

# Improving Impacts of Extraction Through Subnational Multi-Stakeholder Groups in the Philippines

Marietta Cauchi and Rebecca Iwerks

## SUMMARY

Equipping local governments and communities with governance tools to manage subnational resource wealth is an increasingly important response in efforts to transform natural resources into long term development. We studied two pilot projects that demonstrate the successful use of one such tool, multi-stakeholder groups (MSGs), by Bantay Kita, a national civil society coalition, in the contentious Filipino mining sector.

This case study documents the implementation, challenges, and lessons from Bantay Kita's two subnational pilot projects in: Compostela Valley (ComVal); and T'boli, South Cotabato. The projects illustrate how careful creation of subnational MSGs can facilitate local transparency and accountability, produce valuable lessons for the national transparency efforts, and mitigate some of the negative impacts of extraction. In addition to these broad outcomes, the projects resulted in useful outputs, such as transparency templates requiring disclosure of local information on: 1. Environmental, health, and social impacts of mining operations; 2. Payments made by extractive companies to local governments and indigenous peoples groups; 3. Revenues received by local governments and indigenous peoples groups from extractive companies; and, 4. Expenditures by local governments and indigenous people from extractive revenues.

These templates can be used for similar efforts in other parts of the country and in other countries that face similar challenges.

The subnational pilot projects invested in understanding local needs, emphasized local processes, and developed trust between stakeholders, allowing the interventions to address a range of substantive governance issues, and build the capacity of stakeholders to continue conversations beyond the scope of the projects' intervention. Ensuring that the benefits spread throughout the community remains a challenge. Equally challenging is replicating the interventions in other areas with different local laws and political contexts, even within the Philippines.

## INTRODUCTION

Mining in the Philippines is rife with contention and conflict. Far from an ideal of promoting long-term development for the country, news stories about mining often deal with such issues as human rights violations<sup>1</sup>, environmental degradation<sup>2</sup>, and poor revenue capture and corruption. Some who have spoken out against the interests of mining operations have been killed.<sup>3</sup>

At the same time, the Philippines has abundant natural resource wealth. The country ranks fifth in the world in terms of total mineral reserves. It is third in the world in terms of gold reserves, fourth in terms of copper, and fifth in terms of nickel.<sup>4</sup> Even when there is ardent opposition to large-scale mining projects, small-scale mining is prevalent; for instance, small-scale mining accounts for over 80 percent of the gold production in the country.<sup>5</sup>

Over the past decade, observing progress in the global movement towards transparency and accountability in extractive governance, the country's corporate leaders, national government officials, and civil society activists have considered how transparency mechanisms might alleviate tension and improve development outcomes of extraction in the Philippines. As early as 2005, the president of the Philippine Chamber of Mines, Benjamin Philip Romualdez, advocated that the Philippines adopt the Extractive Industries Transparency Initiative (EITI).<sup>6</sup> While many civil society organizations were initially hesitant to work with each other and were skeptical about the potential for the EITI to address their concerns related to mining, Bantay Kita, a national coalition created in 2009, was able to build an alliance between anti-mining groups and pro-transparency groups.<sup>7</sup>

From the beginning, Bantay Kita viewed the national EITI as a limited but useful tool in improving public access to information and improving dialogue between stakeholders. To be effective in decreasing conflict and improving development outcomes, the members of Bantay Kita felt strongly that EITI must have a subnational<sup>8</sup> component and address issues related to small-scale mining. The civil society group understood that local governments have a strong regulatory and political role in extractives in the Philippines and the communities closest to the mines have a personal stake in the impacts of the mines. As a result, before a national EITI multi-stakeholder group (MSG) was formed, Bantay Kita started planning subnational pilot projects that could amplify the impact of the EITI by bringing its tools to the local level.

- 1 Juliane Kippenberg "What if Something Went Wrong? Hazardous Child Labor in small-scale gold mining in the Philippines," September, 2015, <https://www.hrw.org/report/2015/09/29/what-if-something-went-wrong/hazardous-child-labor-small-scale-gold-mining>.
- 2 Jamie Kneen "Backgrounder on Placer Dome in Marinduque, Philippines: The Tailings Spill Disaster of 1996" *Mining Watch Canada*, August 12, 2005, <http://miningwatch.ca/blog/2005/8/12/backgrounder-placer-dome-marinduque-philippines>.
- 3 Dante B. Gatmaytan. *A Handbook on Local Environmental Governance*. (Bantay Kita, 2014), 2 [http://bantaykita.ph/wp-content/uploads/2015/09/MINING-MANUAL\\_PDF-FINAL\\_No-Cropmarks.pdf](http://bantaykita.ph/wp-content/uploads/2015/09/MINING-MANUAL_PDF-FINAL_No-Cropmarks.pdf).
- 4 PH-EITI, Philippines Extractive Industry Transparency Initiative Report 2014. Volume 1, (Philippines Extractive Industry Transparency Initiative, 2014), . 41, [http://www.ph-eiti.org/document/EITI-Report/First-Country-Report/PH-EITI\\_Report\\_Volume\\_1\\_Contextual\\_Info\\_final.pdf](http://www.ph-eiti.org/document/EITI-Report/First-Country-Report/PH-EITI_Report_Volume_1_Contextual_Info_final.pdf).
- 5 2008-2009 Philippine Mining Almanac
- 6 Chamber of Mines of the Philippines, "Philippines holds First National Workshop for EITI," January 18, 2013, <http://www.chamberofmines.com.ph/01182013pr.html>.
- 7 Darmawan Triwibowo, "The Safe Passage in an Acrimonious Environment: The Role of EITI in Strengthening Multi-stakeholder Engagement Towards Extractive Industries Transparency in the Philippines," in *Civil Society and Transparency in the Extractive Industries: Tales from Southeast Asian Countries*, eds. Triwibowo et al. (2014).
- 8 The term 'subnational' or 'local' refers to all levels of government below the national government. In the Philippines, this includes the provincial, municipal, and village (or barangay).

