Gold with Dignity

A Review of Laws and Policies on Artisanal and Small-Scale Gold Mining (ASGM) in the Context of Human Rights-Based Approach to Formalization
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<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<td>OSH</td>
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<td>P/CMRB</td>
<td>Provincial/City Mining Regulatory Board</td>
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<tr>
<td>PANTHER</td>
<td>Participation, Accountability, Non-Discrimination, Transparency, Human Dignity, Empowerment, and the Rule of Law</td>
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<tr>
<td>PCW</td>
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<td>PD</td>
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<td>PEIMP</td>
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<td>SHIELD</td>
<td>Strategic Helpdesks for Information, Education, Livelihood, and other Developmental Interventions</td>
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<td>UNIDO</td>
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<td>United Nations Guiding Principles</td>
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<td>USDOL</td>
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<td>VAW</td>
<td>Violence Against Women</td>
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ABOUT THIS REPORT

This report is developed by the Initiatives for Dialogue and Empowerment through Alternative Legal Services (IDEALS) through a consultancy engagement with the Artisanal Gold Council (AGC) for the planetGOLD Philippines Project.

The report aims to present the consultant’s assessment on the existing legal and policy framework on the artisanal and small-scale gold mining (ASGM) sector in the Philippines, focusing on the project’s pilot sites—Sagada, Mt. Province and Paracale, Camarines Norte. Findings and conclusions are based on the data gathering activities conducted from January to March 2022.

Although the report is designed to provide information on the ASGM communities in the project sites, the findings and recommendations should be evaluated independently and should not be treated as reflective of the AGC or the planetGOLD programme’s standpoint. It likewise holds no liability for any consequences arising from the use of any information contained in this document, either singularly or overall.

The planetGOLD Philippines project is working toward eliminating mercury in the artisanal and small-scale gold mining sector by using a bottom-up approach, involving members of the sector directly in the creation and implementation of policies and practices to sustainably improve mining operations and livelihoods. The planetGOLD Philippines project is implemented by the UN Environment Programme, UN Industrial Development Organization, Department of Environment and Natural Resources, and executed by the Artisanal Gold Council in partnership with the Mines and Geosciences Bureau.
EXECUTIVE SUMMARY

This study is an assessment of the existing legal and policy framework in the Philippines on artisanal small-scale gold mining (ASGM) in order to determine the pathways for the formalization of the ASGM sector. The study specifically aims to:

1. Review and analyze the existing policies and legal framework governing the ASGM sector, gold trading, and illicit financial flows (IFF) in the Philippines;

2. Assess the effectiveness of the implementation of the laws and regulations governing ASGM in the two project sites, namely: Paracale, Camarines Norte and Sagada, Mountain Province;

3. Identify the gaps and barriers, both legal and non-legal, to the formalization of the sector; and

4. Provide specific recommendations on the policy issues and gaps that were identified with specific gender-responsive policy recommendations that would address the gaps and barriers in the formalization of ASGM as a sector.

The study employed a human rights-based (HR-based) approach. This approach required viewing the laws and policies on ASGM within the parameters of state duty to protect, respect, and fulfill the human rights of the small-scale miners as rights holders. This entailed among others, the identification of existing individual and collective rights afforded to members of ASGM, and their correlative responsibilities in terms of complying with standards and regulations within the whole range of the value chain.

In the same vein, the specific obligations of the State were reviewed in terms of how it has implemented and enforced relevant social protection, labor, health, and environmental standards to protect the rights of the ASGM. Correspondingly, the government’s regulations and initiatives to comply with international standards on gold trading and financial flows were part of the inquiry. Such rights and obligations are interlinked with the availability, accessibility, and affordability of various remedies in case of violation of their rights as provided in existing domestic laws and regulations.

The desired formalization of the ASGM sector is a development process. In HR terms, the same should conform to HR-based development principles of participation, accountability, non-discrimination, transparency, human dignity, empowerment, and rule of law, also known as PANTHER principles. This set of principles guided the key recommendations for policy reform in relation to the formalization of the sector.

Desk review of national laws and policies governing the entire value chain on small-scale mining, financial flows and gold trading was conducted. Relevant international conventions and agreements governing ASGM were also covered by the review including the voluntary guidelines on gold certification and traceability. This is combined with the case study of two major small-scale mining sites in the Philippines, namely Paracale, Camarines Norte and Sagada, Mountain Province in order to deepen the understanding of the gaps in the implementation of national laws and compliance with applicable international standards on ASGM.
Findings

1. There is a conducive policy environment for an HR-based approach to formalization of ASGM.

2. Regulations provided by the People’s Small-Scale Mining Act are inadequate to support ASGM formalization.

3. Access to gold mining remains de facto open access through informal community arrangements and local institutions.

4. Formalization of ASGM in the Philippines requires the alignment of relevant national laws with international regulations such as the Minamata Convention and the various voluntary guidance on certification, due diligence initiatives, and traceability schemes.

5. Existing laws and policies in local governance are indispensable to ASGM formalization.

6. Women working in ASGM remain invisible in terms of development planning, provision of support as provided in existing laws, and their economic contribution both at the local and national level.

7. The informal operations of ASGM, both in Paracale and Sagada, are linked to IFF in terms of the following: 1) non-payment of proper taxes both to the local and national government, 2) trading of gold to informal gold buyers or to the black market, and 3) imposition of “protection money” or extortion by public officials or law enforcement officers.

8. The IFF in both project sites are underpinned by the following challenges in financing ASGM operations: 1) credit worthiness of small-scale miners, 2) absence of investors that do not participate in or influence the pricing and trading of gold, and 3) lack of proper documentation and collection of legally mandated payments to the government and effective regulation of the actors and stakeholders within the value chain.

9. Compliance by small-scale miners with BSP gold trading policies is hindered by the following: 1) difficulty of small-scale miners to comply with documentary requirements, 2) reliance on informal systems which require little or no documentation, and 3) inaccessibility of BSP gold-buying stations.

Although the laws to protect, respect, and fulfill the rights of small-scale miners with their corresponding responsibilities of rights holders are in place, the same have to be fine-tuned with the realities, nuances, and dynamics of informal ASGM operations. Notable is the recognition of ASGM as a heterogeneous community of rights holders of men and women, with varying interests and motivations. The sector is engaged in a socially constructed arrangement on the exploitation of gold mineral resources, terms of determining access to it, use and level of technology for its extraction, and the distribution of benefits and financial flows once it has been processed, and traded.

The implementation of the rules and regulations on the access to the state-owned resource remains weak and fragmented both at the national and local level. This gives rise to a de facto open access to mineral resources, influenced and directed by certain stakeholders and local institutions with traditional and cultural foundations.
The strategy to formalize ASGM should recognize and be sensitive to the heterogeneity and complexity of the sector. It should address the elimination of their social and economic vulnerabilities both at work and at home, considering the mode of operation of ASGM as a family enterprise. Analysis of gender norms within the spectrum of ASGM informality should be incorporated as part of an HR-based approach to formalization.

From an HR-based perspective, the recommendations for the formalization of ASGM are disaggregated in terms of the duties of the State (e.g., implementation and enforcement of policies and regulations, capacity-building of rights holders, etc.) and rights and responsibilities of ASGM actors as rights holders (e.g., participation in capacity building activities, organizing their ranks, compliance with government regulations and standards).

Pathways to Formalization

From an HR-based perspective, the recommendations for the formalization of ASGM are disaggregated in terms of the duties of the State (e.g., implementation and enforcement of policies and regulations, capacity-building of rights holders, etc.) and rights and responsibilities of ASGM actors as rights holders (e.g., participation in capacity building activities, organizing their ranks, compliance with government regulations and standards).

1. For the Duty Bearers

   A. **For the Mines and Geosciences Bureau (MGB) to lead the review of the concept of Minahang Bayan (MB)** to broaden it from a mere extraction site to a management unit within the framework of an ecosystem approach that adheres to science-based management to protect the environment and the community.

   B. **Conduct a regular monitoring and assessment of the implementation of the DAO 2022-03.** This should involve the participation of the ASGM and other stakeholders in order to inform the improvement of its implementation.

   C. **Mainstream the transition process of ASGM formalization in all levels of government development planning.**

      ▶ Create an inter-agency task force headed by MGB in coordination with the National Economic and Development Authority (NEDA) for the drafting of the National Action Plan (NAP) on formalization of ASGM with representation from all stakeholders. Determine the areas of convergence between NAP and Minamata Convention to streamline the process and involvement of relevant agencies and to avoid duplication of the two development planning processes.

      ▶ The Department of Interior and Local Government (DILG) can mandate the LGUs where ASGM are significantly present to systematically include the ASGM actors such as the miners, women, local financiers, among others, in local development planning.

      ▶ Enhance the current initiative of BSP of engaging other agencies at the Regional Development Council processes to address the mitigation of IFFs through a developmental approach.

   D. **Develop a systematic and effective documentation and baseline information of the ASGM actors.**

      ▶ Mandate the Philippine Statistics Authority to include the ASGM sector in the national
census taking into account the relevant information that will be needed for the development of NAP. This should be done with MGB and the Provincial Mining Regulatory Board (PMRB).

- Tap the support of NGOs with relevant expertise in developing the information baseline.

E. **Mitigate IFFs and illegal gold trading.**

- Address illegal trade of chemicals and IFFs through effective law enforcement and prosecution. Involvement of the community through education and information campaigns has been shown to be effective in environmental and coastal law enforcement. This can be replicated in ASGM communities. Other state actors such as the prosecutors and judges should likewise be engaged by MGB and BSP to strengthen prosecution of violators of illegal trade of chemicals and illegal gold trading, respectively.

