meetings in the cities, and arbitrations (former local government unit staff, 26 June 2014). Furthermore, anti-mining groups started to expand their capacity to conduct studies to counter the industry experts of mining companies. Despite political support from the former president Gloria Macapagal's administration to the Tampakan project, a provincial referendum was organized by the national government, local governments, and civil society members to vote on mineral extraction. Social movements and peoples' organizations believed that the mining firm and the national government deliberately presented an incomplete, manipulated, and biased scientific assessment. Their suspicions were exacerbated by the government's refusal to make the controversial EIA available to anti-mining groups (D. de Vera, 6 June 2014). Through the support of local people's organizations, various indigenous peoples and national organizations such as Alyansa Tigil Mina (ATM) and the Philippine Association for Intercultural Development (PAFID), conducted a counter assessment of the project. PAFID's study, supported by Cambridge-based geologists, challenged the study made by SDMI-Tampakan and proved that SDMI-Xtrata's study did not take the implications on the river basins of the surrounding provinces into account. The results of the provincial referendum united initially undecided local government officials, local *barangays* and indigenous peoples in four provinces to take a firm anti-mining position (D. Arias, campaign and advocacy officer, Alyansa Tigil Mina, Quezon City, 19 June 2014). Hence, the anti-mining vote won through the referendum culminated in one of the most controversial moratorium in the country (P. Macling Malayao, spokesperson, Kalipunan ng mga Katutubong Mamayan ng Pilipinas, Quezon City, 15 June 2014). Australian investors of the Tampakan mining project, industry experts from the DENR and MGB, Chamber of Mines, and national government officials were disappointed but had to relent to the referendum's decision. Hence, anti-mining groups have started to use the language of science against industry experts of the mining companies.

CONCLUSION

Using Ong's concept of neoliberal exceptions, this article discussed the changing terrains of struggle in contemporary Philippine mining. I argued that the transition to a neoliberal mineral regime has empowered the mining sector and weakened the anti-mining groups through two new governing strategies. First, technologies of subjection have elevated state mining institutions to choose and put into effect the processes aimed at addressing the demands of local communities. Second, technologies of subjectivities have privileged a selected group of industry experts to narrowly arbitrate the environmental viability of mining projects with little external review. Because of the mining capital's access to economic and legal resources, anti-mining communities across the Philippines have been forced to compete on an unequal terrain for a meaningful social dialogue and mining outcomes. With allies in state institutions and science at their behest, the subjection of the institutions and subjectivi-

ties of science become seemingly incontestable spaces for the opponents of mining. The mining sector has been able to marginalize community concerns such as ancestral domains, social justice, and community subjectivities through the monopoly of, and skewed access to, the power of state institutions and the credentials of industry experts.

There are three concrete findings for the Philippines. First, state policies should consider expanding civil society, social movement, and community participation in state mining institutions. Communities faced abusive policy decisions from the mining sector and state institutions as a result of the lack of checks and safeguards. Successful mining cases in Chile, Brazil, and Indonesia were built on state-society compromises. Specifically, civil society organizations occupied important roles in the mining sectors of these states. Second, anti-mining communities should continue to invest in capacity to counter the mining sector in their terrain: state institutions and scientific assessments. The bigger danger to communities is the incomprehensible nature of the mining sector's new weapons within the neoliberal era. Movements across the world must continue to shift their strategies alongside the continuing transformation of global capitalism. And last, postcolonial development in the Philippines must be inclusive and just for those who have been abandoned by the state for decades. Indigenous peoples have been the most abused and neglected group from the Spanish regime until today. It is not fair for the mining sector and the state to transform their governing strategies just for the sake of competitive advantage. A just and democratic mining sector has to consider alternative and historically rooted governing standards.



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