

Improving the *Minahang Bayan* Declaration Process: A First Step Towards Achieving Sustainability in Philippine Small-Scale Gold Mining Industry

Erickson L. Llaguno

*Department of Industrial Engineering and Operations Research
College of Engineering, University of the Philippines Diliman*

Virginia J. Soriano

*Department of Industrial Engineering and Operations Research/ Environmental Engineering Program
College of Engineering, University of the Philippines Diliman*

Mili-Ann M. Tamayao

*Department of Industrial Engineering and Operations Research/ Energy Engineering Program
College of Engineering, University of the Philippines Diliman*

Abstract— Small-scale gold mining contributes significantly to the total value of gold mined in the country surpassing even that of large-scale mining in recent years. With the attendant adverse environmental and social problems that this predominantly illegal operation also generates, the quest for sustainable small-scale mining has long been a concern for the government and other industry stakeholders. The introduction of *Minahang Bayan* or sites onshore, which is a regulatory mechanism that determines where small-scale mining operations are allowed, is viewed as a means to address this sustainability concern. It is the first step towards legalizing small-scale mining operations as mandated in Republic Act No. 7076, otherwise known as the “People’s Small-Scale Mining Act of 1991”. As of December 2015 however, only three (3) *Minahang Bayan* have been declared since the law took effect in 1991.

This study shows that the *Minahang Bayan* policy and implementation is fraught with several fundamental problems: 1) there are no commitments on processing times for several major steps; 2) policy is silent on actions to be taken in case of process delays; 3) the application process is open to a lot of delays; 4) petitioners and process owners are not very knowledgeable of the process; 5) lack of access to monitoring application status; and 6) quality checks in upstream process steps (i.e., at the city/provincial and regional local government units) are lacking as manifested by deficient applications forwarded to the national office.

It is recommended that the government takes a proactive approach in assisting the miners in their *Minahang Bayan* petitions through 1) identification of processing and response times for major steps in accordance with the Citizen’s Charter of concerned government offices; 2) identification of next steps if processing and response commitments are not met; 3) widespread and effective education and information campaign utilizing video presentations, petition template containing the appropriate documents (correct both in form and content) as example; 4) designation of a government personnel to actively coordinate with the miners; 5) provision of an online monitoring facility to enable petitioners to track status of applications; 6) provision of instructional materials aimed at government offices performing different steps in the process to minimize or totally eliminate occurrences of deficiencies; and 7) identification of potential *Minahang Bayan* areas to be initiated by the Mines and Geosciences Bureau, with the assistance of local government units, academe and other partners, to lessen external factors affecting the process (e.g. politics).

Indeed, improving the *Minahang Bayan* declaration process is the crucial first step to realizing and achieving a responsible and sustainable small-scale gold mining. It is the first step that the government really has to take.

Keywords— *Minahang Bayan, Sustainability, Proactive Approach*

1. INTRODUCTION

The importance of the mining sector cannot be overstated. According to the Department of Environment and Natural Resources (DENR), the Philippines is ranked 5th among the most mineralized countries in the world -- with gold as one of the most significant minerals in terms of abundance and value. Globally, the country has the 3rd largest known gold reserves [1]. In 2014, the estimated value of gold produced by the country's mining industry is around PhP 32.97 Billion, or close to 25% of the total PhP 138.61 Billion production value for metallic minerals for the said period [2]. Of the yearly volume of gold produced in the country, a substantial portion comes from small-scale mining. Data from Mines and Geosciences Board (MGB) reveals that in 2009 alone, value of gold mined from small-scale mining is more than twice that of large scale mining i.e. PhP 36.91 Billion and PhP 15.85 Billion respectively. It is believed that the total gold value contribution from small-scale mining is even underestimated because of the irregularities in the operations and transactions within this small-scale gold mining industry. As defined in DENR Department Administrative Order 2015-03, small-scale mining refers to "extraction of minerals that relies heavily on manual labor using simple implements and methods and does not use explosives or heavy mining equipment" [3].

The Senate Economic Planning Office (SEPO) maintained that the mining industry, focusing on the small-scale gold mining industry, is not maximizing its full potential [4]. This is mainly due to operational inefficiencies, ineffective or lack of implementation of mining laws, preventable environmental and social costs and the illegal operation of most mining sites – a stark reality in the small-scale mining industry in the country. These findings are similar to those claimed by Hentschel et al. [5] in many cases of small-scale mining they studied in other countries.

Meanwhile, DENR does not see the industry slowing down given the continued demand and attractive prices for metallic commodities in the market. This will serve as a major driver for intensified small-scale mining activities which will lead to further adverse social, environmental and economic concerns owing to the illegal nature of the activity.

Section 5 of the Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 7076 states that "no small-scale mining shall be undertaken outside a *Minahang Bayan* and that no entity shall engage in small-scale mining without a small-scale mining contract" [3]. Per RA 7076, a *Minahang Bayan* or "People's Small-Scale Mining Area" refers to the entire area in sites onshore that are suitable for small-scale mining operations.

Since the passing of the law in 1991 however (i.e. almost 25 years ago), only three *Minahang Bayan* areas have been declared in the country as of December 2015.

2. OBJECTIVES AND SCOPE OF THE STUDY

This study looks into the process of declaring a *Minahang Bayan*, the first step into the legalization process for small-scale miners under RA 7076. Given that it is the first major hurdle on the path to effective regulatory policy implementation, this study dissects the *Minahang Bayan* declaration process (as specified in the law) and identifies the areas causing delays in the declaration based on information gathered from stakeholders and available historical records. The extent of the discussions on the impacts of the delays on the application process is subject to data availability. Pertinent recommendations are likewise generated to address these causes.