- Strengthen ASGM as a sector by assisting them not only to register as a formal organization but also by providing them capacity building activities which include financial literacy and investment planning, among others.

- For LGUs where a MB is constituted: adopt ordinances that incentivize registration of ASGM miners, reporting of relevant information like production data and other relevant information to enable the LGU to implement evidence-based regulations. Incentives may be in the form of increased budget allocation to the sector or supplemental livelihoods.

- Study the development of a system of localized certification of the mining areas which should involve the stakeholders, notably the communities which are directly and indirectly affected by ASGM operations.

- Revisit the gold trading policy of BSP. Other ASGM actors such as entrepreneurs with sufficient capital and resources and are capable of complying to formal standards should operate ASGM and be provided with support to access funds and investments from private and public financial institutions.

- BSP should adopt an effective social marketing strategy to entice and convince the stakeholders in ASGM to patronize the gold buying program. Part of the goal should be to make the appropriate content accessible in terms of language and to articulate a nuanced explanation of relevant international standards that BSP is promoting and implementing. Ultimately, it should encourage self-reporting of relevant information that will help in mitigating IFFs in ASGM. This would entail coordination with other appropriate national agencies and LGUs where ASGM is significantly present.

- Extend to gold trading a multi-stakeholder approach to formalization. Explore involvement of other non-state actors such as gold traders, jewelers, and even pawnshop owners, among others, who are usually the end-users of gold from both legal and informal sources. They
are also the stakeholders within the reach of government regulations at the local level who can influence the desired behavior in terms of ethical sourcing and consumption of gold through effective communication strategies and information and education outreach programs by government and NGOs. Organizing them around the framework of localized ethical gold sourcing and trading, free and non-complicit to environmental degradation and HR abuse, or under the banner of “Gold with Dignity” is worth studying.

F. Address the invisibility of women in ASGM in terms of their practical and strategic needs.

- Both the national government and the local government unit (LGU) should conduct a more proactive approach in the reporting and documentation of women and children involved in the AGSM sector. It was heavily reiterated in both project areas that small-scale mining is a family affair and thus, efforts on documentation should be refined so as to formally recognize the involvement of women in the sector and address the burden that they carry.

- Streamline the documentation and reporting on VAWC especially among local interagency authorities. Moreover, documentation should not only be limited to formal cases settled in court, but also include out-of-court cases.

- Map the site-specific involvement of women in ASGM to determine appropriate intervention and support that should be given to them to reduce and address their vulnerabilities and marginalization in terms of social and economic benefits and participation in decision-making in ASGM operations.

- Tap the expertise of the private sector or NGOs working on the women sector for social preparation of the women in ASGM to enable them to participate in the formalization process.

2. For the ASGM Actors as Right Holders

A. Undertake organizational development and strengthening in areas such as organizational management, financial management, and literacy and consolidation of membership, among others.

B. Review the organizational processes in order to address exclusion or discrimination of women within the organization.

C. Conduct capacity building training to improve knowledge and compliance to laws and regulations affecting ASGM operations at the local and national level.

D. Participate in local development planning and budgeting to ensure the inclusion of the sector in the annual development plan of the LGU.

E. Actively engage and participate in the formulation of the NAP on Minamata Convention.

F. Undertake training on policy advocacy to enable them to engage the policy and law-making processes in relation to ASGM and its formalization.
I. Introduction

Gold with dignity highlights the perspective of a rights-based approach to artisanal and small-scale gold mining (ASGM) formalization. Generally, human rights (HR) refer to freedom of action and having access to resources and services that should be provided by the State so that every person can live a life with dignity. In the context of the artisanal and small-scale gold miners who are mostly operating within informal arrangements, life with dignity is aspirational. This is in view of the various development issues associated with it, such as the environmental degradation and health hazards related to mercury use, child labor, increased vulnerabilities of women, and absence of social protection, among others.

As a development process, ASGM formalization framed according to a human-rights based (HR-based) approach is anchored on the HR obligation of the State to protect, respect, and fulfill the various civil, political, social, economic, and cultural rights of the rights holders. Adoption and implementation of laws and policies by the State is one of the indicators on how the state performs its HR obligations. On the other hand, rights holders, while intrinsically imbued with various rights, have correlative responsibilities to the State. This is in the context of their compliance with the rule of law to ensure a functioning society. A life with dignity then, although contextual, should uniformly conform to international HR laws.

In the Philippines, small scale-mining is governed by Republic Act (RA) No. 7076, or the People’s Small-Scale Mining Act (PSSMA). PSSMA legally recognized small-scale mining as a regulated access to the exploitation, utilization, and management of the state-owned mineral resources such as gold.

Under the PSSMA, “small-scale mining” refers to mining activities relying heavily on manual labor using simple implementations and methods, without the use of explosives or heavy mining equipment. The law considers Filipino citizens who engage in the extraction or removal of minerals or ore from the ground either as individuals or as a group and who voluntarily form a cooperative duly licensed by the Department of Environment and Natural Resources (DENR) as small-scale miners.

Different policies and laws come into play in the entire process of gold mining. International law lays out a general policy framework that can help provide a progressive view on the mining sector. The Constitution, serving as the fundamental law, recognizes the rights of artisanal and small-scale gold miners. It promotes social justice and the fair interplay between the State as a duty-bearer, and its citizens as rights holders. Meanwhile, domestic laws define the details in ASGM by formalizing the same, defining certain rights, responsibilities, and even remedies in applicable instances.

AGSM or gold mining conducted by individual miners or small enterprises with limited capital investment and production, appears to be a common industry in the Philippines. It is the oldest form of mineral extraction in the country, as large-scale mining operations only began in the early 1920s for the Philippines, whereas ASGM has been in practice in rural areas since time immemorial.
As such, the Philippine government endeavors to provide a legal framework that addresses the needs of the different stakeholders in the said industry. Yet, multifaceted issues surround the ASGM sector despite the existence of seemingly comprehensive mining policies and laws.

ASGM is a significant sector given its economic contribution in terms of gold production globally. The development issues mentioned earlier and the policy context on small-scale mining prevailing in the Philippines, including international initiatives advocating for ASGM formalization among others are the baseline considerations of this report.

Globally, there is mounting evidence concluding that formalization of the ASGM sector is the key to ascertaining that those who are primarily engaged in the sector are benefitted, capacitated and are incentivized to engage in rules and science-based access and management of the state-owned mineral resource. Other non-state actors like the business sector or the financiers of small-scale mining operations are also key stakeholders in transitioning to formalized ASGM operations.
II. Research Framework

This paper is a result of the consultancy services of the Initiatives for Dialogue and Empowerment through Alternative Legal Services (IDEALS) to the Artisanal Gold Council (AGC). AGC is the executing agency for the Global Environmental Facility-supported program “Global Opportunities for Long-Term Development,” also known as planetGOLD, in the Philippines. The consultancy focused on two selected project areas of planetGOLD Philippines, namely: Paracale, Camarines Norte and Sagada, Mountain Province.

For this study, an assessment of the existing legal and policy framework of the government is premised on the need for reform to integrate the ASGM into the formal economy. The task is to identify the gaps and barriers in the review of the relevant laws, policies, and programs currently being implemented by the Philippine Government by using an HR-based framework. This entailed among others, the identification of existing individual and collective rights afforded to members of ASGM, and their correlative responsibilities in terms of complying with standards and regulations within the whole range of the value chain. The review looked into the various property rights as provided by tenurial arrangements and contractual obligations and how the conflict or issues of enforcement of such rights are being mediated by existing legal and non-legal remedies. Another significant aspect of the review is on the benefits stream and financial flow linked to ASGM.

In the same vein, the specific obligations of the State were reviewed in terms of how it has implemented and enforced relevant social protection, labor, health, and environmental standards to protect the rights of the ASGM. Correspondingly, the government’s regulations and initiatives to comply with international standards on gold trading and financial flows were part of the inquiry. Such rights and obligations are interlinked with the availability, accessibility, and affordability of various remedies in case of violation of their rights as provided in existing domestic laws and regulations.

Other non-state actors like business enterprises engaged in extending credit, supplies, equipment, and logistic support among others were also assessed in terms of the United Nations (UN) Guiding Principles (UNGP) on business and human rights (BHR). This guideline which has gained international acceptance applies to all business enterprises regardless of the nature and size of operations.

This review also analyzed the community institutions, both formal and informal, which produce and reproduce the informal dynamics of ASGM.

The desired formalization of the ASGM sector is a development process. In HR terms, the same should conform to HR-based development principles of participation, accountability, non-discrimination, transparency, human dignity, empowerment, and rule of law, also known as PANTHER principles. These principles guided the key recommendations for policy reform in relation to the formalization of the sector and in proposing recommendations for its improvement.

A. Objectives of the Study

The study aims to:

1. Review and analyze the existing policies and legal framework governing the ASGM sector, gold trading, and IFFs in the Philippines;
2. Assess the effectiveness of the implementation of the laws and regulations governing ASGM in the two project sites;

3. Identify the gaps and barriers, both legal and non-legal, to the formalization of the sector; and

4. Provide specific recommendations on the policy issues and gaps that were identified with specific gender-responsive policy recommendations that would address the gaps and barriers in the formalization of ASGM as a sector.

