



Open Contracting and Inclusion

Bantay Kita

Philippines

This case-study is part of a larger study that explores the possible benefits of open contracting for marginalized communities. Research was done by Francois van Schalkwyk & Miko Cañares. The complete study and results are found [here](#).

Bantay Kita,¹ with the support of Hivos, implements the Open Mining Governance Project in the Philippines. Its aim is to facilitate knowledge sharing and to provide lobbying and advocacy, both at the national and local level, to influence the duty bearers and support the identified community initiatives to improve mining governance. Bantay Kita intends to contribute to three outcomes: (1) increase the appreciation of mining-affected communities on how to use disclosed mining data; (2) establish an enabling environment for public access to mining data; and (3) enhance the capacity of civil society organizations to use disclosed mining data.

Context

The Philippines is considered to be one of the most mineral-rich countries in the world (Chavez 2012; Philippine Statistics Authority 2016). Based on Philippine Statistics Authority estimates, the country's mineral resources are estimated to be 57 billion metric tons (Philippine Statistics Authority 2016). At the same time, the country is also considered a biodiversity hotspot (UN Environment Program 2014) and its ecosystems face a high risk of extinction due to man-made destruction resulting in habitat degradation (Foundation for the Philippine Environment n.d.).

Based on the Philippine Constitution, the ownership of minerals is vested in the Philippine state. The Philippine Mining Act of 1995 is based on the premise "that all mineral lands are owned by the state but are open to contractors on the basis of revenue sharing" (Clemente 2019: 1). Revenue sharing is governed by the provisions of the Local Government Code of 1991 -- where local governments are entitled to a 40% share from the gross collections of the preceding year. In the case of mining activities occurring on the ancestral lands of indigenous people, a minimum of 1% of the market value of gross output is to be paid by the mining companies as royalties to indigenous peoples (IP).

Indigenous people number between 14 and 17 million, roughly 10% of the Philippine population and belong to 110 ethno-linguistic groups.² The National Commission on Indigenous Peoples, the agency mandated to protect and promote the well-being of indigenous people in the country, reports that most of the indigenous communities are located in northern Luzon, the Visayas area and southern Mindanao.³ Indigenous communities happen to be located in the

¹ Bantay Kita, which means "watch your revenue", is the Philippine equivalent of Publish What You Pay.

² https://www.ph.undp.org/content/philippines/en/home/library/democratic_governance/FastFacts-IPs.html

³ <http://www.ncip.gov.ph/asset/pdf/annual/infkot.pdf>

same areas where mineral deposits are found or natural resources abound, resulting to tenurial insecurities ([De Vera 2007](#)) and even gross violation of human rights, making the country “one of the most dangerous places for land and environmental defenders” ([Aytin 2015: 1](#)).

Legally, indigenous communities are given protection under law and their welfare is looked after, especially in the context of mining activities. For example, IP communities’ rights over their land is legislated in the Indigenous People’s Rights Act (IPRA). IPRA also protects IP rights to govern themselves using customary laws, penalizes discrimination, protection of indigenous culture and traditions, and exemption from taxation in the case of ancestral land and domains, among others.

With regard to mining activities on ancestral lands, the Philippine Mining Act provides that no mining permit will be granted unless “free and informed prior consent” (FPIC) has been granted by the affected indigenous community. Ideally, the proposal from the mining company needs to be in line with the indigenous community’s Ancestral Domain Sustainable Development Program Plan (ADS DPP). Furthermore, under the Social Development Management Program provision in the Philippine Mining Act, companies are required to:⁴

- a. assist in the development of the host and neighboring communities in accordance with its Social Development and Management Program approved by the Mines and Geosciences Bureau to promote the general welfare of the inhabitants living within the area;
- b. develop mining technology and geosciences as well as manpower training and development;
- c. allot a minimum of one percent (1%) of the direct mining and milling costs annually to implement the activities above (90% to implement (a) and 10% to implement (b)).