The study also centers only on the implementation of RA 7076. Presidential Decree (PD) 1899 which was promulgated in 1984 and which authorized Provincial Governors to issue small scale mining permits is not discussed. Currently, there are issues and concerns surrounding the implementation of these two laws based on Department of Justice Opinion No. 029 dated June 27, 2011 [6], the Supreme Court ruling on *SR Metals et al* in 2014 [7] and the MGB's emphasis on the implementation of Executive Order 79 which primarily reiterates compliance to RA 7076 only and ignores PD 1899. Recognizing that this issue is far from resolved, the study deems it best to focus, in the meantime, on the legalization path through the *Minahang Bayan* of RA 7076.

3. A CLOSER LOOK AT SMALL-SCALE MINING IN THE PHILIPPINES

About 250,000-300,000 individuals benefit, directly or indirectly, from small-scale mining activities in the country [8] Given that mining industries are usually concentrated in certain parts of the country, their contribution to employment and total economic and social well-being are particularly important to mining communities (e.g., Benguet, Maragusan, Compostela Valley).

It is estimated that of the 8,281 small-scale mining operations engaged in gold, other metallics and non-metallics, only around 16% are considered legal. The small-scale gold mining industry in the Philippines is mostly operating illegally, thus, is effectively unregulated. For example, Benguet, where small-scale mining is relatively more organized¹, has only six (6) out of the 96 small-scale mining operations with a license to operate, as of June 2010 [8]. Interviews conducted by the authors with small-scale miners revealed that, among others, regulatory difficulties such as time and resource intensive permitting process, land use issues with large scale mining companies and private landowners and political interventions in licensing their operations led them to perform small-scale mining illegally.

Furthermore, from focused group discussions (FGDs) conducted by the authors with miners and government agency representatives (e.g., Department of Environment and Natural Resources, Mines and Geosciences Bureau), miners do not lack the desire to obtain permit and be regulated. In fact, based on subsequent surveys, interviews and workshops in Kalinga, Abra and Camarines Norte, miners, local government executives and other stakeholders maintain that legalization and regulation are two of the most important needs of the small-scale mining industry in its journey towards sustainability. Notwithstanding the shared desires and sentiments that regulation is vital to the path towards

¹ Compared to other areas in the country, Benguet has a more organized small-scale mining community mainly because of the presence of the Benguet Federation of Small-scale miners, Inc., which is governing about 10,000 miners who are also members of smaller associations.

sustainability, the number of licensed small-scale mining entities in the country is dismal. The number simply is not reflective of the collective sentiments of the industry’s stakeholders.

Lack of regulation is related to sustainability problems in small-scale mining as illustrated in Figure 1. Local executives claim that as much as they want to promulgate resolutions and ordinances that can help regulate small-scale mining in their area, they are concerned that doing so would give miners a semblance of legitimacy – something that they maintain is clearly against the law. On the other hand, a total ban on illegal small-scale mining is definitely out of consideration given the sector’s significant contribution to the total value of gold mined in the country and the numerous families that are dependent on the sector for a living.

Short of being tolerated, the lack of effective enforcement of the laws on small-scale mining, for reasons valid or not, lends a no-win situation for all the stakeholders concerned. Under this condition, the government has been contending with increased degradation of the environment, social backlash regarding deadly mining incidents due to unsafe mining procedures, and revenue loss. This revenue loss is not just due to uncollected taxes from the small-scale miners but also because of unaccounted transactions between small-scale miners and their customers, some of whom are foreigners.