Hence, the study proposes to:

1. **Address legal and regulatory framework for small-scale mining, including:**
   - Applicable laws, policies, and administrative issuances, including but not limited to those related to informal economies, mining, health and safety standards, ASGM, and gender;
   - Enforcement of governing laws and regulations;
   - Provisions on land tenure;
   - Jurisprudence related to ASGM sector (i.e., resolution of conflicting issuances from national and local government);
   - Government agencies and other bodies mandated to regulate this sector, and their specific roles;
   - Local policies in the two project sites related to small-scale mining, permitting process, documentation requirements, and mining regulatory board deliberations and approval;
   - Overview of Small-Scale Mining Contracts (SSMC) in the two project sites; and
   - Gold trading regulations

2. **Conduct content analysis of gaps in existing laws and regulations (including gender).**

3. **Assess the process for declaration of a MB and issuance of SSMCs, highlighting gaps and areas of improvement and gender-responsiveness in the process.**

4. **Review of policy and implementation gaps of the following aspects of ASGM:**

**B. Statement of the Problem**

The overall desired outcome of the formalization of ASGM in the Philippines is the integration of the sector into the formal economy. Formalization of the sector carries with it the recognition of the ASGM actors as active participants in development planning at the local and national levels, and may ultimately improve the lives of the people and communities who are part of the industry. The pathway to formalization, however, will involve addressing pertinent issues such as the impact of mercury and other toxic substances on health and environment, proliferation of cheap labor, marginalization of women, and prevalence of child labor and IFFs, among others. These change processes will require the creation, acceptance, and adoption of and adherence to robust policy and legal frameworks for the sustainability of ASGM formalization.
a. Provisions on land tenure;

b. Decent working conditions for men, women, and adolescents of legal working age;

c. Mercury supply sources and trade; and

d. Regulations on conditions of access to domestic and gold trading.

5. **Assess the current gold trading policy, regulations, and procedures and make recommendations to improve artisanal miners’ access to the formal gold market:**

   a. Analyze the current requirements and procedures of the Bangko Sentral of the Philippines (BSP) for purchasing gold from artisanal miners;

      i. Evaluate if they are performing due diligence and traceability that meet the European gold market standards such as the Organisation for Economic Co-operation and Development (OECD) Due Diligence Guidance and the London Bullion Market Association (LBMA) Responsible Gold Guidance.

      ii. Assess the viability of possible solutions and provide recommendations on how to engage the BSP in implementing due diligence and traceability systems into the BSP gold buying procedures.

   b. Analyze the economic incentives of the national gold trade and ASGM activities;

   c. Evaluate coordination efforts between the various government bodies at the state level responsible for regulating the gold trade and ASGM activities in order to identify coordination gaps and provide recommendations;

   d. Evaluate how BSP’s regulations and procedures for gold buying affect the government’s efforts to formalize the ASGM sector;

   e. Investigate and evaluate what government authorities might be tasked with policing the informal gold trade. Assess their capacities and recommend what resources, training and tactics they would need to police gold trading regulations; and

   f. Recommend measures to mitigate IFF related to the gold trade.

6. **Identification of any legal, regulatory, administrative or practical barriers to the formalization of the sector, and recommendations for addressing these barriers; and**

7. **Gender-responsive policy recommendations and/or amendments to existing laws and regulations.**

C. **Methodology**

1. **Research Method.**

   The study is a descriptive research that was conducted from November 2021 to April 2022 focusing on the assessment of the policy, legal framework, and gold trading regulations governing ASGM in the Philippines.
The following data collection methods were used:

a. **Desk Research.** Prior to actual fieldwork, a review of related literature and other materials culled from primary and secondary sources (e.g., existing laws and regulations, relevant national and local policies, official documents, web research on ASGM, case studies, and interviews with officials from several agencies and other key stakeholders) was done.

b. **Key Informant Interview (KII).** Interviews with duty bearers and business stakeholders were done to validate the information obtained in the Contextual Study regarding the implementation of laws and policies, the rights and practices of the ASGM miners, and the financial flow of the ASGM sector.

c. **Focus Group Discussions (FGDs).** FGDs were conducted with relevant ASGM stakeholders in the project area. The study divided the FGD into groups, namely: 1) ASGM organizations operating in the MB; 2) individual miners not involved in any ASGM organizations but are operating in the MB; 3) ASGM organizations operating outside the MB; 4) individual miners not involved in any ASGM organization operating outside the MB; and 5) women miners.

The FGDs intended to surface 1) the ASGM’s knowledge of relevant laws and their experiences as rights holders with the implementation of these laws and policies by duty bearers at the national and local levels, and 2) the nature and dynamics of their interaction with other non-State actors.

d. **Document Analysis and Data Triangulation.** Document analysis was combined with the other data gathering activities such as the FGDs and KIIs. The review of documents from online and primary sources is designed to identify 1) the applicable laws on ASGM, 2) the relevant obligations of duty bearers specific to their official mandates, 3) the rights and entitlements of the miners as rights holders and of the non-state actors with direct role and influence in ASGM operations, and 4) the benefit streams derived.

Primary information derived from FGDs with ASGM rights holders on ASGM operations, gold trading, and financial flows were utilized in probing how the duty-bearers have performed their mandated obligations, thereby providing a basis for analyzing the gaps in the implementation of the law and in identifying key recommendations for formalization. The entire analytical process is guided by the HR framework.³

2. Research Participant and Setting.

The study was conducted in two ASGM communities: Sagada, Mountain Province and Paracale, Camarines Norte. These are the two project sites under the planetGOLD Philippines. Respondents of the study were the ASGM miners as rights holders and other non-state actors (e.g. financiers, landowners, claim owners, gold buyers, and traders) who were directly or indirectly engaged in the entire mining operations, including gold trading. Selected relevant duty bearers from both study sites also participated as KII respondents to provide their perspective in terms of the obligation of the State with respect to the ASGM sector.

3. Ethical Considerations.

The discussions with stakeholders during the FGDs and KIIs involved the exchange of personal information considered private and confidential. IDEALS is committed to protecting the privacy of the stakeholders it interacted with, in accordance with the Data Privacy Act and other relevant laws. To uphold privacy rights and confidentiality during discussions and interviews, prior informed consent was secured after the organization had explained to the information sources the nature and objectives of the discussion, and their right to refuse any question they were not comfortable answering. Questions asked relate only to matters involved in connection with the objectives of the study. All information collected by IDEALS during the discussions or interviews were kept privately in a secure database, exclusively accessible to the concerned staff of IDEALS, except when otherwise allowed by the concerned discussion participant/interviewee. In order to ensure the faithful execution of this commitment, IDEALS secured the FGD participants’ and key informants’ consent through a Verification and Consent Form.

D. Scope and Limitation

ASGM is just a subset of the whole small-scale mining (SSM) sector. Aside from gold, there are other metallic and non-metallic minerals mined throughout the country. For the purposes of this study, the focus will be on the mining of gold minerals alone in the artisanal and small-scale sphere, thus the use of the term ASGM.

The study only focused on the state of ASGM in the selected project areas of planetGOLD Philippines: Paracale, Camarines Norte and Sagada, Mountain Province from November 2021 to April 2022.

It is also acknowledged that during the time the study was being conducted, the implementing rules of the PSSMA were revised. The policies reviewed in this study were, therefore, analyzed in the framework of the implementing rules in effect prior to the revision, particularly: DENR Department Administrative Order (DAO) 2015-03 or the Revised Implementing Rules And Regulations of Republic Act No. 7076, otherwise known as the “People’s Small-Scale Mining Act of 1991.” Since the revision took effect after the case studies in the selected project sites were conducted, the effectiveness and impacts of the new rules have yet to be experienced. Moreover, some of the data collected on mercury use, estimation, and exposure are based on publications and studies conducted prior to the period of data collection.

The resulting policy recommendation views the formalization of ASGM as a development process. Through an HR-based approach, the primary stakeholders are miners and other vulnerable ASGM actors. Thus, entailing the disaggregation of the stakeholders into rights holders and duty bearers.
As a process, the research and analysis primarily employed the PANTHER principle, namely: Participation, Accountability, Non-discrimination, Transparency, Human dignity, Empowerment, and Rule of law. The findings of the study are not expected to be representative of the entire state of ASGM in the country.

E. Research Sites

The two areas covered in this paper are the sites covered by the planetGOLD Project in the Philippines. Both AGC and MGB which executed the planetGOLD Project assessed various potential project sites and selected Paracale and Sagada as the cases for this study.

AGC conducted further research in the area to provide baseline data on the current knowledge, attitudes, and practices of these SSM communities. The results of AGC’s study were reported in the document entitled “The Artisanal and Small-Scale Gold Mining Sector in the Philippines: A Contextual Study of planetGOLD Philippines Project Sites.” This document and the baseline data stated therein were used for this study.

1. Paracale, Camarines Norte

Paracale is one of the 12 municipalities of the province of Camarines Norte. It is a third-class municipality with a population of 60,198 individuals and 13,588 households known for its long history of gold mining.

Even before the Spanish colonial rule, Paracale was the center of commerce for the exchange of jewelry, gold, food, and other basic needs. In 1571, since most people prospected gold by excavating holes and canals in the ground, the Spaniards named the area Paracale, meaning “canal digger.”

According to the inventory of SSM issued by MGB Region V for the calendar year 2021, there are 47 small-scale mining operations in Barangay Casalugan. However, there is only one declared MB area in Paracale, covering 26.5 hectares of land in Sitio Maning, Barangay Casalugan, and is awarded to the Samahan ng mga Minero ng Barangay Casalugan (SMBC).

