

# A Look at Small-Scale Mining in Banaybanay, Davao Oriental

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## Introduction

Executive Order 79<sup>2</sup> (EO 79) states what should be done by the mining sectors and how they should act in accordance with the law. It lays down guidelines designating areas where mining should not be operated, to wit, near cemeteries, archaeological sites, waterways, reservoirs, old growth forests, protected areas and prime agricultural lands. It includes a review on existing mining agreements entered into by the government, both large-scale and small-scale operations. It sets standards for small-scale mining in the extraction of precious minerals.

EO 79 provides benefits that redound to the people, putting a face to the 1987 Philippine Constitution. Among these are Section 1, Article XII<sup>3</sup> that mentions equal distribution of opportunities, income, and wealth to all sectors in society and paragraph 3, Section

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<sup>1</sup> The authors, students of the College of Law of the Ateneo de Davao University, conducted this qualitative research in the first semester of SY 2012.

<sup>2</sup> See Executive Order 79, "Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines To Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources".

<sup>3</sup> Article XII, Section 1. The goals of the national economy are a more equitable distribution of opportunities, income and wealth, a sustained increase in the amount of goods and services produced by the nation for the benefit of the people, and an expanding productivity as the key raising the quality of life for all, especially the underprivileged. xxx

2, Article XII<sup>4</sup> which expressly allows the small-scale utilization of mineral resources of Filipinos.

How does the community perceive small-scale mining operations in their area? How did these impact their lives? To find some answers to these questions, the researchers visited four barangays in Banaybanay, Davao Oriental, namely, Barangay Kauswagan, Barangay Mahayag, Barangay Pintagan, and Barangay Puntalinao, and conducted an informal research using two research tools: questionnaire survey and Key informant Interview (KII). These were given to the workers and non-workers in these mining sites.

### Discussion

Small-scale mining is an informal, artisanal form of mining, a most primitive type of mining which poor miners practiced, usually illegally. Four categories of problems rise from this practice: environmental, health and safety; labor and gender; technical and financial; and regulatory and legal.<sup>5</sup>

Sanny Bangcayao, President of the Lower Gumayan Small-Scale Miners Cooperative in Pantukan, Compostela Valley, comments that since small-scale mining industry is a major player in the local economy, the government must support it through providing sufficient technical and financial support to create more sustainable operations in the *Minahang Bayan* across the archipelago. He notes that in the mining areas of Davao region, small-scale miners are organized as cooperatives and are very eager to acquire mining permits for the *Minahang Bayan* but despite their application for permits, they have not acquired one. Bangcayao adds,

It seems that MGB (Minerals and Geosciences Bureau) is prioritizing the applications of foreign large-scale mining companies. And yet, if you will compare the land area excavated by small-scale miners and that of large-scale mining companies, ours is just a handful compared to their thousands of hectares.

The Junior Chamber International (JCI) Senate Philippines, however, believes that small-scale miners are not regulated enough and do not contribute to the economy as much. JCI Senate Philippines notes that mining operations without government-issued permits must be shut down and stresses that small-scale mining cooperatives operate most of the illegal mining activities. Atty. Menjie Redelosa, JCI Senate Philippines Chair of the Committee for Responsible Mining, observes, "We are not saying that it is bad but it must be governed. If we witness illegal mining activities, we should immediately notify government agencies like the DENR and the concerned local government units." Ed Arreza, Mines and Geosciences Bureau (MGB) Region XI Director, said that there are four small-scale mining cooperatives that that have permits or have applied for one. The rest hardly show interest to apply for mining permits. He laments that MGB does not have sufficient manpower to go after these miners.

*Kalikasan* Partylist, however, believes that having a mining permit is not equivalent to being a responsible mining operator. Many large-scale mining companies, with mining permits, neglected environmental conservation and preservation in their different mining areas in the country. Responsible mining means giving back to the community more than what had been taken. Mining companies extract mineral resources by volume from the host country and directly ship these minerals to other countries, which later sell these products back to the host country.