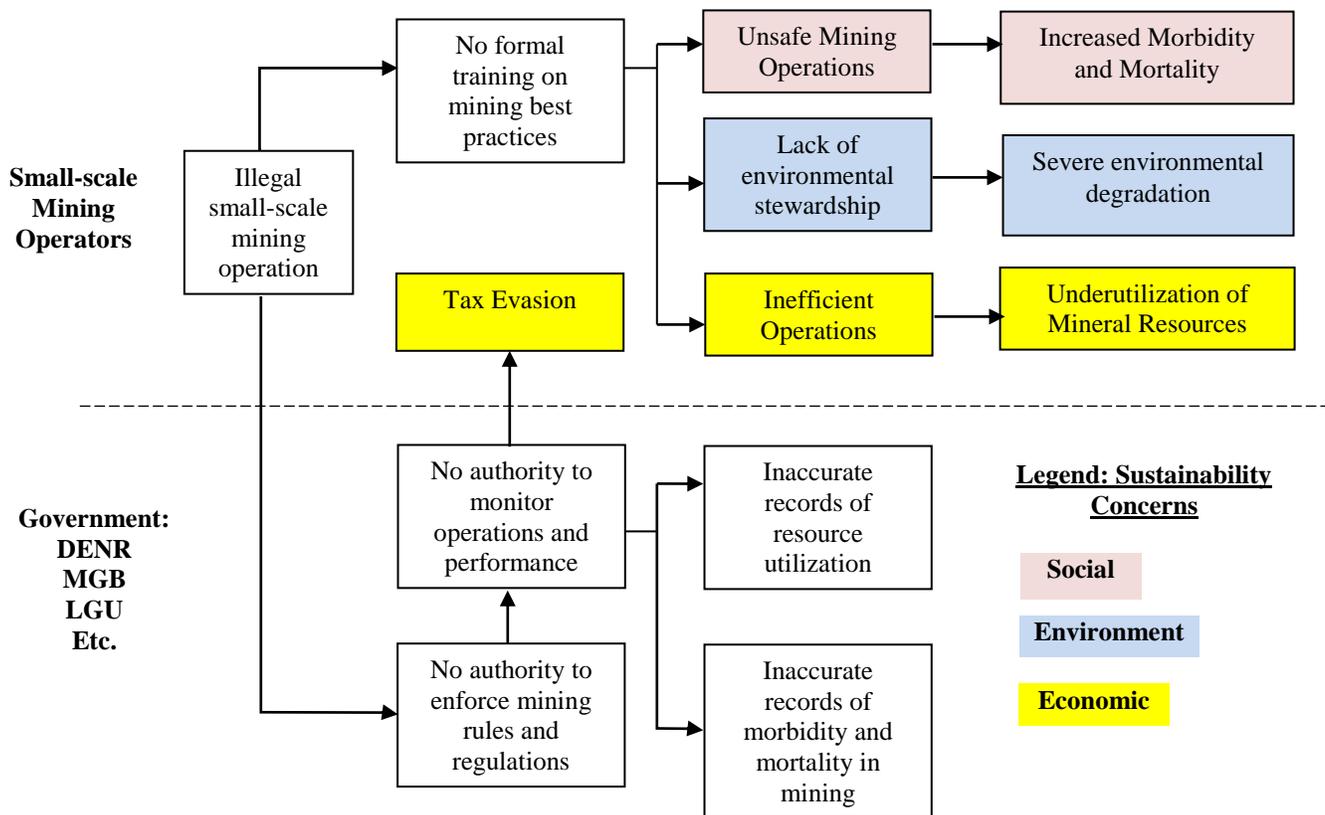


Figure 1. Impact of Regulatory Policy Implementation Deficiency on Small-scale Mining

On the other hand, small-scale gold miners cannot take advantage of government assistance in ensuring environmentally sound and safe working environments. For example, DENR Administrative Order 97-30 provides environmental and safety rules and regulations for small-scale mining [9].

However, the government can only impose and determine the effectiveness of these rules and regulations in registered mining sites. Likewise, miners cannot take advantage of other services and assistance that the government may offer to promote responsible and more efficient mining (e.g., centralized assay facilities, trainings, etc.).

Ensuing sustainability problems include underutilization of mineral resources and tax evasion (economic), severe environmental degradation (environment), and increased morbidity and mortality (social) due to mining operations.

MGB is presently implementing EO 79, which reiterates compliance to RA 7076, in governing the small-scale mining in the country. RA 7076 was put into law to "promote, develop, protect and rationalize viable small-scale mining activities in order to generate more employment opportunities and provide an equitable sharing of the nation's wealth and natural resources..." [3]. Since its promulgation however, there has been no significant increase in the portion of the sector that operates legally; the economic, environmental, health, and safety issues on this industry persist through the decades.

EO 79, promulgated in 2012, is a new policy with a more comprehensive scope and covers the entire mining industry. Its objectives are to strengthen protection of the environment, the promotion of responsible and sustainable mining and the provision of a more equitable revenue-sharing scheme in the mining sector [10,11].

EO 79 was crafted in consonance with a six-point agenda adopted by the Climate Change and Adaptation and the Economic Development Cabinet Clusters. These are:

- 1) Ensure mining's contribution to the country's sustainable development (i.e., economic and social growth and environmental protection);
- 2) Adopt international best practices and promote good governance and integrity in the sector;
- 3) Ensure the protection of the environment by adopting technically and scientifically sound and generally accepted methods as well as indigenous best practices;
- 4) Ensure the consistency of local issuances with the Constitution and national laws;
- 5) Ensure fair, adequate, and equitable shared economic benefit for the country and the people; and
- 6) Deliver efficient and effective management of the mining sector.

After about three years since its implementation however, it has hardly made an impact on the small-scale mining, particularly, in curbing its illegal operation.

4. THE *MINAHANG BAYAN* DECLARATION PROCESS AND STATUS OF APPLICATIONS

Minahang Bayan or “People’s Small-Scale Mining Area” refers to the entire area in sites onshore that are suitable for small-scale mining operations. Corresponding IRR of RA 776 lists down mineralized areas that may be declared for this purpose and includes public lands (covered by mining applications), private lands (subject to the consent of the landowner/s) and ancestral lands/ancestral domains (subject of Certificates of Ancestral Domains/Ancestral Land Title), among others.

Only three areas in the country have been declared as *Minahang Bayan*, as of December 2015 (Table 1) [12]

Table 1. Declared *Minahang Bayan* Areas, As of December 2015

Name of Area/Association	Location	Size of Area (hectares)	Commodity
1. Tubajon Small-scale Mining Area	Brgys. Diaz, Mabini and Navarro, Tubajon, Dinagat Island Province	735	Chromite
2. Buenavista Small-scale Miners Association	Bulo, Buenavista, Quezon	26.03	Gold
3. Masabong Village Small-scale Mining Association (MAVISSMA)	Bayugan 3, Rosario, Agusan del Sur	592	Gold

Based on the experience of MAVISSMA, the Association applied for *Minahang Bayan* on November 15, 1987 and was declared on November 29, 2012 through PMRB Resolution No. 03, Series of 2012. In all, it took 25 years to get the declaration [13]

Figure 2 presents the process flowchart for the *Minahang Bayan* declaration procedure starting from the filing of the petition until the declaration, as presented in Chapter III of DAO 2015-03. Corresponding Sections of the law are also included for reference. Within 15 days upon receipt of the petition/request, the Provincial/City Mining Regulatory Board (P/CMRB) is instructed to forward the documents to the concerned MGB Regional Office (RO). The RO, in turn, checks if the area is open for declaration as *Minahang Bayan* in view of existing mining rights and areas closed to mining per EO 79. A technical and economic evaluation will be conducted by RO if area is open for *Minahang Bayan* declaration, otherwise the petition shall be denied. The evaluation shall be forwarded to the DENR Secretary for initial review, thru the MGB Director, within 15 days upon receipt of the RO of the petition or request. It is stated that the MGB Director shall immediately inform RO of the initial review, which it should subsequently forward to the Board for consideration.

