

**Gap analysis and recommendations on laws on  
child labour and working conditions in  
artisanal small-scale gold mining**

by

**Nina Patricia D. Sison-Arroyo**

International Labour Organization  
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## Abbreviations

AFP	Armed Forces of the Philippines
AFRIM	Alternative Forum for Research in Mindanao
ASGM	Artisanal and Small-Scale Gold Mining
ASM	Artisanal and Small-Scale Mining
ASHP	Annual Safety and Health Programme
BCPC	Barangay Council for the Protection of Children
BIR	Bureau of Internal Revenue
BLR	Bureau of Labor Relations
BSP	Bangko Sentral ng Pilipinas
BWC	Bureau of Working Conditions
BWSC	Bureau of Workers with Special Concerns
CEMCCR	Certificate of Environmental Management and Community Relations Record
CCO	Chemical Control Order
CDA	Cooperative Development Authority
CDMP	Community Development and Management Programme
CEMCCR	Certificate of Environmental Management and Community Relations Record
CRC	Convention on the Rights of the Child
DA	Department of Agriculture
DENR	Department of Environment and Natural Resources
DILG	Department of the Interior and Local Government
DOF	Department of Finance
DOH	Department of Health
DOJ	Department of Justice
DOLE	Department of Labor and Employment
DSWD	Department of Social Welfare and Development
DTI	Department of Trade and Industry
ECC	Environmental Compliance Certificate
ECOP	Employers Confederation of the Philippines
EILER	Ecumenical Institute for Labour and Educational Research
EMB	Environmental Management Bureau
EMS	Environmental Management System
GOCC	Government-Owned and Controlled Corporations
I-ACAT	Inter-Agency Council Against Trafficking
I-ACEH	Inter-Agency Committee on Environmental Health
ICC	Indigenous Cultural Communities
ILO	International Labour Organization
LCPC	Local Council for the Protection of Children
LGUs	Local Government Units
LLCO	Labour Law Compliance Officer
LTO	Land Transportation Office
MGB	Mines and Geosciences Bureau
MICC	Mining Industry Coordinating Council
MPL	Mineral Processing License
MSESDD	Mine Safety, Environment and Social Development Division
NAMRIA	National Mapping and Resources Information Authority
NCIP	National Commission on Indigenous Peoples
NCLC	National Child Labour Committee

NGO	Non-Government Organization
OSH	Occupational Safety and Health
P/CRMB	Provincial/City Mining Regulatory Board
PEIMP	Potential Environmental Impact Management Plan
PH-EITI	Philippines Extractive Industries Transparency Initiative
PhilHealth	Philippine Health Insurance Corporation
PNP	Philippine National Police
PPACL	Philippine Programme Against Child Labour
PSSMA	People's Small-Scale Mining Protection Areas
PSSMPF	People's Small-Scale Mining Protection Fund
RLCS	Revised Labour Compliance System
SEC	Securities and Exchange Commission
SHIELD	Strategic Helpdesks for Information, Education, Livelihood and other Developmental Interventions
SOCTECH	Social Technology
SSMC	Small-Scale Mining Contract
SSMP	Small-Scale Mining Permits
SSS	Social Security System
VAT	Value-Added Tax
UNEP	United Nations Environment Programme
UNTS	United Nations Treaty Series

## List of laws and their abbreviations

C. 138	ILO Convention No. 138 or the Minimum Age Convention
C. 182	ILO Convention No. 182 or the Worst Forms of Child Labour Convention
E.O. 79	Executive Order No. 79, s. 2012, 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
E.O. 226	Executive Order No. 226, s. 1987 or the Omnibus Investments Code of 1987
DAO 97-30	DENR Administrative Order No. 97-30 or the Small-Scale Mine Safety Rules and Regulations
DAO 2000-98	DENR Administrative Order No. 2000-98, or the Mine Safety and Health Standards
DAO 21 s. 2010-21	DENR Administrative Order No. 21, s. 2010: Providing for a Consolidated Department of Environment and Natural Resources Administrative Order for the Implementing Rules and Regulations of R.A. No. 7942, Otherwise Known as the “Philippine Mining Act of 1995”
D.O. 30, s. 1997	DENR Administrative Order No. 97-30 September 11, 1997: Small-Scale Mine Safety Rules and Regulations
D.O. 38, s. 1997	DENR Administrative Order No. 38 Series of 1997: Chemical Control Order for Mercury and Mercury Compounds
D.O. 131-B, s. 2016	DOLE Department Order series of 2016 Revised Rules on Labour Laws Compliance System
D.O. 149-2016	DOLE Department Order 149 series of 2016, Guidelines in Assessing and Determining Hazardous Work in the Employment of Persons Below 18 Years of Age
P.D. 1150	Presidential Decree No. 1150, s. 1977, Amending Presidential Decree No. 581 and Regulating Panning or Sluicing for Gold Inside Mining Claims or in Public or Private Lands
P.D. 1899	Presidential Decree No. 1899, s. 1984, Establishing Small-Scale Mining as a New Dimension in Mineral Development
R.A. 6969	Republic Act No. 6969 or the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990
R.A. 7076	Republic Act No. 7076 or An Act Creating a People’s Small-Scale Mining Programme and for Other Purposes
R.A. 7653	Republic Act No. 7653 or the New Central Bank Act

R.A. 7942	Republic Act No. 7942 or the Philippine Mining Act of 1995
R.A. 8552	Republic Act No. 8552 or the Domestic Adoption Act of 1998
R.A. 9231	Republic Act No. 9231 or An Act Providing for the Elimination of the Worst Forms of Child Labour and Affording Stronger Protection for the Working Child, Amending for this Purpose Republic Act No. 7610, as Amended, Otherwise Known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act"
R.A. 9275	Republic Act No. 275 or the Philippine Clean Water Act of 2004
R.A. 9344	Republic Act No. 9344 or the Juvenile Justice and Welfare Act of 2006
R.A. 10364	Republic Act No. 10364 or the Expanded Anti-Trafficking in Persons Act of 2012
R.A. 10533	Republic Act No. 10533 or the Enhanced Basic Education Act of 2013
R.A. 10657	Republic Act No. 10657 or the Chemistry Profession Act



# Gap analysis and recommendations on laws on child labour and working conditions in artisanal small-scale gold mining

by

Nina Patricia D. Sison-Arroyo

## EXECUTIVE SUMMARY

The Artisanal and Small-Scale Gold Mining (ASGM) sector is considered “a vital contributor to the Philippine economy”.<sup>1</sup> Studies estimate that 200,000 to 300,000 miners and their families in 20 to 30 provinces in the Philippines rely on ASGM as a primary source of subsistence.<sup>2</sup> Of the estimate, about 18,000 are women and children.<sup>3</sup> By the International Labour Organization (ILO) approximation, the number may be as many as 500,000 across the country.<sup>4</sup> The sector is said to have been producing an average of 30 tons, or about 80 per cent of the country’s annual gold supply.<sup>5</sup>

But amidst the glitter of gold, and despite legislation on mining, environmental protection and elimination of the worst forms of child labour, the ASGM sector remains wrought with problems - children and adults work in the most dangerous and hazardous of conditions, families and mining communities remain impoverished, and harmful and toxic mining practices continue to destroy the environment.

ASGM operations are predominantly unregulated and conducted without government license or permit.<sup>6</sup> This predicament is often identified as one of the primary factors that lead to the slew of issues attendant to ASGM. Among the gaps that need to be addressed are the following:

- a) On child labour:
  - Republic Act (R.A.) No. 9231 and the Revised Labour Compliance System (RLCS) are not responsive to the needs and unique circumstances of the informal sector.
  - The National Child Labour Committee (NCLC) has limited powers owing to its precarious existence.

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<sup>1</sup>United Nations Environment Programme (UNEP), National Strategic Plan of Action for the Phase-out of Mercury in Artisanal and Small-Scale Gold-Mining in the Philippines 2011-2021 (A plan developed by the Environmental Management Bureau [EMB] of the Department of Environment and Natural Resources [DENR] with the assistance of the UNEP [hereinafter National Strategic Action Plan 2011-2021], available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/12780/2011-06-03NSP-ASGM.FINAL.2011.pdf?sequence=1&isAllowed=y>, (last accessed January 31, 2017).

<sup>2</sup>National Strategic Action Plan 2011-2021 *supra* note 1; see also, Maria Isabel D. Artajo, *Enhancing Decent Work Outcomes in Small-Scale Gold Mining*, ILS Discussion Paper Series 4 (2012); See also Extractive Industries Transparency Initiative, Volume II of the Philippines Extractive Industries Transparency Initiative (PH-EITI) Country Report 2015 128, available at [https://eiti.org/sites/default/files/documents/volume-ii\\_of\\_the\\_ph-eiti\\_country-report\\_2015\\_1.pdf](https://eiti.org/sites/default/files/documents/volume-ii_of_the_ph-eiti_country-report_2015_1.pdf) (last accessed May 12, 2017).

<sup>3</sup>Ban Toxics!, *The Price of Gold: Mercury Use and Current Issues Surrounding Artisanal and Small-scale Gold Mining in the Philippines* 18, available at [http://www.takagifund.org/admin/img/sup/rpt\\_file20152](http://www.takagifund.org/admin/img/sup/rpt_file20152) [hereinafter, *The Price of Gold*].

<sup>4</sup>International Labour Organization, *Child Labour in Gold Mining: The Problem*, available at [www.ilo.org/ipeinfo/product/download.do?type=document&id=4146](http://www.ilo.org/ipeinfo/product/download.do?type=document&id=4146) (last accessed Dec. 9, 2016) [hereinafter *Child Labour in Gold Mining Fact Sheet*].

<sup>5</sup>National Strategic Action Plan 2011-2021 *supra* note 1.

<sup>6</sup>International Labour Organization, *The burden of gold, Child labour in small-scale mines and quarries*, World of Work No. 54, Aug. 2015, at 19 [hereinafter *The Burden of Gold*].

- The Local Council for the Protection of Children (LCPC)/Barangay Council for the Protection of Children (BCPC) have not been constituted, are inactive, or not fully functional.
  - The Provincial/City Mining Regulatory Board (P/CMRB) has the direct authority over the monitoring and implementation of mining and related laws, but it lacks the expertise and capacity to address child labour in mining.
  - The educational system has limited mechanisms to make it more accessible and attractive.
  - The gap between the minimum age of employability and the age of completion of compulsory education encourages children to work instead of complete their education.
  - Administrative rules are inconsistent with regard to the prohibition on employment of children in all phases of mining operations.
- b) On working conditions, occupational health and safety (OSH) and social issues:
- The RLCS does not address the informal sector.
  - Alternative livelihood programmes cannot compete with mining.
  - Lack of clarity on which agency has jurisdiction over OSH in the informal mining sector.
  - The Pantawid Pamilyang Pilipino Programme (4Ps) limited resources cannot cover the hundreds of thousands of families in ASGM.
  - Lack of transparency and information regarding the People's Small-Scale Mining Protection Fund (PSSMPF).
- c) On the promotion of sustainable, viable and legal ASGM operations:
- The declaration of *Minabang Bayan* is a long and complicated process.
  - Multiple layers of registration and licensing requirements.
  - Overwhelming disincentives and limited incentives for ASGM to formalize.
  - Lack of support and assistance for ASGM to transition to formalization.
- d) On the use of mercury in ASGM:
- The Philippines has not ratified the Minamata Convention.
  - The current regulatory measures on the use of mercury and mercury compounds are piecemeal.
  - Mercury is very accessible and affordable.
  - Lack of awareness among mining communities on the toxic and harmful effects of mercury on human health and the environment.
- e) On monitoring systems and roles of agencies:
- Apparent overlaps in the roles and functions of agencies may cause confusion regarding which agency should do what.
  - RLCS does not address the informal sector.
  - Lack of clarity on which agency has jurisdiction over occupational health and safety in the informal mining sector.
  - Lack of coordination between the NCLC and Inter-Agency Council Against Trafficking (I-ACAT).
  - Agencies with vital roles in addressing ASGM issues are not in the composition of the Mining Industry Coordinating Council (MICC).

The following are the recommendations to address the gaps that have been identified:

- a) On child labour
- Amend R.A. 9231 and the RLCS to effectively respond to the unique circumstances of the informal sector.
  - Amend R.A. 9231 to strengthen the NCLC and provide appropriations for its programmes.
  - Activate and/or strengthen the LCPC/BCPCs.
  - Include a representative of the children's sector in the P/CMRB.

- Strengthen measures to make education more accessible and to encourage children to complete basic education.
  - Amend Section 163 of the implementing rules and regulations (IRR) of R.A. 7949 to harmonize it with the Department of Labor and Employment (DOLE) Department Order (DO) No. 149, s. 2016.
- b) On working conditions, OSH and social issues:
- Amend the RLCS to effectively respond to the unique circumstances of the informal sector.
  - Clarify which agency has jurisdiction over occupational safety and health in the informal sectors.
  - Make the PSSMPF more transparent and accessible.
  - Address economic and social issues through 4Ps, viable alternative livelihood and financial management programmes.
- c) On the promotion of sustainable, viable and legal ASGM operations:
- Expand the process for state-initiated declaration of *Minabang Bayan*.
  - Waive the consent requirement in certain cases.
  - Specify time limits for approving authorities to act on decision points in the *Minabang Bayan* declaration process.
  - Streamline the registration and licensing process.
  - Review the Banko Sentral ng Pilipinas (BSP) gold-buying programme and make it more accessible to small-scale miners.
  - Reduce taxes and provide incentives.
  - Strengthen legal foundations and support systems for transitioning to formalization.
- d) On the use of mercury in ASGM:
- Ratify the Minamata Convention.
  - Enact a comprehensive national law consistent with the Minamata Convention.
  - Intensify campaigns to increase awareness on the toxic and harmful effects of mercury and capacity-building programmes on alternative methods.
- e) On monitoring systems and roles of agencies:
- Clarify the roles of agencies with respect to OSH issues in the informal mining sector.
  - Reinforce Inter-Agency Committee on Environmental Health (I-ACEH) and work towards the full implementation of the policy, plans and partnerships outlined in the Department of Health (DOH) Administrative Order (AO) No. 2013-0018.
  - Amend R.A. 9231 and the RLCS to effectively respond to the unique circumstances of the informal sector.
  - Strengthen coordination between NCLC and I-ACAT.
  - Reinforce the MICC by adding DOLE and DOH in its membership.

## 1. INTRODUCTION

### 1.1 Overview of the ASGM sector in the Philippines

The Philippines is one of the most highly mineralized countries in the world. Out of the country's total land area of 30 million hectares, 9 million or 30 per cent have been identified as having high mineral potential, and less than 3 per cent of that is covered by mining tenements.<sup>7</sup> Its untapped mineral wealth is worth at least US\$840 billion.<sup>8</sup> It is among the top ten Asian countries and the 21<sup>st</sup> worldwide with the highest published gold reserves.<sup>9</sup> In 2015, it ranked 5<sup>th</sup> in Asia's gold mine production at 46.8 tons – its highest registered production over the course of ten years.<sup>10</sup> In the same year, the local mining industry statistics showed that the estimated value of gold produced was Php35.33 billion, which is about 32 per cent of the total estimated national production value for metallic minerals.<sup>11</sup> Despite these figures, historically, mining is not among the main drivers of economic growth in the country, but it is viewed as having a great potential to be a key growth sector in the Philippines.<sup>12</sup>

From 2012 to 2015, the contribution of the mining industry to total employment was recorded at 6-7 per cent.<sup>13</sup> Among mining and quarrying industry sub-classes, the 2013 Annual Survey of Philippine Business and Industry showed that gold ore mining placed second in terms of the number of establishments in the formal sector with 34 establishments, next to sand and gravel quarrying.<sup>14</sup> In terms of number of workers, gold ore mining registered an average of 198 per establishment; copper ore mining generated the highest average with about four times more than the gold ore mining sector's average.<sup>15</sup>

The ASGM sector is considered “a vital contributor to the Philippine economy”.<sup>16</sup> While statistics on ASGM are hard to come by because it is predominantly in the informal sector, unregulated and conducted without government license or permit,<sup>17</sup> studies estimate that 200,000 to 300,000 miners and their families in 20 to 30 provinces in the Philippines rely on ASGM as a primary source of subsistence.<sup>18</sup>

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<sup>7</sup>Mines and Geosciences Bureau (MGB), Facts and Figures, *available at* <http://www.mgb.gov.ph/images/homepage-images/mining-facts-and-figures-----updated-January-2017.pdf> (last accessed Jan 30, 2017).

<sup>8</sup>Senate of the Republic of the Philippines, Realizing the Philippines' Mining Potential (A Policy Brief prepared by the Senate Economic Planning Office) (December 2013), *available at* [www.senate.gov.ph/publications/PB%202013-12%20-%20Mining\\_Policy%20Brief\\_final\\_revised\\_010614.pdf](http://www.senate.gov.ph/publications/PB%202013-12%20-%20Mining_Policy%20Brief_final_revised_010614.pdf) (last accessed Jan. 30, 2017); *See also* La Bugal-Blaan Tribal Association, Inc., et. al., vs. Victor O. Ramos, et. al., 421 SCRA 148 (2004).

<sup>9</sup>World Gold Council, World Official Gold Holdings, International Financial Statistics, January 2017, *available at* <http://www.gold.org/research/latest-world-official-gold-reserves> (last accessed Jan 30, 2017).

<sup>10</sup>Thomson-Reuters, GFMS Gold Survey 2016, *available at* <http://diamondwealthmastery.com/wp-content/uploads/2016/04/Thomson-Reuters-GFMS-2016-Gold-Survey.pdf> (last accessed May 9, 2017.)

<sup>11</sup>Mines and Geosciences Bureau, *supra* note 7.

<sup>12</sup>Senate of the Republic of the Philippines, *Realizing the Philippines' Mining Potential*, Policy Brief, Senate Economic Planning Office (December 2013), *available at* [www.senate.gov.ph/publications/PB%202013-12%20-%20Mining\\_Policy%20Brief\\_final\\_revised\\_010614.pdf](http://www.senate.gov.ph/publications/PB%202013-12%20-%20Mining_Policy%20Brief_final_revised_010614.pdf) (last accessed Jan 30, 2017).

<sup>13</sup>MGB, Mining Industry Statistics, *available at* [http://www.mgb.gov.ph/attachments/article/162/MIS\(2015\)%20\(1\)%20\(1\).pdf](http://www.mgb.gov.ph/attachments/article/162/MIS(2015)%20(1)%20(1).pdf), (last accessed Jan 30, 2017).

<sup>14</sup>Philippine Statistics Authority (PSA), 2013 Annual Survey of Philippine Business and Industry - Mining and Quarrying for All Establishments: Final Results, *available at* <https://psa.gov.ph/content/2013-annual-survey-philippine-business-and-industry-mining-and-quarrying-all-establishments> (last accessed May 11, 2017).

<sup>15</sup>*Id.*

<sup>16</sup>National Strategic Action Plan *supra* note 1.

<sup>17</sup>The Burden of Gold, *supra* note 2 at 19.

<sup>18</sup>National Strategic Action Plan 2011-2021 *supra* note 1; *See also* Maria Isabel D. Artajo, *Enhancing Decent Work Outcomes in Small-Scale Gold Mining*, ILS Discussion Paper Series 2012, 4; *see also* Extractive Industries Transparency Initiative, Volume II of the Philippines Extractive Industries Transparency Initiative (PH-EITI) Country Report 2015 128, *available at* [https://eiti.org/sites/default/files/documents/volume-ii\\_of\\_the\\_ph-eiti\\_country-report\\_2015\\_1.pdf](https://eiti.org/sites/default/files/documents/volume-ii_of_the_ph-eiti_country-report_2015_1.pdf) (last accessed May 12, 2017).

Of the estimate, about 18,000 are women and children.<sup>19</sup> By ILO approximation, the number may be as many as 500,000 across the country.<sup>20</sup> The sector is said to have been producing an average of 30 tons, or about 80 per cent of the country's annual gold supply.<sup>21</sup> In terms of gross production value, the Mines and Geosciences Bureau (MGB) reported an average of Php1.3 billion from 2012 to 2015.<sup>22</sup> This figure is based on gold purchases by the BSP, which does not reflect the undocumented gold transactions in the black market.

ASGM practices are commonly classified into traditional and gold rush mining. Indigenous communities using methods that are influenced by their culture and beliefs practice traditional mining. Typically, in a traditional setting, the operation mainly involves family, led by the head of the family, and other members of the community.<sup>23</sup> Mining methods have been handed down for generations, which include a ritual before, during, and after mining; a tunneling system that is planned-out; and mechanical operations, such as crushing ores manually, using ball mills when the volume of ore is large, and concentrating gold using the gravity method.<sup>24</sup> Rooted in the indigenous peoples' view of ancestral lands being communal property, the mineral resources found in them are considered communal, and production sharing is also communal.<sup>25</sup> For instance, Benguet miners equally share the profit from a single mining operation. When high grade ore is found, tunnel owners and miners share the mine to all the members of the community, giving priority to elders, women and children.<sup>26</sup>

Small-scale gold rush mining is practiced by individuals who do not have a common ethnicity or culture.<sup>27</sup> They are usually spurred to migrate, in search of good fortune, to a location where gold is discovered. Because they are not bound by shared tradition, religious beliefs and rituals, their methods are characteristically less systematic, they are less skilled compared to traditional miners, and they do not practice communal sharing of ore production.<sup>28</sup>

While gold rush mining is known for the use of mercury and cyanide,<sup>29</sup> mercury is commonly used in other forms of ASGM due to the lack of awareness of alternative methods to extract gold. There is a popular belief among ASGM workers that gold cannot be recovered without using mercury.<sup>30</sup>

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<sup>19</sup>The Price of Gold *supra* note 3.

