

## Answering critical questions on small-scale mining in the Philippines

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The small-scale mining sector was earlier seen as a platform for employment and economic opportunities in the Philippines. Sadly, despite the passage of the Small-scale Mining Act in 1991 and the implementation of the People's Small-scale Mining Program, persistent poverty levels (Municipality of Itogon 2015; PSA 2019) and informal and child labor (Nuñez 2015) have persisted in the communities hosting small-scale mining activities. Behind these are the very laws intended to develop the sector. To date, there seem no documented reports of the small-scale mining's contribution to the progress of the country.

This *Policy Note* revisits small-scale mining in the Philippines and its promise in ensuring employment and economic opportunities, particularly in the countryside. It raises some key recommendations toward streamlining related processes and enforcing the implementation of laws leading to the formalization and legalization of small-scale mining in the country.

### **Small-scale mining in the Philippines**

The Philippines is endowed with abundant commercially marketable metallic and nonmetallic minerals. Many Filipinos reap these riches through small-scale mining, which operates in at least 16 of the country's 17 regions (MGB 2019a).

Small-scale mining was first acknowledged as a formal industry sector in 1984 upon the enactment of Presidential Decree 1899. The decree defined small-scale mining and set a licensing system under the authority of local government units (LGUs). Six years later, the Small-scale Mining Act of 1991 was enacted, introducing the People Small-scale Mining Program. This transferred the authority over small-scale mining to provincial or city mining regulatory boards (P/CMRBs), chaired by the regional director of the Mines and Geosciences Bureau (MGB).

Central to the People's Small-scale Mining Program is the condition that all small-scale mining activities must be done within a declared people's small-scale mining area or *Minahang Bayan*. However, majority of small-scale miners found it very difficult to comply with this condition, based on key informant interviews (KIIs) and focus group discussions (FGDs). As there were two laws governing small-scale mining, confusion and social concerns also deepened within small-scale mining communities.

Informality pervaded the sector and the program seemed almost impossible to be enforced. For the period 1992–2014, only three *Minahang Bayan* areas were officially declared. Currently, there are only 7 provinces with 17



*An inventory of small-scale mining activities shows that children still constitute six percent of the labor force (MGB-RO5 2017). Despite the Philippines' efforts to eliminate child labor in all industries, sustainable enforcement at the barangay level remains weak. (Photo from [www.ilo.org](http://www.ilo.org))*

nationally declared Minahang Bayan areas (MGB 2019b). Still, the sector has tremendous potentials to contribute to the attainment of national development goals, specifically poverty reduction. With the abundance of precious metals, such as gold and silver, it is even possible that the adequacy of the country's gross international reserves, a key economic indicator, can be assured.

### Issues on small-scale mining

#### *Institutional issues*

Foremost of the institutional issues is regarding the definition of small-scale mining under the law. The current definition does not fit its intended small-scale mining players and the eventual beneficiaries of government support. For instance, the law defines small-scale miners as an "individual miner or cooperative duly licensed" by the Department of Environment and Natural Resources (DENR). The reality is that the individual small-scale miners who

carry out small-scale mining activities are barely capable to comply with the requirements imposed to be duly licensed. Small-scale mining players need to be dissected further and the corresponding rules and regulations revised to reflect their scales, needs, and capacities.

The agencies involved in small-scale mining in the country also face various problems. For instance, the P/CMRBs currently have no guidelines on the accreditation process for their membership. The composition of the Board, as defined by the DENR Administrative Order 2015-03, does not include representation from the other major stakeholders critical to the successful implementation of the People's Small-scale Mining Program in certain provinces or regions. These stakeholders include representatives from the National Commission on Indigenous Peoples (NCIP), Department of Social Welfare and Development, Technical Education and Skills Development Authority, and *Bangko Sentral ng*

*Pilipinas* (BSP), among others. Instead, the order fixes the composition of the Board to five members, namely,

- regional director concerned or their duly authorized representative as chairperson;
- provincial governor or city mayor or their representative as member;
- one small-scale mining representative as member;
- one large-scale mining representative as member; and
- one representative from an environmental nongovernment organization as member.