Figure 1. Map of Camarines Norte

To this day, SSM is considered one of the major sources of livelihood in the province since it has rich reserves of metallic and non-metallic minerals in 11 of its 27 barangays. Barangay Casalugan, with a total population of 1,621 individuals, is rich in gold deposits.

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SSM activities have been present in the Northern Zone since 1985, specifically in Barangay Fidelisan where there is a declared MB covering 10 hectares. The first SSM contract signed in Mountain Province is for the Northern Sagada Barangay Small Scale Mining Association, Inc. (NSBSSMAI) operating in Barangay Fidelisan.7

F. Legal and Theoretical Framework

Formalization is a process that includes regulation of ASGM activity and the integration of ASGM actors into the formal economy and society. It goes beyond the legalization process, which mainly concerns effective compliance with permitting and regulatory standards imposed by concerned government agencies.8 Various schemes to formalize ASGM demonstrated by the experiences of a number of developing countries yield uneven outcomes. Efforts of formalizing the sector have been based on short-term development goals, thus narrowly addressing sectoral reform and sustainability of the change process or the policies and support programs to improve the lives of the people and communities that depended on it.9

As a change process, ASGM formalization requires a multi-disciplinary approach, a multi-actor process, and integration of policies.10 The sustainability of the transformation process depends on how the

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8 UNITAR & UN Environment, Handbook, supra note 3.
miners’ perspectives are embedded\textsuperscript{11} and supported by post-formalization strategies, such as educating miners and supporting formal ASGM operations.\textsuperscript{12} Likewise, any ASGM formalization initiative should have a global perspective given the sector’s integration into the global market economy, which has been linked to the perpetuation of informality that thrives on cheap and flexible labor.\textsuperscript{13} Thus, formalization should also be informed by the international regulatory framework and be a platform to address extreme poverty, deplorable labor conditions, and persistent use of mercury among other global development issues.

Viewing AGSM formalization as a development process from an HR perspective provides a broad canvas to study and analyze the existing laws and policies, including programs and projects involving the ASGM sector in the Philippines. An HR-based approach to ASGM formalization entails the disaggregation of the stakeholders/actors into rights holders and duty bearers whose rights and obligations are defined by international HR laws which are transformed or incorporated into the domestic legal regime.

In this approach, the artisanal and small-scale miners are viewed as active subjects in pursuing the desired development outcome of formalization of the sector, imbued with rights with correlative responsibilities and entitled to remedies for the violation of their rights. The HR-based approach favors such vulnerable groups as the artisanal and small-scale miners, including women and children, and entails dissecting gender norms, forms of discrimination, and power imbalances to ensure that interventions reach the most marginalized segments of the population.\textsuperscript{14}

On the one hand, the State, though constitutionally recognized as the owner of mineral resources,\textsuperscript{15} has the obligation as a duty bearer to protect, respect, and fulfill the rights of the ASGM and to guarantee their access to adequate judicial and non-judicial remedies, free from legal and non-legal barriers. All these are geared towards providing the rights holders the freedom to exercise their rights and entitlement to goods and services for a life with dignity, regardless of their race, nationality, gender, and status in life, among others.\textsuperscript{16} The inherent powers of the State such as the power of eminent domain, taxation, and police powers are mediated by the rights of the duty bearer. Such rights function as a shield to protect them from excessive or abusive exercise of state power.

ASGM operations also involve non-state actors like business enterprises or individuals, who influence, direct, or even control its dynamics, relations, or desired outcomes. They may be financiers, operators, landowners, claim-owners, traders, suppliers of inputs, or gold buyers who are equally imbued with rights and responsibilities. Analysis of their role in influencing the state’s duty to perform

\textsuperscript{11}Id.
\textsuperscript{12}Gerardo Martinez, Nicole M. Smith, Aaron Malone. Formalization is just the beginning: Analyzing post-formalization successes and challenges in Peru’s small-scale gold mining sector, Resources Policy, Volume 74 at 102390, (2021) available at https://doi.org/10.1016/j.resourpol.2021.102390
\textsuperscript{13}Fisher, et al. supra note 9.
\textsuperscript{14}UNITAR & UN Environment, Handbook, supra note 3.
\textsuperscript{15}See Phil. Const. Art. XII, § 2 (The Regalian Doctrine or the state ownership of all natural resources which include mineral resources, is provided under the Constitution which states -

All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

its HR obligations or the claim-making of the miners as rights holders is critical in understanding the informal dynamics of ASGM operations including the supply chain — and in framing interventions to implement the process of ASGM transformation to a formalized system.

Based on the foregoing premises, the following are parameters in reviewing and analyzing the existing laws and policies, including the programs and projects, involving the ASGM sector in the Philippines:

1. **State as Duty Bearer.** The State duty to protect, respect, and fulfill the rights of ASGM is reflected in the laws and policies covering the entire process of ASGM operations. Specifically, this involves the permitting process, monitoring of operations, enforcement and imposition of sanctions, and incentive mechanisms, among others. The state duty is further disaggregated in terms of the roles and obligations of national government agencies and the LGU in relation to small-scale mining. The process of analysis will be guided by the following key questions:

   a. What are the relevant laws, policies, programs, and projects?
   
   b. What is the context in which the laws, policies, programs, and projects operate?
   
   c. What are the duties of the national government and the LGU in relation to the regulation, monitoring, and enforcement of standards, incentives, and sanctions?
   
   d. What are the factors that hinder/enhance the performance of the State obligations?

2. **ASGM as Rights Holder.** The artisanal and small-scale gold miners have individual and collective rights. This underscores the dynamics in the ASGM operations. The range of rights that they have and the rights which are significantly affected by their work as miners will be studied in terms of how the State has protected, respected, and fulfilled such rights. Conceptualizing artisanal and small-scale gold miners as active subjects of the formalization of their sector dictates that they should be able to claim their rights, actively perform their correlative responsibility to exercise their rights within the rule of law, and seek remedies for violation of their rights.

   The process of analysis will be guided by the following key questions:

   a. What are the rights of artisanal and small-scale gold miners in relation to the whole range of ASGM operations?
   
   b. How are these rights protected, respected, and fulfilled by the State?
   
   c. What are the responsibilities of artisanal and small-scale gold miners in relation to the whole range of ASGM operations?
   
   d. What are the factors that enhance/hinder the exercise of such rights and responsibilities?
   
   e. What are the remedies provided by the State in case of violation of such rights by the State or non-state actors?

3. **ASGM Non-state Actors.** The non-state actors such as the suppliers, financiers, and traders, among others, perform non-state functions yet affect the rights of miners. Although non-state
actors are also subject to State protection, they may not interfere in the miners’ enjoyment and exercise of their rights in the context of the existing relations and dynamics in ASGM operation. It is part of the obligation of the State to prevent non-state interference. The following are the relevant questions to ask:

a. Who are the non-state actors?

b. What are their rights and responsibilities under existing laws in relation to ASGM operations?

c. How does the state protect, respect, and fulfill their rights?

d. What are their remedies?

e. How do the non-state actors affect the rights of artisanal and small-scale gold miners?

<table>
<thead>
<tr>
<th>Context</th>
<th>Formalization (A Development Process)</th>
<th>Integration of ASGM to the Formal Economy/Society</th>
<th>Definition</th>
</tr>
</thead>
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<tr>
<td>State as Duty Bearer (Protect, Respect and Fulfill)</td>
<td><strong>Regulation</strong> (Laws, rules, and regulations, and institutional arrangements)</td>
<td><strong>Monitoring</strong> (Laws, rules, and regulations, and institutional arrangements)</td>
<td><strong>Enforcement and Sanctions</strong> (Laws, rules, and regulations, and institutional arrangements)</td>
</tr>
<tr>
<td>ASGM as Rights Holder (Individual, Collective)</td>
<td><strong>Rights</strong> (e.g., Labor, health, social protection, property, etc.)</td>
<td><strong>Responsibilities</strong> (e.g., Compliance, participation, pay taxes and fees)</td>
<td><strong>Remedies</strong> (Administrative, civil, and criminal)</td>
</tr>
<tr>
<td>Other Non-State Actors (Traders, Financiers, Gold Buyers, etc.)</td>
<td><strong>Rights</strong> (e.g., Property, reasonable return of investments, inviolability of contracts)</td>
<td><strong>Responsibilities</strong> (UNGP on BHR, responsibility to respect HR, HR due diligence, HR policy, grievance mechanisms, pay taxes, compliance to regulatory measures)</td>
<td><strong>Rights</strong> (e.g., Labor, health, social protection, property, etc.)</td>
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*Figure 3. HR- and Rules-Based Approach to Formalization Schematic Diagram*
Policy recommendations to define the ASGM formalization will be framed in terms of the PANTHER principles on HR-based development programming. This process demands that ASGM integration into the formal economy and society provides an enabling mechanism for the recognition of the ASGM as a sector at the local and national levels. Thus, to enable the ASGM sector to participate in and benefit from the formalization, the process should be organized, capacitated, systems-oriented, accountable, and with effective representation and access to remedies. Ultimately, the formalization process should lead to desired outcomes of the ASGM sector such as eradication of the use of mercury and other toxic substances, sustainable development, poverty eradication, and transparent and accountable financial flows, among others.