<sup>20</sup>International Labour Organization *supra* note 5 at 6.

<sup>21</sup>National Strategic Action Plan *supra* note 1.

<sup>22</sup>Mines and Geosciences Bureau, Mining Industry Statistics (15 December 2016), available at [http://www.mgb.gov.ph/attachments/article/162/MIS\(2015\)%20\(1\)%20\(1\).pdf](http://www.mgb.gov.ph/attachments/article/162/MIS(2015)%20(1)%20(1).pdf), (last accessed on Jan 30, 2017).

<sup>23</sup>Erika M. Rey and Ricardo M. Saturay Jr., Small-Scale Mining in the Philippines: Towards Genuine National Development (A paper researched for Advocates of Science and Technology [AGHAM]) 9 (2005), available at <https://www.slideshare.net/AGHAM/small-scale-mining-in-the-philippines-towards-genuine-national-development>, (last accessed May 12, 2017).

<sup>24</sup>*Id.* at 9-11.

<sup>25</sup>*Id.* at 9-11.

<sup>26</sup>The Alternative Forum for Research in Mindanao (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, BANTAY KITA OCCASIONAL PAPER SERIES 14 (2<sup>nd</sup> is. 2012).

<sup>27</sup>Rey and Saturay Jr., *supra* note 23 at 12-13.

<sup>28</sup>*Id.* at 12-13.

<sup>29</sup>*Id.* at 9.

<sup>30</sup>Pante-Aviado, Sarah Marie, Mining Laws Compliance and Practices on Small-Scale Gold Mining in Camarines Norte (2014), at 151 (unpublished Masters in Public Administration paper, Camarines Norte State College).

## 1.2 Methods used in ASGM

ASGM processes generally involve four phases - exploration, extraction, concentration and refining. Each stage employs different techniques.

a) **Exploration** is the initial activity in the mining process, where a strategy is employed to locate gold-bearing rocks called ores in an identified geographical area.<sup>31</sup> Unlike in large-scale mining, which uses sophisticated geological and technological methods and tools, exploration in ASGM is based mainly on indigenous knowledge, observation and intuition.<sup>32</sup>

b) **Extraction** is the process of removing the gold-bearing rock from the earth or recovering gold from its source. The method used in extracting gold depends on the source of the gold. If the source is from a primary deposit, or gold embedded in what are called veins or lodes in rock beds,<sup>33</sup> extraction is done underground through small tunnels or shallow surface excavations.<sup>34</sup> Some miners use explosives to blast tunnels into hard rock, although the use of dynamite in mining is prohibited.<sup>35</sup> The ores are removed using simple implements, such as picks, shovels, chisels, sledgehammers, pulleys and ropes, and they are hauled and transported manually using sacks, trackless mine cars, or wheelbarrows.<sup>36</sup>

When primary gold deposits are eroded over time by nature, fine gold dust or small grains accumulate with other heavy minerals in streams and rivers.<sup>37</sup> These are secondary gold deposits referred to as placer deposits. Placer deposits are extracted from sediments by panning or sluicing.<sup>38</sup>

Paracale, a coastal area, is known for its high-grade ore found in clay below the water table. For generations, gold has been extracted using a method called compressor mining, which is unique to Paracale. *Price* illustrates this deadly process:

Compressor mines are simple shafts, perhaps a meter square dug straight down through rock, sand or clay to a depth of 30 or 40 feet. Miners wrap air tubes about themselves in an intricate pattern of loops and knots to secure the tubes on their bodies. Then they clench their teeth around the open ends of the small tubes, breathe deeply and drop below the surface to begin their exhausting work.

Wearing simple swim goggles or masks, they wedge themselves at the bottom of the murky, water-filled pit to scoop the rich, clay-ore into burlap sacks. Above, men tend the compressors and haul up the ore. The miners put their lives in the hands of those on the surface. A faulty compressor gasket, a sudden shift in the clay walls above them or an unexpected change in the ocean currents can mean death. They are used to and even laugh about the danger. To many, this is all they know. They fished this way as young boys. Now the payoff is far greater, so they take the risks. "This is what they do," my interpreter said as an older teenager bobbed in the trash-can-sized hole before disappearing into darkness.<sup>39</sup>

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<sup>31</sup>ROGER MARJORIBANKS, *GEOLOGICAL METHODS IN MINERAL EXPLORATION AND MINING 1* (2<sup>nd</sup> ed. 2010).

<sup>32</sup>Rey and Saturay Jr., *supra* note 23 at 6-9.

<sup>33</sup>Gold.info, *Gold Deposits*, available at <http://www.gold.info/en/gold-deposits/> (last accessed Jan. 31, 2017).

<sup>34</sup>Rey and Saturay Jr., *supra* note 23 at 7.

<sup>35</sup>*Id.*

<sup>36</sup>*Id.*

<sup>37</sup>Gold.info, *supra* note 33.

<sup>38</sup>Rey and Saturay Jr., *supra* note 23 at 7.

<sup>39</sup>Larry C. Price, *The Philippines: Dangerous and Illegal Compressor Mining* (2012), available at <http://pulitzercenter.org/reporting/philippines-compressor-gold-mines-child-labour-mercury-pollution-economy> (last accessed Feb. 1, 2017).

c) **Concentration and refining** is the process of separating the gold from other materials referred to as gangue. Typically, concentration is done manually by handpicking the gold from the ores and discarding the gangue. The gold ore goes through a milling process, where the ores are crushed using sledgehammers or small jaw crushers, then ground to finer pieces using various tools. High-grade ores are crushed using manual, water-run, diesel, or electric ball mills.<sup>40</sup>

Crushed ores and placer deposits are refined further using sluice boxes and pans. This is called gravity method, based on the principle that gold sinks, while non-gold materials and lighter sediments stay suspended in water.

The non-gold particles of the ore are made of magnetite sand consisting of iron. The iron is separated from the gold using a magnet, which attracts the magnetic iron and leaves only the gold, which is non-magnetic. Borax is added to this and the mixture is heated in a clay crucible using a torch or an open furnace to produce a marketable gold bead.<sup>41</sup>

Small-scale mining areas commonly use mercury amalgamation to get the gold. Mercury is mixed with the ore in the ball mill and later in the panning concentrate to hold the gold particles together and separate them from the gangue and other sulfide minerals. The amalgam is burned until all the mercury evaporates.<sup>42</sup>

Cyanide leaching is another method that is utilized where gold in the ore is dissolved in the chemical and then recovered by adding zinc or aluminum to the solution.<sup>43</sup>

### 1.3 Key players in small-scale mining

There are several key players in the mining and gold trading operation, and it varies depending on the method of mining; but generally, the following are involved:

- a) Land owners who are the rightful claimants to the area, but who usually do not have the skill or capital to mine the land;
- b) Tunnel owners who may be individuals, a cooperative or association;
- c) Financiers who fund the mining operations who may be foreigners, migrants or locals, sometimes the land or tunnel owners themselves;
- d) Skilled miners;
- e) Ore packers and haulers;
- f) Ore and sack washers, who are usually women and young workers;
- g) Ore transporters;
- h) Processing plant workers; and
- i) Gold traders and buyers.<sup>44</sup>

The one who holds the capital usually dominates the power relations among the key players. The skilled miners and mine workers who do the hard work in extremely dangerous and hazardous conditions are often exploited and remain impoverished, despite the significant contribution of ASGM to the country's annual gold supply.

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<sup>40</sup>Rey and Saturay Jr., *supra* note 23 at 7-8.

<sup>41</sup>*Id.*

<sup>42</sup>*Id.*

<sup>43</sup>*Id.*

<sup>44</sup>The Alternative Forum for Research in Mindanao (AFRIM), *supra* note 26.

## 1.4 Health, safety and social issues in artisanal and small-scale mining

ASGM is a notoriously dangerous activity wrought with many OSH issues. A research based on an extensive review of literature as well as surveys and data collection involving professionals and experts from different countries, including the Philippines, provides a comprehensive list of the health and safety risks of AGSM to miners, their families and their communities. The list categorizes the risks into diseases and injuries, hazards and exposures and chemicals, as shown in table below.<sup>45</sup>

**Comprehensive list of risks to artisanal and small-scale miners and their communities**

Diseases and injuries	Hazards	Chemicals
Ergonomic stresses	Landslides	Mercury (used in gold processing)
Musculoskeletal disorders and diseases (arthritis)	Decompression sickness (from diving)	Cyanide (used in gold processing)
Respiratory diseases	Airborne pollutants (equipment exhaust, dust)	Arsenic (naturally occurring)
Noise and hearing loss	Heat and cold stress	Chromium (naturally occurring)
Parasitic infections (malaria)	Poor air quality/ventilation	Radon (naturally occurring)
Bloodborne infectious diseases (HIV/AIDS, Hepatitis B/C, Ebola)	Blasting/explosives	Aluminum (naturally occurring)
Cancer (occupational)	Rock falls	Copper (naturally occurring)
Neurotoxicity	Flooding	Manganese (naturally occurring)
Airborne infectious diseases (TB) Dengue fever	Stumbling, slipping and falling	Nickel (mined and naturally occurring)
Diseases of blood and skin	Unstable underground structures	Zinc (used in gold processing)
Traumatic injury	Obsolete, inappropriate or damaged equipment	Lead (emitted during processing and naturally occurring)
Water/soil/food contamination related diseases (cholera, typhoid)	Poor visibility and light	Cadmium (naturally occurring)
Enteric (intestinal) infections	Poorly built tunnels	Cobalt (mined and naturally occurring)
Lifestyle factors (smoking related diseases, inadequate nutrition, alcohol and drugs, STDs, HIV/AIDS)	Lack of exits	Selenium (naturally occurring)
Genital corrosions and miscarriages (from prolonged standing in water)	Gender-based violence and abuse	Uranium (mined)
Skeletal fractures	Dense living arrangements	Methane (naturally occurring)
Cardiovascular diseases	Remoteness of work	
Mental impairments/psychological effects	Poor sanitation	
	Water, soil and food contamination	
	Vampire bat attacks	
	Improper use of chemicals	
	Social conflicts	

A cross-sectional study of the conditions of mining communities in Benguet, where gold is the most commonly extracted mineral ore, demonstrate safety and health risks that are similar with the findings in the table above. The research found that miners are exposed to dust, air pollution, poor environmental

<sup>45</sup>Nicole M. Smith, Saleem Ali, Carmel Bofinger and Nina Collins, Human Health and Safety in Artisanal and Small-Scale Mining: An Integrated Approach to Risk Mitigation, J. CLEANER PROD., Volume 129, at 46 (2016).



sanitation, chemicals, intense heat, waste products from mining and high noise levels.<sup>46</sup> They use inadequate protective equipment; rubber boots being the only gear that is consistently used.<sup>47</sup> Safety infractions include unsteady trenches in the underground tunnels and pits, insufficient slopes, possibility of collapse of trenches, and risk of subsidence or sinking of the ground.<sup>48</sup>

In addition to the health and safety issues, other social issues plague small-scale mining, including the following:

- a) The unregulated migration of miners and their families into newly discovered mining areas displace the original inhabitants and disrupt their local customs and traditional economic activities.
- b) The absence of legitimate claims over the areas where small-scale miners operate often result in violent conflicts with other claimants, including large-scale mining companies.
- c) The informal nature of the operation and the lack of capital make small-scale miners vulnerable to exploitation, especially by financiers who take advantage of them, resulting in very little profit and measly compensation for the miners that are not commensurate with the work that they put in.
- d) Despite the extreme hazards and risks of the trade, small-scale miners are not insured and they do not have social security benefits.<sup>49</sup>

### **1.5 Mercury use in ASGM and other harmful and destructive practices**

The use of mercury is widespread in ASGM. ASGM accounts for 70 metric tons of mercury discharged annually into the atmosphere.<sup>50</sup> Large amounts of mercury, about 10 to 25 grams to produce a gram of gold, are dumped into ball mills to retrieve gold from whole ores. About one to 3 grams of mercury are used to recover a gram of gold from amalgamation of gold concentrates.<sup>51</sup>

See **Annex 1** for a list of provinces that reportedly use mercury in ASGM.<sup>52</sup>

The use of mercury in gold processing causes mercury pollution of the environment in different ways. Mercury can pollute the ground when it is unintentionally spilled into the ground due to careless handling; it can contaminate the water when it is discharged together with mine tailings or thrown directly into rivers; and it can pollute the atmosphere when it vaporizes, especially when the amalgam is blowtorched and refined.<sup>53</sup> Mercury poisoning can cause skin irritation, fever, headaches, nausea, irritability, fatigue and depression, as well as significant negative effects on human health, including neurological disturbances, problems in the reproductive and other body organs, blindness, numbness of

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<sup>46</sup>Jinkie Leilanie DP Lu, *Investigation of safety conditions in small scale mining industries in the Philippines*, ENVIRON. SCI. IND. J, Volume 10, Issue 11 at 425 (2015).

<sup>47</sup>*Id.* at 424.

<sup>48</sup>*Id.* at 425.

<sup>49</sup>The Price of Gold *supra* note 3, at 43.

<sup>50</sup>The Price of Gold *supra* note 3, at 5.

<sup>51</sup>*Id.*

<sup>52</sup>Extractive Industries Transparency Initiative, *supra* note 18.

<sup>53</sup>Danilo C. Israel and Jasmina P. Asiro, *Mercury Pollution Due to Small-Scale Gold Mining in the Philippines: An Economic Analysis*, PIDS RESEARCH PAPER SERIES NO. 2002-02, 19.

the extremities, hearing and speech impairment, loss of memory, decline in sensory ability, kidney disease, tremors, serious birth defects and even death.<sup>54</sup>

Despite its health and environmental impacts, small-scale miners use mercury because it is very accessible and it is an inexpensive way of retrieving the gold. It allows them to immediately process the gold, usually in their own homes, and sell it quickly to meet their day-to-day needs. The lack of awareness of the risks of mercury use and lack of knowledge of mercury-free alternatives are other factors that contribute to the proliferation of mercury use.<sup>55</sup>

Apart from being a major source of mercury pollution, ASGM also aggravates other environmental problems, such as deforestation and landscape destruction, contamination of water bodies due to the use of cyanide, soil erosion and siltation, biodiversity loss and loss of soil productivity.<sup>56</sup>

## 1.6 Child labour issues in ASGM

Thousands of children in the Philippines reportedly participate in virtually all forms of mining and in every phase of the mining process.<sup>57</sup> About 14 per cent of children who live in mining communities work in the mines; their ages ranging from 11 to 17 years old and some even younger.<sup>58</sup> Like adults, children in ASGM are subjected to dangerous and exploitative working conditions, such as very long work hours; very low wages and poor labour standards; exposure to bacteria, dust, pollutants, mercury and other toxic substances; poor ventilation; extreme temperature and noise; carrying heavy loads of rocks and water; and very limited access to welfare, health and safety facilities. They suffer multiple adverse consequences, including irregular or no schooling, injuries or even fatalities, health problems, and problems in physical and psychological development.<sup>59</sup>

Children in mining communities are exposed to adult activities that pose moral hazards, such as gambling, drinking and smoking.<sup>60</sup> Some miners, including children, reportedly use illegal drugs to keep them awake.<sup>61</sup>

Children in ASGM are typically boys, although girls are sometimes involved in panning, washing and crushing rocks. Girls are generally exploited in other ways. They are made to look after younger siblings and perform household chores instead of going to school; some are forced into domestic work or prostitution.<sup>62</sup>

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<sup>54</sup>*Id.*; See also *The Price of Gold supra* note 3, at 25.

<sup>55</sup>*Id.*

<sup>56</sup>*The Price of Gold supra* note 3, at 42.

<sup>57</sup>Human Rights Watch, "What ... if Something Went Wrong?" Hazardous Child Labour in Small-Scale Gold Mining in the Philippines, available at <https://www.hrw.org/report/2015/09/29/what-if-something-went-wrong/hazardous-child-labour-small-scale-gold-mining> (last accessed Dec. 9, 2016).

<sup>58</sup>*Id.* (citing Ecumenical Institute for Labour and Educational Research (EILER), *Key Findings of Baseline Study on Child Labour in Mining and Plantations* (2015)).

<sup>59</sup>Thomas Hentschel, Felix Hruschka, Michael Priester, *Global Report on Artisanal and Small-Scale Mining* (A Report commissioned by the Mining, Minerals and Sustainable Development project of the International Institute for Environment and Development in 2002), available at <http://pubs.iied.org/pdfs/G00723.pdf> (last accessed May 10, 2017).

<sup>60</sup>Caymo, Apolinario L. II, *Analysis of the Child Labour Issue in Small-Scale Mining Operations in the Philippines*, at 17 (2016) (unpublished LLM paper, Universiteit Gent) available at [lib.ugent.be/fulltxt/RUG01/002/272/391/RUG01-002272391\\_2016\\_0001\\_AC.pdf](http://lib.ugent.be/fulltxt/RUG01/002/272/391/RUG01-002272391_2016_0001_AC.pdf), (last accessed Dec. 9, 2016).

<sup>61</sup>*Id.* citing Crispin B. Beltran Resource Center, *A Baseline Study for the Community-Based Approach in Combatting Child Labour in Hazardous Industries in Plantation and Mining* (A study commissioned by EILER) at 69; See also *Interview with Ms Eve Cubelo* (Programme Manager of Ban Toxics!), (through skype) (Dec. 20, 2016).

<sup>62</sup>*Child Labour in Gold Mining Fact Sheet supra* note 4, at 6.

In the study by Human Rights Watch, boys were found to engage in compressor mining in Camarines Norte where they dive for gold under life-threatening conditions. Like the adult miners, they dive into very narrow, dark and cold shafts and breathe under murky water through a makeshift apparatus made of plastic tube attached to a diesel-run compressor at the surface.<sup>63</sup> They dig into the mud in total darkness for one to three hours, or until their bodies can take it.<sup>64</sup> Diving in the mud for long hours expose the children to bacteria that causes skin infections.<sup>65</sup> They are also exposed to carbon monoxide from the compressor, which can lead to lung cancer.<sup>66</sup> When the breathing apparatus malfunctions, they come up for air quickly, which may form small nitrogen bubbles in the blood that cause pain in the joints, shortness of breath, brain disorders or an embolism.<sup>67</sup>

The same study found boys participating in underground mining in Camarines Norte and Masbate alongside adults.<sup>68</sup> They are lowered into pits and work underground for long hours, sometimes 24-hour shifts. They carry the heavy ores, about 30 kilos, in sacks out of the pits. Oxygen is pumped in through blowers from the surface, but if the pits are not so deep, blowers are not used. Children are subjected to very dangerous conditions – lack of oxygen that may lead to asphyxiation; long work hours; carrying extremely heavy loads; and accidents caused by falling rocks or wooden beams, by falls, from the tools they use or from dropping sacks of ores.<sup>69</sup>

## 1.7 Summary of related studies

Studies on laws on child labour and working conditions in ASGM are scant and limited to certain areas of concern regarding small-scale mining.

Ban Toxics' extensive research on ASGM<sup>70</sup> centres on the environmental and health impacts of mercury use in mining, with special focus on study sites in Camarines Norte, Nueva Vizcaya, Benguet, Masbate, Negros Occidental and Compostella Valley. It recommends putting an end to primary mining of mercury and imposing a mercury import ban, providing technical and financial support to ASGM, organizing and strengthening ASGM formal groups of miners, removing barriers to formalization, strengthening local mining regulatory boards, and increasing awareness on mercury's toxic effects to miners, their families and affected communities.

Human Rights Watch<sup>71</sup> documents the hazardous child labour conditions in ASGM in the provinces of Camarines Norte and Masbate. Human Rights Watch researchers interviewed 135 people, including 65 children, as well as government officials, representatives of international agencies and non-government organizations, traders, teachers, health workers and mining experts. The report describes the hazards of child labour in underwater mining, underground mining, carrying heavy loads, processing gold with mercury and panning for gold. It recommends, among others, that the government of the Philippines develop strategies to address child labour in mining and to develop a responsible small-scale mining sector. It also urges the BSP to institute thorough due diligence procedures to identify child labour and other human rights risks in the gold supply chain.

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<sup>63</sup>*Supra* note 56, at 11.

<sup>64</sup>*Id.*

<sup>65</sup>*Id.*

<sup>66</sup>*Id.*

<sup>67</sup>*Id.*, citing Centres for Disease Control and Prevention, Decompression Sickness and Tunnel Workers, *available at* <http://www.cdc.gov/niosh/topics/decompression/> (last accessed Aug. 20, 2015); PBS Newshour, Diving into the Philippines' dangerous, underwater mines, *available at* <http://www.pbs.org/newshour/bb/world-jan-june14-philippines-01-27/> (last accessed July 17, 2015).

<sup>68</sup>*Supra*, at 13.

<sup>69</sup>*Id.*

<sup>70</sup>Ban Toxics!, *supra* note 3.

<sup>71</sup>Human Rights Watch, *supra* note 56.

The Alternate Forum for Research in Mindanao's<sup>72</sup> scoping paper provides an overview of the traditional small-scale mining operations in Benguet in contrast to the modernized methods of South Cotabato. The study focuses mainly on stakeholders of the industry, policy regimes that govern it, ASGM's contribution to the local economy, the effect of small-scale mining on the environment, and the delivery of social services. It briefly discusses some challenges and recommendations, including: the incongruence between the legal definition of small-scale mining and the growing number of ASGM whose operations are mechanized, different claims over ancestral land which create conflicts between indigenous peoples' groups, the need to examine the capability of the national and local government in enforcing the laws, and the need to introduce alternative livelihoods activities.