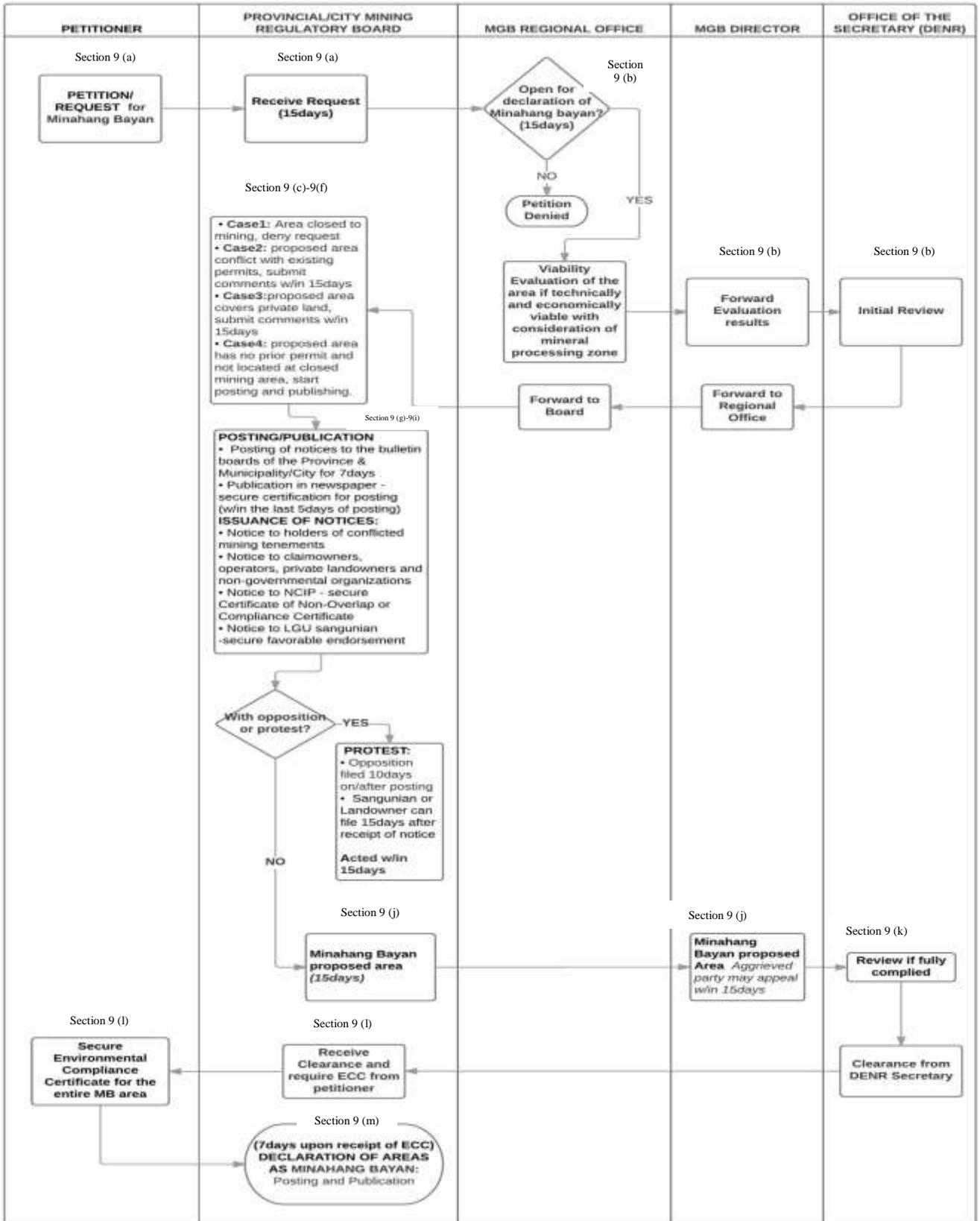


Figure 2. Process Flowchart for the Declaration of *Minahang Bayan* (Based on DAO 2015-03)

Depending on the status of the petitioned area (e.g. area covers private lands), the Board shall request concerned party or parties to submit their comments within 15 days from receipt of notice of petition from the Board. These parties may include any of the following: existing holder (s) of mining permits/contracts, mining applicants of the proposed *Minahang Bayan* and/or private landowners to be affected. In the event that the area is found to be free of prior and present mining permits, contracts or applications, a notice of the proposed *Minahang Bayan* shall be posted on the bulletin boards of RO, Offices of the Governor and City/Municipal Mayor for 7 days. Copies of the notice shall also be provided to barangay/s concerned. In addition to the posting on the bulletin boards, the Board also requires that the notice be published in a local or national newspaper, cost of which to be paid for by the petitioner.

Copies of the same notice shall also be given to the National Commission on Indigenous Peoples (NCIP) and the Local Government Unit's Sanggunian to secure the necessary certificates (Certificate of Non-Overlap or Compliance Certificate) and favorable resolution/endorsement respectively.