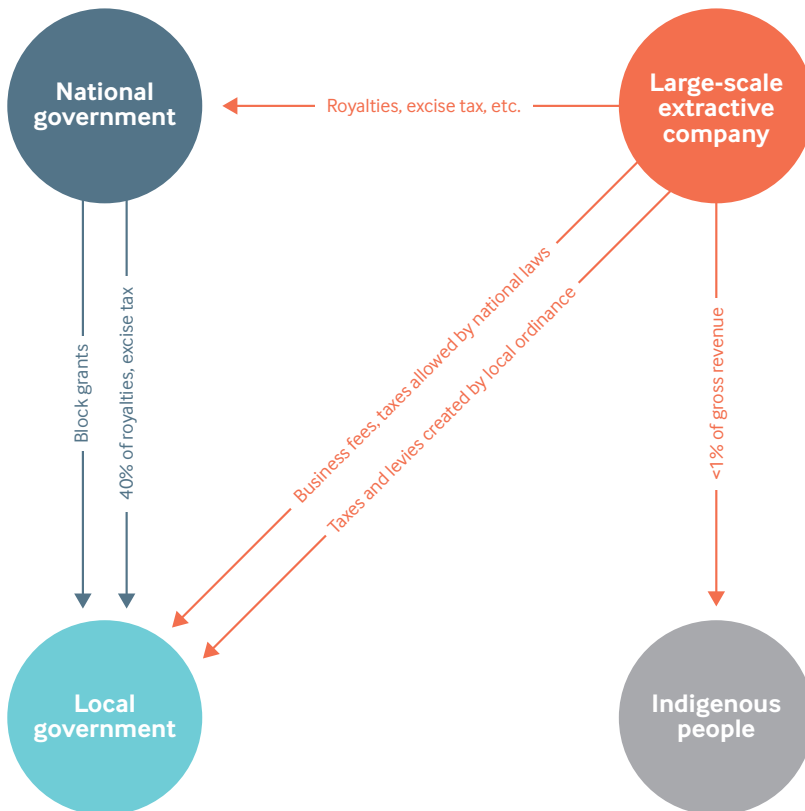
This case study documents the lessons and challenges with the first two subnational projects undertaken by Bantay Kita. These projects were in Compostela Valley and T’boli, South Cotabato. The next section provides the large-scale and small-scale mining context in the Philippines; section II describes the projects in the two areas; section III summarizes the preliminary outputs of the projects; and section IV focuses on the main lessons learned through the projects in creating and maintaining MSGs and challenges with replicating such models elsewhere.

## I. SUBNATIONAL RELEVANCE OF TRANSPARENCY AND ACCOUNTABILITY IN THE PHILIPPINES’ EXTRACTIVE SECTORS

Addressing the role of subnational governments is critical for realizing optimal natural resource management in the Philippines because local governments hold many fiscal and environmental powers. This section outlines the legal mandate of subnational governments in the Philippines as they relate to natural resource wealth management.

There are four levels of government in the Philippines: national, provincial, municipal, and village (called *barangay*). Many responsibilities are devolved or decentralized from the national government to lower levels of government. For example, Local Government Code 1991, RA 7160 gives local governments authority over basic services in infrastructure, health care, and social welfare.<sup>9</sup> To match these expenditure responsibilities, the local governments receive revenue transfers from the national government and have some local tax-raising powers.

### Large-scale mining



<sup>9</sup> The details of how these responsibilities are shared between lower levels of government is beyond the scope of this paper.

The Filipino Constitution declares the national government as owner of all lands and natural resources.<sup>10</sup> The national government is also responsible for issuing all large-scale mining licenses, outlining basic environmental and safety requirements, and developing the bulk of fiscal regime provisions. The national government is required to share forty percent of the excise taxes and royalty fees that it collects from extraction activities with the local governments.<sup>11</sup> Local governments are also entitled to a forty percent share of the national internal revenue taxes.<sup>12</sup>

The decentralization of environmental and fiscal policy provides an opportunity for local governments to influence extractive sector related policy. A *general welfare* clause in the Local Government Code, allows local governments at all levels to create legislation that can bar certain mining practices within their jurisdiction.<sup>13</sup> For example, one province has barred all open-pit mining. In addition, any project that will have environmental impact must undergo a local consultation process culminating in a decision from the local legislative body, the *sanggunian*, on whether to approve the project or not.<sup>14</sup> Both local and national governments have the power to monitor whether companies are acting in compliance with environmental obligations.<sup>15</sup>

The Philippines Mining Act authorizes local governments to collect occupation fees from extraction companies while the Local Government Code allows local governments to collect business taxes, real property taxes, and other fees from all businesses operating in their area.<sup>16</sup> The fiscal autonomy of local governments also affords local governments the right to levy additional taxes and fees on extractive companies by local ordinance.<sup>17</sup> In addition, indigenous people groups are entitled to receive a minimum of one percent of the gross revenues of a project operating on their ancestral lands. Figure 1 summarizes the different financial flows for large-scale mining projects in the Philippines.