Artajo's<sup>73</sup> study covers the municipalities of Itogon in Benguet; Balbalan in Kalinga; Labo and Jose Panganiban in Camarines Norte; and Nabunturan, Monkayo and Pantukan in Compostela Valley. It provides an overview of small-scale gold mining in the Philippines, examines issues and constraints confronting the sector, and proposes policy recommendations to enhance decent work outcomes in small-scale gold mining.

Artajo recommends that technical and livelihood support be provided to small-scale miners, miners be encouraged to form cooperatives to enable them to access credit facilities and other support mechanisms, and community-based supplier and value-adding industries or services be developed to increase employment levels in ASGM. She also advocates for capacity enhancement of local government units (LGUs) to regulate ASGM operations; stakeholders' involvement in promoting health and safety and environmental protection standards; on-site health, environmental, and safety training courses; social protection schemes whenever ASGM operations are stopped; and establishment of P/CMRBs, creation of multi-stakeholder technical working groups, and institutionalization of avenues for consultations to promote social dialogue.

Llaguno, Soriano and Tamayao look into the process of declaring a *Minahang Bayan* and propose the following steps to improve the system: "(a) identification of processing and response times for major steps in accordance with the Citizen's Charter of concerned government offices; (b) identification of next steps if processing and response commitments are not met; (c) widespread and effective education and information campaign utilizing video presentations, petition template containing the appropriate documents (correct both in form and content) as example; (d) designation of a government personnel to actively coordinate with the miners; (e) provision of an online monitoring facility to enable petitioners to track status of applications; (f) provision of instructional materials aimed at government offices performing different steps in the process to minimize or totally eliminate occurrences of deficiencies; and (g) identification of potential *Minahang Bayan* areas to be initiated by the MGB, with the assistance of LGUs, academe and other partners, to lessen external factors affecting the process (e.g. politics)."<sup>74</sup>

Jurado, Amurao and Calubag<sup>75</sup> examine the role of the small-scale mining industry in the country's economic development through creating employment opportunities, generating revenues from taxes and building up gross international reserves through the mandatory sale of gold to the BSP. Their study briefly discusses some proposed bills that reduce taxes imposed on small-scale miners.

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<sup>72</sup>The Alternative Forum for Research in Mindanao (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, BANTAY KITA OCCASIONAL PAPER SERIES 14 (2<sup>nd</sup> is. 2012).

<sup>73</sup>Artajo, *supra* note 18.

<sup>74</sup>Erickson L. Llaguno, Virginia J. Soriano and Mili-Ann M. Tamayao, *Improving the Minahang Bayan Declaration Process: A First Step Towards Achieving Sustainability in Philippine Small-Scale Mining Industry*, PHIL. ENGINEERING J., Volume No. 37, Issue No. 1.

<sup>75</sup>Florida J. Jurado, Ma. Berlie L. Amurao, and Marlene L. Calubag, *Philippine Small-Scale Mining, Tax Issues and Concerns*, NTRC Tax Res. J., Volume No. XXVII.6, November-December 2015 Issue.

Caymo<sup>76</sup> assesses the situation of children working in ASGM in the Philippines, and proposes possible approaches and legal and policy solutions to effectively address child labour in the mining sector. He espouses the recognition of the right of children to work in the mining industry as well as the easement of licensing requirements in order to attract informal small-scale mining operators to legitimize their operations. He supports the theory that formalization will place the ASGM sector under labour monitoring and inspection systems, with specific regard to conditions of work and other terms of employment of workers, most especially children.

Pante-Aviado's study documents the small-scale mining practices in Camarines Norte and compliance of Artisanal and Small-Scale Mining (ASM) with the provisions of R.A. 7076 and E.O. 79.<sup>77</sup> Her findings show that almost all the relevant laws were not complied with. She recommends the adoption and implementation of programmes and measures to raise awareness on OSH, mining cooperatives, *Minabang Bayan* and mercury toxicity; facilitate the formation of mining cooperatives; declare *Minabang Bayan* and mining seasons; improve livelihood opportunities; simplify the process of securing small-scale mining contracts and establish one-stop centres for application; and establish easy-to-follow OSH guidelines. She likewise suggests the enactment of viable and responsible laws, especially on dynamite use, and the strict implementation of existing laws.

### 1.8 Scope and purposes of the study

This study adds another lens to examining ASGM by looking at the relevant ASGM laws in order to:

- a) Assess the type and scope of existing legislation, their impact on child labour and working conditions concerns in ASGM and the status of the ASGM sector in general.
- b) Identify those responsible for the implementation of each of these laws and regulations.
- c) Identify critical gaps that exist in ASGM legislative and institutional frameworks with regard to child labour and working conditions issues in ASGM; the promotion of sustainable, viable and legal ASGM operations; use of mercury, the Minamata convention and other environmental issues; social issues in ASGM communities; and monitoring systems including referral and reporting processes and roles of agencies.
- d) Identify relevant key stakeholders and their roles in helping to enforce legislation.

This study focuses mainly on legislative and policy measures as well as monitoring and law enforcement mechanisms to address the problems associated with small-scale mining. It does not cover poverty-alleviation measures although it should be emphasized that the issues in ASGM are fundamentally linked to poverty, and thus, such measures are a critical component of an effective and sustainable intervention.

This study is limited by the lack of sources of reliable data and information on ASGM and child labour in the Philippine mining sector. It also does not benefit from the depth of insight that may be gained from field research.

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<sup>76</sup>Caymo, *supra* note 59.

<sup>77</sup>Pante-Aviado, *supra* note 30.

## 1.9 Methodology

Data gathering was conducted through desk review and interview with key informants. The information gathered was analyzed in order to assess the gaps, with primary focus on legislative, policy, monitoring and enforcement issues.

The findings and recommendations of this study were reviewed and validated at a roundtable discussion with government and non-government experts selected on the basis of their experience and knowledge in the field.

See **Annex 2** for the list of key informants and **Annex 3** for the list of participants at the roundtable discussion.

## 2. CURRENT LEGAL FRAMEWORK ON ASGM

### 2.1 International instruments

The Philippines is a party to ILO Convention No. 176 (C. 176) concerning Safety and Health in Mines, which it ratified on 27 February 1998.

C. 176 applies to all mines, including surface and underground sites for the exploration for minerals (excluding oil and gas) that involves the mechanical disturbance of the ground; extraction of minerals (excluding oil and gas); and preparation, including crushing, grinding, concentration or washing of the extracted material.<sup>78</sup> It requires member States to prescribe, implement and periodically review coherent national laws and regulations on safety and health in mining;<sup>79</sup> holds employers responsible for taking preventive and protective measures;<sup>80</sup> and recognizes the rights and duties of workers and their representatives.<sup>81</sup>

As a party to C. 176, it is the obligation of the Philippine government to pass national laws and regulations that are consistent with the framework prescribed in the Convention. Accordingly, legislation should designate the competent authority that is to monitor, regulate and supervise the various aspects of safety and health in mines; appoint inspectors to inspect the mines; establish procedures for reporting and investigating fatal and serious accidents, dangerous occurrences, and mine disasters; compile and publish statistics on accidents, occupational diseases, and dangerous occurrences; suspend or restrict mining activities on safety and health grounds; and establish effective procedures to ensure the implementation of the rights of workers and their representatives to be consulted and to participate in measures relating to safety and health at the workplace.<sup>82</sup> The government is also mandated to specify requirements for rescue, first aid, appropriate medical and sanitary facilities; protective measures; storage and handling of hazardous substances; manufacture, storage, transport and use of explosives and initiating devices at the mine, which must be carried out by or under the direct supervision of competent and authorized persons.<sup>83</sup>

Another international instrument affecting mining is the Minamata Convention on Mercury, which the Philippines signed on 10 October 2013, and is considering to ratify. The Convention is a global treaty to protect human health and the environment from exposure to mercury and its adverse effects. Among the major highlights of the Convention is a ban on new mercury mines, the phase-out of existing ones

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<sup>78</sup>Convention (No. 176) Concerning Safety and Health in Mines art. 1, *adopted* June 22, 1995 (entered into force June 5, 1998) 2029 United Nations Treaty Series (U.N.T.S.). 207.

<sup>79</sup>*Id.* art. 3 and 4.

<sup>80</sup>*Id.* art. 6-12.

<sup>81</sup>*Id.* art. 13 and 14.

<sup>82</sup>*Id.* art. 3.

<sup>83</sup>*Id.* art. 5.

within a period of 15 years from the date of entry into force of the Convention, and the regulation of artisanal and small-scale gold mining in which mercury amalgamation is used to extract ore. Specifically, Article 7 of the Convention requires countries with ASGM and processing in their territories to reduce, and where feasible eliminate, the use of mercury and mercury compounds in, and the emissions and releases to the environment of mercury from, such mining and processing. Towards this goal, countries shall develop and implement a national action plan, which shall include the following:

- a) National objectives and reduction targets.
- b) Actions to eliminate:
  - i. Whole ore amalgamation;
  - ii. Open burning of amalgam or processed amalgam;
  - iii. Burning of amalgam in residential areas; and
  - iv. Cyanide leaching in sediment, ore or tailings to which mercury has been added without first removing the mercury.
- c) Steps to facilitate the formalization or regulation of the artisanal and small-scale gold mining sector.
- d) Baseline estimates of the quantities of mercury used and the practices employed in artisanal and small-scale gold mining and processing within its territory.
- e) Strategies for promoting the reduction of emissions and releases of, and exposure to, mercury in artisanal and small-scale gold mining and processing, including mercury-free methods.
- f) Strategies for managing trade and preventing the diversion of mercury and mercury compounds from both foreign and domestic sources to use in artisanal and small-scale gold mining and processing.
- g) Strategies for involving stakeholders in the implementation and continuing development of the national action plan.
- h) A public health strategy on the exposure of artisanal and small-scale gold miners and their communities to mercury. Such a strategy should include, inter alia, the gathering of health data, training for health-care workers and awareness-raising through health facilities.
- i) Strategies to prevent the exposure of vulnerable populations, particularly children and women of child-bearing age, especially pregnant women, to mercury used in artisanal and small-scale gold mining.
- j) Strategies for providing information to artisanal and small-scale gold miners and affected communities.
- k) A schedule for the implementation of the national action plan.<sup>84</sup>

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<sup>84</sup>Minamata Convention on Mercury, Annex C *adopted* Oct. 10, 2013 (not yet in force).

## 2.2 Domestic laws

The 1987 Philippine Constitution gives the State full control and supervision over the exploration, development, and utilization of natural resources.<sup>85</sup> It authorizes Congress to allow by law the small-scale utilization of natural resources by Filipino citizens,<sup>86</sup> consistent with its declared goal towards “a more equitable distribution of opportunities, income and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.”<sup>87</sup>

Laws on small-scale mining evolved in response to the changing nature and scope of small-scale mining operations in the Philippines. Presidential Decree (P.D.) No. 1150 of 1977<sup>88</sup> is one of the earliest attempts of the government to regulate small-scale mining when operations were limited to gold panning and sluicing in mining claims and mining camps. The objective of the Decree was to recognize such activities as a lawful source of livelihood to individuals, without resulting in a loss to the government of foreign exchange or taxes generated by the gold produced from such operations. Hence, necessary safeguards or protective measures were adopted, including the requirement of applying for a permit, limiting the area where panning and sluicing may be conducted, and prescribing the sale of gold to licensed dealers. The Decree prohibited the employment of minors in such operations, as well as the use of drilling, blasting, crushing or grinding by machineries or similar activities.

In 1984, P.D. 1899 established small-scale mining as a new dimension in mineral resources development.<sup>89</sup> The Decree acknowledged the existence of “small mineral deposits that are being or could be worked profitably at small tonnages requiring minimal capital investments utilizing manual labour”, and considered that “the development of these small mineral deposits will generate more employment opportunities, thereby alleviating the living conditions in the rural areas and will contribute additional foreign exchange earnings”.<sup>90</sup>

Subsequently, The People’s Small-Scale Mining Act of 1991, or R.A. 7076, was enacted. It echoes the Constitution and P.D. 1899 in that it seeks 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.” To carry out this policy, the Act provides for the identification, segregation and reservation of certain mineral lands as people's small-scale mining areas (PSSMA),<sup>91</sup> and created the P/CMRB for this purpose.<sup>92</sup> The Board is authorized to award small-scale mining contracts within the identified areas subject to certain qualifications and conditions. The threshold requirement is for persons undertaking or intending to undertake small-scale mining to register with the Board.<sup>93</sup>

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<sup>85</sup>Phil. Const. Art. XII, § I.

<sup>86</sup>Phil. Const. Art. XII, § II.

<sup>87</sup>Phil. Const. Art. XII, § I.

<sup>88</sup>Amending Presidential Decree No. 581 and Regulating Panning or Sluicing for Gold Inside Mining Claims or in Public or Private Lands, Presidential Decree No. 1150.

<sup>89</sup>Establishing Small-Scale Mining as a New Dimension in Mineral Development, Presidential Decree No. 1899.

<sup>90</sup>Presidential Decree No. 1899, whereas cl.

<sup>91</sup>An Act Creating a People’s Small-Scale Mining Programme and for other Purposes [People’s Small-Scale Mining Act of 1991], R.A. 7076, § 4.

<sup>92</sup>People’s Small-Scale Mining Act of 1991, § 5.

<sup>93</sup>DENR, Revised Implementing Rules and Regulations of R.A. No. 7076, Otherwise Known As The "People's Small-Scale Mining Act of 1991", A.O. No. 3, Series of 2015 [DENR A.O. No. 3, s. 2015], § 6 (2015).



It is R.A. 7076 that first required ASGM operators to pay all taxes, royalties and government shares.<sup>94</sup> Under its pre-cursor, P.D. 1899, only income tax applied to small-scale miners. Currently, small-scale miners are liable to pay for the following national taxes: income tax at the rate of 5 per cent-32 per cent for individual taxpayers; 30 per cent for corporations; excise tax of 2 per cent on every sale of gold to the BSP; value added tax of 12 per cent if sold by value-added tax (VAT)-registered taxpayers to persons and entities; and 0 per cent if sold to BSP.<sup>95</sup>

The Philippine Mining Act of 1995, or R.A. 7942, was enacted to promote the local mining industry in a way that effectively safeguards the environment and protects the rights of affected communities through the combined efforts of the government and the private sector. While it has some provisions that pertain to small-scale mining specifically, it is mainly a law that liberalizes large-scale mining. Small-scale mining, including the processing of mineral ores or minerals produced by small-scale miners as well as the licensing of their custom mills or processing plants, continues to be governed by R.A. 7076 and other pertinent laws.<sup>96</sup> With respect to the transporting of mineral ores or minerals from the small-scale mining areas to the custom mills or processing plants, R.A. 7942 authorizes the Provincial Mining Regulatory Board (PMRB) to formulate their own policies to govern such transport of ores.<sup>97</sup> The absence of a permit is prima facie evidence of illegal mining, which is sufficient cause for the confiscation of the ores or minerals being transported, the tools and equipment used, and the vehicle transporting the same.<sup>98</sup>

Among the other references to small-scale mining in R.A. 7942 is the prohibition on applications for mineral agreements or financial or technical assistance agreements in areas covered by small-scale miners, unless there is prior consent of the small-scale miners.<sup>99</sup> It also provides that a small scale-mining cooperative covered by R.A. 7076 shall be given preferential right to apply for a small-scale mining agreement in a mineral reservation for a maximum aggregate area of 25 per cent the reservation.<sup>100</sup>

R.A. 7942 prohibits the employment of persons under 16 years of age in any phase of mining operations; and it prohibits those 18 years of age from being employed in an underground mine.<sup>101</sup> This, however, has been amended by the DOLE order issued pursuant to R.A. 9231, which classifies mining as hazardous work and prohibits all forms of employment of children in mining activities.<sup>102</sup>

After the enactment of the Philippine Small-Scale Mining Act of 1991 and the Philippine Mining Act of 1995, confusion arose as to which law applies to small-scale mining. The Department of Justice (DOJ) issued Opinion No. 29, Series of 2011 stating that R.A. 7076 completely repealed P.D. 1899. The Department of Environment and Natural Resources (DENR), on the other hand, clarified in its 2007 *Clarificatory Guidelines in the Implementation of the Small-Scale Mining Laws*<sup>103</sup> that the laws co-exist. DENR's position was later reinforced by the Supreme Court in the case of *SR Metals, Inc. et. al., vs. Reyes* where it pronounced that:

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<sup>94</sup>People's Small-Scale Mining Act of 1991, § 13(d).

<sup>95</sup>Jurado, Amurao and Calubag, *supra* note 74 at 14-26.

<sup>96</sup>An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization and Conservation [Philippine Mining Act of 1995], R.A. 7942, § 42, 55 (1995).

<sup>97</sup>Philippine Mining Act of 1995 § 53.

<sup>98</sup>*Id.*

<sup>99</sup>Philippine Mining Act of 1995 § 19(e).

<sup>100</sup>Philippine Mining Act of 1995 § 5.

<sup>101</sup>DENR AO No. 21, s. 2010 § 163.

<sup>102</sup>DOLE, Guidelines in Assessing and Determining Hazardous Work in the Employment of Persons Below 18 Years of Age, Department Order (DO) No. 149, series of 2016 [DOLE D.O. No. 149, s. 2016] § 6 (Feb. 15, 2016).

<sup>103</sup>DENR, Clarificatory Guidelines in the Implementation of the Small-Scale Mining Laws, Memorandum Circular 7 Series of 2007 [DENR Memo. Circ. No. 7, s. 2007] (July 5, 2007).

Two different laws governing small-scale mining co-exist: P.D. 1899 and R.A. 7076. The controversy lies in the apparent conflicting provisions on the definition of small-scale mining under the two laws. Section 1 of P.D. 1899 defines small-scale mining in this wise:

Small-scale mining refers to any single unit mining operation having an annual production of not more than 50,000 metric tons of ore and satisfying the following requisites:

- a) The working is artisanal, whether open cast or shallow underground mining, without the use of sophisticated mining equipment;
- b) Minimal investment on infrastructures and processing plant;
- c) Heavy reliance on manual labour; and
- d) Owned, managed or controlled by an individual or entity qualified under existing mining laws, rules and regulations.

On the other hand, under Section 3(b) of R.A. 7076, small-scale mining refers to ‘mining activities which rely heavily on manual labour using simple implements and methods and do not use explosives or heavy mining equipment.’ Significantly, this definition does not provide for an annual extraction limit unlike in P.D. 1899.

DOJ Opinion No. 74, Series of 2006 concluded that as nothing from R.A. 7076 speaks of an annual production limit, Section 1 of P.D. 1899 should be considered impliedly repealed by R.A. 7076, the later law. However, while these two laws tackle the definition of what small-scale mining is, both have different objects upon which the laws shall be applied to. P.D. 1899 applies to individuals, partnerships and corporations while R.A. 7076 applies to cooperatives. There are other differences between the two laws, but we cannot hastily conclude that there is an implied repeal because of the omission. Both laws may stand.<sup>104</sup>

The Clarificatory Guidelines stated that small-scale mining operations in areas not declared as PSSMA shall be covered by Small-Scale Mining Permits (SSMP) under P.D. 1899. According to the Guidelines, P.D. 1899 and R.A. 7076 commonly define small-scale mining as largely artisanal with heavy reliance on manual labour and without the use of explosives and or blasting accessories. Both laws place a maximum annual production of 50,000 dry metric tons of ore for metallic materials, or of the material itself for non-metallic minerals; and a maximum capital investment of Php10 million for a single unit small-scale mining operation.

To qualify under the Decree, the applicant must be a Filipino citizen, of legal age and with capacity to contract, or a corporation or partnership authorized to engage in mining, registered with the Securities and Exchange Commission (SEC), at least 60 per cent of the capital of which is owned at all times by Filipino citizens. On the other hand, small-scale mining operations in PSSMAs shall be covered by Small-Scale Mining Contracts (SSMC) under R.A. 7076. Small-scale miners organized as an individual miner or a cooperative of small-scale miners may apply to enter into a small-scale mining contract.<sup>105</sup>

In 2012, Executive Order (E.O.) No. 79 series of 2012 entitled *“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”* reiterated that the law that governs small-scale mining operations is still R.A. 7076. Accordingly, the small-scale mining of metallic minerals is prohibited except gold, silver and chromite, which shall be mined only in PSSMAs or *Minahang Bayan*. The use of mercury in small-scale mining is also strictly prohibited. To ensure the proper regulation and management of small-

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<sup>104</sup>SR Metals, Inc., San R Mining and Construction Corp. and Galeo Equipment and Mining Company, Inc. vs. The Honorable Angelo T. Reyes, in his Capacity as Secretary of DENR, 724 SCRA 535 (2014).

<sup>105</sup>DENR Admin. Order No. 3, s. 2015, § 10.

scale mining, E.O. 79 ordered the operationalization of P/CMRBs in provinces and cities where they have not been constituted, and it mandated the concerned government agencies to conduct training and capacity building measures in the form of technical assistance for small-scale mining cooperatives and associations.

The prohibition in the use of mercury in mining was gradually introduced in the Philippine legal system with the evolution of Philippine mining laws. In P.D. 1150, the possession of mercury created the presumption that it will be used to amalgamate gold that was stolen from mining claims or mining camps. P.D. 1899 and R.A. 7076 made no reference to the use of mercury in ASGM, although the IRR of the latter prohibited the use of mercury in mineral processing.<sup>106</sup> R.A. 7942 merely regulated the use of certain chemicals, including mercury and cyanide, by requiring an interim importation permit/certification from the Environmental Regulatory Board (ERB). It was only through E.O. 79 that the State strictly prohibited the use of mercury in small-scale mining.<sup>107</sup>

R.A. 6969, or the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990 provides the general legal framework for regulating the use of chemicals, including mercury. It covers the importation, manufacture, processing, handling, storage, transportation, sale, distribution, use and disposal of all unregulated chemical substances and mixtures in the Philippines, including the entry even in transit, as well as the keeping or storage and disposal of hazardous and nuclear wastes into the country for whatever purposes. Its declared policy is to regulate, restrict or prohibit such activities if the chemical substances and mixtures concerned present unreasonable risk and/or injury to health or the environment.