<sup>4</sup> Article XII, Section 2. xxx The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons. xxx

<sup>5</sup> 'Regularizing Informal Mining: A Summary of the Proceedings of the International Roundtable on Artisanal Mining' available at [http://www.hsph.harvard.edu/mining/small\\_scale\\_mining.html](http://www.hsph.harvard.edu/mining/small_scale_mining.html)

“The mining industry must be environment-friendly and must contribute to the national industrialization of our country. We deserve a pro-people and pro-environment mining policy,” said Dr. Jean Lindo of the *Kalikasan* Partylist. Lindo comments that the Philippine Mining Act must be scrapped for facilitating the sell-out of our rich mineral resources to foreign large-scale mining companies.<sup>6</sup>

The Department of Environment and Natural Resources-Mines and Geosciences Bureau (DENR-MGB) is pushing for the rationalized conduct of small-scale mining to help raise its compliance with applicable regulations and contribution to the country’s economy. Authorities estimate that as many as 300,000 individuals are engaged in small-scale mining. Section 5<sup>7</sup> of Republic Act No. 7076<sup>8</sup> establishes People’s Small Small-scale Mining Areas (PSSMA) “in sites onshore suitable for small-scale mining” so legitimate small-scale miners can operate there, making their extraction activities and output easier to monitor. DENR-MGB’s bid for rationalizing Philippine small-scale mining gained headway after the issuance of Department of Justice (DOJ) Opinion No. 29, Series of 2011, stating that RA 7076 repealed Presidential Decree (PD) 1899.<sup>9</sup> DOJ Opinion 29 clarified PD 1899, stating that it “no longer has the force and effect of law.” DENR-MGB sought an opinion in its April 28, 2011 letter to DOJ, believing the chaotic state of Philippine small-scale mining is partly due to

<sup>6</sup> See <http://www.rappler.com/business/special-report/whymining/whymining-latest-stories/145-mining-and-society/8297-mindanao-small-scale-mining-face-challenges>

<sup>7</sup> Section 5. Declaration of People’s Small-scale Mining Areas. The Board is hereby authorized to declare and set aside people’s small-scale mining areas in sites onshore suitable for small-scale mining, subject to review by the Secretary, immediately giving priority to areas already occupied and actively mined by small-scale miners before August 1, 1987: Provided, That such areas are not considered as active mining areas: Provided, further, That the minerals found therein are technically and commercially suitable for small-scale mining activities: Provided, finally, That the areas are not covered by existing forest rights or reservations and have not been declared as tourist or marine reserves, parks and wildlife reservations, unless their status as such is withdrawn by competent authority.

<sup>8</sup> See Republic Act 7076, “People’s Small-Scale Mining Act of 1991”.

<sup>9</sup> See PD 1899, “Establishing Small-Scale Mining as a New Dimension in Mineral Development”.

the confusion over which of RA 7076 and PD 1899 truly governs this activity. Section 1 (b) and (c)<sup>10</sup> of RA 7076 specifically defines small-scale mining and small-scale miners. The contracts cover co-production, joint venture or mineral production sharing agreements between government and small-scale mining contractors for small-scale utilization of mineral land plots. DENR-MGB reported only two PSSMAs have been established since RA 7076’s enactment. Such PSSMAs are in Tubahong, Dinagat Island province, and Buenavista municipality in Quezon province. Mining tenements issued under PD 1899 include processors’ permits pursuant to DENR Administrative Order 05, Series of 1989, as well as small-scale mining permits. Citing a 2007 data, a DENR research proposal previously reported small-scale mining exists in 40 provinces. Among small-scale mining practices, which DENR continues to object, is the discharge of waste directly into the environment that contaminates water and other elements. DENR-MGB calls for local government restriction on small-scale mining so geological stability in areas with such activity can be preserved to help guard against disasters.

The respondents in this study came from four barangays in Banaybanay, Davao Oriental: Barangay Kauswagan, Barangay Mahayag, Barangay Pintatagan, and Barangay Puntalinao. One hundred sixty survey questionnaires were distributed to these barangays; 131 questionnaires were answered and returned. Each barangay was given 40 questionnaires. Thirty-seven were answered and collected in Barangay Kauswagan; 26 from Barangay Mahayag; 35 from Barangay Pintatagan; and 33 from Barangay Puntalinao.