<table>
<thead>
<tr>
<th>Context</th>
<th>Economic, social, and cultural — individual, community, local, national, regional, and international</th>
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</thead>
<tbody>
<tr>
<td>Formalization</td>
<td>Integration of ASGM to the Formal Economy/Society</td>
</tr>
<tr>
<td>Participation</td>
<td>Recognition of the ASGM, local industry and national level. (Requires ASGM to be organized, capacitated, systems oriented, accountable, has effective representation and access to remedies)</td>
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<tr>
<td>Accountability</td>
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<td>Non-discrimination</td>
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<td>Transparency</td>
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<td>Human dignity</td>
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<td>Empowerment</td>
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<td>Rule of Law</td>
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*Figure 4. Conceptual Framework for HR and Rules Based ASGM Formalization*

III. Review of Related Literature

A. ASGM and Formalization

The Minamata Convention on Mercury\textsuperscript{18} defines ASGM as \textit{gold mining conducted by individual miners or small enterprises with limited capital investment and production.}\textsuperscript{19} The International Labour Organization (ILO) described it as \textit{labor-intensive, with mechanization being at a low level and basic.}\textsuperscript{20} ASGM is often associated with \textit{informal mining conducted by individuals, groups, families, or cooperatives who use rudimentary processes to extract minerals or gems, often with no or very little mechanization.}\textsuperscript{21} Ordinarily, ASGM actors are unorganized or without legal personality, hence the lack of government support and inability to benefit from enforcement policies to help them understand and comply with regulations.\textsuperscript{22}

Among countries however, definitions, legal status, and criteria vary. In the Philippines, ASGM operations are largely informal.\textsuperscript{23} It is described as a family enterprise where both women and children are also engaged\textsuperscript{24} and has also been linked to child labor;\textsuperscript{25} environmental degradation, and use of mercury.\textsuperscript{26} The use of mercury in Philippine ASGM is prominent such that aside from being considered as a hindering factor in the formalization of the ASGM sector, it also results in a number of social and environmental issues, particularly, health risks and reduced economic opportunity.\textsuperscript{27}

In Senegal, ASGM is embedded in customary management structures. A study demonstrated that customary tenure and resource management structure has provided a system of governance to enable 1) collection of taxes on the extraction of gold resources, 2) local support services for technical assistance and community development, 3) dispute resolution, and 4) the maintenance of order and control.\textsuperscript{28} The study also highlighted the failure of top-down, bureaucratic legalization and titling approaches to land and minerals. It suggested the acceptance of the primacy of governing customs in rural settings, which remain relevant and influential.\textsuperscript{29}

\textsuperscript{18}Minamata Convention on Mercury signed October 10, 2013 available at https://www.mercuryconvention.org/sites/default/files/2021-06/Minamata-Convention-booklet-Sep2019-EN.pdf (The Convention provides an international legal framework in dealing with the global anthropogenic source and use of mercury through common action of State Parties given its impact on health and environment. It identifies ASGM as a major anthropogenic source of mercury use and thus it provides, among others, the elimination of its use in ASGM operations.)

\textsuperscript{19}(id. art. 2 (a)).


\textsuperscript{22}UNITAR & UN Environment, Handbook, supra note 3.

\textsuperscript{23}Id.

\textsuperscript{24}Inception Workshop: Strategic Planning for Artisanal and Small-scale Gold Mining in Asia held on 19 – 21 January 2010, Richmonde Hotel, Ortigas Center, Pasig City, Philippines.


\textsuperscript{26}Id.


\textsuperscript{29}Id.
A study in Ecuador, Mongolia, Peru, Tanzania, and Uganda indicated that formalization is key to addressing issues on mercury management and other social concerns in ASGM communities. 30

Formalization is also seen as an enabling factor to address mercury-use in ASGM, and therefore, can provide the desired outcome in terms of environmental and health concerns.31 In the Philippines, mercury-use is also heavily linked to the informality of the ASGM sector, according to a study conducted by BAN Toxics.32 The study also pointed to the illicit gold and mercury markets as the driver of extreme poverty and continued use of mercury in mining communities. As such, sources and suppliers of mercury exercise authority over the ASGM sector and the continued use of mercury perpetuates such authority as it augments incomes for most gold traders and financiers. 33

The narrative that artisanal miners are not aware of the risks of mercury use in their operations is another misconception of their capacities. They are in fact deeply aware of the dangers of mercury use, of the technology for mercury-free operations, and efficient gold production methods. The problem is a function of lack of access to such technologies and socio-economic empowerment.34

A study has shown that efficient communication and active participation of local stakeholders are necessary in the process of changing miner behavior and perception in environmental conservation. This is rooted in the findings that miners are not against conservation per se, but rather, they are concerned with how it affects them.35

A post-formalization strategy focused on educating and supporting formal ASGM operations is likewise seen as a crucial phase in the formalization process, as also discussed in the Contextual Study of planetGOLD. A study in Peru indicated that there was an improvement in the health and safety practices and labor conditions, and environmental awareness of miners post-formalization. However, the demands of operating formally led them to feel “more pursued and scrutinized” than they were under an informal set-up and they faced challenges in obtaining technical support and access to credit.36 This resonates with the recommendation of BAN Toxics to adopt development programs strengthening links with formal markets, promote equitable wealth-sharing mechanisms, and invest in technology and initiatives for building knowledge and capacities.

Notably, there are various narratives on ASGM informality in the past that have shaped policy interventions to formalize the sector. One is that ASGM is seen as a way out of poverty as a “get-rich-quick” activity. Such a narrative failed to capture the diversity of the ASGM sector, the composition

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32 Ban Toxics is an independent non-government environmental organization engaged in the advancement of environmental justice, health, and sustainable development in the area of chemicals and wastes, with a special focus on women, children, and other marginalized sectors. See https://bantoxics.org/
33 BAN Toxics, Illicit Mercury Flows, supra note 27.
34 UNITAR & UN Environment, Handbook, supra note 3.
36 Martinez et al., supra note 12.
of which ranges from people whose livelihoods rely on subsistence farming to skilled workers who migrated from urban areas in search of work. In fact, ASGM communities are actually much more diverse, the same being heterogeneous and populated by enterprising businessmen and individuals with skills. This denotes that the ASGM sector is not solely poverty-driven and subsistence-oriented as it seemed.

Another layer of perception of ASGM dynamics is the narrative of “unscrupulous middlemen” in light of the uneven trading practices and IFFs. Middlemen are those who provide loans to sponsor mining activities, offer access to markets, and can form long-term mutually beneficial relationships in complex supply chains of production and labor hierarchies. Middlemen are well documented in certain contexts, but such narratives should also be taken with caution. In keeping with the bottom-up approach to ASGM formalization, it is crucial that the supply chain recognize, rather than exclude, middlemen as legitimate market players who also make a livelihood in challenging economic circumstances.

A broader understanding of the supply chains and the roles of each actor within is necessary. The small scale-mining sector in the Philippines and elsewhere is heterogeneous with complex economic, social, and political dynamics operating in informal spaces. Such heterogeneity is invariably described to exist in a continuum from legal to illegal; in terms of scales of mechanization and extraction are organized, institutionalized, and territorialized in different places, and its main challenges vary from region to region —and often from site to site.

Previous policy changes to formalize ASGM in various country contexts failed to capture the desired objective of improving the lives of the people depending on the industry and in weaning them from the negative outcomes of their informal set-up. The PSSMA, as a policy reform in the mining sector of the Philippines, is not insulated from the global blueprint that incentivized foreign investment in order to encourage foreign capital flow to host countries, mostly resource-rich developing countries. This was backed by the International Monetary Fund (IMF) and World Bank within the framework of structural adjustment, and supported by various governments in Latin America, Africa, and Asia that started in the early 1980s. The policy

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39 Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF), Global Trends supra note 37.
40 Id. (citing Fold et al. Buying into formalization? State institutions and interlocked markets in African small-scale gold mining, Futures (2014), and Geenen, S. African artisanal mining from the inside out: access, norms and power in Congo’s gold sector, Routledge (2015), and McQuilken, J. & Hilson, G., “Mapping” small-scale mineral production networks: The case of alluvial diamonds in Ghana, Development and Change (2017)) (Fold et al., 2014; Geenen, 2015, McQuilken & Hilson, 2017)
41 Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF), Global Trends supra note 37.
42 Id. (citing McQuilken, J. & Hilson, G., “Mapping” small-scale mineral production networks: The case of alluvial diamonds in Ghana, Development and Change (2017))(McQuilken & Hilson, 2017)
43 Hilson & Maconachie, supra note 38.
44 Id.
46 Hilson & Maconachie, supra note 38.
47 Hilson & Maconachie, supra note 38.
shift that was conceptualized as formalization of the ASGM narrowly focused on promoting the entrepreneurship of small enterprises. It only gave a premium to the issuance of mining titles through legal processes that, ironically, only eased out the artisanal and small-scale miners.\textsuperscript{48}

1. The Human Rights-Based Approach to Formalization

A bottom-up approach to ASGM formalization can be implemented through the adoption of a human-rights-based approach. This approach is described as follows:

A human rights-based approach focuses on those who are most marginalized, excluded, or discriminated against. This often requires an analysis of gender norms, forms of discrimination, and power imbalances to ensure that interventions reach the most marginalized segments of the population. Important elements include ensuring that people are recognized as key actors in their own development, rather than passive recipients of commodities and services; acknowledging free, active, and meaningful participation as both a means and a goal; and focusing on empowering stakeholders. Further emphasis is put on local ownership of the development process, accountability through independent review of government performance, and access to remedies.\textsuperscript{49}

In a bottom-up approach, the State acts as enabler through the government or its agents. In the context of ASGM formalization, the government can do the following:

\begin{quote}
Beyond monitoring and law enforcement, the government addresses miners’ and traders’ rights and needs and provides access to finance, assistance, and markets. By appreciating their rights and their way of living, addressing their needs, and including them in policy discussions, the government builds reciprocal relationships based on trust and mutual accountability with ASGM communities. In order to effectively achieve this approach, civil servants (in particular, those operating at the local level) need to be empowered and their institutions need to be capacitated. Moreover, national ASGM formalization efforts and the political will that sustains them need to be coordinated and aligned at the institutional level, and governments need to allocate adequate national resources to fund the formalization process.\textsuperscript{50}
\end{quote}

\textsuperscript{48} Id.
\textsuperscript{49} Id.
\textsuperscript{50} Id.
2. Women in ASGM

Globally, there is a growing recognition and valuation of the contribution of women. The contribution of women in global gross domestic product (GDP) is projected at USD 28 trillion by 2025, should women participate equally with men in economic activities. However, ASGM is traditionally a male-dominated sector. Studies suggest that out of the 500,000 artisanal and small-scale gold miners in the country, there are only around 18,000 women and children directly involved in the ASGM sector. Women are then relegated to specific roles in mining operations, like in ball mills and auxiliary services in the mines. In Itogon, Benguet, the ball mill provides space for women to negotiate their rights and welfare; decide on health, education, reproductive and care role concerns, and the general welfare of the community; and promote cultural value on equal sharing of resources.