In sum, not only do local governments receive income from extraction projects, but they also have the power to decide whether and what type of extraction takes place in their community. The overlapping mandates with the national government can enhance oversight of extractives in some provinces while creating a vacuum of accountability in others due to conflicting decisions taken by different levels of government.

10 Philippine Constitution of 1987, Art. XII, Sec. 2.

11 The revenues are shared between the province (20%), municipality (45%) and barangay (35%) where the extraction takes place.

12 This is not specific to extractive payments and shared between levels of local government based on population and land area.

13 Local Government Code of 1991, Sec. 129.

14 Local Government Code of 1991, Sec. 452.

15 National law provides that companies must submit environmental work plans to both the regional office of the national government and the local legislative body. DAO No. 2010-21, §168.

16 Philippine Mining Act of 1995, Sec. 86; Local Government Code of 1991, multiple sections.

17 Constitution; Local Government Code of 1991, Sec 129 and Philippine Mining Act.

### Indigenous groups and extraction

An important component of subnational extractive governance in the Philippines includes the role of indigenous groups. Census estimates show that between 10 and 20 percent of the population in the Philippines are classified as indigenous people.<sup>18</sup> They live in 65 out of 78 of the country's provinces.<sup>19</sup> The Filipino Constitution<sup>20</sup> protects the rights of indigenous people and their ancestral lands. The Indigenous Peoples' Rights Act<sup>21</sup> requires free, prior, and informed consent of indigenous communities for all large-scale and small-scale extraction projects in ancestral domains. Mirroring the international right, the Filipino law is based in recognition of indigenous self-determination on their own lands.<sup>22</sup> A National Commission on Indigenous Peoples (NCIP), composed of seven commissioners appointed by the President, is responsible for defining the ancestral domains and certifying whether communities gave their consent to exploitation within their domains.<sup>23</sup> If an indigenous community gives consent to an extraction project, it signs a memorandum of agreement with the extraction company outlining any terms or conditions. According to the NCIP guidelines, the community must give its consent at each major phase of the project. Despite the strong legislation, critics observe that implementation is often marred by corruption, recognition of false tribal leaders, and rushing through of the indigenous governance process.<sup>24</sup>

According to the 1995 Mining Act, indigenous people groups are entitled to receive a minimum of one percent of the gross revenues of a project operating on their ancestral lands. The indigenous community leadership is responsible for managing these funds for the socioeconomic benefit of its people. Annual audits of royalty spending are supposed to be sent to the NCIP.<sup>25</sup> Indigenous people are also granted the right to mine within their ancestral lands without needing to get further approval from the national government.<sup>26</sup>

### Small-scale mining

Even though small-scale mining (SSM) is defined by law as mining by individuals or cooperatives with minimal or no mechanization, in reality SSM represents a range of mechanized and non-mechanized operations. Some families seasonally conduct SSM in their backyards or ancestral lands with simple tools as part of a subsistence lifestyle. At the other end of the spectrum are Chinese companies that operate heavy machinery year-round, employ dozens of workers, and bring their extracted product directly to barges at nearby ports.<sup>27</sup> There are also modern SSM cooperatives, registered associations with mechanized processing plants with some employees.

Two co-existing laws complicate the licensing and oversight of the industry. Presidential Decree No. 1899 “establishing Small-Scale Mining as a New Dimension in Mineral Development” passed in 1984, gives the national government, specifically the Director of the Mines and Geo-Sciences Bureau, the authority to issue SSM permits. The

18 Sarah Bestang K. Dekdeken, “Philippines,” in *The Indigenous World 2015*, ed. Cæcilie Mikkelsen (International Work Group for Indigenous Affairs, 2015), 254-261, [http://www.iwgia.org/images/stories/sections/regions/asia/documents/IW2015/Philippines\\_IW2015\\_web.pdf](http://www.iwgia.org/images/stories/sections/regions/asia/documents/IW2015/Philippines_IW2015_web.pdf).

19 Dekdeken, “Philippines,” 254-261.

20 Article XII, Sections 5 and 6.

21 Republic Act No. 8371, see section 7 (b); section 57.

22 This law is not without controversy and has only narrowly survived challenges at the Supreme Court. See *Cruz vs. Secretary of Environment and Natural Resources*, G.R. No. 135385 (December 6, 2000). <http://sc.judiciary.gov.ph/jurisprudence/2000/dec2000/135385.htm>.

23 Cielo Magno and Dante B. Gatmaytan, *Free Prior and Informed Consent in the Philippines: Regulations and Realities* (Boston: Oxfam America, 2013), 8, [http://alyansatigilmina.net/wp-content/uploads/2013/10/FPIC-in-the-Philippines-September-2013\\_Oxfam-Policy-Briefing-Paper\\_Mago-and-Gatmaytan.pdf](http://alyansatigilmina.net/wp-content/uploads/2013/10/FPIC-in-the-Philippines-September-2013_Oxfam-Policy-Briefing-Paper_Mago-and-Gatmaytan.pdf).