Oppositions or protests regarding the proposed *Minahang Bayan* shall be filed directly with the Board 10 days from the date of publication or from the last posting date. The Board is mandated to act on the protest within 15 days after its submission for resolution, appeals on which can be made with the Secretary within 15 days from receipt of Board's decision.

In the absence of any opposition, the Board is tasked to submit to the Secretary, thru the MGB Director, all pertinent documents for final clearance. The Board shall undertake this within 15 days upon receipt of compliance with the publications and posting requirements. With all the requirements fully complied with, the Secretary shall issue the clearance for the declaration of the *Minahang Bayan* to the Board. The Board shall then require the petitioner to secure an Environmental Compliance Certificate (ECC) for the entire *Minahang Bayan*. The petitioner is given a year to obtain the ECC. The Board is duty-bound to declare the area as *Minahang Bayan* within 7 days upon its receipt of the ECC.

Failure to declare an area as *Minahang Bayan* within 1 year of the release of the clearance from Secretary shall mean denial of the petition.

Data from MGB on the status of *Minahang Bayan* applications [15] shows that, as of 2015, there are 42 applications for *Minahang Bayan* filed with the Bureau, mostly from Cordillera Administrative Region (CAR), Region X (Northern Mindanao) and Region XI (Davao Region) (see Table 2). Data as to the average age of the applications (i.e. time since filed) are not available. However, given the *Minahang Bayan* policy was promulgated in 1991 and was strengthened in 2012, these applications could possibly range between 3-25 years.

Table 2. Distribution of *Minahang Bayan* Applications By Region, As of December 2015

Region	Number of Applications	Percentage of Total (%)
Cordillera Administrative Region	11	26
Region II	2	5
Region III	1	2
Region IV-A	2	5
Region IV-B	1	2
Region V	2	5
Region VI	1	2
Region VII	1	2
Region VIII	3	7
Region X	6	14
Region XI	5	12
Region XII	4	10
Region XIII	3	7
Total	42	100%

With respect to commodity, data from the Bureau shows that 79% of the applications pertain to gold mining while 9% relate to extraction of either gold/silver combination or chromite [12]. Per EO 79, only gold, silver and chromite are allowed for small-scale mining.

Table 3. Distribution of *Minahang Bayan* Applications By Commodity, As of December 2015

Commodity	Number of Applications	Percentage of Total (%)
Gold	33	79
Chromite	4	9
Gold/Silver	2	5
Slate/Marble	2	5
Silica	1	2
Total	42	100%

5. FINDINGS AND ANALYSIS ON THE MINAHANG BAYAN DECLARATION PROCESS

It has been consistently raised in focus group discussions (FGDs) and workshops conducted by the authors under the Department of Science and Technology (DOST) MINERS Project (Project G) that the problem on legalization and regulation in small-scale mining stems from the lengthy, resource-intensive, and sometimes politicized permitting/licensing application process. This is also very true in the case of the declaration of *Minahang Bayan*.

Based on the steps with stated processing or completion times [3], it will take *at the very least 77 days (~3.5 work months)* before an area is declared a *Minahang Bayan*. The process only states a minimum time and this is mainly due to the absence of time commitments of some of the flows in the process especially those involving authorities at the national level (e.g. review by the Secretary). To date, no application has been processed within 3.5 months; instead, records indicate that existing applications have been pending for about 3-25 years. The following table identifies the different steps that need clarity in terms of time commitments for completion. Requests for certifications from different government agencies may also cause delays based on petitioner experiences. Unfortunately, the law is silent on the allowable period to secure these documents from the concerned government unit or on penalties on documents that are not provided within a period of time (e.g. deemed approved if there is non-response within a prescribed period). Based on the experience on the application process for Hydropower Projects in Mindanao, it takes 73 days to obtain a Certification of Non-Overlap (CNO) from NCIP (inclusive of the Free and Prior Informed Consent or FPIC exercise) and 20 days to get endorsements from LGU [14]. Likewise, the law is also not specific on courses of action to take, either by the petitioner or concerned government entity, should the prescribed period is exceeded (e.g. if documents are forwarded beyond the prescribed 15 days).

Table 4. Steps in the Declaration Process That Need Specific Time Commitments

Relevant Section of DAO 2015-03	Steps that Need Clear Time Commitments
<p><u>Section 9 (b):</u> Within 15 days from receipt of the pertinent petition or request, the Regional Office shall forward the result of its evaluation thereof to the Secretary, through the Director, for initial review. The Director shall immediately inform the Regional Office about the result of said initial review, who shall subsequently forward the said result to the Board, for consideration.</p>	<ul style="list-style-type: none"> • Conduct of initial review by the Secretary • Relay of result of initial review to Regional Office upon receipt by the Director • Forwarding of result to the Board upon receipt by the Regional Office
<p><u>Section 9 (d):</u>the Board shall formally notify the holder (s) of mining permit(s)/contract(s).....</p>	<ul style="list-style-type: none"> • Period in which formal notification is to be made by the Board upon its receipt of the initial review result
<p><u>Section 9 (e):</u>the Board shall formally notify the landowner(s) or lawful possessor(s) concerned.....</p>	<ul style="list-style-type: none"> • Period in which formal notification is to be made by the Board upon its receipt of