Women play a role in the exploration, ore extraction, processing, mineral sale, finished product purchase and sale, and provision of goods and services. However, even within these roles, women are not free from discrimination and marginalization, even to the point of engaging in sexual activities on account of low remuneration and “other gendered disadvantages” such as their association to the unskilled and non-technical mine works. Women in ASGM who engaged in sexual activities are susceptible to social exclusion and sexual and physical abuse.

The women’s roles in ASGM are diverse and change over time but for the most part, the work they undertake are limited to cooking, cleaning, doing light non-physical work, and running errands. In contrast to this, a study conducted by ILO in Camarines Norte found that women are a part of the top positions of a number of mining associations and are also regarded as an important player in the secondary economies that benefit the sector and the community. Sadly, they are not given enough opportunities to grow in the sector due to the lack of government support in terms of technical and financial assistance.

3. Financial Flows and ASGM

There is an exchange of value when gold is sold or traded through formal, informal, or illegal channels as it changes hands from the seller to the buyer. From a legal perspective, this exchange of value is a taxable event which generates income to both the

34 Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF). Women in Artisanal and Small-Scale Mining, supra note 51.
35 Id.
38 planetGOLD Philippines, Gender Analysis Report in Philippine Small-Scale Mining.
buyer and the seller. Such a taxable event is subject to the State’s power of taxation. Tax collection should be unimpeded because taxation is the lifeblood of the country and it is what the taxpayer pays for a civilized society. It is also a basic tenet in Philippine taxation that all income from whatever source, whether legal or illegal, is taxable unless specifically excluded by the Tax Code. Benefit from such exchange comes in the form of profit for the seller or programs and projects to the public paid from the taxes collected by the government, among others.

Extending this to ASGM operations, which is predominantly informal, foregrounds a number of policy issues which the State has to address. Mining of gold, a mineral resource owned by the State, brings utilization, development, and exploitation under direct State regulation through contracts, permits, and licenses to qualified applicants. The entire value chain in producing gold until it reaches the end-user involves heterogeneous stakeholders and layers of relationships and context-specific dynamics. It should be noted that there are already exchanges of value even before gold is mined and traded. The financier or mine operator will have to pay for equipment or salaries for mobilization of miners for the preparatory works of mining operations.

Likewise, gold has various economic uses which adds further complexity to its regulation. It can take on the form of a currency, a commercial tool, or financial instrument, making it accessible for legal or illicit purposes. Adding to this layer of complexity are the health, environmental, and social issues related to the use of mercury and other toxic substances in the extraction of gold in most informal ASGM operations.

There is no international consensus on the definition of IFFs. Since it was coined in the 1990s, IFFs have been associated with money that is illegally earned, transferred, or used that crosses borders. OECD defines it as “value illegally earned, transferred, or used.” Operationally, IFF linked to ASGM may mean two things: first, maximization of profit which may be in the form of tax evasion, money laundering, or smuggling, among others; second, extracting value which may be through rent-seeking behavior such as bribery, underpayment of the share or wage of a worker, or payment to armed groups, among others.

Although IFFs in ASGM have historically contributed to conflict and instability, it would be a mistake to classify it solely as a criminal matter in view of its links to formal and informal networks and local livelihoods. The State should therefore aim to curb, if not eradicate, IFF associated with ASGM as it undermines the rule of law. Respect and protection of HR when rule of law is enhanced and strengthened will ensure the accessibility and

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62 Id.
64 Hunter et al., Follow the Money, supra note 61.
IV. Review of National and International Legal Framework on ASGM

A. INTERNATIONAL LEGAL FRAMEWORK

A typical ASGM supply chain involves actors even in the international fields. The prevailing informalty of its systems and processes, and the various development issues associated with it, such as poverty, child labor, women and gender issues, environmental degradation, and IFFs, among others, have fueled significant global attention and action from both state and non-state actors. Central to such efforts and initiatives is the formalization of ASGM.

Essentially, the formalization of ASGM at the global level is driven by multilateralism among States and international organizations, notably the UN, as well as by initiatives and cooperation from non-state parties such as the private sector and Civil Society Organizations (CSO), which are mostly embodied in legally non-binding instruments. This trend is not divorced from contemporary international relations on various fields of human endeavors, wherein traditional notions of enforcement and compliance with international commitment and obligation among States are now embodied in soft laws and not only in legally-binding treaties and conventions.

INFO BOX: Value of Soft Law in International Law

Soft law refers to any written international instrument — other than a treaty — containing principles, norms, standards, or other statements of expected behavior. Soft law can come in many forms, including: normative resolutions of international organizations, concluding texts of summit meetings or international conferences, recommendations of treaty bodies overseeing compliance with treaty obligations, bilateral or multilateral memoranda of understanding, executive political agreements, and guidelines or codes of conduct adopted in a variety of contexts. Another important feature of soft law is that its scope goes beyond State parties and it may extend to non-state actors like international organizations, business entities, NGOs, and even individuals.

The value of soft law mechanisms, such as voluntary guidelines among others, is their potential to influence institutions. It may also serve as a template for policymaking and standards of evaluation and expected behavior at the national or international level. In the context of growing clamor for greater accountability of non-state actors, like corporations in relation to business-related HR abuses, the proliferation of voluntary norms and codes of conduct may be viewed as a social contract between corporations and the general public that veer away from the formal rules in addressing compliance to a desired corporate behavior or business practice. It may also be reflective of the failure of the state to regulate the actions and behavior of corporations who have immense economic resources and political influence.
National and international advocacy and engagement done by CSOs with state and non-state actors have likewise shaped the discourse on ASGM formalization from a mere process of legalization to an integrated approach that takes into account its economic, social, legal, and environmental dimensions.\textsuperscript{79}

For the purpose of the study, the following are the international policy frameworks and development initiatives and processes which should be taken into account in framing a national policy on formalization of ASGM:

\section*{1. Minamata Convention on Mercury}

The Minamata Convention on Mercury represents an innovative and comprehensive multilateral action of states to protect human health and the environment from the global adverse impacts of the use of mercury.\textsuperscript{80} It articulates the desired norm of state parties on effective governance of mercury throughout its life cycle from mining, actual use, and management as waste by state parties and by other key stakeholders. It builds on prior global policy on chemicals and toxic substances such as the Basel, Rotterdam, and Stockholm conventions, and provides, among others, financial mechanisms and some targeted differentiation and flexibilities for its implementation, especially for developing and least developed countries.\textsuperscript{81}

The Convention dealt with ASGM comprehensively since the sector is a major anthropogenic source of mercury emission in the atmosphere, affecting about 70 countries\textsuperscript{82} including the Philippines.\textsuperscript{83} The Convention provides an international regulatory framework on the eradication of the use of mercury in ASGM which is deemed a major step in the formalization of ASGM.\textsuperscript{84} Specifically, Article 7 and Annex C of the Convention\textsuperscript{85} apply to artisanal and small-scale gold mining and processing in which mercury amalgamation is used to extract gold from ore.\textsuperscript{86}

The Philippines became the 123rd State Party to the Minamata Convention after the Government of the Philippines submitted its instrument of ratification on 8 July 2020.\textsuperscript{87} Under the Convention, the Philippine Government should undertake the following actions in relation of ASGM: reduce and, where feasible, eliminate the use of mercury and its compound and its emission to the environment;\textsuperscript{88} and determine if mining and processing within Philippine territory is more than insignificant; report to the Conference of Parties (COP) on the measures it has taken to implement the provisions of the Convention and on the effectiveness of such measures;\textsuperscript{89} and participate in the COP.