In furtherance of R.A. 6969, the DENR issued A.O. 97-38 or the Chemical Control Order (CCO) to restrict the importation, manufacture, processing, use and distribution of mercury and mercury compounds, in particular. It also addresses the treatment, storage and disposal of mercury-bearing or mercury-contaminated wastes in the Philippines. The CCO limits the use of mercury and mercury compounds to specific end-users, namely: chlor-alkali plants, mining and metallurgical industries, electrical apparatus, industrial and control instruments, pharmaceutical, paint manufacturing, pulp and paper manufacturing, dental amalgam, industrial catalyst and pesticides production or formulation.<sup>108</sup>

The Philippines recently adopted a National Strategic Action Plan for the Phase-out of Mercury composed of a strategic text for short to medium term activities from the years 2011 to 2015, and an Action Table that covers the period of activities from 2011 to 2021. “The goal of the National Strategic Plan is to protect human health and the environment through the introduction of responsible ASGM practices focusing on mercury use reduction and eventual elimination of mercury use and releases in the environment, adoption of cleaner and toxic-free gold production technologies and simultaneously address social, institutional, financial, regulatory reform, among others.”<sup>109</sup>

A comparative summary of the domestic legislation on small-scale mining is provided in **Annex 4**.

## **2.3 Monitoring and enforcement mechanisms**

### 2.3.1 Monitoring and enforcement of small-scale mining laws

The monitoring and enforcement of small-scale mining laws involve several aspects, including labour law compliance, environmental, fiscal and monetary. At an inter-agency level, E.O. 79 constituted the

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<sup>106</sup>*Id.* at §13[c].

<sup>107</sup>Office of the President, 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, Executive Order No. 79, series of 2012 [E.O. No. 79, s. 2012] § 11[e] (July 6, 2012).

<sup>108</sup>DENR, Chemical Control Order for Mercury and Mercury Compounds, A.O. No. 38, series of 1997 [DENR A.O. No. 38, s. 1997] § 7(3) (Dec. 23, 1997).

<sup>109</sup>National Strategic Action Plan *supra* note 1.

Climate Change Adaptation and Mitigation and Economic Development Cabinet Clusters as the MICC. The MICC is co-chaired by the chairs of the two clusters, specifically the Secretaries of the DENR and the Department of Finance (DOF). The following are the functions of the MICC:

- a) Submit a work plan within 60 days from the effectivity of this Order for the implementation of this Order and other reforms related to the mining industry.
- b) Ensure continuing dialogue and coordination among all stakeholders in the industry.
- c) Conduct and facilitate the necessary capacity and institutional building programmes for all concerned government agencies and instrumentalities.
- d) Conduct an assessment and review of all mining-related laws, rules and regulations, issuances, and agreements with the view to formulating recommendations to improve the allocation of revenues and risk between the government and the mining sector, to enhance coordination between the national government and LGUs to ensure implementation of mining laws and regulations, and to properly regulate small-scale mining participants and ensure that they are accountable to the same environmental and social obligations as large-scale mining companies.
- e) As may be directed by the President, constitute and create a Task Force Against Illegal Mining and seek the assistance of all law enforcement agencies, such as, but not limited, to the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP) to ensure strict compliance with relevant laws, rules and regulations.
- f) Serve as the Oversight Committee over the operations of P/CMRBs.
- g) Request the assistance of any government agency or instrumentality, including government-owned and controlled corporations (GOCC) and LGUs, in the implementation of this Order.
- h) Submit periodic reports to the President on the status of the implementation of this Order.
- i) Perform such other functions and acts as may be necessary, proper or incidental to the attainment of its mandates and objectives, or as may be directed by the President.<sup>110</sup>

### 2.3.2 Labour law compliance

For the specific purpose of monitoring and enforcing compliance with labour laws, Article 128 of the Labor Code gives visitorial and enforcement powers to the Secretary of Labor and Employment. The Secretary or his/her duly authorized representatives, primarily the Labour Law Compliance Officer (LLCO) has the power to access employer's records and premises, examine any employee and investigate any fact, condition, or matter which may be necessary to determine violations or which may aid in the enforcement of labour laws. Such power is "broad enough to cover any fact, condition or matter related to the enforcement not only of the Labor Code but of any labour law."<sup>111</sup>

The current labour law compliance framework under the RLCS<sup>112</sup> introduces a developmental approach to compliance where employers, workers and the LLCO conduct the assessment jointly. If deficiencies are noted during the assessment, the establishment is given a prescribed period to formulate and implement an action plan to correct the deficiencies. A follow-up assessment is conducted to ensure

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<sup>110</sup>E.O. No. 79, s. 2012, § 10.

<sup>111</sup>1 CESARIO AZUCENA, THE LABOR CODE WITH COMMENTS AND CASES 379 (6th ed. 2007).

<sup>112</sup>DOLE, Revised Rules on Labour Laws Compliance System, Department Order No. 131-B, Series of 2016 [DOLE D.O. No. 131-B, s. 2016] (2016).

compliance with the action plan, and if the establishment is found to have failed to correct the deficiencies, only then is a labour standards case initiated or a compliance order issued. The Revised Rules include other compliance-enabling strategies, namely awareness raising and capacity building activities, free technical assistance, incentivizing compliance programme and enhancement of plant-level partnership mechanisms.<sup>113</sup>

The DENR, particularly the Mine Safety, Environment and Social Development Division (MSESDD) of the MGB, is responsible for the enhancement of programmes on, promotion of best practices in, and investigation of incidents/complaints relating to mine safety and health, environmental management and social development.”<sup>114</sup>

DENR A.O. 97-30 series of 1997, or the *Small-Scale Mine Safety Rules and Regulations*, institutes mechanisms to promote and protect the right of workers in mining operations to a safe, sanitary and healthy work environment. It provides a set of measures for each classification of mines – surface mines, underground mines and underwater mining nearshore. A later issuance, DENR A.O. 2000-98, or the *Mine Safety and Health Standards* was created pursuant to Section 8 of R.A. 7942. It primarily covers large-scale mining operations.

The *Small-Scale Mine Safety Rules and Regulations* require a single or group of small-scale mining operators/permittees/contractors to form a Safety Organization, headed by a qualified Safety Inspector, which shall ensure the effective implementation of safety and health programmes.<sup>115</sup> They are also required to submit reports, including a monthly report on accidents and sickness and a monthly statistical data, to the P/CMRB copy furnished the MGB Regional Office concerned and the DOLE.<sup>116</sup> It authorizes the P/CMRB, for purposes of inquiry or inspection pertaining to safety, health, and sanitation, to require the operator/ contractor/ permittee during reasonable business hours to produce any work, paper, report and document related to the accident and to present any of the workers/miners to be investigated or examined and to execute sworn statements during the examination.<sup>117</sup>

Department of Health (DOH) A.O. 2013-0018 or the National Occupational Health Policy for the Informal Mining, Transport and Agricultural Sectors created the I-ACEH to serve as the main coordinating body for the implementation of an integrated and multi-sectoral programme for the informal sector. The I-ACEH is composed of the DOH Secretary as Chair and the DENR Secretary as Vice-Chair.

### 2.3.3 Environmental compliance

P.D. 1586, *Establishing an Environmental Impact Statement System including other Environmental Management Related Measures and for Other Purposes*, requires persons, partnerships or corporations to first secure an Environmental Compliance Certificate issued by the President or his duly authorized representative before undertaking or operating an environmentally critical project.<sup>118</sup> E.O. 79 clarified that the Environmental Impact Statement System requirements under P.D. 1586 applies to small-scale mining. Accordingly, small-scale mining operations need to secure prior to operations an Environmental Compliance Certificate from the Environmental Management Bureau (EMB) Regional Office.<sup>119</sup> Additionally, they are required to

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<sup>113</sup>DOLE DO No. 131-B, s. 2016, § 2.

<sup>114</sup>Mines and Geosciences Bureau, Mandate and Functions, *available at* <http://www.mgb.gov.ph/transparency/about-us/mandate-and-functions> (last accessed on Jan. 28, 2017).

<sup>115</sup>DENR, Small-scale Mine Safety Rules and Regulations, AO No. 30, series of 1997 [DENR Admin. Order 30, s. 1997] rules 10-11, § 1 (Sept. 11, 1997).

<sup>116</sup>DENR Admin. Order 30, s. 1997, rules 4-5.

<sup>117</sup>DENR Admin. Order 30, s. 1997, rule 3.

<sup>118</sup>Establishing an Environmental Impact Statement System Including Other Environmental Management Related Measures and for Other Purposes, Presidential Decree No. 1586 § 4, (1978).

<sup>119</sup>DENR Memo. Circular No. 7, s. 2007.

submit a Potential Environmental Impact Report and Final Mine Rehabilitation/Decommissioning Plan duly approved by the Mine Rehabilitation Fund Committee of the MGB Regional Office. This Committee is mandated to deputize a Multipartite Monitoring Team as its monitoring arm chaired by the EMB regional Office and co-chaired by the MGB Regional Office.<sup>120</sup>

It is the EMB Director or Regional Director concerned that issues the Notice of Violation, Cease and Desist Order, and/or imposition of fines and penalties for violations of the provisions of the Employees Compensation Programme, P.D. 1586, and all other environmental laws.<sup>121</sup>

#### 2.3.4 Fiscal and monetary aspects

The Bureau of Internal Revenue (BIR) implements the national tax measures. Small-scale mining contractors, as part of the terms and conditions of their contract, are required to sell their gold production outputs to the BSP or through its authorized buying stations or agents.<sup>122</sup> They are not allowed to export gold or sell to any buyer other than the BSP.

### 3. CURRENT LEGAL FRAMEWORK ON CHILD LABOUR

#### 3.1 International instruments

The Philippines is a party to the two primary international instruments concerning child labour. The first is ILO Convention No. 138 (C. 138), or the *Minimum Age Convention*, which the country ratified on 4 June 1998. C. 138 requires State Parties to legislate a minimum age below which children are not allowed to work. It specifies that the minimum age shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.<sup>123</sup> It sets a higher minimum age of 18 years old for any type of employment or work, which by its nature or the circumstances in which it is carried out is hazardous to or likely to jeopardize the health, safety, or morals of young persons.<sup>124</sup>

The second international treaty is ILO Convention No. 182 (C. 182) or the *Worst Forms of Child Labour Convention*, which focuses on the urgency to eliminate the worst forms of child labour as a priority, with a view towards achieving the long-term goal of effectively ending all forms of child labour.<sup>125</sup> Article 3 of C. 138 states that the “worst forms of child labour” comprises:

- a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.
- b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.
- c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties.

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<sup>120</sup>DENR, Harmonization of the Implementation of the Philippine Environmental Impact Statement System and the Philippine Mining Act of 1995 in relation to Mining Projects, A.O. No. 2, series of 2015 [DENR Admin. Order 2, s. 2015] §6 (March 10, 2015).

<sup>121</sup>DENR Admin. Order No. 2, s. 2015, §8.

<sup>122</sup>DENR Admin. Order No. 3, s. 2015, § 13.

<sup>123</sup>International Labour Organization Convention Concerning Minimum Age for Admission to Employment, Art. 2(3), adopted June 26, 1973, 1015 U.N.T.S. 297.

<sup>124</sup>*Id.* at art. 3(1).

<sup>125</sup>International Labour Organization Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, adopted June 17, 1999, 2133 U.N.T.S. 161.

- d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.<sup>126</sup>

It is the obligation of State Parties to identify, through national laws or regulations, the types of work that should be classified under Article 3(d).<sup>127</sup>

The Convention on the Rights of the Child, ratified by the Philippines on 21 August 1990, provides that “States Parties shall recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.”<sup>128</sup> To this end, it requires States Parties to take legislative, administrative, social and educational measures, including legislation on a minimum age or minimum ages for admission to employment; appropriate regulation of the hours and conditions of employment; and enforcement of penalties or other sanctions.<sup>129</sup>

### 3.2 Domestic laws

In consonance with the provisions of C. 138 and C. 182, the Philippines enacted R.A. 9231 or *An Act Providing for the Elimination of the Worst Forms of Child Labour and Affording Stronger Protection for the Working Child*, which amended R.A. 7610, or the *Special Protection of Children Against Abuse, Exploitation and Discrimination Act*, as it pertains to working children.

R.A. 9231 sets the minimum age of employment at 15 years old, and penalizes the employment of children in the worst forms of child labour. R.A. 9231 mirrors the five categories of worst forms of child labour specified in C. 138, and identifies which activities are hazardous or likely to be harmful to the health, safety or morals of children, such as work that:

- a) Is performed underground, underwater or at dangerous heights.
- b) Exposes the child to physical danger such as, but not limited to the dangerous feats of balancing, physical strength or contortion or which requires the manual transport of heavy loads.
- c) Is performed in an unhealthy environment exposing the child to hazardous working conditions.
- d) Is performed under particularly difficult conditions.
- e) Exposes the child to biological agents such as bacteria, fungi, viruses, protozoans, nematodes and other parasites.<sup>130</sup>

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<sup>126</sup>*Id.* art. 3.

<sup>127</sup>*Id.* art. 4.

<sup>128</sup>UN Convention on the Rights of the Child art. 21[1], *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [UN Convention on the Rights of the Child].

<sup>129</sup>*Id.* art. 21[2].

<sup>130</sup>An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for other Purposes, [Special Protection of Children Against Abuse, Exploitation and Discrimination Act], Republic Act No. 7610, § 12-D (as amended by An Act Providing for the Elimination of the Worst Forms of Child Labour and Affording Stronger Protection for the Working Child, Amending for this Purpose Republic Act No. 7610, as Amended, Otherwise Known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act”, Republic Act No. 9231 (2003).

Pursuant to R.A. 9231, DOLE D.O. 149, Series of 2016, or the *Guidelines in Assessing and Determining Hazardous Work in the Employment of Persons Below 18 Years of Age*, declared mining as hazardous to persons below 18 years old. Additionally, R.A. 10364, or the *Expanded Anti-Trafficking in Persons Act of 2012*, considers as trafficking in persons “the use, procuring or offering of a child for illegal activities or work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals”.<sup>131</sup> When a child is trafficked for the purpose of exploitation in the worst forms of child labour, the suspects may be charged for violating both R.A. 9231 and the trafficking law.<sup>132</sup>

### 3.3 Monitoring and enforcement mechanisms

The DOLE, through the Secretary or his/her authorized representative, is the lead agency that is mandated to implement child labour laws. The responsibility of monitoring and assessing compliance with child labour laws falls on the LLCOs, and they are directed to use D.O. 149-2016 within the framework of the labour laws compliance system in the performance of their function.<sup>133</sup> It is the Secretary, through the Regional Director, who has the authority to impose administrative sanctions on those who violate R.A. 9231, including the issuance of an order for the closure of any business, firm or establishment, or compliance orders in case of violations of the provisions of the Act.<sup>134</sup> With respect to the enforcement of the criminal provisions of the law, whether under R.A. 9231 or the Expanded Anti-Trafficking in Persons Act, the law enforcement agencies are the ones tasked to investigate cases and the DOJ to initiate criminal proceedings.

The NCLC spearheads the implementation and monitoring of the Philippine Programme Against Child Labour, which is the national programme for the prevention and elimination of child labour that envisions a child-labour free Philippines.<sup>135</sup> The roles of the member agencies and non-government partners of NCLC are clarified in a Memorandum of Agreement, which designated DOLE as the overall coordinator of the implementation of the Philippine Programme Against Child Labour (PPACL), with the responsibility to monitor and evaluate the programme.<sup>136</sup> The DOJ was given the responsibility to monitor, investigate, and prosecute cases of child abuse, child labour and exploitation.<sup>137</sup> The Committee for the Special Protection of Children, chaired by the DOJ, was designated as the body that is principally responsible for coordinating and monitoring the investigation and prosecution of cases for violations of R.A. 7610.<sup>138</sup>

The I-ACAT, on the other hand, is responsible for formulating a comprehensive and integrated programme to prevent and suppress the trafficking in persons, and monitoring and overseeing the strict implementation of the anti-trafficking law. It is composed of the DOJ Secretary as Chairperson, the Department of Social Welfare and Development (DSWD) Secretary as Co-Chairperson, and the

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<sup>131</sup>An Act Expanding Republic Act No. 9208, Entitled "An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations and for other Purposes" [Expanded Anti-Trafficking Act of 2012], Republic Act No. 10364 § 4 (2012).

<sup>132</sup>Department of Justice, Legal Opinion LML-L-29G15-907 (July 29, 2015).

<sup>133</sup>DOLE Dept. Order No. 149, s. 2016] § 3.

<sup>134</sup>Special Protection of Children Against Abuse, Exploitation and Discrimination Act, § 16(g).

<sup>135</sup>Bureau of Workers with Special Concerns, Philippine Programme Against Child Labour, available at <http://www.bwsc.dole.gov.ph/programmes-and-projects-submenu1/clpep/philippine-programme-against-child-labour.html> (last accessed Nov. 12, 2017).

<sup>136</sup>Child Labour Knowledge Sharing System, Memorandum of Agreement to Strategically Scale Up Implementation of the Philippine Programme Against Child Labour (A Memorandum of Agreement by and among relevant stakeholders to combat child labour in the Philippines.) Art. 3, ¶ 1, available at [http://site.clkss.org.ph/resources/policies/memorandum-of-agreement/moa-to-strategically-scale-up-implementation-of-the-philippine-programme-against-child-labour/at\\_download/policy\\_file](http://site.clkss.org.ph/resources/policies/memorandum-of-agreement/moa-to-strategically-scale-up-implementation-of-the-philippine-programme-against-child-labour/at_download/policy_file) (last accessed Nov. 12, 2017).

<sup>137</sup>*Id.*, art. 3 (6).

<sup>138</sup>*Id.*



Secretaries of nine other government agencies including DOLE and three representatives from the non-government sector as members.

At the local level, the Local Councils for the Protection of Children, which are instituted at all levels of the local government down to the barangay, are responsible for monitoring the implementation of laws on children, including anti-child labour laws and protecting the welfare of the children in the communities.

The DSWD recently launched its Strategic Helpdesks for Information, Education, Livelihood and other Developmental Interventions (SHIELD) against child labour. SHIELD will help LGUs establish a functional Local Child Labour Registration System and a Barangay Help Desk. The local registry will identify who and where child labourers are in the community, and will set a mechanism for referral and monitoring of cases. The Barangay Help Desk will provide a one-stop service centre, and facilitate rescue operations when necessary.

#### 4. ANALYSIS OF GAPS

##### 4.1 Child labour

Child labour in mining is difficult to reduce, more so to eliminate. Children are involved in mining due to a complex web of factors, poverty being the primary driving force.<sup>139</sup> The economic prospect of bringing in more profit, low educational attainment of parents, lack of enforcement of child labour laws, lack of educational infrastructure, lack of interest of the parents in the education of their children, lack of orientation of the parents concerning the future of their children, and passing on the tradition of mining in the family are among the other reasons.<sup>140</sup>

The fact that small-scale mining is still predominantly an underground economy makes it even harder to deal with the problem of child labour. Article 128 of the Labor Code, which gives the Secretary or his or her duly authorized representative visitorial and enforcement powers is far-reaching, and it applies to both the formal and informal sectors. It is “broad enough to cover any fact, condition or matter related to the enforcement not only of the Labor Code but of any labour law.”<sup>141</sup> The RLCS, however, is designed to apply largely to the formal sector. In addition, DOLE does not have the sufficient number of LLCOs to cover both the formal and informal sectors.

The non-responsiveness of the RLCS may be traced to the scope of R.A. 9231, which also does not provide clear parameters for intervention in the informal sector. The provisions have been crafted primarily with the formal sector in mind. Although the administrative sanction of closure of an establishment may be applied to small-scale mining operations, the other provisions do not lend themselves well to the realities surrounding ASGM.

The NCLC has limited powers owing to its precarious existence. The NCLC was not created by law; it exists only by virtue of a Memorandum of Agreement among the concerned government agencies and other stakeholders. This affects its ability to operate effectively. Without legislation, it is difficult to allocate funds to support the NCLC’s programmes. The NCLC relies on whatever amounts the member-agencies are able to source and use for this purpose from their respective budgets. Further, its capacity to assert itself is clipped without a strong legal foundation for its creation and operation as a body.

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<sup>139</sup>Caymo, *supra* note 59 at 19.

<sup>140</sup>Thomas Hentschel, Felix Hruschka, Michael Priester *supra* note 58 at 20-22.

<sup>141</sup>1 CESARIO AZUCENA, THE LABOR CODE WITH COMMENTS AND CASES 379 (6th ed. 2007).

The LCPC, especially the BCPCs, are the monitoring mechanisms that are closest to the ground. However, not all barangays have constituted their BCPCs, and those that have been created are not fully functional.<sup>142</sup>

The P/CMRB has the direct authority over the monitoring and implementation of mining and related laws. It is also in a strategic position to curb child labour in ASGM because of its proximity to the mining sites. However, it lacks the capacity to address child labour issues. Moreover, its composition does not include a representative from the children's sector.

The issues associated with the nation's educational system are additional contributory factors. While basic education is free and compulsory, there are many hidden costs which are burdensome for low income families to bear. For the parents, the long-term benefits of having their children educated are overshadowed by the prospects of earning a profit that will meet the immediate and pressing needs of the family. Priorities boil down to which endeavor can bring food on the table. Children who have experienced earning money from mining become more attracted to working for a profit, even under extremely difficult circumstances, rather than going to school.<sup>143</sup>

Yet another issue is the gap between the minimum age of employment and the age of completion of compulsory education. R.A. 10533 or the Enhanced Basic Education Act of 2013, introduced the K-12 programme, which added two more years to high school and resulted in increasing the age of completion of basic education to 18 years old. The minimum age of employment, however, is lower at 15 years old. The gap in the ages may encourage children to join the labour force at an age when they have not yet completed compulsory education.