Relevant Section of DAO 2015-03	Steps that Need Clear Time Commitments
	the initial review result
<p>Section 9 (f):the Board shall prepare and cause the posting of the notice of the proposed <i>Minahang Bayan</i>...</p> <p>.....the Board shall also cause the publication of the same notice once in a newspaper of local or national circulation...</p> <p>The Board shall forward a copy of the notice to the NCIP with the request for issuance of a Certificate of Non-Overlap...</p> <p>The Board shall also forward a copy of the notice to all the Sanggunian concerned....At least the majority of the Sanggunian concerned shall endorse the declaration....</p>	<ul style="list-style-type: none"> • Period for the preparation and posting of the notice if area is found clear of existing concerns • Period to have the notice put on publication • Forwarding of a copy of notice to NCIP • Receipt of certificate from NCIP • Forwarding of a copy to Sanggunian • Receipt of endorsement from Sanggunian
<p>Section 9 (j):the Board shall forward ... all the pertinent documents for the declaration of the proposed <i>Minahang Bayan</i> to the Secretary thru the Director for review.</p>	<ul style="list-style-type: none"> • Conduct of review by the Secretary

In addition to the steps without prescribed processing times, the MGB Central Office also noted deficiencies on the applications forwarded to them. The following are the common deficiencies encountered and the possible causes of these based on understanding of the process:

Table 5. Common Deficiencies Observed in *Minahang Bayan* Applications

Relevant Section of DAO 2015-03	Observed Deficiencies in Applications Reaching Central Office	Possible Cause/s of the Deficiencies
<p>Section 9 (a): The interested party shall file with the Board a petition or request for declaration of an area as <i>Minahang Bayan</i>, specifying therein the coverage of the proposed area described in geographic coordinates of at least four (4) corners of the proposed area(s) following the meridional block system under Section 11 hereof. Within</p>	<ul style="list-style-type: none"> • Written petition or request (or resolution in some cases) is not included in the documents • Absence of any technical description of the area concerned 	<ul style="list-style-type: none"> • Failure, both at the Board and at the Regional Office level, to check completeness of the documents before forwarding to Central Office. • Lack of applicant (i.e., miner) awareness of complete application requirements

Relevant Section of DAO 2015-03	Observed Deficiencies in Applications Reaching Central Office	Possible Cause/s of the Deficiencies
<p>fifteen (15) days upon receipt of the petition or request, the Board shall forward the same to the Regional Office concerned.</p>	<ul style="list-style-type: none"> • Proposed area description not in geographic coordinates or not conforming with the meridional block system • Inconsistencies noted in the area descriptions 	<ul style="list-style-type: none"> • Failure, both at the Board and Regional Office level, to check for consistency of descriptions. • Lack of applicant capacity to provide needed technical information
<p>Section 9 (b): The Regional Office concerned, upon receipt of the petition or request for declaration of an area as <i>Minahang Bayan</i>, shall check in its control map the status of the proposed area vis-à-vis the prior existing mining rights and applications as well as areas closed to mining applications pursuant to the pertinent provisions of the EO and its implementing rules and regulations. It shall, thereafter, evaluate the said area if it is technically and economically viable for small-scale mining, taking into consideration, among others, the necessary allocation for a mineral processing zone, if mineral processing shall be conducted.</p>	<ul style="list-style-type: none"> • Absence of Area Status/Certification that area is free of any conflict (or if with conflict, proof of finality of order/appeal, for instance) • Absence of Area Status in relation to the “No-Go Zones” • Technical and economic viability evaluation not undertaken • Absence of allocation for a mineral processing zone 	<ul style="list-style-type: none"> • Failure at the Regional Office to undertake technical and economic evaluation of the proposed site and provide the necessary area status certifications and the required mineral processing allocation.
<p>Section 9 (d): In case the proposed area is in conflict with existing mining permit(s)/contract(s) or mining application(s) falling within the categories enumerated in paragraphs (b) and (c) of Section 8 hereof, the Board shall formally notify the holder(s) of mining permit(s)/contract(s) or mining applicant(s) concerned of the</p>	<ul style="list-style-type: none"> • Absence of any direct notice sent to concerned parties 	<ul style="list-style-type: none"> • Failure of the Board to perform any of the following before forwarding documents to the MGB Director: <ul style="list-style-type: none"> a) notify concerned parties c) check documents for completeness of requirements

Relevant Section of DAO 2015-03	Observed Deficiencies in Applications Reaching Central Office	Possible Cause/s of the Deficiencies
<p>proposed <i>Minahang Bayan</i> and require them to submit their comment(s) within 15 days from receipt of the notice, copy furnished the petitioner</p>		
<p>Section 9 (e): In case the proposed area covers private land(s) as cited in paragraph (d) of Section 8 hereof, the Board shall formally notify the landowner(s) or lawful possessor(s) concerned of the proposed <i>Minahang Bayan</i> and require them to submit their comment(s) within 15 days upon receipt of the notice, copy furnished the petitioner.</p>	<ul style="list-style-type: none"> • Absence of any direct notice sent to concerned parties • Private lots have not been declared 	<ul style="list-style-type: none"> • Failure of the Board to perform any of the following before forwarding documents to the MGB Director: <ul style="list-style-type: none"> a) notify concerned parties b) check documents for completeness of requirements
<p>Section 9 (f) : In case the proposed area is found to have no prior and existing mining permits/contracts and mining applications, and is not situated in areas closed to mining application, the Board shall prepare and cause the posting of the notice of the proposed <i>Minahang Bayan</i> on the bulletin boards of the Regional Office concerned and Offices of the Provincial Governor and Municipality/City Mayor concerned, for seven (7) days, copy furnished the Barangay(s) concerned. Where necessary, the Notice shall be in a language generally understood in the locality concerned where it is posted. The Board shall also cause the publication of the same notice once in a newspaper of local or national circulation. The petitioner shall shoulder the cost of publication.</p> <p>The Board shall forward</p>	<ul style="list-style-type: none"> • Absence of Proof of Posting • The actual period of posting is not specified • Absence of any notice sent to NCIP • Absence of Compliance Certificate/Supporting Memorandum of Agreement/Free and Prior Informed Consent (if within a CADT or CALT Area) • Absence of endorsement 	<ul style="list-style-type: none"> • Failure of the Board to perform any of the following before forwarding documents to the MGB Director: <ul style="list-style-type: none"> a) undertake posting b) check documents for completeness of requirements • Lack of applicant (i.e., miner) awareness of complete application requirements • Failure of the Board to perform any of the following before forwarding documents to the MGB Director: <ul style="list-style-type: none"> a) notify NCIP/seek endorsement from Sanggunian b) check documents for completeness of requirements • Lack of applicant (i.e., miner) awareness of