24 Magno and Gatmaytan, *Free Prior and Informed Consent in the Philippines*, 12.

25 NCIP Administrative Order 3-2012 §63.

26 Republic Act No. 8371, section 57.

27 Boris Verbrugge and Beverly Besmanos, *Undermining the Myths about Small-scale Mining* (Bantay Kita, 2015), <http://bantaykita.ph/undermining-the-myths-about-small-scale-mining>

Republic Act No. 7076, known as the “People’s Small-Scale Mining Act of 1991,” was passed without repealing the previous legislation. Under this law, the provincial or city mining regulatory board has the authority to approve applications for SSM permits and contracts. This board is composed of representatives from the Department of Environment and Natural Resources, the SSM sector, the large-scale mining (LSM) industry, and environmental groups. The Supreme Court of the Philippines has declared both laws valid. As a result, both national laws set limits on the scope of SSM production (maximum of 50,000 dry metric tons of ore), capital investment (maximum of PHP 10 million), and use of tools (no explosives or heavy machinery).<sup>28</sup> There are also national laws outlining standards for environmental impact and safety of SSM, including limiting the use of mercury. The national law designates the Provincial Mining Regulatory Board responsible for providing oversight of SSM operations. As in LSM, the provincial government also has the authority to issue additional environmental and local taxation legislation.



Small-scale mining in T’boli: Ore is pulverized in a drum machine to free gold from rock by using mercury.

The coordination between large-scale and small-scale miners can also create conflict. Because the companies are not regulated by the same laws and may receive their licenses from different levels of government, it is not uncommon for small-scale miners to be awarded legal rights to an area that is also awarded to an LSM company. Procedurally the LSM is supposed to be asked by the Provincial Mining Regulatory Board to issue a waiver before SSM is allowed on their concessions. LSM companies often complain that there is less scrutiny for the environmental impacts of SSM companies, which can be more severe than that of their large-scale counterparts.

While LSM companies organize their advocacy under one association, SSM companies often have disparate goals and are not formally organized. The SSM companies can benefit from local allegiances as some local government officials are also in the business of SSM.

28 AFRIM, *A Background Study on the Small-Scale Gold Mining Operations in Benguet and South Cotabato and Their Impact on the Economy, the Environment, and the Community* (Alternate Forum for Research in Mindanao, 2012), 11-12, <http://bantaykita.ph/pdfs/Small%20Scale%20Mining.pdf>.

## II. BANTAY KITA PROJECTS IN TWO REGIONS TO FOSTER MULTI-STAKEHOLDER DIALOGUE

Understanding the fundamental role that subnational jurisdictions play in the governance of extractives in the Philippines, Bantay Kita initiated two subnational pilot projects to promote transparency and accountability. In addition to hoping that these projects would foster better extractive resource governance in the regions, that is, promote improved development from the natural resource wealth, Bantay Kita hoped to gather experiences that would contribute to the national implementation of the EITI. Partnering with members of its coalition of subnational non-governmental organizations, Bantay Kita decided to implement its projects in the province of Compostela Valley and the city of T'boli in the province of South Cotabato.



### Bringing international lessons to subnational transparency

Bantay Kita's work was supported by Asian and international actors who brought lessons from other subnational interventions. The projects were funded by the Natural Resource Governance Institute (NRGI), the United States Agency for International Development (USAID), and the Australian Agency for International Development (AusAID). Some of these donors coupled their funding with technical assistance and lessons from other multi-stakeholder interventions. For example, NRGI brought lessons from subnational interventions in Indonesia, Peru, Ghana, and Nigeria. NRGI also supported Bantay Kita with some of its economic analysis on local impacts of extraction.

The funding from NRGI and USAID came with support of cross-Asia collaboration through a grant to the Indonesian civil society organization Article 33. Beginning in 2007, Article 33 launched an intervention in the Indonesian districts of Blora and Bojonegoro, where Exxon had made a large oil discovery. Article 33 formed MSGs in both districts to promote transparency of the revenues from the oil block and formulate long-term plans for the use of those revenues. The projects were successful, leading to similar work in other districts.

Article 33 was funded to support Bantay Kita's work in the Compostela Valley. In addition to bringing the story of its work in Indonesia, Article 33 provided technical advice to Bantay Kita and the MSG about how to formulate a transparency mechanism. Article 33 also facilitated visits between stakeholders in Bojonegoro and Compostela Valley. The project fostered strong relationships between local government officials, companies, and civil society across countries. Not only did this benefit the stakeholders in Compostela Valley, but the MSG in Bojonegoro was inspired to formalize its transparency mechanism into law from this exchange.

According to the Mines and Geosciences Bureau, Compostela Valley had a gold reserve of close to 200 million metric tons in 2008.<sup>34</sup> There are over 22,000 miners operating in the province in a mix of small-scale and large-scale projects.<sup>35</sup> The majority of mining takes place on ancestral land of indigenous people groups. Despite the large amount of resources extracted in the area, there are still many development challenges, and questions persist about whether revenues are being paid correctly and why they are not resulting in better development of local communities. In 2010, there was an alarming series of murders of leaders of indigenous peoples that many believed to be related to the collection and allocation of royalties. Melvin Lamanilao, one of the founding members of Bantay Kita, explained: "The indigenous people accepted mining in their area but questioned whether they were getting their right share. The killings were a result of suspicion among indigenous people because of the lack of revenue transparency receipt and management of the royalty payments."

29 Summary of the project. Muh. Rasyid Ridla Ansori, *Managing Oil & Gas Revenue: Indonesia Sub National Experience* (IKAT-US, 2012), <http://www.slideshare.net/Article33/module-for-managing-oil-gas-revenue-indonesia-subnational-experience>.