There is also incongruence between DOLE Department Order (DO) No. 149, Series of 2016 and Section 163 of the IRR of R.A. 7942. DO 149 considers mining as hazardous to persons below 18 years old, and prohibits the employment of children in any form of mining work. The IRR of R.A. 7942, on the other hand, allows children 16 years of age or older to work in mining operations, but prohibits employment of children of any age in underground mines.

#### **4.2 Working conditions, occupational health and safety and social issues**

The problem on working conditions and social issues, like child labour, are brought about by multiple factors, with poverty being a root cause. From a policy perspective, the lack of appropriate interventions is due again to the fact that ASGM is not formalized. The visitorial powers of the Secretary of DOLE should be broad enough to cover informal mining operations, but a limited LLC system and lack of financial and human resources make it difficult for LLCOs to reach the ASGM sector.

The government has provided alternative livelihood programmes to remove families from ASGM, but these cannot compete with ASGM, which is more lucrative. While there have been some inroads in this area, only a few families have opted to pursue this alternative.<sup>144</sup>

On the issue of occupational safety and health, normally it is a matter within the jurisdiction of the DOLE. As far as the mining sector is concerned, however, DOLE claims that it has no authority to enforce occupational safety and health rules; it is the MGB that has jurisdiction over this.<sup>145</sup> Despite the mandate of the MSESDD, the MGB, on the other hand, is of the position that they are not responsible for

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<sup>142</sup>Interview with Atty Karina Trayvilla (Regional Director, DOLE Region V), (by telephone conference) (Jan. 9, 2017).

<sup>143</sup>Interview with Ms Eve Cubelo (Programme Manager of Ban Toxics!), (by skype) (Dec. 20, 2016).

<sup>144</sup>Interview with Atty Karina Trayvilla, *supra* note 140.

<sup>145</sup>Buena Bernal, DOLE has no mandate on mine safety – Baldoz, *available at* <http://www.rappler.com/nation/99913-dole-mandate-mine-safety-baldoz> (last accessed July 21, 2015).

occupational safety and health when it comes to illegal operations; the response of MGB is stoppage and law enforcement.<sup>146</sup> Still, little is being done to crack down on small-scale miners to effect stoppage of work and hold violators accountable.

The 4Ps is the primary vehicle of the government to alleviate poverty and help address social problems. While it has some successes, it cannot cover the hundreds of thousands of families engaged in ASGM.

The PSSMPF has the potential to help improve working conditions and protect human health and safety as well as the environment. But the Fund is in its infancy stage owing to the fact that only a few small-scale mining operations have formalized. The MGB has yet to popularize information on how much resources are available and how the Fund may be accessed.

### 4.3 Promotion of sustainable, viable and legal ASGM operations

Regulatory laws on ASGM are not consistent with the Constitutional policy of promoting more equitable distribution of opportunities, income and wealth, and allowing small-scale utilization of natural resources by Filipino citizens. Current laws impose stringent requirements that are unrealistic for small-scale miners to comply with and make it extremely difficult for them to formalize.

#### 4.3.1 Declaration of *Minabang Bayan*

The first hurdle in applying for a small-scale mining contract is the requirement under R.A. 7076 that the application should be for a location within a small-scale mining area or *Minabang Bayan*. Any interested party may file a petition to declare a specific area a *Minabang Bayan*.<sup>147</sup> In some cases, the Regional Office concerned may recommend other areas for possible declaration.<sup>148</sup>

As of December 2016, there were 69 petitions for declaration of *Minabang Bayan* pending.<sup>149</sup> To this date, only five *Minabang Bayan* have been approved – Banaybanay, Davao Oriental; Lorente, Eastern Samar; Dinagat Island; Buenavista, Quezon; and Agusan del Sur.<sup>150</sup> Agusan del Sur is inactive because of non-compliance with the Environmental Compliance Certificate (ECC), while Buenavista appears to have been mined out.<sup>151</sup>

Some applications were denied due to the lack of consent of holders or previous mining applicants in the area.<sup>152</sup> This is considered a common choke point in the process. In many instances, prior claimants are large-scale mining companies that no longer mine the area and cannot be located or contacted.<sup>153</sup>

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<sup>146</sup>Interview with Eng Esteban Martin (Executive Director, Mines and Geosciences Bureau), at the Mines and Geosciences Bureau Central Office, Quezon City, in person (Feb. 1, 2017).

<sup>147</sup>DENR Admin. Order No. 3, s. 2015, § 9[a].

<sup>148</sup>*Id.* at ¶ 2.

<sup>149</sup>*Id.*

<sup>150</sup>Interview with Eng Esteban Martin, *supra* note 144.

<sup>151</sup>*Id.*

<sup>152</sup>Jonathan L. Mayuga, *DENR okays Minabang Bayan application for Eastern Samar, Davao Oriental*, BUSINESS MIRROR, Jan. 26, 2016, available at <http://www.businessmirror.com.ph/denr-okays-minahang-bayan-application-for-eastern-samar-davao-oriental/> (last accessed Feb. 1, 2017).

<sup>153</sup>Interview with Ms Shalimar Vitan (Chief Operating Officer of Ban Toxics!), (in person at the Ban Toxics office, 6C Maningning Street, Sikatuna Village, Quezon City 1101 Philippines) (Jan. 10, 2017); See also, Interview with Eve Cubelo, *supra* note 135.

Another apparent bottleneck is in obtaining the ECC, which is difficult to comply with considering that the petitioners are small operators, often family enterprises, and their applications are piecemeal rather than zonal.<sup>154</sup> Petitioners are required to strictly comply with the requirement of securing an ECC from the Environmental Management Bureau Regional Office for the entire *Minabang Bayan*. This is a complicated and technical procedure, which is incompatible with the skills set of small-scale miners. It may entail hiring an expert consultant who will facilitate the compliance process. The difficulty and cost associated with obtaining an ECC pose as a disincentive especially for small-scale miners who are not organized.<sup>155</sup>

The lack of clear time limits for acting on the petition for declaration of *Minabang Bayan* also contributes to the delay. While the IRR of R.A. 7076 prescribe periods within which certain steps must be completed, there are no clear timeframes for the approving authorities to take action, resulting in uncertainty as to when a decision may be expected:

- a) Period within which the P/CMRB should issue a denial in case the proposed area is inside areas closed to mining applications.
- b) Period within which the P/CMRB should issue notices in case the proposed area is in conflict with existing mining permits/contracts/applications, or it covers private lands.
- c) Period within which the P/CMRB should post the notice of the proposed *Minabang Bayan* in case there is no conflict, or the proposed area does not cover private lands.
- d) Period within which the National Commission on Indigenous Peoples (NCIP) is to issue a Certificate of Non-Overlap or Compliance Certificate, as the case may be, pursuant to the pertinent provisions of R.A. 8371.
- e) Period within which a majority of the Sanggunian is supposed to endorse the declaration of the proposed *Minabang Bayan*.
- f) Period within which the Secretary should complete the initial review of the result of the evaluation of the petition by the Regional Office of MGB.
- g) Period within which the Secretary should decide an appeal when the decision of the Board is appealed to him or her.
- h) Period within which the Secretary should issue the clearance after all requirements are complied with.

See **Annex 5** for a flowchart of the approval process for declaring a *Minabang Bayan*.<sup>156</sup>

The fact that there are only five *Minabang Bayan* since the passage of R.A. 7076 in 1991 is evidence that the law is not able to achieve its purpose of promoting, developing, protecting and rationalizing 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.

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<sup>154</sup>Interview with Eng Esteban Martin, *supra* note 144.

<sup>155</sup>*Id.*

<sup>156</sup>Llaguno, Soriano and Tamayao, *supra* note 73, at 51.

#### 4.3.2 Multiple layers of registration and licensing requirements

In order to lawfully conduct small-scale mining operations, qualified applicants have to undergo multiple layers of registration and licensing requirements in accordance with R.A. 7076, specifically: (a) individual miners should first register with the P/CMRB; (b) organize themselves into an association of miners or cooperative and register with the SEC, Department of Trade and Industry (DTI), Cooperative Development Authority (CDA) or other appropriate government agency; (c) apply for a small-scale mining license; and (d) then apply for a small-scale mining contract. After the initial registration of individual miners, each step that follows entails the submission of a set of documents and a tedious approval process.

The setting up of a cooperative alone is no simple matter. Memorandum Circular 2015-01 issued by the CDA lays down the revised guidelines for registration of small-scale mining cooperatives. It requires a membership of at least 15 licensed miners, capitalization with at least 25 per cent of the authorized share capital subscribed and at least 25 per cent of the subscribed share paid up prior to registration, and the submission of the following documents:

- a) Original copy of the Cooperative Name Reservation Notice;
- b) Economic survey;
- c) Articles of Cooperation and approved By-Laws;
- d) Treasurer's Affidavit;
- e) Surety bonds of accountable officers;
- f) Certificate of pre-membership seminar signed by the Cooperative interim chairperson;
- g) Undertaking to change name;
- h) Undertaking to comply with accounting and auditing standards;
- i) Undertaking to comply with other requirements prescribed by other regulatory agencies;
- j) Certification from the MGB Regional Office that the members are licensed miners;
- k) Tax Identification Number of all cooperators; and
- l) Registration fee.

It takes 60 days from submission of the complete documentary requirements for the Authority to approve or deny the application, otherwise, the application is deemed approved unless the delay is attributable to the applicant.

The application for a small-scale mining license requires the payment of an application fee and submission of an application form and proof of registration with the Securities and Exchange Commission (SEC), DTI, CDA or other appropriate government agency. There is no prescribed period within which the P/CMRB should act on the application.

Note that there seems to be a chicken and egg situation between licensing and registering as a cooperative. If the miners are registered as a cooperative, to secure a license they need to submit to P/CMRB proof of registration with the CDA, but to register as a cooperative with the Authority the applicant must submit a certification from the MGB Regional Office that the members are licensed miners.

The application for a small-scale mining contract also necessitates payment of an application fee and the submission of several documents, namely:

- a) Duly accomplished and notarized application form;
- b) Copy of small-scale miners license;
- c) Location map of the proposed small-scale mining contract area showing its geographic coordinates/ meridional block/s and boundaries in relation to the *Minabang Bayan*, majoe environmental features and other projects using a National Mapping and Resources

- Information Authority (NAMRIA) topographic map in a scale of 1:50,000 or 1:10,000 duly prepared, signed and sealed by a deputized Geodetic Engineer;
- d) Sketch plan of the proposed mining contract area at a convenient scale duly prepared, signed and sealed by a deputized Geodetic Engineer;
  - e) Proposed small-scale mining contract;
  - f) Application for survey order;
  - g) Proposed Two-Year Work Programme;
  - h) Potential Environmental Impact Management Plan (PEIMP);
  - i) Certificate of Environmental Management and Community Relations Record (CEMCCR) or Certificate of Exemption, in lieu of a CEMCRR, if the applicant has neither past or present mineral resource use or mining-related venture(s);
  - j) Community Development and Management Programme (CDMP);
  - k) Annual Safety and Health Programme (ASHP); and
  - l) Sworn declaration of the total area (hectarage) covered by the applicant's small-scale mining contract(s)/application(s) in the entire country.

A separate license, and therefore another application process, is required before one can engage in mineral processing. On top of all these, an Ore Transport Permit must be obtained for mineral and mineral products to be transported legally from a *Minahang Bayan*.

All together, before ASGM can be legally operational in an area, small-scale miners have to successfully clear at least seven major hurdles, each one entailing costs, time, and effort. The cumbersome process and restrictive conditions discourage small-scale miners to formalize, and even if they make a good faith attempt to comply it is close to impossible to do so. P.D. 1899, unlike R.A. 7076, afforded some flexibility in the imposition of conditions. It gave the Director of Mines and Geosciences the discretion to waive some requirements from other government agencies, which he or she may deem unnecessary.<sup>157</sup>

#### 4.3.3 Overwhelming disincentives and limited incentives for ASGM to formalize

In addition to the difficulty of obtaining the licenses and SSMC, there are several other impositions that have the effect of discouraging ASGM operators to formalize. Among these is the requirement that gold should be sold only to the BSP through its buying stations. Large-scale mining corporations are not required to do so. Most small-scale miners sell their gold to the black market because it is more convenient and it translates to immediate payment.<sup>158</sup>

The first hindrance to selling to the BSP is accessibility. The buying stations are located in the BSP's Department of General Services in Quezon City, and in its regional offices in Davao City, Zamboanga City, Baguio City and Naga City,<sup>159</sup> which hardly cover the 20 or so provinces where ASGM is being conducted.

Another challenge is the need to conform with the BSP's requirements for acceptance, which prove to be difficult for small-scale miners due to lack of technology, namely:

- a) Physical form
  - Bar or disc (powder is not accepted).
  - Should not contain mercury or amalgam in any quantity.
  - Free of slag or other foreign matter.

<sup>157</sup>Presidential Decree No. 1899, § 6.

<sup>158</sup>Extractive Industries Transparency Initiative, *supra* note 18 at 122.

<sup>159</sup>Bangko Sentral ng Pilipinas, BSP Gold Buying Programme, *available at* <http://www.bsp.gov.ph/bspnotes/bspgold.asp> (last accessed April 15, 2017).

- No sign of metallic segregation/layering or poured shortness.
  - Should not be damp or wet.
- b) Maximum dimensions
- Bar : 16.5 cm (6.5”) long x 8 cm (3”) wide x 4 cm (1.5”) thick.
  - Disc : 10 cm (4”) diameter x 5 cm (2”) thick maximum.
- c) Weight
- Maximum weight per bar or disc shall be approximately 160 tr. oz. (@ 5 kg).
  - Maximum weight per lot shall be approximately 320 tr. oz. (@ 10 kg).
- d) Minimum preliminary gold assay – 30 per cent

Taxes and other charges are also disincentives to formalization. While small-scale mining permittees or licensees under P.D. 1899 are exempt from payment of all taxes, except income tax,<sup>160</sup> R.A. 7076 imposes national and local taxes on small-scale mining contractors as provided in the National Internal Revenue Code.<sup>161</sup> The applicable national revenue taxes are income tax, excise tax and value added tax.<sup>162</sup> Sales to the BSP by small-scale gold producers had been on a decline since April 2012, when the BIR put up collection desks at the BSP’s gold-buying sites and imposed 2 per cent excise tax and 5 per cent creditable withholding tax at the point of sale.<sup>163</sup>

In addition, SSMC holders need to pay royalty equivalent to 5 per cent of the gross output for small-scale mining within mineral reservations, government production share, and occupation fee per year.<sup>164</sup> R.A. 7942 further requires the payment of royalty to indigenous cultural communities upon utilization of the minerals in an amount to be agreed upon by the SSMC holder and the Indigenous Cultural Communities (ICC).<sup>165</sup>

The justification for the imposition of taxes is the “polluters pay principle” in environmental law, which basically means that those who cause damage to the environment should bear the costs associated with it.<sup>166</sup>

While the obligations are piled up on the SSMC, there appears to be little incentive to formalize. It may be said that formalization will allow small-scale miners to avail themselves of technical assistance, social security and protection, and employment benefits as provided by law, which they would otherwise not be entitled to. These however, seem to be overshadowed by the immediate restrictive implications of securing a license and SSMC, and the long-term obligations of paying taxes and other charges.

On the other hand, large-scale contractors are given a number of incentives under R.A. 7942, including incentives for investment; for acquiring, constructing or installing pollution control devices and facilities; for income tax-carry forward of losses; for income tax accelerated depreciation; and for

<sup>160</sup>Presidential Decree No. 1899, § 4.

<sup>161</sup>DENR Admin. Order No. 3, s. 2015, *supra* note 91, § 28.

<sup>162</sup>Jurado, Amurao and Calubag, *supra* note 74.

<sup>163</sup>*Id.*; See also, Melissa Luz T. Lopez, *Gold reserves plateau as tax woes nag – BSP*, BUSINESS WORLD, January 19, 2016, available at <http://www.bworldonline.com/content.php?section=Finance&title=gold-reserves-plateau-as-tax-woes-nag---bsp&id=121654> (last accessed April 16, 2017).

<sup>164</sup>DENR Admin. Order No. 3, s. 2015, *supra* note 91 § 28, 29.

<sup>165</sup>Philippine Mining Act of 1995, § 17.

<sup>166</sup>Jurado, Amurao and Calubag *supra* note 74 citing United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, June 3-14, 1992, *Rio Declaration on Environment and Development*, Principle 16, A/CONF.151/26 (Vol. I) (Aug. 12, 1992).

simultaneous availment of the incentives under the Act and the income tax holiday under E.O. 226.<sup>167</sup> No similar incentives are given to small-scale contractors.

#### 4.3.4 Lack of support and assistance to transition to formalization

The relevant laws that affect small-scale mining adopt a law enforcement paradigm instead of a developmental approach. This being the case, there is a lack of support and assistance to transition small-scale miners to formalization.

R.A. 7076 provides that in declaring small-scale mining areas those actively mined and occupied by small-scale miners must be immediately prioritized.<sup>168</sup> Its IRR state that small-scale miners who have been in actual operation of mineral lands on or before August 1, 1987 shall not be dispossessed, ejected or removed from those areas, provided, that those areas are declared *Minahang Bayan* and the small-scale miners shall secure a small-scale mining contract in compliance with the Act.<sup>169</sup> Considering the challenges in declaring a *Minahang Bayan* and obtaining a SSMC, it will take quite a while for small-scale miners to be able to comply with the conditions. The Act and its rules do not indicate any grace period within which the conditions should be met. In the absence of such, there is no instruction on how long small-scale miners may continue to possess and occupy the area. Further, it is also unclear whether continued possession means that the small-scale miners may persist in conducting their mining activities pending their application for a *Minahang Bayan* and SSMC.

In contrast, for holders of SSMP under P.D. 1899 with a remaining term of less than one year, E.O. 79 allows for the issuance of a temporary SSMC by the Governor/City Mayor concerned upon recommendation by the P/CMRB to continue small-scale mining operations within a period of 6 months or until the area is declared a *Minahang Bayan*, whichever comes first.<sup>170</sup>

In any case, the laws provide some measures to assist small-scale miners in formalizing their operations. R.A. 7076 states that the DENR, in coordination with the P/CMRB and other government agencies concerned, shall extend the following assistance to small-scale miners:

- a) Organization of small-scale miners into cooperatives;
- b) Technical and financial assistance and social services;
- c) Processing and marketing assistance; and
- d) Generation of ancillary livelihood activities.<sup>171</sup>

E.O. 79 states that “(t)echnical assistance through trainings, seminars for capacity-building for small-scale miners, mining cooperatives and associations shall be conducted by the government agencies concerned.”<sup>172</sup> But the assistance afforded in these provisions is commonly viewed as accommodations extended to small-scale miners who operate legally. At the very least, however, assistance in organizing into cooperatives clearly pertains to small-scale miners who have not secured licenses and SSMC.

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<sup>167</sup>Department of Environment and Natural Resources, Revised Implementing Rules and Regulations of the Philippine Mining Act of 1995, DENR Administrative Order No. 21, series of 2010 [DENR Admin. Order No. 21, s. 2010] § 222 to 227 (June 28, 2010).

<sup>168</sup>DENR Admin. Order No. 3, s. 2015, *supra* note 91, § 5.

<sup>169</sup>DENR Admin. Order No. 3, s. 2015, *supra* note 91, § 37.

<sup>170</sup>Department of Environment and Natural Resources, The Implementing Rules and Regulations of Executive Order No. 79, Administrative Order No. 7, series of 2012 [DENR Admin. Order No. 7, s. 2012] § 14[a] (Sept. 10, 2012).

<sup>171</sup>DENR Admin. Order No. 3, s. 2015, *supra* note 91, § 33.

<sup>172</sup>DENR Admin. Order No. 7, s. 2012, *supra* note 168, § 14(e)



Meanwhile, small-scale miners are faced with the threat of penalization. For violation of any of its provisions, R.A. 7076 imposes a penalty of imprisonment of not less than six years and confiscation and seizure by the P/CMRB of the equipment, tools and conveyance used in the commission of the offense.<sup>173</sup> Criminal liabilities may also be incurred for violation of child labour laws as well as pertinent environmental laws.

Unlike other environmental laws that provide grace periods for transitioning to compliance with no threat of penalty, small-scale mining laws have no such provision other than the window given to holders of SSMP who may be issued temporary mining contracts. For instance, R.A. 8749, or the Philippine Clean Air Act of 1999, states as follows:

Existing industries, which are proven to exceed emission rates established by the Department in consultation with stakeholders, after a thorough, credible and transparent measurement process shall be allowed a grace period of eighteen (18) months for the establishment of an environmental management system and the installation of an appropriate air pollution control device : *Provided*, That an extension of not more than twelve (12) months may be allowed by the Department on meritorious grounds.<sup>174</sup>

R.A. 9003, or the Ecological Solid Waste Management Act of 2000, allows for a three-year transition period for LGUs to convert open dumps into controlled dumps.<sup>175</sup>

R.A. 9275, or the Philippine Clean Water Act of 2004, provides that DENR shall:

Review and set effluent standards every five (5) years from the effectivity of this Act or sooner as determined by the Department: *Provided*, That in the interim, the provisions of DENR Administrative Order (AO) No. 35 of the Department shall apply: *Provided, further*, That when new and more stringent standards are set in accordance with this section, the Department may establish a grace period with a maximum of five (5) years: *Provided, finally*, That such grace period shall be limited to the moratorium on the issuance of cease and desist and/or closure order against the industry's operations except in the event such operation poses serious and grave threat to the environment, or the industry fails to institute retooling, upgrading or establishing an environmental management system (EMS).<sup>176</sup> (*Underscoring supplied*).