Relevant Section of DAO 2015-03	Observed Deficiencies in Applications Reaching Central Office	Possible Cause/s of the Deficiencies
<p>a copy of the notice to the NCIP with the request for issuance of a Certificate of Non-Overlap or Compliance Certificate, as the case may be, pursuant to the pertinent provisions of RA No 8371.</p> <p>The Board shall also forward a copy of the notice to all the Sanggunian concerned, for the purpose of the pertinent provisions of Sections 26 and 27 of RA No. 7160. At least the majority of the Sanggunian concerned shall endorse the declaration of the proposed <i>Minahang Bayan</i>.</p>	<p>from the concerned Sanggunian</p>	<p>complete application requirements</p>
<p>Section 9 (g): Within 5 days from the last date of posting and publication, the authorized officer(s) of the office(s) concerned and the publisher of the newspaper concerned shall issue a certification(s) that the posting and publication requirements have been complied with.</p>	<ul style="list-style-type: none"> • The copy of the published page is not attached. 	<ul style="list-style-type: none"> • Failure of the Board to check documents for completeness of requirements • Lack of applicant (i.e., miner) awareness of complete application requirements

Presently, small-scale miners are able to operate even without the required permits. The lack of clear incentives for the miners to legalize also affects their flickering desire to come to the fold of the law. As it is, the challenging application requirements and process are adding more to their lack of drive to obtain permit to legally operate. It also does not help that most of the common deficiencies leading to delays on the processing of applications can be traced to shortcomings on the part of either the Board or the MGB Regional Office – the government institutions central to the whole process. Delays due to these shortcomings are not linear but rather exponential. Advice to the petitioner or any entity regarding absence of particular document will have to go through channels, which in most cases, takes time. In the meantime, the application process comes to a halt while waiting for the document, which will have to go through channels once again.

As such, amidst a condition of a lack of implementation of laws leading to adverse environment and social concerns but with significant economic benefits for the families, communities and for the country (e.g. employment, substantial mined output/value, potential share due to taxes etc), the onus is on the government to do concrete *proactive* steps to help small-scale miners hurdle the barriers to legalization. .

6. RECOMMENDATIONS ON MINAHANG BAYAN DECLARATION PROCESS IMPROVEMENT

Based on our assessment of the *Minahang Bayan* declaration process *vis a vis* existing practices and reported issues, we find that both miner's (applicant's) awareness of application requirements and the concerned government agency and local government unit effectiveness and efficiency in processing applications are key to faster *Minahang Bayan* declaration. The extent of completeness of the submitted documents, including its form and content, reflects the miners understanding of the requirements and the whole process. To this end, the following are the proposed specific steps to achieve this objective:

a) Maintain an inventory of small-scale mining operations in the area

With the help of proper authorities (barangays chairs, mayors and other LGU officials and agencies), an accounting of small-scale mining operations, both organized and unorganized, in an area should be generated first. In some areas visited by the authors under the Project G, the local government even requires that those working in the mines obtain residence certificates as a way of identifying those involved in the activity. Government personnel going to the sites (some of which are in hinterlands) for this purpose will show how serious the government is in its effort to facilitate the implementation of the law. The presence of organizations or cooperatives of miners will help facilitate this undertaking.

b) Conduct of information and education campaign using video presentations and template applications

- Series of orientations regarding the laws on small-scale mining should be conducted through video clips, *copy of which should be provided to the miners*. These orientations and awareness sessions shall be in coordination with all the stakeholders of small-scale mining in the area. The clip should also contain the *Minahang Bayan* process and requirements as well.
- From past successful applications, make a sample/template of petition or request containing all the requisite documents complete with explanations, reminders and suggestions on how best these documents can be accomplished or obtained. Copies of these sample documents should be provided to small-scale mining organizations and other interested would-be petitioners.

c) Assign a government personnel to assist and coordinate petition concerns with small-scale miners

A government personnel should be assigned to directly assist and coordinate with the small-scale miners regarding their applications/petitions. Together with the miners, he should set specific

timetable/milestones regarding submissions of documents. He/she will also be responsible in responding to clarifications and queries from the miners.

d) Provide a monitoring facility to track status of *Minahang Bayan* petitions

One of the complaints of small-scale miners is the absence of any feedback regarding their applications, with some of them in utter disappointment and frustration. To address this very important issue, it is suggested that an online tracking of *Minahang Bayan* applications be set-up by MGB. This system will enable the miners to monitor application status and be informed on the deficiencies encountered, if any. In addition to the online tracking facility, the government personnel assigned to assist a particular group of miners shall also inform the small-scale miners, through other forms of communication suitable and convenient for the parties, of the status and the next steps to be taken.