30 Bramantyo Prijosusilo, *Fueling the Future. Indonesia plans for its new oil wealth* (NRGI, February 2012, NRGI) <http://www.resourcegovernance.org/sites/default/files/Indonesia3.12.pdf>.

31 Article 33 Indonesia, *Mining Industry Transparency and Accountability Initiative in Sub-national Level* [Video] (August 22, 2013), <https://www.youtube.com/watch?v=qsF5NA5qQGM>.

32 Article 33 Indonesia, *Training Module 2013: Module for Multistakeholder Engagement for Extractive Industry Better Governance* (January 28, 2013), <http://www.slideshare.net/Article33/module-ComVal-article-33-indonesia>.

33 IKAT-US, IKAT-US: A South Asian Partnership for Better Governance in Extractive Industries [video], 0 <https://revenuewatch.app.box.com/s/9ezgxe5o7ol3xt52s2biudrr5aufgwo>

34 Joel B. Escovilla, "Mineral reserves expected to boost Davao's growth," *GMA News Online*, October 1, 2008, <http://www.gmanetwork.com/news/story/124086/news/regions/mineral-reserves-expected-to-boost-davao-s-growth>.

35 Bantay Kita, *Compostela Valley Extractive Industry Transparency Handbook*, (Bantay Kita, 2015), 2, <http://bantaykita.ph/compostela-valley-extractive-industry-transparency-handbook/>.



Although a process of informed consent was required for all the mining in the area, those who participated in the consent of projects did not feel that they had an adequate understanding of the potential risks and benefits of the project. As projects continued, distrust grew. At the same time, the ubiquitous and loosely regulated SSM yielded little revenue while creating significant environmental and social impact. Only a few of the numerous small-scale miners held proper contracts and thus the provincial government was not collecting significant revenue from these projects.<sup>36</sup>

Bantay Kita sought to work in this province because even though there was a history of conflict, many local stakeholders were starting to engage in productive conversations to reduce tensions. Some of the founding members of Bantay Kita were active in the area and felt strongly that a local multi-stakeholder transparency initiative could decrease the information asymmetry in the area, reduce conflict, and improve development outcomes.

Unlike Compostela Valley, T'boli in the province of South Cotabato, has no LSM. Instead, the municipality hosts a variety of SSM projects, many of which use different methods of tunneling to extract gold. The majority of the SSM is concentrated in two villages and employs approximately 1,000 people. Initial research by Bantay Kita's subnational project partner, Alternate Forum for Research in Mindanao (AFRIM), found that the government in South Cotabato had been proactive in passing legislation to govern local taxation and environmental impact related to SSM.<sup>37</sup> A Provincial Ordinance passed in 2003 imposed taxes on all SSM and mineral processing in the area.<sup>38</sup> Bantay Kita deemed this a location that could offer interesting lessons on government regulation and compliance.

Bantay Kita's primary focus in both areas was to create a MSG that would facilitate transparency and accountability throughout the extractive decision-making chain. The team anticipated that fostering multi-stakeholder dialogue would bring the issues of primary concern in each area to the fore.

Building on the contacts from the local partner organizations, Bantay Kita began its work by talking with individual stakeholders and hosting multi-stakeholder forums in both regions. The forums brought together representatives from small-scale mines, large-scale mines, the local government, the representatives of indigenous peoples, and civil society organizations. At the end of each workshop, the group created action plans to follow-up on their discussions. The initial meetings, which focused on increasing awareness and exchange of information about extractive governance challenges in the area, led to an agreement among all the stakeholders to create a formal MSG.

With strong support from leadership in the local governments in both areas, Bantay Kita was able to encourage formalization of the MSGs. In ComVal, the Governor Arturo Uy signed an executive order in 2012 giving the legal basis to create the ComVal Multi-Stakeholder Council for Extractive Industry Transparency and Accountability with the mandate to foster transparency and accountability in all areas of extractive governance.<sup>39</sup> In T'boli, Mayor Dibu S. Tuan signed an executive order in September 2013 officially forming the T'boli Small-Scale Mining Transparency and Accountability Multi-Sector Council with the mandate to advise the legislature and regulatory board on SSM policy.

*Multi-stakeholder groups are important because of the representation and the equal power they give to all members. The consensus building process requires members to listen to each other. Multi-stakeholder groups provide a level playing field to talk about the problems of the extractive industries.*

– Cielo Magno  
Bantay Kita national coordinator

36 NRGi internal document, *Highlights of ComVal Multistakeholder Group*.

37 AFRIM, *A Background Study on the Small-scale Gold Mining Operations in Benguet and South Cotabato*, 2012.

38 Provincial Ordinance No. 7 (2003).

39 Executive Order 020-2012.

Bantay Kita, and its local and international partners, continued to support the development of each MSG. Interventions ranged from supporting the logistics of the MSG to developing technical expertise. At one end of the spectrum, Bantay Kita would help by providing a hosting space for the MSG to meet and ensuring that there were minutes from each meeting. On the technical side, Bantay Kita and its partners would provide training on issues that were highlighted during the conversations of each MSG. Topics covered included: the life cycle of extraction, resource revenue streams, and environmental management. Article 33, Bantay Kita's partner based in Indonesia, facilitated peer-to-peer learning between government and corporate officials from the resource rich district of Bojonegoro in Indonesia and their Filipino counterparts.