R.A. 10657, or the Chemistry Profession Act, which regulates the practice of chemistry and chemical analysis in consideration of public safety, national economy and protection of the environment, provides a three-year grace period for all individuals and institutions to comply with its provisions.<sup>177</sup>

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<sup>173</sup>DENR Admin. Order No. 3, s. 2015, *supra* note 91, § 36.

<sup>174</sup>An Act Providing for a Comprehensive Air Pollution Control Policy [Philippine Clean Air Act of 1999] Republic Act No. 8749, § 19 (1999).

<sup>175</sup>An Act Providing for an Ecological Solid Waste Management Programme, Creating the Necessary Institutional Mechanisms and Incentives, Declaring Certain Acts Prohibited and Providing Penalties, Appropriating Funds Therefor, and for other Purposes [Ecological Solid Waste Management Act of 2000] Republic Act No. 9003, § 37 (2000).

<sup>176</sup>An Act Providing for a Comprehensive Water Quality Management and for Other Purposes [Philippine Clean Water Act of 2004] Republic Act No. 9275, § 19(f) (2004).

<sup>177</sup>An Act Regulating and Modernizing the Practice of Chemistry in the Philippines, Repealing for the Purpose Republic Act Numbered Seven Hundred Fifty-Four (R. A. No. 754), Otherwise Known as the Chemistry Law of the Philippines [Chemistry Profession Act] Republic Act No. 10657, § 46 (2015).

#### 4.4 Use of mercury in ASGM

The current regulatory measures on mercury are piecemeal. The Philippines has not ratified the Minamata Convention on Mercury, and it has not adopted a comprehensive national legislation to address the risks of mercury to human health and the environment.

Although E.O. 79 prohibits the use of mercury in small-scale mining, mercury remains very accessible and affordable to miners. It does not plug the influx of mercury that is imported for dental purposes. Dental amalgamation is exempted from the requirements for the Chemical Control Order on mercury. “This has resulted in the importation of much greater quantities than is actually needed for dental uses and the proliferation of dental clinics that supply mercury for gold mining.”<sup>178</sup>

There is also a lack of awareness among mining communities on the toxic and harmful effects of mercury use and exposure on human health and the environment.

#### 4.5 Monitoring systems and roles of agencies

There are apparent overlaps in the functions of government agencies mandated to protect the environment, regulate mining, ensure decent work and occupational safety and health, and eliminate child labour in its worst forms. The overlaps may be an advantage in the sense that concerned agencies addressing different but cross-cutting issues can coordinate with each other. If there is a lack of coordination and unclear delineation of roles, however, the intersections create confusion regarding which agency is responsible for what. Consequently, efforts at achieving the lofty purposes of applicable laws become watered down.

The issue on which agency has the authority to monitor occupational safety and health in the mining sector was discussed under Section 5.2.

On law enforcement regarding child labour issues, the NCLC has the mandate to ensure the implementation of R.A. 9231 on the elimination of the worst forms of child labour. Since the enactment of R.A. 10364, or the Expanded Anti-Trafficking in Persons Act of 2012, the worst forms of child labour have been considered as trafficking for the exploitation of children, thereby putting it within the ambit of I-ACAT’s powers. By express provision of R.A. 10361,<sup>179</sup> however, it did not repeal or amend R.A. 9231 in any way. One who engages children in hazardous activities, such as mining, can then be prosecuted for violation of both laws. Despite the existence of two government bodies mandated to address child labour, children continue to be exploited in ASGM under the worst conditions.

The MICC involves key government agencies most of which are also members of I-ACAT and NCLC. It is composed of the Climate Change Adaptation and Mitigation Cluster and the Economic Development Cabinet Cluster. E.O. 79 added the DOJ, NCIP and the Union of Local Authorities of the Philippines in the membership of MICC. It did not include two agencies that have vital roles in addressing the problems in ASGM – DOLE and the DOH. While both agencies are involved in the working groups of MICC, it may be necessary to have them represented in the governing body to ensure that issues that concern them are prioritized and their inputs are put forward during the decision-making process.

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<sup>178</sup>The Price of Gold *supra* note 3, at 4.

<sup>179</sup>Expanded Anti-Trafficking in Persons Act of 2012, *supra* note 129, § 26.

## 5. RECOMMENDATIONS

### 5.1 Child labour

#### 5.1.1 Amend R.A. 9231 and the RLCS to effectively respond to the unique circumstances of the informal sector

Recommendations on addressing issues pertaining to child labour in general are discussed in two earlier studies commissioned by ILO.<sup>180</sup> Among the recommendations mentioned there, the one that may impact ASGM the most is the amendment of R.A. 9231 to develop measures and establish parameters on the administration and enforcement of the law adapted to the informal economy, especially by “taking specific measures to expand the reach and strengthen the capacity of the labour inspectorate to monitor child labour in the informal sector”.<sup>181</sup> In the formal sector, DOLE has deputized private individuals to increase the complement of LLCOs. It should consider the same strategy for the informal sector.

The RLCS should likewise be reviewed and amended to cover the informal sector. DOLE has institutionalized the developmental approach in its labour compliance system. It is well-positioned to expand the same approach to address the needs of the ASGM sector as it transitions to formalization.

#### 5.1.2 Amend R.A. 9231 to strengthen the NCLC and provide appropriations for its programme

To further strengthen the NCLC, R.A. 9231 should be amended to give the NCLC the legal mandate to address child labour as well as provide the appropriations to support its programmes.

#### 5.1.3 Activate and/or strengthen the LCPC/BCPCs

The LCPC/BCPCs should be constituted and/or activated as they are the most strategically placed mechanism to address the issue. R.A. 9344 allots 1 per cent of the Internal Revenue Allotment of the local government for the strengthening and implementation of the programmes of the LCPC.<sup>182</sup> This allocation may be used for child labour profiling, advocacy initiatives, capacity-building activities, assistance to children, institution of health and nutrition programmes and parent education, among others.<sup>183</sup>

#### 5.1.4 Include a representative of the children’s sector in the P/CMRB

The P/CMRB should include a representative of the children’s sector in its membership, preferably the non-government organization (NGO) representative in the LCPC. This will help ensure the promotion and protection of the welfare of children, and harmonization of the anti-child labour initiatives of the LCPC with the programmes and activities of the P/CMRB. The P/CMRB should also undergo capacity-

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<sup>180</sup>Nina Patricia D. Sison-Arroyo, A Legal Review of National Laws and Regulations Related to Child Labour and Forced Labour in the Philippines (Feb. 16, 2013) (on file with ILO); See also Nina Patricia Sison-Arroyo, *Legal Options to Address the Gap Between the Age of Compulsory Schooling and Minimum Age for Work in the Philippines*, 60 *Ateneo L.J.* 148 (2015).

<sup>181</sup>International Labour Conference 101st Session, Geneva, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A) at 416, ILC.101/III/1A (2012).

<sup>182</sup>An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of Justice, Appropriating Funds Therefor and for other Purposes [Juvenile Justice and Welfare Act of 2006], Republic Act No. 9344, § 15.

<sup>183</sup>DILG Memorandum Circular No. 2012-120, Allocation of the 1 per cent Internal Revenue Allotment (IRA) for the Strengthening and Implementation of the Programmes, Projects and Activities of the Local Councils for the Protection of Children per Section 15 of R.A. 9344.

building seminars to enhance their awareness on child labour laws and their capacity to develop strategies to address the issue.

5.1.5 Strengthen measures to make education more accessible and to encourage children to complete basic education

The government should find ways to make education more accessible and attractive, including programmes that will increase financial assistance and cover more beneficiaries, provide transportation support, establish in-school feeding programmes, and bring the alternative learning systems closer to the mining sites.

R.A. 9231 should be amended to strengthen mechanisms to prevent children of employable age from leaving school before they complete their compulsory education. The government should also look into whether there is a need to raise the age of minimum employment to 18 to eliminate the age gap between the age of employability and the age of completion of compulsory education.

5.1.6 Reconcile the implementing rules and regulations of R.A. 7942 with DOLE D.O. 149, s. 2016 on the prohibition on employing children in mining

Section 163 of the IRR of R.A. 7942 should be amended to make it consistent with DO 149 of DOLE, which prohibits the employment of children below 18 years old in all phases of mining operations.

## 5.2 Working conditions and social issues

Recommendations pertaining to monitoring and enforcement are discussed in Section 6.5. Other possible measures to address the gaps relating to working conditions and social issues are discussed here.

5.2.1 Make the People's Small-Scale Mining Protection Fund more transparent and accessible

The DENR should inform ASGM communities of the PSSMPF, how much resources are available so far, and how the funds may be utilized. It should raise the awareness of small-scale miners on the process and requirements for accessing the Fund.

5.2.2 Address economic issues through 4Ps, viable alternative livelihood programmes and financial management seminars

The government should consider expanding the coverage of 4Ps to enable it to reach more families in the ASGM sector. Doing this will not only help address poverty, but would also improve profiling and monitoring at the community level. The DSWD's National Household Targeting System for Poverty Reduction (Listahanan 2) helps those who need assistance the most.<sup>184</sup> DSWD should study its selection process and look into the possibility of prioritizing poor families in ASGM communities.

DOLE and DSWD should explore viable alternative livelihood programmes that can yield sufficient income to meet the basic needs of the families, and also allow them to save and invest for their future. The programmes may include activities that can make surface areas productive so that miners can have sustainable sources of living, especially when the mines have been mined out. To complement this, DOLE should extend its Small Business Management Training and Financial Awareness Seminars to the ASGM sector.

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<sup>184</sup>Interview with Atty Karina Trayvilla, *supra* note 140.

### 5.3 Promotion of sustainable, viable and legal ASGM operations

#### 5.3.1 Expand the process for state-initiated declaration of *Minabang Bayan*

For the purpose of carrying out the State's declared policy to promote, develop, protect and rationalize viable small-scale mining activities and to maximize the utilization of known and verified mineral resources and reserves, the State should consider identifying and declaring on its own initiative, through the MGB, the following areas as *Minabang Bayan*, without precluding the right of interested parties to apply for a declaration for the same or other locations:

- a) A portion of the mineral reservations identified and established by the MGB in accordance with Section 8 of the IRR of E.O. 79.
- b) Areas already occupied and actively mined by small-scale miners before August 1, 1987 pursuant to Section 5 of R.A. 7076, except areas closed to mining applications.
- c) National Government-Owned Mining Assets or those mining areas, mining tenements and/or claims previously held by operators which were previously assigned by government financial institutions or government-owned corporations to the Asset Privatization Trust/Private Management Office.
- d) Lands of non-moving mining rights holders as identified by the multi-stakeholder team led by the DENR pursuant to Section 6 of the IRR of E.O. 79.

It will not require an amendment of R.A. 7076 to do this because Section 6 of the Act gives the P/CMRB the authority to declare certain lands as PSSMA without going into the details. The detailed procedure for declaring a *Minabang Bayan* was supplied in A.O. 2015-03, or the Revised IRR of R.A. 7076, hence, an amendment of the rules will be sufficient to include a new section that will prescribe the process for a state-initiated declaration.

#### 5.3.2 Waive the consent requirement in certain cases

To address the difficulty in obtaining the comments and consent of existing claimants and owners of private lands, the DENR should amend Section 9 of the IRR of R.A. 7076 to provide for instances when the right to comment or consent is deemed waived, as follows (the proposed revisions underscored):

- 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 proposed *Minabang Bayan* and require them to submit their comment(s) within fifteen (15) days upon receipt of the notice, copy furnished the petitioner; Provided, that failure on the part of the holders or applicants to comment within the prescribed period despite due notice shall be deemed a waiver of their right to comment and object to the declaration; Provided further, that non-moving mining rights holders who have failed to implement the three-year development/utilization work programme or exploration work programme for two consecutive years shall likewise be deemed to have waived their right to comment and object.
- e. In case the proposed area covers private land(s) as cited in paragraph (d) Section 8 hereof, the Board shall formally notify the landowner(s) or lawful possessor(s) concerned of the proposed *Minabang Bayan* and require them to submit their comment(s) within fifteen (15)

days upon receipt of the notice, copy furnished the petitioner; Provided, that failure on the part of the holders or applicants to comment within the prescribed period despite due notice shall be deemed a waiver of their right to comment and object to the declaration;

5.3.3 Specify time limits for approving authorities to act on decision points in the *Minahang Bayan* declaration process

Amend Section 9 of the IRR of R.A. 7076 to provide time limits for approving authorities to act on decision points in the process of declaring a *Minahang Bayan*. The pertinent paragraphs of Section 9 with the suggested revisions underscored are as follows:

- c. In case the proposed area is situated inside areas closed to mining applications, the board shall deny the petition or request within fifteen (15) days from receipt of the pertinent petition or request.
- 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, within fifteen (15) days from receipt of the pertinent petition or request, formally notify the holder(s) of mining permit(s)/contract(s) or mining applicant(s) concerned of the proposed *Minahang Bayan* and require them to submit their comment(s) within fifteen (15) days upon receipt of the notice, copy furnished the petitioner.
- e. In case the proposed area covers private land(s) as cited in paragraph (d) Section 8 hereof, the Board shall, within fifteen (15) days from receipt of the pertinent petition or request, formally notify the landowner(s) or lawful possessor(s) concerned of the proposed *Minahang Bayan* and require them to submit their comment(s) within fifteen (15) days upon receipt of the notice, copy furnished the petitioner.
- f. In case the proposed areas 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, within fifteen (15) days from receipt of the pertinent petition or request, prepare and cause the posting of the notice of the proposed *Minahang Bayan* on the bulletin boards of the Regional Office concerned and Offices of the Provincial Governor and Municipal/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. Within fifteen (15) days from receipt of the pertinent petition or request, 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.

The Board shall forward 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 R.A. 8371. The NCIP shall issue the appropriate Certificate within fifteen (15) days from receipt of the notice and request.

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 R.A. 7160. At least a majority of the Sanggunian concerned shall endorse the declaration of the proposed *Minahang Bayan* within fifteen (15) days from receipt of a copy of the notice.

- k. If the above requirements are complied with, the Secretary shall clear the declaration of the proposed *Minahang Bayan*, without prejudice to the final resolution of any of the above oppositions, within thirty (30) days from receipt of all the pertinent documents.

#### 5.3.4 Streamline the registration and licensing process

The DENR should re-evaluate and streamline the registration and licensing processes. One possible approach is to do away with the small-scale mining license. The current system requires the registration of miners with the P/CMRB as a first step, followed by securing a small-scale mining license, and then applying for a small-scale mining contract. It is evident from the process that the objective of the registration is to have a database of all persons who are undertaking or intending to undertake small-scale mining. The rationale for requiring an application for a small-scale mining contract is to determine the specific location proposed to be mined, identify possible conflicts, review the proposed programme for utilizing the area, ensure strict environmental standards, and determine the capacity of the applicants to implement the programme. The small-scale mining license appears to duplicate what registration and application for a SSMC seek to achieve. The overlap is evident on the face of the application forms for the license and SSMC (Annexes A and B, respectively, of the IRR of R.A. 7076). The contents of Annex A are subsumed in Annex B.

Prior to R.A. 7076, only a permit was required to lawfully conduct panning or sluicing activities under P.D. 1150, and to engage in small-scale mining under P.D. 1899. Ordinarily, a license is an official permission to engage in a profession or conduct an activity. The issuance of a miner's license is not permission for license holders to mine; it only allows them to apply for a SSMC. There are no competency tests or exams for obtaining a miner's license, and there are no national regulations that prescribe the qualifications of a miner. Licensing small-scale miners is an extra layer to the bureaucratic process, which translates to added costs in terms of person hours, application fee and documentation.

There is flexibility for DENR to amend the IRR in order to amend the licensing requirements because all that R.A. 7076 requires is that "(a)ll persons undertaking small-scale mining activities shall register as miners with the Board and may organize themselves into cooperatives in order to qualify for the awarding of a people's small-scale mining contract."<sup>185</sup>

For the purpose of establishing mining cooperatives, the CDA should consider amending Memorandum Circular 2015-01 to remove the requirement of submitting a certification that the members of the proposed cooperative are licensed miners. In lieu of the license, CDA should instead require proof that the members of the proposed cooperative are registered with the P/CMRB:

#### 4.a.9. Small-Scale Mining Cooperative

4.a.9.a. Undertaking to comply with the regulatory requirements prescribed by other regulatory agency;

4.a.7.b. Certification from ~~Mines Geo-Science Bureau Regional Office that the members are licensed miners if the area of business operation is within the Peoples Small-Scale Mining Area~~ the concerned Provincial/City Mining Regulatory Board that the members are registered miners; and

4.a.7.c. Tax Identification numbers of all cooperators.

With regard to the Mineral Processing License (MPL) for ASGM, in most instances the persons who mine and produce the ores are also the ones who process the ores. In such cases, the miners who are able to obtain a SSMC will still have to secure a separate MPL before they can process the ores. Perhaps it is

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<sup>185</sup>People's Small-Scale Mining Act of 1991, § 8.

possible to incorporate this process in the application for SSMC so that applicants for the SSMC who will also conduct processing or who have existing mineral processing facilities may have the option to indicate this in the application form for SSMC. Apart from the documentary requirements for applying for the SSMC, the applicant will then only need to submit the additional documents that pertain to the MPL.

#### 5.3.5 Review the BSP's gold-buying programme and make it more accessible to small-scale miners

The BSP should review its gold-buying programme and formulate ways to make it more accessible to small-scale miners. It should increase the number of buying stations and authorize dealers who are situated in areas near the mining operations. It should also consider relaxing its requirements for acceptance to allow the sale of gold in any form. It is within the BSP's authority to revise its guidelines accordingly since R.A. 7653, or the New Central Bank Act, provides that the BSP may buy and sell gold in any form, subject to such regulations as it may issue.<sup>186</sup>

#### 5.3.6 Reduce taxes and provide incentives

The State should consider reverting to the tax regime for small-scale miners under P.D. 1899, which exempted holders of small-scale mining permits or licenses from all taxes except income tax. Doing so will help encourage small-scale miners to formalize and sell their gold to BSP, and at the same time reinvigorate the international reserves of the BSP, which is necessary in maintaining international stability and convertibility of the peso.<sup>187</sup> This will entail an amendment of Section 13 of R.A. 7076:

SECTION 13. Terms and Conditions of the Contract - A contract shall have a term of two (2) years, renewable subject to verification by the Board for like periods as long as the contractor complies with the provisions set forth in this Act, and confers upon the contractor the right to mine within the contract area: Provided, That the holder of a small-scale mining contract shall have the following duties and obligations:

x x x

d) Pay ~~all taxes~~ income tax, royalties or government production share as are now or may hereafter be provided by law; Provided, that small-scale mining contractors shall be exempt from all taxes except income tax; x x x

The State should explore other more direct ways of applying the “polluters pay principle” in ASGM, including the strict implementation of the Mine Rehabilitation Programme. Even without imposing excise and value added taxes, there are sufficient measures in Philippine mining and environmental laws that promote the internalization of external environmental costs both in the prevention and remediation of damage to the environment. The prevention of pollution is done by the imposition of conditions on the approval of a SSMC – submission of the Environmental Compliance Certificate, Potential Environmental Impact Management Plan, Certificate of Environmental Management and Community Relations Record, and Community Development and Management Programme. Remediation is made possible through administrative, civil, and criminal sanctions.<sup>188</sup> What is lacking is the consistent and effective enforcement of these measures.

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<sup>186</sup>The New Central Bank Act, Republic Act No. 7653, § 69 (1993).

<sup>187</sup>Jurado, Amurao and Calubag, *supra* note 74 at 20.

<sup>188</sup>Justice Bryan J. Preston, Sustainable Development Law in the Courts: The Polluter Pays Principle (Presented at the 16<sup>th</sup> Commonwealth Law Conference, Hong Kong, 7 April 2009), *available at* [http://www.lec.justice.nsw.gov.au/Documents/preston\\_the%20polluter%20pays%20principle.pdf](http://www.lec.justice.nsw.gov.au/Documents/preston_the%20polluter%20pays%20principle.pdf) (last accessed April 16, 2017).



There is also a need to create incentives that will encourage small-scale miners to formalize. At the very least, small-scale miners should be given incentives for adopting pollution control methods or practices similar to the incentives extended to large-scale miners for acquiring, constructing or installing pollution control devices and facilities.

### 5.3.7 Strengthen legal foundations and support systems for transitioning to formalization

The DENR and other concerned agencies should re-evaluate the People's Small-Scale Mining Programme in order to effectively pursue the intent and realize the objectives of R.A. 7076, which provides in Section 4 that the Programme should be "designed to achieve an orderly, systematic and rational scheme for the small-scale development and utilization of mineral resources in certain mineral areas in order to address the social, economic, technical and environmental problems connected with small-scale mining activities". The Programme as currently designed has not fully achieved the purpose of addressing the problems associated with ASGM, and whatever gains have been accomplished have very little impact.

As a first step, pursuant to Section 4 of R.A. 7076, the assistance extended in Section 33 of the IRR of R.A. 7076 should be construed to apply to both small-scale mining operators who have not formalized and those who have complied with the applicable laws. The DENR should establish mechanisms by which small-scale miners in the informal sector may avail themselves of such assistance, at the very least for the purpose of organizing into cooperatives or associations. It should also provide guidelines for accessing the PSSMPF created by Section 20 of the Act.