The Philippine Government, through its focal point, the Environment Management Bureau (EMB) of the DENR, has sent a notification to the Secretariat of the Convention on 22 October 2020 that ASGM and processing in which mercury amalgamation is used

\textsuperscript{79} BANDE Gulbert MBAH TARH, Aspects of ’Soft Law’ and the Use of ’MoUs’ as a Tool for ’Soft’ Cooperation, International Journal of Humanities and Social Science Vol. 10 Issue No. 8 (August 2020) available at http://dx.doi.org/10.30845/ijhss.v10n8p13
\textsuperscript{80} See Minamata Convention, supra note 18.
\textsuperscript{81} Id.
\textsuperscript{82} UNITAR \& UN Environment, Handbook, supra note 3.
\textsuperscript{83} BBAN Toxics, Illicit Mercury Flows, supra note 27.
\textsuperscript{84} Id.
\textsuperscript{85} See Annex A.
\textsuperscript{86} Minamata Convention, supra note 18, Art. 7.
\textsuperscript{88} Minamata Convention, supra note 18, Art 7(1).
\textsuperscript{89} Id. Art 21
to extract gold from ore is more than insignificant within its territory. Given such determination, it is incumbent upon the Philippine Government to develop and implement a national action plan (NAP) in accordance with Annex C. 

Annex C of the Convention prescribed the specific contents of a NAP, which include among others a state party’s strategies to eliminate worst of mercury use, promotion of mercury-free methods; development of baseline estimates of mercury use and the practices employed; management of trade and prevention of the diversion of mercury, adoption of market-based mechanisms, or marketing tools; prevention of the mercury exposure of vulnerable populations particularly children and women of child-bearing age; development of public health strategy on the exposure of miners and their communities to mercury; and provision of information to ASGM-affected communities.

The Convention likewise provides for cooperation among State Parties, relevant intergovernmental organizations, and other entities, as appropriate. Areas of cooperation include, among others education, outreach programs, promotion of research on sustainable non-use of mercury, financial and technical assistance, and information exchange.

The possibility that there might be unintended effects of the policy changes dictated by the country’s commitment to the Convention at the industry level is not remote. It was noted that policy intervention to implement Article 7 of the Convention should go beyond the technical considerations in addressing mercury use, and should likewise address the issue of equity and fairness that is dominant in ASGM communities worldwide. For example, in Zimbabwe and Tanzania, the government’s drive to implement the Convention has led to the criminalization of mercury use.

The reduction and eventual elimination of mercury in ASGM under the Convention would also require appropriate capacity and resources from the government to be able to implement the NAP.

2. Standards and Certification Systems for ASGM

The Intergovernmental Forum on Mining, Minerals, Metals, and Sustainable Development (IGF) defines “certification” as “a procedure by which an independent or third party provides assurance that a product, process, or service complies with a given set of production standards.”

Certification schemes promote normative behavior and ethical standards that are desired in any ASGM operations, such as: protection of HR, compliance with decent work standards and environmental protection, among others. These schemes and standards are outcomes of various interlinked factors, such as increasing public awareness on the so-called “conflict minerals” and the resultant corporate reputational risks, growing consumer consciousness on the source of minerals used to produce electronic gadgets, introduction of due diligence and conflict mineral regulations that require companies to report on the origin and traceability of minerals in their supply chains by States like the US and EU and multilateral organizations, inspiration drawn from the considerable market success of fair trade certification.
initiatives for agricultural commodities and growth in ethical consumerism, and opportunity for NGOs and development partners to seek interventions that mitigate the adverse impacts of the ASM sector and support its formalization.  

The following are the two certification schemes according to IGF’s classification.  

1. Ethical mineral certification schemes and standards as exemplified by Alliance for Responsible Mining’s Fairmined Standard for Gold from Artisanal and Small-Scale Mining, including Associated Precious Metals; Fairtrade International’s Fairtrade Standard for Gold and Associated Precious Metals for Artisanal and Small-Scale Mining;  

2. Chain of custody initiatives, which aims to ensure traceable supply chains from mine to market that are free from conflict and HR abuses. They respond to the need of companies seeking to meet international regulations and/or voluntary codes and to ensure good business practices.  

The BSP is certified by and compliant with the LBMA Responsible Gold Guidance. LBMA is a standard setting body for the global wholesale market for precious metals. It is committed to responsible sourcing of precious metals like gold and silver by implementing responsible sourcing programs through an auditing system for its accredited members that is compliant with the OECD Due Diligence Guidance Standards as well as the Swiss and US Know-Your-Customer Process, and Anti-Money Laundering, and Combatting Terrorist Financing regulations. The program aims to combat money laundering, terrorist financing, and HR abuses globally.  

The implementation of these certification standards and schemes, however, faces a number of challenges. According to IGF, there are concerns in terms of reaching the “poorest of the poor” given the context of ASGM operations. The diversity and heterogeneity of ASGM operations should also be factored in the certification schemes to achieve their desired outcomes. Long-term sustainability and viability is also a major concern in view of its limited market; absence of requirement that minerals should come from ASM; and lack of incentives for small and medium-sized jewelers and retailers to promote ethically-sourced jewelry.  

Certification is seen as a complementary support to formalization of ASGM. Scaling it up and its sustainability lies in the need to develop the business case for industry players to want to ensure sustainable supply chains and source from artisanal and small-scale gold miner communities where possible.  

2.1. The CRAFT Code  

The Code of Risk mitigation for Artisanal and small-scale Miners engaging in Formal Trade (CRAFT) is an open-source standard developed by the Alliance for Responsible Mining (ARM) that...
demands a suitable environment for companies and governments to implement due diligence practices for the extraction sector. The overall intent of the CRAFT Code is “to promote sustainable social, environmental, and economic development of the ASM sector”.\(^\text{107}\) To facilitate the adoption of the CRAFT Code by public and private actors in the mining sector,\(^\text{108}\) it has the following characteristics:\(^\text{109}\)

1. It creates a space for conversation of due diligence between ASM and/or local mineral aggregators and the refiners and downstream companies.
2. It promotes the legitimacy of the ASM and the continuous development and improvement of the management of risks.
3. It takes into account the five steps of the OECD framework particularly in risk assessment, risk mitigation, verification, and reporting.
4. It contains a Code of Progressive Compliance for Artisanal and SSM producers which is closely aligned with the OECD Due Diligence Guidance.
5. It has an open-source code released which may be used by any stakeholder in the ASM supply chain.

The planetGOLD programme applies the CRAFT Code in its interventions by emphasizing criteria on the production practices and the environment protection of the ASGM sector. The planetGOLD programme employs these three specific criteria: 1) elimination of mercury in the mining process, 2) respecting and protecting the rights of Indigenous Peoples, and 3) minimizing impact on biodiversity.\(^\text{110}\) PlanetGOLD Philippines has adapted these criteria to the local context.

### 3. Combatting Child Labor and Decent Work Under ILO Conventions

The Philippines is a party to all international conventions on child labor.\(^\text{111}\) Relevant to the ASGM context is ILO Convention No. 182, Worst Forms of Child Labor Convention, which the Philippine Government ratified on 28 November 2020.\(^\text{112}\) The Department of Labor and Employment (DOLE) is the focal agency in relation to the implementation of the Government’s commitment to the Convention. The Convention defines all worst forms of child labor. Relevant to the context of ASGM is the nature of the work and the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.\(^\text{113}\)

According to a 2020 Report of the Bureau of International Labor Affairs of the US Department of Labor (USDOL), the Philippines made moderate advancement in efforts to eliminate the worst forms of child labor.\(^\text{114}\) By activity at industry level, the report cited gold mining as one activity where worst forms of child labor as defined under Article 3(a)–(c) of ILO C. 182 remain rampant.\(^\text{115}\)

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\(^{113}\) Id. at Art. 3


\(^{115}\) Id.
Elimination of child labor is also interlinked with the formalization of ASGM. Bringing the sector under government regulations within the framework of decent work will improve the working conditions of the workforce composed also of women and children, according to BAN Toxics. Programs and projects by ILO, DOLE, and NGOs like BAN Toxics focused on the progressive improvement of the working conditions within the sector are tied with a number of complementary and support activities for the sustainability of the efforts to wean a considerable number children from various forms of child labor. Education of children is also considered a key intervention in addressing the issue of child labor.

4. Sustainable Development Goals

Sound management of chemicals and their waste is a vital component of the Sustainable Development Goals (SDG). The implementation of multilateral environmental agreements (MEAs) entered into by the Philippine Government, including the Convention on Biological Diversity, UN Framework Convention on Climate Change, and the Minamata Convention on Mercury, among others, have been linked with the achievement of the SDGs.

MEAs guide global, regional, and national action on environmental issues and are a result of multilateral processes, making them key elements of environmental, legal, and governance regimes. For example, the Minamata Convention on Mercury seeks to protect human health and environment from mercury and is aligned with the various development goals of the SDGs, such as SDG 1 on ending poverty and SDG 8 on decent work, especially in the context of ASGM formalization.

The SDGs are also incorporated in Ambisyon 2040, the Philippine National Development Plan. The Plan envisions that by 2040, a prosperous, predominantly middle-class society with healthy, smart, innovative citizenry will live in a high-trust society in the Philippines. The achievement of the 17 SDG Goals is viewed as a prerequisite for the realization of Ambisyon 2040.

5. UN Guiding Principles on Business and Human Rights

Adopted by a unanimous vote of the UN HR Council in 2011, the UNGP on BHR is founded on the framework “respect, protect, and remedy” proposed by John Ruggie, UN Special Representative on BHR. The framework represents the three pillars of the UNGP on BHR:

- **Pillar 1**, the State’s duty to protect, draws on the State’s HR obligation to protect, respect, and fulfill in relation to business-related HR abuses;
- **Pillar 2**, corporate responsibility to respect HR, requires all business enterprises to respect HR in the conduct of their businesses and to address adverse impacts of their operations; and
- **Pillar 3**, access to remedy, requires the state and business enterprises to ensure access to effective remedies for victims of business-related HR violations through judicial or non-judicial mechanisms.