<sup>10</sup> Section 3 (b). “Small-scale mining” refers to mining activities which rely heavily on manual labor using simple implements and methods and do not use explosives or heavy mining equipment;

Section 3 (c). “Small-scale miners” refer to Filipino citizens who, individually or in the company of other Filipino citizens, voluntarily form a cooperative duly licensed by the Department of Environment and Natural Resources to engage, under the terms and conditions of a contract, in the extraction or removal of minerals or ore-bearing materials from the ground;

### Eight questions were raised in the survey questionnaire:

1. Does mining help your community?
2. Does mining destroy the natural resources of your community?
3. Does mining help your barangay economically?
4. Do you think the mining operators in your barangay have the proper technology for mining operations to be safe?
5. Do you think it is reasonable for the Local Government to allow mining in your barangay?
6. Do you think it is beneficial for the people in your barangay that mining was allowed to operate here?
7. Are there non-resident work forces<sup>11</sup> in your area?
8. If yes, does the presence of these non-resident work forces have a positive impact on your community?

On the question of whether mining helped their community, 25 respondents said *yes* and 12 *did not answer* in Barangay Kauswagan; eight said *yes*, four said *no*, and 14 *did not answer* in Barangay Mahayag; 25 said *yes*, two said *no*, and eight *did not answer* in Barangay Pintatagan; and 23 said *yes*, five said *no*, and five *did not answer* in Barangay Puntalinao.

On the question of whether mining destroyed the natural resources of their community, 21 said *yes*, three said *no*, and 13 *did not answer* in Barangay Kauswagan. In Barangay Mahayag five answered *yes*, six said *no*, and 15 *did not answer*. In Barangay Pintatagan, 19 said *yes*, two said *no*, and 14 *did not answer*. In Barangay Puntalinao, 26 answered *yes*, while seven said *no*.

On the question of whether mining helped their barangay economically, Barangay Kauswagan had 21 saying *yes*, two said *no*, and 14 *did not answer*. In Barangay Mahayag, nine said *yes*, one said *no*, and 16 *did not answer*. In Barangay Pintatagan, 20 said *yes*, two said *no*, and 13 *did not answer*. In Barangay Puntalinao 27 answered *yes*, five said *no*, and one *did not answer*

On the question of whether mining companies operating in their barangay possessed the proper technology for mining operations to be safe, 23 said *no*, and 14 *did not answer* in Barangay Kauswagan. In Barangay Mahayag nine said *no*, and 17 *did not answer*. In Barangay Pintatagan, 32 said *no*, and three *did not answer*. In Barangay Puntalinao two said *yes*, 31 said *no*.

On the question of whether it was reasonable for the Local Government to allow mining operations in their barangay, 10 said *yes*, 10 said *no*, and 17 *did not answer* in Barangay Kauswagan. In Barangay Mahayag eight answered *yes*, three answered *no*, and 15 *did not answer*. In Barangay Pintatagan 12 said *yes*, 14 had said *no*, and nine *did not answer*. In Barangay Puntalinao 16 said *yes* and 17 said *no*.

On the question of whether the people in their barangay found it beneficial for mining to operate there, 13 said *yes*, 10 said *no*, and 14 *did not answer* in Barangay Kauswagan. In Barangay Mahayag, eight said *yes*, three said *no*, and 15 *did not answer*. In Barangay Pintatagan, 16 said *yes*, 15 had said *no*, while four *did not answer*. In Barangay Puntalinao, 13 said *yes* and 20 said *no*.

On the question of whether there were non-resident work forces in their area, 19 said *no*, and 18 *did not answer* in Barangay Kauswagan. In Barangay Mahayag, 10 said *no*, and 16 *did not answer*. In Barangay Pintatagan, 12 said *yes*, 16 had said *no*, and seven *did not answer*. In Barangay Puntalinao, 16 said *yes*, 16 said *no*, and one *did not answer*.

<sup>11</sup> Non-resident work forces refer to the rebels operating in these areas.