### III. OUTPUTS OF THE MULTI-STAKEHOLDER GROUPS

The specific outputs of the MSGs varied by region. This was in part by design; Bantay Kita hoped its project would have strong enough ownership among the stakeholders to be responsive to the needs in the area. Instead of pushing for creating a particular type of transparency, Bantay Kita focused on creating the forums for discussion and providing technical expertise when necessary.

#### ComVal

In ComVal, the MSG had several major accomplishments in a short period of time. The highlights included:

- **Decision to extract guidelines.** The MSG created a guide for indigenous people to analyze the potential impact of an extraction project so that indigenous people could more actively participate in the consent process, and better assess the long-term implications of each mining project. Using the new information, the indigenous people in ComVal were able to negotiate a significant increase in their royalty share for a new LSM project.<sup>40</sup>
- **Transparency throughout the decision chain.** The MSG drafted a report to disclose information from the government and companies about activities throughout the extractives decision-making chain. In July 2013, the MSG approved a handbook with templates for what information should be collected and disclosed in the report. This included all information related to: Memorandum of Agreements signed between governments or indigenous peoples groups and SSM or LSM companies; results of environmental, health, and social impact monitoring of mining operations; payments made by extractive companies to local government bodies and indigenous peoples groups; revenues received by local government bodies and indigenous peoples groups from extractive companies; and expenditures made by local government bodies and indigenous peoples from extractive revenues. In 2014, the ComVal published its first report covering three municipalities within the province – Nabunturan, Maco, and Maragusan.
- **Development plan.** The MSG facilitated the process of creating a development plan for the Budget of the indigenous peoples that prioritized spending on education, health, and infrastructure.

40 NRG. NRG IKAT-US Project: Southeast Asia Partnership for Better Governance in Extractive Industries. Final Narrative Report (March 2015).

- **Revised local tax code.** The publication of the first transparency report revealed a confusing and sometimes contradictory local tax structure. As a result, the provincial legislature revised the resource tax code to facilitate easier tracking of fees from mining companies. In addition, Bantay Kita hosted a training for ancestral leaders so that they would better understand what revenues they were entitled to collect.

## T'boli

Through a series of bi-monthly workshops, Bantay Kita aimed to build the capacity of all the stakeholders in the T'boli MSG. The process brought different issues to the surface as most important in the area. The initial outputs of the project included:

- **Transparency mechanism.** Like the MSG in ComVal, the MSG in T'boli decided to create a transparency mechanism that would increase the availability of information about SSM in the area. The mechanism requires disclosure from small-scale miners about their commercial agreements, mine outputs, social and environmental programs, and payments made to the local government. The local government and tribal councils were likewise required to report what revenues they received from the SSM sector, and how those revenues were spent. This project was possible in T'boli because unlike other regions in the Philippines, there was a clear local ordinance governing the taxes necessary from SSM.
- **Mercury training project.** Despite national legislation banning the use of mercury, many small-scale miners in T'boli used mercury in processing the gold they extracted. Recognizing the negative environmental and public health implications from this practice, the MSG decided to introduce a program that trained small-scale miners on the dangers of mercury and alternative methods of gold processing. The use of mercury was also an opportunity to train miners on other national and local environmental requirements, including the Clean Air Act, Clean Water Act, and Hazardous Waste Act. The trainings were very well attended by leaders in the SSM sector in the area and at least two miners shifted from using mercury to less harmful ways of processing gold.<sup>41</sup>
- **Community development plan.** The MSG process led to the creation of a community development plan for the use of extractive revenues in the indigenous communities. While in general, community development planning is not new to the Philippines, this plan was unique in that it strove to include perspectives identified by women, elders, and community leaders. Because the plan was reviewed by the MSG, Bantay Kita hopes that the MSG will be able to monitor the implementation of the plan as the royalty payments continue.
- **Formalization of SSM.** As part of an effort to better monitor SSM in the region, and its health and environmental impacts, the MSG plans to introduce a process of professional registration and issuance of identification cards for small-scale miners. This should allow miners to access insurance and emergency protection.

41 Interview with Beverly Besmanos (Bantay Kita), February, 2015.

#### IV. LESSONS ON CREATING AND MAINTAINING SUCCESSFUL LOCAL MULTI-STAKEHOLDER GROUPS

The heart of Bantay Kita’s project involved the formation of subnational MSGs. We can derive the following broad lessons from the process thus far:

##### **Bring the right stakeholders to the table and focus on the group formation.**

One of the primary challenges in formulating an MSG is to identify the stakeholder groups, ensuring relevant representation, and encouraging serious participation from all groups. Sometimes one stakeholder group can stall or create an unproductive work environment, corrupting all the efforts of the others in the MSG. Bantay Kita found that having strong support from the government leadership was key to ensuring cooperation among all stakeholders. “It was difficult to bring the small-scale miners to the talks,” said Augusto Blanco, the indigenous people representative on ComVal’s governing provincial council. “Fortunately the governor has more friends than enemies among small-scale miners, so he was able to exert political influence and get them to join the initiative.”

Bantay Kita’s projects were particularly challenging because the SSM sector includes such a variety of players that it can be difficult to identify representatives. Bantay Kita addressed this by building on local networks that already exist between SSM groups and using those groups to identify their own representatives.