As it is the right of the petitioner to be provided an estimate of the time to process the application, MGB shall ensure that completion times be provided for the different steps in the process, in coordination with other stakeholders concerned. Through the respective Citizen's Charter of government units, response time can be provided regarding requests for certifications or endorsements. It is also imperative that actions be specified in the event that response times are not met. A separate instructional video material on *Minahang Bayan* application processing can be created with RO, LGU, Board and other concerned government agencies as target audience. This video shall be distributed to these government entities to ensure roles are clarified as far as application requirements and processing are concerned. With these, the deficiencies observed in the applications forwarded by the different offices can be minimized or totally eliminated. Copies of these information materials shall also be made available through MGB's official websites and social media accounts.

DAO 2015-03 also states that the "Regional Office concerned may recommend to the Board other areas for possible declaration as *Minahang Bayan*", after a petition or request to declare a particular area is filed with the Board. The Regional Office (RO) is truly in a position to identify viable areas for small-scale mining, from a technical and economic perspective. The academe can also be tapped to assist in this undertaking given their expertise and availability of facilities to conduct related tests. With data from their office, RO can generate a list of areas that can be considered for *Minahang Bayan* in the locale – with or without filed petitions – in partnership with local governments and communities. Proactively, it can officially request from concerned agencies and parties, such as but not limited to NCIP and Sanggunian, the required certifications and endorsements for the area's qualification. With MGB RO taking the lead, the risk of the process being politicized will be lessened.

7. CONCLUSION

The recommendations generated by this study will definitely demand resources from the government. In the long term however, the government stands to gain more than the effort and the resources it will invest on proactively assisting the small-scale miners towards obtaining legal status. On the economic aspect, revenues to be derived from the activity are properly accounted for the benefit and use of both national and local governments. With legal status, small-scale miners can be freed from entities and parties that monetarily prey on them because of the illegal nature of the activity.

The environment also stands to reap the benefits of regulation as the miners can now request assistance from the government on the trainings and environmentally-friendly technologies on gold processing – something that only the minority legally-registered small-scale mining operations now are able to avail of.

From the social perspective, a legal framework allows the government to properly monitor activities of the miners, keep track of safety concerns and put in place mechanisms in small-scale mining communities to address social concerns – something it cannot presently perform due to the operations illegal nature.

Improving the *Minahang Bayan* declaration process is definitely the crucial first step to realizing and achieving a responsible and sustainable small-scale gold mining.

8. REFERENCES

- [1] Department of Environment and Natural Resources (DENR). (2016). Mineral Resources. Available online: <http://www.denr.gov.ph/news-and-features/latest-news/16-mineral-resources.html>
- [2] Mines and Geosciences Bureau (MGB). (2016). The Philippine Minerals Industry At a Glance. Available online: <http://www.mgb.gov.ph/images/links-images/ThePhilippineMineralsIndustryAtAGlance.pdf>
- [3] Department of Environment and Natural Resources (DENR) (2015). Department Administrative Order 2015-03: Revised Implementing Rules and Regulations of Republic Act No. 7076, Otherwise Known As The “People’s Small-Scale Mining Act of 1991.” Available online: <http://www.mgb.gov.ph/laws-and-regulation>
- [4] Senate Economic Planning Office. (2013). Realizing the Philippines’ Mining Potential. SEPO Policy Brief. December 2013.
- [5] Hentschel, T., Hruschka, F., and M. Priester. (2003). Artisanal and Small-Scale Mining: Challenges and Opportunities. International Institute for Environment and Development and WBCSD. Available online: <http://pubs.iied.org/pdfs/9268IIED.pdf>
- [6] Quisumbing and Torres Law Office (Quisumbing Torres). (2015). Primer on the Philippine Minerals Industry. Available online: http://www.bakermckenzie.com/files/Publication/1ff1fe77-7cbd-43e9-b700-f2c6a0b938e7/Presentation/PublicationAttachment/ed50695f-70c9-4190-ab0a-6a3dacf8646e/bk_manila_primermineralsindustry_2015.pdf
- [7] Chan Robles Virtual Law Library (Chan Robles) (2014). G.R. No. 179669, June 04, 2014 SR Metals, Inc., San R Mining And Construction Corp. And Galeo Equipment And Mining Company, Inc. Available online: <http://www.chanrobles.com/cralaw/2014junedecisions.php?id=383>
- [8] Department of Environment and Natural Resources (DENR) (2009). Situationer on the Status of Small-Scale Mining Operations and Policy Recommendations. Presentation Material from DENR.
- [9] Department of Environment and Natural Resources (DENR) (1991). Department Administrative Order No. 97-30: Small-scale Mine Safety Rules and Regulations. Available online: <http://www.mgb.gov.ph/Files/Policies/RA%207076.pdf>.
- [10] Fortun, Narvaza and Salazar Law Offices (FNSLaw) . (2012). Philippine Government’s New Mining Policies and Guidelines. Available Online: http://www.fnslaw.com.ph/PDF%20Files/Mining%20Policy-EO79_FNS.pdf

- [11] Office Of The President of the Philippines (OPP) (2012). Executive Order No. 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. Available online: <http://www.denr.gov.ph/news-and-features/latest-news/831-executive-order-79-s-2012.html>
- [12] Mines and Geosciences Bureau. (2015). Status of Applications. Presentation Material from MGB MTD Office, Central Office
- [13] Masabong Village Small-scale Mining Association (MAVISSMA). (2015). MAVISSMA, Inc. Presentation Material from MAVISSMA President. Available online: <http://mining.carsu.edu.ph/system/files/sites/default/files/private/5%20MAVISSMA.pdf>
- [14] Department of Energy (DOE) (2015). One-Stop Processing and Facilitation Center (OSPFC). Available online: <http://www.doe.gov.ph/microsite>