No sections indicate any room for more members to represent sectors that can contribute positively to the development of small-scale mining in certain provinces or regions.

Meanwhile, the current conditions set by BSP, the agency designated by law to procure all gold produced by duly licensed small-scale miners, are not conducive to attract small-scale miners. These conditions include paperwork, early afternoon cut-off, payment in checks, and processing fees, among others. Many artisanal or traditional small-scale miners do not have bank accounts, nor any government-issued identification cards required to even open one. Moreover, the BSP Gold Buying Guidelines indicates a deduction of PHP 1,600 per lot from any payment as processing fee (BSP 2019). While there is no minimum weight or volume required, this processing fee sometimes is already equivalent to the value of gold being sold by these traditional small-scale miners.

On the other hand, the Bureau of Customs (BOC) has been very ineffective in curbing gold smuggling in the country. This is evidenced by the discrepancies in gold recorded by importing countries as against the gold recorded by the BOC as being legally exported out of the country (CSD 2019). BOC does not also have the capability to validate the value of all saleable contents of metals, minerals, or ores being legally exported. Gold transformed into jewelry can also be very easily smuggled out. The eradication of gold smuggling will require cooperation of identified importing countries, but this is not currently being explored at levels reflecting the urgency of the situation.

### *Regulatory issues*

Enforcement becomes an avenue for extortion opportunity by scrupulous government personnel. Through KIIs, the study discovered that police and military officers are taking advantage of the vulnerability of informal small-scale miners by extorting money from the latter. Such abuse intentionally forces the miners not to follow the law.

In terms of requirements, the study found that those necessary to the establishment of *Minahang Bayan* are very prohibitive for small-scale miners to comply with. The feasibility studies, work programs, and environmental impact analysis are likewise too technical and expensive to complete.

Smuggling is also prevalent. This may be attributed to BOC's lack of records of mineral exports. This leakage strengthens illicitness within the informal economy, from small-scale mining to the gold black markets. The real performance of the sector, therefore, cannot be completely monitored.

### *Labor issues*

An inventory of small-scale mining activities shows that children still constitute six percent of the labor force (MGB-R05 2017). Despite the Philippines' efforts to eliminate child labor in all industries, sustainable enforcement at the barangay level remains weak. There are also no updated provisions to the implementing rules and regulations of the small-scale mining law based on a comprehensive gap analysis done by Sison-Arroyo (2017) to address child labor in small-scale mining activities.

### *Environmental issues*

During fieldworks in Compostela Valley in June 2019, the study found that small-scale miners were still using mercury in extracting gold. There is a possibility that this is the same case in many other provinces. While blasting and the use of heavy equipment are also not allowed, several informal small-scale mining operators were still found to have been employing these means. (Anayo and Indino 2019, personal communication).

### ***Social issues***

The free, prior, and informed consent is a specific right that empowers indigenous peoples (IPs) to withhold consent to a project that may affect them. Currently, however, the process involved in securing it is usually expensive. It may even amount to millions of pesos, depending on the extent of ancestral land areas that shall be part of Minahang Bayan areas. This is a major bottleneck in the formalization and legalization of small-scale mining projects, especially in provinces or regions with IPs widely present. The Cordillera Administrative Region is one where majority of the population is composed of closely-related IPs (Cordillera Peoples Alliance 2006).

Moreover, popular small-scale mining areas tend to attract migrants in search of livelihood or entrepreneurial opportunities. Such migration poses threats to IP communities as it results in competition for the work opportunity created by the projects, for which they should be prioritized.

### **Recommendations**

#### ***Establish a cross-department council***

Foremost is the establishment of a cross-department council that cannot be influenced by any single entity. This is the most appropriate, considering the scope of interdepartment coordination required and urgency of the need to stop economic leakages. The council should direct sector roadmap development and strategy formulation toward their successful implementation.

#### ***Formalize small-scale mining***

The formalization of the small-scale mining sector requires three major actions, namely, the implementation of a national research program, sector profiling, and stakeholder analysis. The national research program shall include well-designed surveys taking into consideration varying contexts per province. It must also produce a complete profiling of the sector and its socioeconomic impact per host community. This profiling is needed before

any roadmap can be developed and sound strategies formulated. A national research plan should also be a continuous project to enable yearly monitoring of the performance of each program developed to formalize the sector and recalibrate strategies where needed.