The DENR should revise the IRR of R.A. 7076 in order to better effectuate its mandate under Section 23 of the Act, which states that "(s)mall-scale miners who have been in actual operation of the mineral lands on or before August 1, 1987 as determined by the Board shall not be dispossessed, ejected or removed from said areas: Provided, That they comply with the provisions of this Act." The State has somewhat given consideration for this in Section 14(a) of the rules and regulations of E.O 79, which allows for the issuance of a temporary small-scale mining contract to holders of permits or licenses under P.D. 1899 within a period of 6 months or until the area is declared a *Minahang Bayan*, whichever comes first. The DENR should consider revising Section 37 of the rules of R.A. 7076 to extend a similar interim measure and grace period for small-scale miners who demonstrate a good faith effort to comply with the law, thus:

#### Section 37. Actual Occupation by Small-Scale Miners

Small-scale miners who have been in actual operation of the mineral lands on or before August 1, 1987 as determined by the Board shall not be dispossessed, ejected or removed from said areas: *Provided*, That ~~said areas are declared as *Minahang Bayan* and the small-scale miners shall secure a small-scale mining contract, subject to compliance with the pertinent requirements and with the provisions of RA No. 7076 and this Administrative Order. said miners may be given a temporary small-scale mining contract by the Governor/City Mayor concerned upon recommendation by the P/CMRB to continue small-scale mining operations until the area is declared a *Minahang Bayan* and they are able to secure a small-scale mining contract; *Provided further*, That the occupied mineral lands are not areas closed to mining operations under E.O. 79 and other applicable laws; *Provided further*, That the temporary small-scale mining contract shall have a non-extendible term of two (2) years and the miners shall comply with the following duties and obligations:~~

- a) Undertake extraction and/or breakage of materials without the use of explosives, blasting accessories, explosives ingredients and/or sophisticated and/or heavy equipment;

- b) Not resort to hydraulicking or compressor mining at any stage of small-scale mining within the small-scale mining contract;
- c) Not use mercury in any phase;
- d) Not engage children at any stage of small-scale mining; and
- e) Sell gold only to the BSP through its buying stations or authorized dealers.

Holders of small-scale mining permits (SSMP) issued under P.D. 1899 shall be recognized until their expiration, unless the same are earlier revoked, cancelled or terminated with cause: *Provided*, That the affected small-scale miners operating under SSMPs involving gold, silver, and chromite and non-metallic minerals mining holders ~~may have the option to continue small-scale mining through a small-scale mining contract issued pursuant to the provisions of R.A. 7076. with a remaining term of less than one year~~ may be given a temporary small-scale mining contract with the same terms and conditions stated in this Section (Sec. 14[a], IRR).

More, the DENR should consider revising the rules of R.A. 7076 to clarify and strengthen the provision of assistance to the informal sector:

### Section 33. Assistance to Small-Scale Miners

The Department, in coordination with the Board and other government agencies concerned, shall extend the following assistance to small-scale miners:

- ~~(a) Organization of small-scale miners into cooperatives;~~
- (b) Technical and financial assistance and social services;
- (c) Awareness-raising and capacity-building activities;
- (d) Processing and marketing assistance; and
- (e) Generation of ancillary livelihood activities.

In order to assist small-scale miners who are holders of temporary small-scale mining contracts to comply with the provisions of this Act and other applicable laws, the Department, in coordination with the Board and other government agencies concerned, subject to guidelines that it may issue pursuant thereto, shall provide:

- (a) Technical and financial assistance in:
  - i. organizing and registering with the Cooperative Development Authority, Securities and Exchange Commission, Department of Trade and Industry, Cooperative Development Authority, or other appropriate government agency;
  - ii. applying for a declaration of *Minabang Bayan*; and
  - iii. securing a small-scale mining contract.
- (b) Awareness-raising on the health and environmental effects of mercury, mercury compounds, and other toxic chemicals; anti-child labour laws; occupational safety and health standards; environmental protection; and other related matters;
- (c) Capacity-building seminars on alternatives to mercury and mine blasting; and
- (d) Financial assistance in acquiring proper equipment and devices.

## 5.4 Use of mercury in ASGM

### 5.4.1 Ratify the Minamata Convention

To strengthen the government's efforts in phasing out mercury in ASGM, the broad issue of protecting human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds should be addressed. The State should ratify the Minamata Convention at the soonest

possible time. Civil society should strengthen the campaign for the ratification of the Convention in order that the government will include this in its legislative priorities. Ratification by the State is necessary to ensure a globally coordinated implementation of the obligations of the Convention that will lead to an overall reduction in mercury levels in the environment over time.

#### 5.4.2 Enact a comprehensive national law consistent with the Minamata Convention

The ratification of the Minamata Convention will create the legal impetus for the State to adopt a comprehensive national legislation on mercury and mercury compounds. The Convention, together with its corresponding domestic law, will serve as the backbone for the implementation of the National Strategic Plan for the Phase-out of Mercury in ASGM.

The national law should include an immediate ban on the use of mercury for dental amalgams in order to prevent exposure to its toxicity. As the ban protects human health, it will also stop the glut of mercury imported for dental purposes, consequently reducing the accessibility of mercury to small-scale miners.

#### 5.4.3 Intensify campaigns to increase awareness on the toxic and harmful effects of mercury and capacity-building programmes on alternative methods

To address the lack of awareness among mining communities on the toxic and harmful effects of mercury on human health and the environment, the government, in partnership with civil society, should intensify its awareness campaigns on the issue. Technical assistance should also be strengthened to build the capacity of the ASGM sector to use alternative methods that do not involve the use of mercury or other toxic chemicals.

### **5.5 Monitoring systems and roles of agencies**

In addition to the recommendations that touch upon monitoring systems and roles of agencies discussed in Sections 6.1 and 6.2, the following are other possible measures to address the gaps in this aspect.

#### 5.5.1 Clarify the roles of agencies with respect to occupational safety and health issues in the informal mining sector

On the issue of jurisdiction over occupational safety and health issues in the informal mining sector, DOLE and MGB should coordinate to clarify the issue on which agency has jurisdiction. The solution may be that both agencies should coordinate to address the sector and provide guidelines on how the two will interface.

#### 5.5.2 Reinforce I-ACEH and work towards the full implementation of the policy, plans and partnerships outlined in DOH A.O. 2013-0018

DOH A.O. 2013-0018, which created the I-ACE, is a step towards resolving the gap in occupational safety and health. The I-ACEH serves as the main coordinating body for the implementation of an integrated and multi-sectoral programme for the informal sector. It is composed of the DOH Secretary as Chair and the DENR Secretary as Vice-Chair. Its sub-sector on occupational health is responsible for the implementation of an integrated and multi-sectoral programme for the informal sector. This sub-sector is composed of the DOH, DOLE, MGB, Land Transportation Office (LTO), Department of Agriculture (DA), Department of the Interior and Local Government (DILG), Social Security System (SSS) and Philippine Health Insurance Corporation (PhilHealth).

The AO, however, is limited to setting the policies and general guidelines for instituting a health programme for the informal sector in the public health system. I-ACEH should revisit the policy, plans and partnerships outlined in the Order, and work for their full implementation in the informal mining sector.

### 5.5.3 Strengthen coordination between NCLC and I-ACAT

The NCLC and I-ACAT have taken initiatives to institute a case management protocol that would harmonize the systems of the two bodies, and strengthen the coordination of their efforts. They should move this forward by working together and applying the protocol on an actual case of child labour in ASGM. They should strategize to devise the appropriate approach, whether law enforcement or developmental or a combination.

### 5.5.4 Reinforce the MICC by adding DOLE and DOH in its membership

DOLE and DOH play vital roles in addressing the challenges associated with ASGM. DOLE is mandated to ensure decent work, eliminate child labour, and promote occupational safety and health. DOH is key to promoting public health in the ASGM sector, and it has spearheaded the activation of I-ACEH to address occupational safety and health issues in the mining sector. Both agencies should be added to the membership of the MICC.

## 6. CONCLUSION

Despite the existence of regulatory laws, ASGM outside the *Minabang Bayan* continues unabated together with its attendant problems – child labour, poor working conditions, dangers to occupational safety and health, and social issues. The practice is largely tolerated despite a previous pronouncement that all small-scale mining operating outside a *Minabang Bayan* are illegal and they should be stopped immediately.<sup>189</sup> The intention of the pronouncement was to bring the full force of the law to bear upon environmental offenders, from deterrence, investigation, arrest, searches, prosecution and enforcement of judgments.<sup>190</sup>

Whether the government can stop illegal small-scale mining through law enforcement alone is doubtful. While immediate cessation may be possible, it will be a challenge to sustain it over the long haul. It will take substantial resources to deploy law enforcers and station them indefinitely in remote countryside areas where mining sites are located. Hundreds of thousands of miners and their families rely on ASGM for subsistence living and for many it is the only trade they know, passed on from generation to generation.

The resolution to the issues is a complicated juggling act of law enforcement and regulation to protect children, health and the environment; utilization of mineral resources to promote economic development; and developmental approaches to help transition small-scale miners to formalization.

Adjustments in the laws, policies and systems may be done within the scope of authority of administrative agencies, but these cannot overhaul nationally legislated policies. Still, there is some elbow room to re-evaluate IRR, programmes and processes to make them more in tune with the intent of the Constitution and applicable laws. The impact of these changes may be minimal, but chipping away at critical points may bring realities a bit closer to the vision of sustainable development, environmental protection, equitable distribution of wealth and elimination of child labour in ASGM.

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<sup>189</sup>Louise Maureen Simeon, *Government halts operations of small-scale miners*, PHIL. STAR, Aug. 9, 2016, available at <http://www.philstar.com/business/2016/08/09/1611391/government-halts-operations-small-scale-miners>, (last accessed Feb. 1, 2017).

<sup>190</sup>*Id.*

## List of annexes

**Annex 1**  
**Provinces with reported use of mercury in ASGM**

Benguet	Agusan del Sur	Compostela Valley
Camarines Norte	Surigao del Norte	Isabela
Negros Occidental	Davao del Norte	Nueva Vizcaya
Zamboanga del Norte	Abra	South Cotabato
Zamboanga del Sur	Kalinga	Romblon
Bukidnon	Apayao	Quezon
Agusan del Norte	Oriental Mindoro	Southern Leyte

**Annex 2**  
**List of key informant interviews**

<b>Name</b>	<b>Designation and affiliation</b>	<b>Type of interview and location</b>	<b>Date of interview</b>
1. Eng Esteban Martin	OIC-Chief, Mining Technology Division, Mines and Geosciences Bureau	Personal interview at the Mines and Geosciences Bureau Central Office, Quezon City	February 1, 2017
2. Ms Jane L. Rolda	Provincial Field Head, DOLE, Camarines Norte	By e-mail and text messaging	January 27, 2017
3. Atty Richard Gutierrez	President, Ban Toxics	Personal interview at the Occupational Safety and Health Center, North Avenue corner Agham Road, Diliman, Quezon City	January 12, 2017
4. Ms Shally Vitan	Chief Operating Officer, Ban Toxics	Personal interview at the Ban Toxics office, 6C Maningning Street, Sikatuna Village, Quezon City 1101 Philippines	January 10, 2017
5. Atty Ma. Karina P. Trayvilla	OIC Regional Director of DOLE Regional Office No. 5 Legaspi City	By telephone conference	January 9, 2017
6. Ms Evelyn Cubelo	ASGM Programme Officer, Ban Toxics	By skype	December 20, 2016

**Annex 3**  
**List of participants at the roundtable discussion**

Name	Organization
1. Albano, Eddie	ILO-Caring Gold Mining Project
2. Bacay, Connie	BLR-DOLE
3. Ballesteros, Rebecca	SOCTECH-DSWD
4. Cubello, Evelyn	Ban Toxics
5. Cucueco, Ma. Teresita	BWC-DOLE
6. Dasco, Serafin	Miners Association in Paracale
7. Dela Rosa, Rovelinda	DOLE-Region V
8. Faimlam, Lalaine	BWC-DOLE
9. Gabriel, Jerommel	BWSC-DOLE
10. Galvez, Arlene	Ban Toxics
11. Granadillos, Nelia	OSHC-DOLE
12. Harder, Jannica Marie	BWSC-DOLE
13. Maronilla, Robert	ECOP
14. Martin, Esteban	Miners and Geosciences Bureau
15. Narisma, Jovan Rey	BLR-DOLE
16. Rolda. Maryjane	DOLE-Camarines Norte
17. Soledad, Giovanni	ILO-Caring Gold Mining Project
18. Taguba, Arleen	ILO-Caring Gold Mining Project
19. Valeros, Marco	BWC-DOLE



**Annex 4**  
**Comparative summary of domestic laws on small-scale mining**

	<b>P.D. 1150</b>	<b>P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984</b>	<b>R.A. 7076 and Administrative Order 2015-03</b>	<b>R.A. 7942 and Administrative Order 2010-21</b>	<b>E.O. 79, s. 2012 and Administrative Order 2012-07</b>
<b>Title</b>	Amending P.D. 581 and Regulating Panning or Sluicing for Gold Inside Mining Claims or in Public or Private Lands.	Establishing Small-Scale Mining as a New Dimension in Mineral Development.	People's Small-Scale Mining Act of 1991.	Philippine Mining Act of 1995.	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.
<b>Policy</b>	Gold panning or sluicing should be a regulated activity, such that while it may provide a source of lawful livelihood to individuals without resulting in a loss to the government of foreign exchange or taxes generated by the gold produced from such activities, necessary safeguards	Abundance of cheap labour in the Philippines, relative flexibility and simplicity of operations, minimum capital requirements, less fuel dependent operations and minimal effects on the environment are among the arguments that lend support to the development of small-scale mining.	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, giving due regard to existing rights as herein provided ( <i>Sec. 2</i> ).	All mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through	Further to Section 2, Article XII of the 1987 Constitution, which recognizes the small-scale utilization of resources by Filipino citizens, small-scale mining shall be recognized as a formal sector of the industry.  As recommended by the Climate Change Adaptation and Mitigation and Economic

	<b>P.D. 1150</b>	<b>P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984</b>	<b>R.A. 7076 and Administrative Order 2015-03</b>	<b>R.A. 7942 and Administrative Order 2010-21</b>	<b>E.O. 79, s. 2012 and Administrative Order 2012-07</b>
	or protective measures be adopted against such activity as a subterfuge for high grading or the theft of gold from a mining claim or mining camp ( <i>Whereas clauses</i> ).	Small mineral deposits are being or could be worked profitably at small tonnages requiring minimal capital investments utilizing manual labour. The development of these small mineral deposits will generate more employment opportunities, thereby alleviating the living conditions in the rural areas and will contribute additional foreign exchange earnings ( <i>Whereas clauses</i> ).		the combined efforts of government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protects the rights of affected communities ( <i>Sec. 2</i> ).	Development Cabinet Clusters in a Joint Resolution dated 16 March 2012, a six-point agenda was adopted, which sets the direction and lays the foundation for the implementation of Responsible Mining Policies, foremost among which is to improve environmental mining standards and increase revenues to promote sustainable economic development and social growth, both at the national and local levels ( <i>Whereas clauses</i> ).
<b>Scope of application</b>	Applies to panning or sluicing of loose sediments for the purpose of extracting gold from creeks, streams or rivers	Applies to small-scale mining as defined in the Decree.	Applies to small-scale mining in areas declared as <i>Minahang Bayan</i> .	Applies to the exploration, development, utilization and processing of all mineral resources ( <i>Sec. 15</i> ).	Applies to the Philippine mining sector.

	<b>P.D. 1150</b>	<b>P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984</b>	<b>R.A. 7076 and Administrative Order 2015-03</b>	<b>R.A. 7942 and Administrative Order 2010-21</b>	<b>E.O. 79, s. 2012 and Administrative Order 2012-07</b>
	inside mining claims, and from private or public lands ( <i>Sec. 1</i> ).				
<b>Definition of small-scale mining</b>	No provision.	Any single unit mining operation having an annual production of not more than 50,000 metric tons of ore and satisfying the following requisites: a) The working is artisanal, either open cast or shallow underground mining, without the use of sophisticated mining equipment; b) Minimal investment on infrastructures and processing plant; c) Heavy reliance on manual labour; and d) Owned, managed or controlled by an individual or entity	Mining activities which rely heavily on manual labour using simple implement and methods and do not use explosives or heavy mining equipment ( <i>Sec. 3[b]</i> ).	As defined by R.A. 7076 ( <i>Sec. 42</i> ).	As defined by R.A. 7076.

	P.D. 1150	P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984	R.A. 7076 and Administrative Order 2015-03	R.A. 7942 and Administrative Order 2010-21	E.O. 79, s. 2012 and Administrative Order 2012-07
		qualified under existing mining laws, rules and regulations ( <i>Sec. 1</i> ).			
<b>Who is qualified to apply for a permit, license or contract</b>	Any individual ( <i>Sec. 2</i> ).	Any qualified person as defined in Sec. 1 of these regulations, preferably claim owners and applicants for or holders of quarry permits and/or licenses may be issued a small scale mining permit provided that their mining operations, whether newly-opened, existing or rehabilitated, involve: a) a single mining unit having an annual production not exceeding 50,000 metric tons of run-of-mine ore, either an open cast mine working or a	Small-scale miners who have voluntarily organized and have duly registered with the appropriate government agency as an individual miner or cooperative; Provided, that only one (1) people's small-scale mining contract may be awarded at any one time to a small-scale mining operations within one (1) year from the date of award: Provided, further, that priority shall be given for city where the small-scale mining area is located ( <i>Sec. 9</i> ).	Small-scale mining shall continue to be governed by R.A. 7076 and other pertinent laws ( <i>Sec. 42</i> ).	Only those who are able to strictly comply with environmental standards shall be eligible for the grant of mining rights ( <i>Sec. 2</i> ).

	P.D. 1150	P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984	R.A. 7076 and Administrative Order 2015-03	R.A. 7942 and Administrative Order 2010-21	E.O. 79, s. 2012 and Administrative Order 2012-07
		<p>subsurface mine working which is driven to such distance as safety conditions and practices will allow;</p> <p>b) a total capital investment not exceeding Php10 million during the effectivity of the permit and its renewal;</p> <p>c) a ratio of labour cost to equipment utilization cost to produce, process and market to 1 metric ton of ore equivalent to or exceeding one; and</p> <p>d) the extraction and processing of any of the classified commodities as</p>	<p>The applicant should be 100 per cent Filipino (<i>Sec. 7, IRR</i>).</p> <p>For <i>Minahang Bayan</i> in ancestral lands:</p> <p>a) Only applications by members of the Indigenous Cultural Communities (ICC) shall be accepted within the first 30 days after completion of the seven-day posting of the notice of declaration of the <i>Minahang Bayan</i>.</p> <p>b) Only applications by residents of the province or city where the <i>Minahang Bayan</i> is located shall be accepted within the next 30 days (<i>Sec. 9[n], IRR</i>).</p>		

	<b>P.D. 1150</b>	<b>P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984</b>	<b>R.A. 7076 and Administrative Order 2015-03</b>	<b>R.A. 7942 and Administrative Order 2010-21</b>	<b>E.O. 79, s. 2012 and Administrative Order 2012-07</b>
		<p>specified herein. (<i>Sec. 2, IRR</i>).</p> <p>A qualified person is a Filipino citizen, of legal age, and with capacity to contract, or a corporation or partnership authorized to engage in mining registered with the SEC at least 60 per cent of the capital of which is owned at all times by Filipino citizens (<i>Sec. 1[j] IRR</i>).</p>	<p>For <i>Minahang Bayan</i> outside ancestral lands, only applications by small-scale miners residing in the province or city where the <i>Minahang Bayan</i> is located shall be accepted within the first 30 days (<i>Sec. 9[n], IRR</i>).</p>		
<b>Where to apply for permit, license or contract</b>	Apply for a permit with the Mines Regional Officer having jurisdiction over the area ( <i>Sec. 2</i> ).	Apply for a permit with the Mines and Geosciences Regional or with the Mineral District Offices concerned if one has already been established ( <i>Sec. 25, IRR</i> ).	Apply for a license and a small-scale mining contract with the PI/CMRB ( <i>Sec. 7 and 9[n], IRR</i> ).	Applications for Small-Scale Mining Permits shall be filed with the Provincial Governor/ City Mayor through the concerned P/CMRB for areas outside the Mineral Reservations and with the Director	The DENR shall establish an inter-agency one-stop shop for all mining-related applications and processes ( <i>Sec. 16, IRR</i> ).

	P.D. 1150	P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984	R.A. 7076 and Administrative Order 2015-03	R.A. 7942 and Administrative Order 2010-21	E.O. 79, s. 2012 and Administrative Order 2012-07
				of the Mines and Geosciences Bureau for areas within the Mineral Reservations ( <i>Sec. 103, IRR</i> ).	
<b>Areas that may be applied for a permit, license or contract</b>	Creeks, streams or rivers inside mining claims and private or public lands ( <i>Sec. 1</i> ).	<ul style="list-style-type: none"> <li>a) Areas covered by a valid and existing mining claims including thus already covered by existing mining leases.</li> <li>b) Areas covered by quarry application, permit or licenses and those covered by exploration permits/ applications.</li> <li>c) All other government reservations except mineral reservations, subject to prior</li> </ul>	Areas declared <i>Minahang Bayan</i> .	Small-scale mining shall continue to be governed by R.A. 7076 and other pertinent laws ( <i>Sec. 42</i> ).	Pursuant to R.A. 7076, small-scale mining operations shall be undertaken only within the declared PSSMA or <i>Minahang Bayan</i> ( <i>Sec. 11[b]</i> ).