The royalties to be paid to indigenous communities mentioned above (1% of the market value of gross output) may be reduced after the costs of implementing the activities mentioned in (a) and (b) above are deducted.⁵

⁴ http://www.mgb.gov.ph/images/stories/DAO_2000-99.pdf

⁵ http://www.mgb.gov.ph/images/stories/MIN_DAO_1996-40.pdf

The intention of these protective provisions are laudable, but their implementation has been found wanting. The marginalization of indigenous people in the Philippines in political discourse, economic development and social progress has been extensively documented especially in the context of mining ([Holden et al. 2011](#)), illegal logging and deforestation ([Eder 1990](#)), access to water ([Capistrano 2009](#)) and by aggressive economic policies of the Philippine government (Dalabajan 2014). This is further aggravated by the fact that legal provisions, contracts and official documents are written in English, while indigenous communities, on average, have low literacy levels and numeracy skills, and low levels of educational attainment.

The 'open contracting' initiative

Bantay Kita (BK) is a national coalition of civil society organizations that aims to empower communities so that they can meaningfully participate in natural resource governance. The coalition, headquartered in Manila, implements activities to engage with mining companies, national government agencies and local government units to improve transparency and accountability in the mining sector, build the capacities of individual member organizations and contribute to strengthening their various advocacies, and advocate for enabling legislation that improves the transparency and accountability in the sector. Bantay Kita is currently the civil society representative of the Philippine Extractive Industry Transparency Initiative (PH-EITI).

With support from Hivos, Bantay Kita implemented Project OMG (Open Mining Governance) in 2015. The project aims to increase access, understanding and use of mining contracts data. BK identified this opportunity because of the large amount of data on the mining sector that had been published by the Philippine government after the country institutionalized the PH-EITI and became one of the pioneering members of the Open Government Partnership (OGP). However, BK has also seen that capacity among civil society organizations and communities to access, understand and use the published data remains a challenge.

In the early stages of the project, BK partnered with grassroots organizations, legal action groups and academic institutions based in the provinces of Cebu and Palawan to conduct training and to analyses relevant mining contracts data. The aim was for these stakeholders at the local level to use the data for the management of their natural resources. When data awareness and, in some cases, data literacy was achieved, the stakeholders began to demand specific types of data. Civil society organizations in Cebu wanted access to data on the effects of mining activities on the

environment while the communities in Palawan wanted access to the underlying data on the computation of royalty payments owed to indigenous communities.

Access to data regarding the effects of mining on the environment is relatively difficult to obtain while data on royalties is easier to access. With this in mind, BK proceeded to work in Palawan to avoid a situation where data unavailability and quality would bog down the implementation process. In 2018, BK continued its work in Palawan and began to focus on the community of Bataraza where Rio Tuba Mining operates on indigenous people's ancestral lands.

The project aims to assist the indigenous community of Bataraza in Palawan to understand publicly accessible mining data so that it may be used for evidence-based resource management. The project expects two outcomes: (1) improved understanding of disclosed mining data by the indigenous community through co-creation of knowledge products, capacity building and orientation sessions; and (2) an established enabling environment for public access to mining data by advocating for the institutionalization of Philippine Extractive Industries Transparency Initiative (PH-EITI) by law.

BK then organized data literacy training with its local partner, the Indigenous Peoples Development Office (IPDO), with the support of the Palawan State University. BK also facilitated the preparation of knowledge products that explain how royalty payments are computed, including the legal basis for the computation, and. BK used these knowledge products to explain to IPDO the entitlements that they can rightfully expect to receive. Realizing that what IPDO received from Rio Tuba Nickel Mining Corporation (RTNMC) was lower than what the independent computation suggested, a meeting was facilitated between IPDO and RTNMC to discuss the discrepancies in the royalty payments.

It became clear from these engagements that the EITI data disclosed on the PH-EITI website uses accrual accounting while the IPDO records are based on quarterly payments. The significant variance in the royalty payments was found to be the 20% withholding tax deducted by the mining company from the royalties due. It was confirmed by the Bureau of Internal Revenue in a roundtable discussion that indeed royalty payments are not tax exempt. In the case of indigenous peoples' royalty payments, the mining companies are responsible for filing such taxes and are mandated by law to do so.

After the findings had been agreed upon by both the IPDO and the mining company, feedback was sent to the PH-EITI National Coordinator. One of the lessons for BK was to refocus its advocacy towards the exemption of royalty payments from withholding taxes so that more benefits may accrue to indigenous communities. This is an ambitious undertaking as it requires revisions to the tax code and a loss of revenue to the state.