On the question of whether the presence of these non-resident work forces have a positive impact on their community, two said *yes*, 21 said *no*, and 14 *did not answer* in Barangay Kauswagan. In Barangay Mahayag, all 26 *did not answer*. In Barangay Pintatagan, one said *yes*, 29 said *no*, and five *did not answer*. In Barangay Puntalinao all 33 said *no*.

Eighty-one among the 131 respondents affirmed that mining helped their community; 77 agreed that it improved their community's daily needs; but, 71 confirmed that mining also destroyed their natural resource. Ninety-five believed that the mining operators in their areas do not possess the proper technology for safe mining; despite this, however, 46 agreed that they still find it reasonable for their local government to allow mining in their areas. Fifty stated that mining operations in their areas benefited them; although, 48 disagreed. In the area of the presence of non-resident work forces operating in the mining area, 61 vetoed their presence, 42 refused to comment. When pressed, 83 stated that the presence of these non-resident forces have a negative impact to them; 45 refused to comment.

## Conclusion

Observing these small-scale mining operations in Banaybanay, Davao Oriental, the researchers gathered these significant facts. First, small-scale miners used a primitive form of mining. There were no sophisticated mining equipment; the small-scale miners depend on manual work to mine. Section 11 (f)<sup>12</sup> of Executive Order 79, specifically mandates the government to provide training,

<sup>12</sup> Section 11. Measures to Improve Small-Scale Mining Activities. To improve and address issues on small-scale mining, the following measures shall be undertaken:  
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f) Training and capacity building measures shall be conducted by the concerned government agencies.

educational assistance, dissemination and transfer of important technologies with regards to small-scale mining to small-scale miners but this provision of the law is not evident.

Second, the locations of the mining area in the four barangays are also contentious. These mining areas are near waterways and prime agricultural lands. This contradicts Section I<sup>13</sup> of Executive Order 79 designating areas where mining should not be done: near cemeteries, archeological sites, waterways, reservoirs, old growth forests, protected areas and prime agricultural lands.

Third, half of the 131 respondents agreed that the legislative aim of Executive Order 79 to increase the economic development of the community was met. Mining in their areas has helped their community financially and improved their lives. However, majority of the respondents saw that mining operations destroyed their natural resources which contradicted Section 2<sup>14</sup> of the said law.

<sup>13</sup> Section 1. Areas Closed to Mining Applications. Applications for mineral contracts, concessions, and agreements shall not be allowed in the following: a) Areas expressly enumerated under Section 19 of RA No. 7942; b) Protected areas categorized and established under the National Integrated Protected Areas System (NIPAS) under RA No. 7586; c) Prime agricultural lands, in addition to lands covered by RA No. 6657, or the Comprehensive Agrarian Reform Law of 1988, as amended, including plantations and areas devoted to valuable crops, and strategic agriculture and fisheries development zones and fish refuge and sanctuaries declared as such by the Secretary of the Department of Agriculture (DA); d) Tourism development areas, as identified in the National Tourism Development Plan (NTDP); and, e) Other critical areas, island ecosystems, and impact areas of mining as determined by current and existing mapping technologies, that the DENR may hereafter identify pursuant to existing laws, rules, and regulations, such as, but not limited to, the NIPAS Act.

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<sup>14</sup> Section 2. Full Enforcement of Environmental Standards in Mining. The Government in general, and the Department of Environmental and Natural Resources (DENR) in particular, in coordination with concerned LGUs, shall ensure that environmental standards in mining, as prescribed by the various mining and environmental laws, rules, and regulations, shall be fully and strictly enforced, and appropriate sanctions meted out against violators thereof.

In line with the above, only those who are able to strictly comply with all the pertinent requirements shall be eligible for the grant of mining rights, pursuant to the applicable provisions of RA No. 7942.

Hence, while small-scale mining operations in these four barangays in Banaybanay, Davao Oriental achieved financial growth and community development, they also threatened the natural resources and the lives of the people. As observed, Executive Order 79 was not strictly implemented in the mining areas in Banaybanay, Davao Oriental.