	P.D. 1150	P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984	R.A. 7076 and Administrative Order 2015-03	R.A. 7942 and Administrative Order 2010-21	E.O. 79, s. 2012 and Administrative Order 2012-07
		<p>verification by the bureau.</p> <p>d) New areas defined as mining areas not covered by valid and existing claims before the promulgation of P. D. 1899 on January 23, 1984.</p> <p>e) A combination of any of the above (Sec. 7, IRR).</p>			
<b>Limitations</b>	<p><i>Size of the area:</i> Area applied for shall not be more than 2,000 square meters (Sec. 2).</p>	<p><i>Size of the area:</i> Area applied for shall not be more than 5,000 square meters (Sec. 24, IRR).</p> <p><i>Number of permits per applicant:</i> The number of permits that an applicant is entitled to shall be as follows:</p>	<p><i>Size of the area:</i> Area applied for shall not be less than 1.25 hectares nor more than 20 hectares per small-scale mining contract (Sec. 11, IRR).</p> <p><i>Number of small-scale mining contract awarded per applicant:</i> Only one may be awarded at any one</p>	Small-scale mining shall continue to be governed by R.A. 7076 and other pertinent laws (Sec. 42).	No provision.



	P.D. 1150	P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984	R.A. 7076 and Administrative Order 2015-03	R.A. 7942 and Administrative Order 2010-21	E.O. 79, s. 2012 and Administrative Order 2012-07
		<p>a) For individuals – one permit is any one province; and</p> <p>b) For partnership and corporation – two permit in any one province covering its own mining areas with the option to operate another two permits belonging to another person or entity or a total of four permits (Sec. 10, IRR).</p>	<p>time to a small-scale mining contractor in the entire country (Sec. 10, IRR).</p> <p><i>Quantity of production:</i> The ore produced shall not exceed 50,000 metric tons annually and shall be processed in a custom mill (Sec. 13 [b], IRR).</p>		
<b>Duration of permit, license or contract</b>	A period not exceeding three months renewable for the same period (Sec. 2).	Two years renewable for another two years (Sec. 2).	<p>License shall be effective during the term of the small-scale mining contract (Sec. 7, IRR).</p> <p>The small-scale mining contract shall have a term of two years renewable for like</p>	Small-scale mining shall continue to be governed by R.A. 7076 and other pertinent laws (Sec. 42).	No provision.

	P.D. 1150	P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984	R.A. 7076 and Administrative Order 2015-03	R.A. 7942 and Administrative Order 2010-21	E.O. 79, s. 2012 and Administrative Order 2012-07
			periods but not to exceed six years (Sec. 13[a], IRR).		
<b>Application fee</b>	Php30.00 (Sec. 2).	Php50.00 (Sec. 20, IRR).	Php1,000 for the license (Sec. 7[b], IRR).  Php20,000 for the small-scale mining contract.	Small-scale mining shall continue to be governed by R.A. 7076 and other pertinent laws (Sec. 42).	No provision.
<b>Application requirements</b>	<ul style="list-style-type: none"> <li>a) Accomplished application form;</li> <li>b) Payment of fee; and</li> <li>c) Written consent of the claim owner or landowner or government agency concerned to such panning or sluicing. If the mining claim or claims are covered by an</li> </ul>	<ul style="list-style-type: none"> <li>a) Accomplished application form;</li> <li>b) Payment of fee;</li> <li>c) To accompany the application form: <ul style="list-style-type: none"> <li>i. Survey plan with corresponding technical description of the area applied for prepared by a deputized</li> </ul> </li> </ul>	<p>Requirements for licensing:</p> <ul style="list-style-type: none"> <li>a) Application form duly accomplished and notarized;</li> <li>b) Payment of fee; and</li> <li>c) Proof of registration with SEC, Department of Trade and Industry, Cooperative Development Authority or other appropriate agency (Sec. 7, IRR).</li> </ul>	In addition to the requirements of R.A. 7076, only those who are able to strictly comply with environmental standards shall be eligible for the grant of mining rights (Sec. 2).	<p>Among the requirements prior to the issuance of the SSMC, the applicant must submit the following documents:</p> <ul style="list-style-type: none"> <li>a) ECC for the <i>Minahang Bayan</i> secured through an Environmental Impact Assessment Statement from the EMB;</li> <li>b) Potential Environmental Impact Report, which is a simplified Environmental</li> </ul>

	<b>P.D. 1150</b>	<b>P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984</b>	<b>R.A. 7076 and Administrative Order 2015-03</b>	<b>R.A. 7942 and Administrative Order 2010-21</b>	<b>E.O. 79, s. 2012 and Administrative Order 2012-07</b>
	operating agreement, the consent shall be given by the operator ( <i>Sec. 3</i> ).	<p>geodetic engineer of this bureau;</p> <p>ii. If the application is a partnership or corporation, the articles of partnership or incorporation together with the by-laws thereof duly registered with the Securities and Exchange Commission;</p> <p>iii. In areas covered by established government reservation other than mineral reservation, clearance</p>	<p>Requirements for small-scale mining contracts:</p> <p>a) Duly accomplished and notarized application form;</p> <p>b) Payment of application fee;</p> <p>c) Copy of small-scale miners license;</p> <p>d) Location map of the proposed small-scale mining contract area showing its geographic coordinates/ meridional block/s and boundaries in relation to the <i>Minahang Bayan</i>, major environmental features and other projects using a National Mapping and Resources Information</p>		<p>Protection and Enhancement Programme, and a Final Mine Rehabilitation/ Decommissioning Plan duly approved by the MGB Regional Office concerned; and</p> <p>c) CDMP, a simplified Social Development Programme, duly approved by the MGB Regional Office concerned (<i>Sec. 14[c], IRR</i>).</p>

	P.D. 1150	P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984	R.A. 7076 and Administrative Order 2015-03	R.A. 7942 and Administrative Order 2010-21	E.O. 79, s. 2012 and Administrative Order 2012-07
		<p>from the government agencies concerned; and</p> <p>iv. Operating agreement/contract between holders of a valid and existing mining rights with qualified persons <i>(Sec. 5, IRR).</i></p> <p>d) Written consent of the claim owner, operator, landowner or holders of other rights such as pasture leases, timber leases, etc. <i>(Sec. 23, IRR).</i></p> <p>e) If the area is situated within a</p>	<p>Authority (NAMRIA) topographic map in a scale of 1:50,000 or 1:10,000 duly prepared, signed and sealed by a deputized Geodetic Engineer;</p> <p>e) Sketch plan of the proposed mining contract area at a convenient scale duly prepared, signed and sealed by a deputized Geodetic Engineer;</p> <p>f) Proposed small-scale mining contract;</p> <p>g) Application for survey order;</p> <p>h) Proposed Two-Year Work Programme;</p> <p>i) Potential Environmental Impact Management Plan (PEIMP);</p>		

	P.D. 1150	P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984	R.A. 7076 and Administrative Order 2015-03	R.A. 7942 and Administrative Order 2010-21	E.O. 79, s. 2012 and Administrative Order 2012-07
		<p>government reservation other than a mineral reservation, a clearance from the government agency concerned shall first be secured (<i>Sec. 23, IRR</i>).</p> <p>The Regional Director, may if he deems it necessary, require additional requirements, such as:</p> <p>a) The mode and manner of protecting the ecological balance of the area applied for duly signed by the application of the Regional Director's technical</p>	<p>j) Certificate of Environmental Management and Community Relations Record (CEMCRR) or Certificate of Exemption, in lieu of a CEMCRR, if the applicant has neither past or present mineral resource use or mining-related venture(s);</p> <p>k) Development and Management Programme (CDMP);</p> <p>l) Annual Safety and Health Programme (ASHP); and</p> <p>m) Sworn declaration of the total area (hectarage) covered by the applicant's small-scale mining contract(s)/</p>		

	<b>P.D. 1150</b>	<b>P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984</b>	<b>R.A. 7076 and Administrative Order 2015-03</b>	<b>R.A. 7942 and Administrative Order 2010-21</b>	<b>E.O. 79, s. 2012 and Administrative Order 2012-07</b>
		<p>personnel, as the case may be;</p> <p>b) A project study of the mining operation; and</p> <p>c) Field verification of the area subject of application (<i>Sec. 6, IRR</i>).</p>	<p>application(s) in the entire country (<i>Sec. 10, IRR</i>).</p>		
<b>Terms and conditions of the permit, license or contract</b>	<p>The activities to be permitted shall be limited to panning by hand or sluicing by the use of sluice boxes (<i>Sec. 5</i>).</p> <p>No drilling, blasting, crushing or grinding by machineries or similar activities shall be allowed (<i>Sec. 5</i>).</p> <p>It shall be unlawful to employ minors in any panning or sluicing operation, or to</p>	<p>a) The permit shall be for the exclusive use of the permittee and shall not be transferred within the written approval of the Director or Regional Director, as the case may be.</p> <p>b) The Permit may be suspended or revoked at any time by the Director or Regional Director, as the case may be, when in their opinion, public</p>	<p>(<i>Sec. 13, IRR</i>)</p> <p>a) Conduct small-scale mining in accordance with the Two-Year Work Programme, PEIMP, ASHP and CDMP, duly approved by the Regional Office concerned and the ECC.</p> <p>b) Undertake extraction and/or breakage of materials without the use of explosives, blasting accessories, explosives</p>	<p>Small-scale mining shall continue to be governed by R.A. 7076 and other pertinent laws (<i>Sec. 42</i>).</p>	<p>Hydraulicking, compressor mining and the use of mercury in small-scale mining operations shall be strictly prohibited (<i>Sec. 14[c], IRR</i>).</p>

	<b>P.D. 1150</b>	<b>P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984</b>	<b>R.A. 7076 and Administrative Order 2015-03</b>	<b>R.A. 7942 and Administrative Order 2010-21</b>	<b>E.O. 79, s. 2012 and Administrative Order 2012-07</b>
	conduct such operations during nighttime ( <i>Sec. 4</i> ).	<p>interest, welfare and peace and order conditions so requires or demands or upon failure of the Permittee to comply with the other terms and conditions stated in the Permit or for ecological reasons.</p> <p>c) The statements made in the application and those made later in support thereof shall be considered as conditions and essential parts of the Permit and any misrepresentation contained therein shall be a cause for the suspension or cancellation of the permit.</p>	<p>ingredients, and/or sophisticated and/or heavy equipment.</p> <p>c) Not resort to hydraulic mining or compressor mining at any stage of small-scale mining within the small-scale mining contract.</p> <p>d) Not to use mercury in any phase.</p> <p>e) Confine small-scale mining to its small-scale mining contract area.</p> <p>f) Abide by DAO 97-30 otherwise known as the Small-Scale Mine Safety Rules and Regulations.</p> <p>g) Comply with its obligations to the holder of a mining permit/contract, if applicable.</p>		

	P.D. 1150	P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984	R.A. 7076 and Administrative Order 2015-03	R.A. 7942 and Administrative Order 2010-21	E.O. 79, s. 2012 and Administrative Order 2012-07
		<p>d) The removal or extraction of ores/quarry materials under the permit shall be confined within the area specified therein, the boundaries of which, according to the application are established on the ground with prominent marks.</p> <p>e) The penal provisions of P.D. 463, with emphasis on “theft of minerals” are deemed included and adopted in these Regulations (Sec. 15, IRR).</p> <p>The permittee shall within 12 months from the date of issuance of the permit, place the</p>	<p>h) Sell its production outputs to the BSP or through its authorized buying station(s)/agent(s).</p> <p>i) Pay all taxes, royalties and/or government production share as provided by law at the time the small-scale mining contract is signed.</p> <p>j) Submit under oath at the end of each month a detailed production report and annual financial report to the Board.</p> <p>(Sec. 14, IRR)</p> <p>k) Mineral processing shall be undertaken only through centralized custom mills located in</p>		



	<b>P.D. 1150</b>	<b>P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984</b>	<b>R.A. 7076 and Administrative Order 2015-03</b>	<b>R.A. 7942 and Administrative Order 2010-21</b>	<b>E.O. 79, s. 2012 and Administrative Order 2012-07</b>
		area in actual commercial production and shall submit verified quarterly production and integrated annual survey reports, within 30 days after the end of the quarter and year covered by reports aforementioned. Provided, that failure to place the area in actual production within the period aforesated without justification shall cause the automatic cancellation of the permit <i>(Sec. 16, IRR)</i> .	mineral processing zones under a MPL <i>(Sec. 14, IRR)</i> .		
<b>Ban on the use of chemicals (mercury and cyanide)</b>	Mercury is not a household necessity in a mining camp and the possession by a mining employee	No provision.	No mercury shall be used in mineral processing <i>(Sec. 13[c], IRR)</i> .	Requires an interim importation permit/certification from the Environmental	The use of mercury in small-scale mining shall be strictly prohibited <i>(Sec. 11[e])</i> .

	<b>P.D. 1150</b>	<b>P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984</b>	<b>R.A. 7076 and Administrative Order 2015-03</b>	<b>R.A. 7942 and Administrative Order 2010-21</b>	<b>E.O. 79, s. 2012 and Administrative Order 2012-07</b>
	thereof inside the camp gives rise to the suspicion that the same will be used to amalgamate gold ( <i>Whereas clause</i> ).			Regulatory Board on the use of chemicals (e.g. mercury and cyanide) in compliance with R.A. 6969 or the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990.	
<b>Ban on child labour</b>	No provision.	No provision.	No provision.	No person under 16 years of age shall be employed in any phase of mining operations and no person under 18 years of age shall be employed in an underground mine. The Bureau shall coordinate with the DOLE in the determination of hazardous operations, processes and/or activities in mining industry in relation to	No provision.

	P.D. 1150	P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984	R.A. 7076 and Administrative Order 2015-03	R.A. 7942 and Administrative Order 2010-21	E.O. 79, s. 2012 and Administrative Order 2012-07
				the employment of minors ( <i>Sec. 163, IRR</i> ).	
<b>Ore transport permit</b>	No provision.	No provision.	The transport of ores/minerals/mineral products and by-products, including gold bullions, from a <i>Minahang Bayan</i> shall be accompanied by an Ore Transport Permit issued by the Board. The Board such formulate its own implementing guidelines to govern such transport ( <i>Sec.35, IRR</i> ).	In case of mineral ores or minerals being transported from the small-scale mining areas to the custom mills or processing plants, the concerned P/CMRB shall formulate its own policies to govern such transport of ores produced by small-scale miners ( <i>Sec. 117, IRR</i> ).	No provision.
<b>Taxes and other charges</b>	Authorized buyers shall retain 11-1/2 per cent of the gross value of the gold bought, 1-1/2 per cent to accrue as ad valorem tax and 10 per cent as royalty to the claim owner, landowner or	The small-scale mining permittee/licensee shall, during the term of the permit or license, be exempt from payment of all taxes, except income tax ( <i>Sec. 4</i> ).	( <i>Sec. 13</i> ) Pay all taxes, royalties or government production share as are now or may hereafter be provided by law.  ( <i>Sec. 28, IRR</i> ) a) National and local taxes due as provided	Small-scale mining shall continue to be governed by Republic Act 7076 and other pertinent laws ( <i>Sec. 42</i> ).	No provision.

	<b>P.D. 1150</b>	<b>P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984</b>	<b>R.A. 7076 and Administrative Order 2015-03</b>	<b>R.A. 7942 and Administrative Order 2010-21</b>	<b>E.O. 79, s. 2012 and Administrative Order 2012-07</b>
	government agency concerned, as the case may be: Provided, finally, That if the mining claim or claims are covered by an agreement, the 10 per cent royalty, except when there is an agreement to the contrary, shall be divided equally between the claim owner and the operator <i>(Sec. 6)</i> .		in the National Internal Revenue Code; b) Royalty equivalent to 5 per cent of the gross output for small scale mining within mineral reservations; and c) Government production share; and <i>(Sec. 29, IRR)</i> d) Occupation fee of Php100 per hectare or a fraction thereof per year which shall be paid to the municipality where the small-scale mining contract area is located.		
<b>Assistance</b>	No provision.	The Bureau of Mines and Geo-Sciences shall provide technical assistance, whenever feasible, as determined	The Department, in coordination with the Board and other government agencies concerned, shall extend	Small-scale mining shall continue to be governed by R.A. 7076 and other pertinent laws <i>(Sec. 42)</i> .	Technical assistance through trainings, seminars for capacity-building for small-scale miners, mining

	P.D. 1150	P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984	R.A. 7076 and Administrative Order 2015-03	R.A. 7942 and Administrative Order 2010-21	E.O. 79, s. 2012 and Administrative Order 2012-07
		by the Director of Mines and Geo-Sciences (Sec. 5)	the following assistance to small-scale miners: a) Organization of small-scale miners into cooperatives; b) Technical and financial assistance and social services; c) Processing and marketing assistance; and d) Generation of ancillary livelihood activities (Sec. 33, IRR).		cooperatives and associations shall be conducted by the government agencies concerned (Sec. 14[e], IRR).
<b>Penalty/sanctions for violating the provisions of the law</b>	Any person who buys or sells gold without a license shall be penalized with arresto mayor (Sec. 7).  Any person who shall pan or sluice inside a mining claim or on private or public lands, without the	The Director or Regional Director shall take steps as he or she may deem necessary to secure or enforce compliance with the Decree and relevant laws (Sec. 37, IRR).	(Sec. 31, IRR) a) The small-scale mining contract may be cancelled by the Secretary through the Board. b) The Secretary through the Board may impose fines of not less than Php20,000 but	Small-scale mining shall continue to be governed by R.A. 7076 and other pertinent laws (Sec. 42).	LGUs, DENR and the MGB working together shall strictly implement R.A. 7076, to ensure the protection of the environment, address various issues in small-scale mining, and ensure that violators thereof are subjected to appropriate

	<b>P.D. 1150</b>	<b>P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984</b>	<b>R.A. 7076 and Administrative Order 2015-03</b>	<b>R.A. 7942 and Administrative Order 2010-21</b>	<b>E.O. 79, s. 2012 and Administrative Order 2012-07</b>
	<p>consent of the claim owner or operator, private landowner or the government agency concerned, and without a permit from the Mines Regional Officer shall be guilty of "high grading" and shall, upon conviction, be penalized with arresto mayor <i>(Sec. 8)</i>.</p> <p>Unexplained or unauthorized possession of a person within a mining camp or mining claim in the form of dust, flakes or grain shall be penalized with arresto mayor <i>(Sec. 9)</i>.</p>		<p>not more than Php100,000.</p> <p>c) Non-payment of the fine shall render the small-scale mining contractor ineligible for other small-scale mining contracts.</p> <p><i>(Sec. 36, IRR)</i></p> <p>d) Violation of any of the provisions of this Act and its IRR shall be penalized with imprisonment of not less than six years and confiscation and seizure by the Board of the equipment, tools and conveyance used in the commission of the offense.</p>		<p>administrative and criminal liability <i>(Sec. 12)</i>.</p> <p>When there is a violation of applicable laws and regulations, the MGB Director/Regional Director shall require remediation measures and summarily issue suspension orders until the danger is removed <i>(Sec. 5, IRR)</i>.</p> <p>The EMB shall issue notice of violations/ cease and desist orders, and/or impose fines and penalties for violations of ECC and environmental laws <i>(Sec. 5, IRR)</i>.</p>

	<b>P.D. 1150</b>	<b>P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984</b>	<b>R.A. 7076 and Administrative Order 2015-03</b>	<b>R.A. 7942 and Administrative Order 2010-21</b>	<b>E.O. 79, s. 2012 and Administrative Order 2012-07</b>
	Any person who without a permit sells, or who knowingly, buys or acquires gold in the form of dust, flakes, grains or gold amalgam from persons without a permit shall be guilty of theft as an accessory and shall, upon conviction, be penalized with arresto menor in its maximum period ( <i>Sec. 11</i> ).				
<b>Transitory provisions</b>	No provision.	No provision.	Small-scale miners who have been in actual operation of mineral lands on or before August 1, 1987 as determined by the Board shall not be dispossessed, ejected or removed from those areas, provided, that:	Not applicable to small-scale mining.	Holders of small-scale mining permits (SSMP) under P.D. 1899 shall be recognized until their permits expire, unless their permits are revoked, cancelled or terminated earlier for cause. Those affected SSMP holders may have the option to continue

	P.D. 1150	P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984	R.A. 7076 and Administrative Order 2015-03	R.A. 7942 and Administrative Order 2010-21	E.O. 79, s. 2012 and Administrative Order 2012-07
			<p>a) Those areas are declared <i>Minahang Bayan</i>;</p> <p>b) The small-scale miners shall secure a small-scale mining contract subject to compliance with the pertinent requirements and with the provisions of the Act and its IRR (<i>Sec. 37, IRR</i>)</p> <p> Holders of small-scale mining permits (SSMP) under P.D. 1899 shall be recognized until their permits expire, unless their permits are revoked, cancelled or terminated earlier for cause. Those affected SSMP holders may have the option to continue small-scale mining through a small-scale</p>		<p>small-scale mining through a small-scale mining contract issued pursuant to R.A. 7076.</p> <p> Holders of Small-Scale Mining Permits under P.D. 1899 with a remaining term of less than one-year may be given a temporary small-scale mining contract by the Governor/City Mayor concerned upon recommendation by the P/CMRB to continue small-scale mining operations within a period of 6 months or until the area is declared a <i>Minahang Bayan</i>, whichever comes first (<i>Sec. 14[a], IRR</i>).</p>



	<b>P.D. 1150</b>	<b>P.D. 1899, s. 1984 and Mines Administrative Order MRD-41, s. 1984</b>	<b>R.A. 7076 and Administrative Order 2015-03</b>	<b>R.A. 7942 and Administrative Order 2010-21</b>	<b>E.O. 79, s. 2012 and Administrative Order 2012-07</b>
			mining contract issued pursuant to this Act ( <i>Sec. 37, IRR</i> ).		

## Annex 5 Flowchart of the *Minahang Bayan* declaration process