Outcomes

IPDO's ability to access and understand mining data has been instrumental in its ability to engage and negotiate with mining companies. As BK reported, the different value-creation activities that enabled IPDO to access and understand mining data, led them to raise questions and engage successfully with mining companies regarding how much they are owed in the form of royalties due to them for the use of their ancestral land.

With the assistance of BK, the indigenous community was able to engage in dialogue with the National Commission on Indigenous Peoples and to push for a tax exemption on indigenous communities' royalties. But, more importantly, the different activities facilitated by BK empowered the IPDO as evidenced by their ability to ask sharp questions, clarify their understanding of the royalty payments, and dig deeper into how mining companies fulfill their responsibilities under the law. This realization cascaded to other local NGOs working with indigenous communities who learned about the royalty payments. They reported that they found it informative and useful for their own context-specific advocacy efforts (e.g. the conservation of the Mt Bulanjao ecosystem by using data to conduct their own cost-benefit analysis of environmental services).

While the process did not actually result in an increase in royalty income for the indigenous community, it did establish a degree of trust between the various stakeholders responsible for ensuring that indigenous communities are benefiting from mining activities within their ancestral domain. Further, the process allowed dialogue between the IPDO and the mining company, to clarify royalty computations as well as get assurance that royalty payments are correctly computed. At the same time, the process also provided a venue for a collaborative discussion among IPDO, the mining companies, and oversight national government agencies, about indigenous people's rights and future tax policy agenda related to mining royalty payments.

Case analysis

There are significant enabling mechanisms that made possible the outcomes described above. First, the Philippines' membership of the Extractive Industries Transparency Initiative (EITI) provided the overarching framework for the disclosure of data and information related to the mining sector. This was supported by relevant laws that safeguard indigenous peoples' rights to a share of mining revenues. Second, Bantay Kita's role as the civil society representative of the EITI leadership places it in a relatively influential position, in terms of ensuring that transparency of mining revenues remains high on EITI's agenda. Third, given the stagnant nature of open data initiatives in the country, the push for the EITI data portal as the primary data source for those interested in dissecting mining-related information without having to resort to filing a Freedom of Information (FOI) request, became more critical. Finally, the need to show use cases for published data became urgent in order to convince stakeholders from within government that there is value in data publication. These different push factors hastened the disruptive nature of the data publication.

The "disruptiveness" of the data was further boosted by the fact that the intent to publish on the part of government, as required by EITI commitments, was matched by demand, as indicated by the desire of indigenous communities affected by mining activities on their land to understand the nature of royalty payments. For the many datasets that were published in the EITI portal, royalty payments was the single most interesting dataset to this historically marginalized community. This reinforces previous studies that indicate that without real demand for data, its use will not be meaningful, and the data will be underutilized. Real, problem-driven demand for data makes data use sustainable.

What is critical though in this data value chain is the role of Bantay Kita in facilitating processes of awareness, access, capacity building and stakeholder consultations? Bantay Kita played an important role in both value creation and value activation as a switcher between the community and capital networks. It made use of its position in its network, and also established connections to new networks, in order to maximize different resources and assets (relationships included) to promote data access, analysis and use. It engaged trusted local intermediaries such as the state university to assist in building the capacity of IPDO to understand the data and to translate

complex datasets into accessible information via the infographics. It facilitated meetings with the mining company and other agencies to discuss the implications of the data that was analyzed.

Instead of partnering with national (and Manila-based) organizations to undertake capacity building and data-related tasks for IPDO, Bantay Kita's inclusion of subnational intermediaries such as the Palawan-based university mandated to conduct community extension activities illustrates its approach to ensuring local ownership. Bantay Kita also facilitated processes rather than taking the lead in meetings it set up with mining companies and other stakeholders. This facilitation effort did not only make the processes more inclusive and empowering, but also more sustainable.

It is important to point out that while processes may appear to be inclusive, and at a certain level they may well be more inclusive, this does not necessarily mean that exclusionary processes did not take place. The Bantay Kita case was successful in including the indigenous people in a discussion of mining royalty revenues and in making their voices heard. However, this does not necessarily mean that the views of every member of the IDPO were heard. Power structures embedded in contextual, personal, professional, institutional and social structures impact on inclusionary and exclusionary processes (Chambers 2017), and some suggest are inevitable in social networks (Castells 2009).