#### ***Redefine and augment policy***

The government should redefine sector types, scale, and coverage. In particular, the small-scale mining sector players must be redefined to reflect on-the-ground realities. The objectives of current and potential small-scale miners can be basis for such redefinition. Rules and regulations must then reflect eventual final updates.

Developing the small-scale mining sector would also include ways to maximize operational efficiency and productivity. Having redefined scales further, the corresponding equipment types and investment thresholds should also be adjusted. Such adjustment must consider the fact that ore types, mining approaches, and processing options vary from mine to mine.

The reclassification of small-scale mining operations by the industries they cater may also be considered as this approach can open up options on how government can better identify appropriate support according to industries or industry clusters. Similarly, more focused small-scale mining development support from those industry groups can easily be encouraged or initiated.

#### ***Clarify clearance requirement***

The current implementing rules and regulations of the Small-Scale Mining Act specifies that the clearance from the DENR Secretary is required prior to the declaration of Minahang Bayan areas by the corresponding P/CMRB. However, it is not specified as to what aspect of the petition process will need revalidation by the Secretary. There are several petitions already endorsed by the P/CMRBs to the DENR Secretary through MGB. While awaiting clearance, these areas are considered “locally-declared” Minahang Bayan areas, thus some small-scale mining contracts are being issued and operations being tolerated.



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MGB describes the status of petitions for the declaration of Minahang Bayan areas as “In Process”, “Under Review”, “Locally Declared”, and “Nationally Declared”. For transparency, the designation must be more specific and must not confuse the public that there are two types or levels of declarations, which is not in accordance with the law.

### **Harmonize regulatory structures**

While Executive Order 79 signed by then President Benigno Aquino III clarified the distinction between the roles of LGUs, DENR, and MGB in the areas of administration, regulation, and promotion of small-scale mining activities in the country, the specific extent of responsibilities in monitoring and enforcement must still be clarified.

Also, P/CMRB must have a balanced composition, allowing more stakeholder representation. Several stakeholders directly involved in developing the small-scale mining sector are not part of the P/CMRBs. Guidelines aimed at

accrediting members to the Board are needed, with due consideration to area-specific contexts.

### **Enforce policy**

Enhancement and strict implementation of People’s Small-scale Mining Program as indicated in Small-Scale Mining Act need to be assured. The same is true for complementary policies, such as the Indigenous People’s Rights Act (IPRA), regulations of contrabands, National Integrated Protected Areas System Act, Forestry Code, and the Local Government Code.

Similarly, the capacities of the agencies responsible to implement these policies need to be assured. While the LGUs and DENR may be well supported, the NCIP is underfunded to properly implement policies bestowed by IPRA. There should also be a recognition of the primacy of Small-scale Mining Act, with due respect to policy hierarchy.

The government should also strive to clarify benefit-sharing agreements in relation to taxes, royalties, and lease. It

should adjust and impose higher penalties for violators and clarify fines to include financiers and officials of small-scale mining groups to instill accountability.

### Ways forward

Small-scale mining remains to be a source of economic opportunity for the country. The challenge is to refine existing government approach and policy interventions, strategies, and action plans for them to be more coordinated. They should be more focused on national research, vision-mission setting, strategies and roadmap development, as well as implementation, monitoring, evaluation, and improvement.

The general direction should be to make it more convenient for small-scale miners, host communities, and other stakeholders to remain compliant with the laws regulating the small-scale mining sector. The government should also remind itself that capacity building, training, and declaration of Minahang Bayan areas are its duties as per DENR Administrative Order 2015-03.

Exerting more effort and investing more resources to develop the sector will definitely be justified. At the minimum, the benefits of stopping the gold smuggling can, by itself, justify the entire cost of the development effort on a yearly basis. From this, the creation of more sustainable work opportunities can domino to better economic and community development alternatives in high-poverty but highly mineralized provinces of the country. 📄

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