Once it had the right stakeholders, Bantay Kita made it a priority to help the stakeholders work together. It responded to substantive and technical requests based on the needs articulated by the group. Beverly Besmanos from Bantay Kita explained: “Banta Kita only facilitated the process, while the identification of the initiatives came from the wisdom of each MSG member and even from the voices of elders, women, and youth from the communities.” This required patience and flexibility of the implementing team to listen to the needs of the community and respond appropriately.

*If there is transparency, there will be no “it’s mine” or “that’s yours,” it will only be: “these are ours.”*

– Datu Juaning Maguan,  
T’boli tribal chieftain

##### **Identify strong local leaders.**

Bantay Kita found it fundamental to its success to have a strong local leader who believed that improved transparency and accountability in extractive governance was important to the development of his or her jurisdiction. It also helped that the political leadership did not directly benefit from extraction projects. In both ComVal and T’boli, Bantay Kita’s project had quick and lasting support from the elected local leadership. Not only did this give the MSG legitimacy, but it made it easier to quickly establish a formal legal mandate for each group. Bantay Kita found it similarly valuable to have strong support from the leadership of the indigenous groups in both areas.

##### **Invest and mobilize highly skilled staff.**

Highly skilled project staff can bring enormous credibility to a new initiative. Even when local leaders are not expert on a topic, they can quickly access the level of expertise of those with whom they are working. If they sense that the implementation staff are not well versed in extractive or development issues, they will find the project less credible and not allocate the time necessary for it to be a success. It is thus important to ensure that all staff are knowledgeable about the best practices of extractive governance. Bantay Kita’s staff is among the most knowledgeable about extractive issues in the Philippines. They also benefited from learning of other subnational interventions through their technical collaboration with NREGI and Article 33.

### **Seek low-hanging fruit.**

Both MSGs were able to show quick wins from their work by selecting projects that were feasible and relevant. In ComVal, the MSG limited the initial use of their transparency mechanism to a few regions that were the least conflict-prone and showed the highest likelihood of success. In T'boli, the MSG gained credibility in the community by including work related to mercury disposal in the project scope.

### **Connect with the community.**

While these projects exist at the subnational level, it can often be difficult to avoid elite capture even within that context, and ensure that the benefits of a project are felt at all levels of society. Upon reflecting on the initial implementation of these projects, Bantay Kita found that the impacts of its projects – the power to access information and hold leaders accountable for how they manage natural resource revenues – were still not reaching much of the population. While community consultation is required by many national laws, Bantay Kita found that the local people were often not well informed before a project commenced, did not know where to report environmental damage they witnessed, and did not have realistic expectations about what potential benefits could result from extraction. While Bantay Kita had hoped its project would increase the information and capacity at the very local level, it realized that additional work is necessary to ensure that provincial conversations are shared in villages.

In response, Bantay Kita is redoubling its efforts at the village level to improve the understanding of the mining process and mining related documents. The hope is that an improved local understanding can act as a base for communities to engage more effectively with mining companies.

### **Navigate the politics of indigenous peoples.**

Bantay Kita's subnational projects were distinct from many other initiatives at the local level because they included outreach to indigenous people groups. Bantay Kita found that the indigenous people groups needed significant capacity building to better understand the extractive industries, especially the process of signing extraction agreements. Bantay Kita also noted that those groups receiving royalties often did not have strong financial management systems. By focusing on building the capacity of indigenous leaders, Bantay Kita was better able to engage the IP community in discussions related to extractives. As Beverly Besmanos, who oversaw Bantay Kita's project in T'boli explains: "Bantay Kita was able to train local IP leaders who are now better able to articulate their issues, promoting the free-flowing exchange of ideas, lessons and strategies."

In addition to these issues of capacity, Bantay Kita faced the challenge of navigating the special politics of indigenous people groups. One challenge for indigenous people groups is an internal conflict about whether to allow mining projects on their ancestral lands. Some in the indigenous community in the Philippines believe that allowing mining on their lands abdicates their responsibility to protect and honor the natural environment. Others believe that the extraction can be a valued source of revenue for the community. Even if there was agreement on how to proceed with extraction, there was rarely an established mechanism to communicate the amount and use of royalties to the entire community. Sometimes the lack of communication led to elite capture of the revenues, even in a small community, and distrust between the leaders and the community they represented.

This challenge was particularly prevalent in ComVal. While the MSG of ComVal did not actually participate in the settlement or mediation of the indigenous conflict, the formation of the MSG put an implied pressure for indigenous communities and leadership to settle their internal conflict.

### **Provide site-specific response.**

Because local governments have the power to create their own taxation and environmental monitoring scheme in each jurisdiction, it is necessary for subnational Filipino projects to be tailored to the specific regulations within the local government unit. For example, the Provincial Ordinance governing SSM fees in South Cotabato differs from those in other provinces. The transparency mechanism, as a result, has to be tailored to account for these specific revenue streams. Beyond this legal consideration, the political sustainability of the project also requires deep local acceptance, which is more likely when a community's unique characteristics and concerns are noted from the beginning. The strength of stakeholders can also vary from location to location. In ComVal, Bantay Kita found that the indigenous communities would benefit from additional concerted training on revenue collection and transparency. The small-scale miners in T'boli did not have a full understanding of the regulations and so Bantay Kita focused their initial capacity building on that stakeholder group. In each location, Bantay Kita not only varied the content, but also the target and depth of its capacity building based on the actual needs in the area. As much as possible, Bantay Kita based the decision on how to intervene, on the needs identified by the stakeholders.

Bantay Kita was able to respond flexibly because it had local partners who had worked in each region for years. The local partners were familiar with the different stakeholders and what approaches would be most likely to build trust between the actors. Their proximity to the program also allowed them the flexibility to respond to the needs on the ground and provide more or fewer trainings and workshops. As Bantay Kita looks to expand the creation of MSGs across the country, it may be difficult to find as capable and well-resourced subnational partners in each region.

### **Improve local record keeping.**

A particular challenge of working at the subnational level and with SSM is the state of record keeping. In ComVal, the MSG found many SSM companies could not report their payments because they did not keep sufficiently detailed records of what they had paid. The hope of the council is that over time the requirement to report will foster better record keeping by the companies.

On the government side, it is not uncommon for local governments to have incomplete information about which mining companies, both SSM and LSM, are operating in their jurisdiction. This is complicated by the joint local and national licensing processes. In order to understand the scope of mining in the project area, and thus who should be included in consultations, governments must often begin by mapping the number and location of mining operations.

The manner in which information is transferred from the national government can also determine the success of subnational transparency and accountability initiatives. In the initial national EITI report, some transfers to the local governments were still reported in aggregated forms, making it difficult for local stakeholders to understand how much of the revenue that the local government received was extractive-specific revenue.

*Through the creation of multi-stakeholder groups in Extractive Industry governance, a member will come to understand the agenda of another sector. It is only when we begin to look through one's eyes, try to fit ones' shoes and listen to ones' voice that we can truly say, we understand the issue. In managing resources, this is a must.*

— Beverly Besmanos  
Bantay Kita subnational  
coordinator for Mindanao

Bantay Kita is using its position on the national EITI board to highlight this issue and explain the implications it can have in limiting tracking at the local level. The national EITI MSG plans to have more disaggregated information about subnational transfers in its next report.

### **Ensure sustainability beyond local leadership terms.**

Part of the reason that both projects were deemed to be successful was because they benefited from strong local champions in positions of local government leadership. The question arises about whether and how these projects can be sustained through changes in government administration. Even though each area created executive orders for the formation of the MSGs there is a limitation to their legal strength.

In response, the MSG in ComVal is lobbying the local legislature to create an ordinance enshrining the transparency and accountability mechanism into law.

The process of creating templates, training stakeholders, gathering information, and reconciling data can be very time consuming and expensive. The provincial government of ComVal agreed to finance the creation of the initial report, but it is not clear whether it will be able to continue this funding in the future. Those working on the project also warn that it requires a long project time span: “Legislating the initiative and mechanisms is not by itself a guarantee of sustainability, said Melvin Lamanilao. “It is an important indicator, but developing more champions among key stakeholders is equally important. Three to five years engagement and support is needed to ensure strengthening of these initiatives at the subnational level.” Rosalita Arsyad, formerly from NRG, echoed the benefit of a prolonged engagement to support the building of lasting local institutions, noting that it often takes one to two years to introduce the project and get buy-in from all the relevant stakeholders.

## **NEXT STEPS FOR LOCAL TRANSPARENCY AND ACCOUNTABILITY**

Bantay Kita has always viewed the two projects as pilots with the potential to bring the experience of these initiatives to the national EITI process. As part of its commitment to the Open Government Partnership, the national government of Philippines has promised to obtain EITI compliance status and improve subnational transparency mechanisms in each province.<sup>42</sup> The national EITI secretariat is in the process of considering to what extent this is an opportunity to promote more subnational MSGs and what resources are necessary to expand these activities.

Bantay Kita continues to use its unique role as a link between the local and national transparency movements to maximize the potential for change. Working with the national EITI secretariat, Bantay Kita has created province-specific summaries of the EITI report with the hope of increasing local awareness of extractive revenues. Bantay Kita is also advocating for the inclusion of more disaggregated information about subnational transfers and payments in the next round of EITI reporting so that it can be even more useful for local governments and stakeholders.

42 Philippine Open Government Partnership, *Shared Commitments for Better Outcomes: The Philippine Open Government Partnership National Action Plan 2015-2017*, (2015) <http://www.opengovpartnership.org/sites/default/files/PHILIPPINE%20OPEN%20GOVERNMENT%20PARTNERSHIP%20NATIONAL%20ACTION%20PLAN%202015-2017.pdf>.

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At the local government level, Bantay Kita has begun reaching out to additional local governments about implementing similar MSG programs and has received a positive response. The peer-to-peer learning facilitated by Bantay Kita and Article 33, has spurred other local leader collaborations. Article 33 and Gadjah Mada University hosted a “Local Leaders Forum,” bringing together leaders from resource rich subnational areas throughout Southeast Asia. Other civil society groups, like PanNature in Vietnam<sup>43</sup>, hope to draw from these lessons and create their own subnational transparency mechanisms.

As the MSGs proliferate through subnational areas in the Philippines and around the world, further research precisely monitoring interventions can help implementers understand how to best ensure sustained momentum over time, how to start projects where local leaders may not be initially receptive, and how to most effectively use information to hold companies and leaders to account. The lessons from Bantay Kita’s work in the Philippines is an important early step towards developing decision-making and monitoring tools to best equip subnational communities to respond to their resource wealth.

*Marietta Cauchi is a trained lawyer and currently works as a freelance journalist and communications consultant.*

*Rebecca Iwerks is an attorney with ten years’ experience supporting communities and fostering better governance and respect for rights.*

43 PanNature, <http://www.nature.org.vn/en>.