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Unlike states, corporations have no direct legal obligation under international law to protect, respect, and fulfill individual HR. The UNGP, however, established the standard that business enterprises have the responsibility to respect internationally recognized HR and those provided in the national laws of the countries where they operate. Although the standards set by UNGP are voluntary, harmful corporate conduct may still constitute violations under local laws where the corporation operates.

The Commission of Human Rights (CHR) initiated in 2012 various initiatives to guide, inform, and assist the Philippine Government and its agencies in popularizing and mainstreaming the UNGP on BHR. This was done through the support of the UN Development Program (UNDP). Initial efforts were made by CHR to develop the NAP on BHR that would involve the business sector, CSOs, and other HR groups.\(^{120}\) The formulation of a NAP by states is a crucial step for national implementation of the UNGP at the country level. To date, a number of states have formulated their NAP on the UNGP implementation. For the Philippines, formulating a NAP on BHR will require calibrated steps considering that the UNGP has yet to be appreciated by the various agencies.

6. Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas

The OECD Due Diligence Guidance is a voluntary global framework that promotes responsible sourcing of minerals from conflict-affected and high-risk areas through sustainable mineral sourcing practices and transparent supply chains of companies engaged in the mineral sector. The UN-backed guidance aims to engage companies in an on-going, proactive, and reactive process through which companies can ensure that they respect HR and do not contribute to conflict.\(^{121}\)

This has gained international recognition, setting a benchmark for State and non-state actors, such as companies and international organizations as shown by the adoption of various certification schemes in the mineral sector.

7. UN Guiding Principles on Business and Human Rights

The Convention\(^{122}\) provides for the designation of a competent authority to monitor and regulate safety and health in mines, as well as to compile and publish statistics on accidents, occupational diseases, and dangerous occurrences. This Convention was ratified by the Philippines on 27 February 1998. In line with this, the DENR published DAO 2000-98 or the Mine Safety and Health Standards. However, this standard is mainly used for the large-scale mining sector. Rules governing safety and health in small-scale mines are determined by DENR Administrative Order No. 97-30 or the Small-Scale Mine Safety Rules and Regulations.\(^{123}\)

B. National Legal Framework

1. Constitutional Framework Relevant to ASGM

The Constitution aims to promote social justice in all phases of national development,\(^{124}\) and a just

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\(^{120}\) See UN Working Group on Business and Human Rights, *Guidance on National Action Plans on Business and Human Rights* at 3, 2015 (The NAP on BHR is an evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UNGP on BHR.)


\(^{124}\) Phil. Const. Art II, §10.
and dynamic social order to ensure the prosperity and independence of Filipinos. It seeks for the equalization of economic, political, and social opportunities by putting the duty of tilting the balance of social forces to the State. The history of injustice to the underprivileged is a source of the most serious problems that plague the nation. Thus, promoting social justice is one of the utmost priorities in the Constitution.

The Constitution therefore mandates the Congress to create more economic opportunities for the underprivileged. It recognizes that commitment to create economic opportunities is key to the promotion of social justice.

Arguably, the enactment of special laws recognizing and formalizing such industries as small-scale mining through the PSSMA are legislations that promote social justice. Under the PSSMA, the state aims to promote, develop, protect, and rationalize small-scale mining to generate employment opportunities and provide an equitable sharing of the nation’s wealth and natural resources. Beyond this, however, the Constitution provides more to promote social justice and recognize other important HR.

For example, the Constitution sees labor as a primary social economic force, and it mandates the State to protect workers’ rights and promote their welfare.

The State also aims to increase the amount of goods and services produced and expand productivity to raise the quality of life for all, especially the underprivileged. Thus, the State is to promote industrialization and full employment based on sound agricultural development. Although all lands of public domain, minerals, and other natural resources are owned by the State, the Constitution allows Congress to enact a law that legalizes small-scale utilization of the same, hence the creation of the PSSMA.

In addition to the foregoing, other state policies find relevance in the context of SSM which can be used as a basis to further strengthen current artisanal and small-scale mining policies in the Philippines:

- The recognition of the value of dignity in every human person, and the guarantee of full respect for HR;
- The recognition of the role of women in nation building, and the equality of women and men in law;
- The protection and promotion of the right to health and health consciousness among the people;
- The protection and advancement of the right of the people to a balanced and healthful ecology;

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125 Phil. Const. Art II, § 9
127 Id. at 491
130 RA 7076, § 2.
133 Phil. Const. Art XII, § 1.
134 Phil. Const. Art. XII, § 2.
135 Phil. Const. Art. II, § 11
136 Phil. Const. Art. II, § 14
137 Phil. Const. Art. II, § 15
138 Phil. Const. Art. II, § 16
The recognition of the role of the private sector and the provision of incentives to needed investments;\textsuperscript{139}  
The promotion of comprehensive rural development;\textsuperscript{140}  
The recognition and promotion of the rights of indigenous cultural communities;\textsuperscript{141}  and  
The encouragement of non-governmental, community-based, or sectoral organizations that promote national welfare.\textsuperscript{142}

2. Statutory Framework

Prior to the PSSMA which took effect in 1991, various pieces of legislation have been passed in an attempt to regulate small-scale mining in the Philippines.

In 1974, Presidential Decree No. (PD) 581, \textit{Prescribing a Heavier Minimum Penalty for High Grading or Theft of Gold from a Mining Claim or Mining Camp}, was passed, penalizing high grading or theft of gold from a mining camp or mining claim without the consent of the operator therein. This suggests that even before the recognition of SSM as an industry, Filipinos have been engaged in it although the practice is not formally recognized as such, and is operating within the legal bounds of large-scale mining.

PD 581 was later amended by PD 1150, \textit{Amending Presidential Decree No. 581 and Regulating Panning or Sluicing for Gold Inside Mining Claims or in Public or Private Lands}, which allowed the panning or sluicing of loose sediments to extract gold, provided a mining permit is granted to the individual concerned. This seems to be a step towards the recognition of SSM and its formalization considering that a government permit is needed.

In 1984, PD 1899, \textit{Establishing Small-Scale Mining as a New Dimension in Mineral Development}, was passed, establishing SSM as a new dimension in mineral development. It defined SSM as any single-unit mining operation having an annual production of not more than 50,000 metric tons of ore and satisfying the following requisites:

1. The working is artisanal, either open cast or shallow underground mining, without the use of sophisticated mining equipment;
2. There is minimal investment on infrastructures and processing plant;
3. There is heavy reliance on manual labor; and
4. The operation is owned, managed, or controlled by an individual or entity qualified under existing mining laws, rules, and regulations.\textsuperscript{143}

Likewise, the said decree provided for the licensing process of holders of SSM rights. In this law, small-scale miners with permits/licenses were also given tax exemptions during the period of their permit. PD 1899 did not require the formation of cooperatives of small-scale miners, in contrast to the current PSSMA. Thus, any individual, partnership, or corporation may apply for a small-scale mining license.

The PSSMA did not repeal PD 1899. To help implement the provisions of the PSSMA, the DENR issued the IRR of the said law through DAO 1992-34 and 2015-03. The law and its IRR provided for the regularization of the sector that has long been left unregulated.

In 1995, RA 7942 or the Philippine Mining Act of 1995 was passed which governs mineral resources exploration, development, utilization, and

\textsuperscript{139}Phil. Const. Art. II, § 20  
\textsuperscript{140}Phil. Const. Art. II, § 21  
\textsuperscript{141}Phil. Const. Art. II, § 22  
\textsuperscript{142}Phil. Const. Art. II, § 23  
\textsuperscript{143}Establishing Small-Scale Mining As A New Dimension In Mineral Development, Presidential Decree 1899, § 1 (1984)
conservation. Although the Philippine Mining Act provided that “[SSM] shall continue to be governed by [the PSSMA] and other pertinent laws,” certain provisions are still applicable to ASGM. The Philippine Mining Act also provided that mineral agreement or financial or technical assistance agreement applications shall not be allowed in areas covered by small-scale miners.

The coexistence of PD 1899 and the PSSMA have been discussed by jurisprudence. PD 1899 was once criticized for allegedly violating equal protection for having an annual extraction limit which is absent in the PSSMA. This extraction limit was upheld eventually by the Supreme Court in the case of SR Metals Inc., et al. v. Reyes.

The Court explained that “while [PD 1899 and the PSSMA] tackle the definition of what SSM is, both have different objects upon which the laws shall be applied to. PD 1899 applies to individuals, partnerships, and corporations while the PSSMA applies to cooperatives.” The Court stated that although there are differences, both laws may stand.

In another occasion where the Court resolved on the issue of the annual extraction limit, it recognized

145 Id. §19
147 Id.
DENR’s power to promulgate the necessary IRR to give effect to the laws. DENR therefore issued Department Memorandum Circular No. (DMC) 2007-7, providing guidelines harmonizing the implementation of PD 1899, the PSSMA, and the Philippine Mining Act. It provided, among others, that PD 1899 covers SSMPs in mining operations outside MBs, while the PSSMA covers those pursuant to SSMCs. It also imposed the annual extraction limit on both Small-Scale Mining Permits (SSMP) in PD 1899 and SSMCs under the PSSMA. The Supreme Court held a 50,000-MT limit likewise imposed on small-scale miners under the PSSMA.149

When Executive Order No. (EO) 79 was promulgated in 2012, it was directed that all SSM activities be within a declared MB, thus rendering PD 1899 inapplicable. However, the extraction limit still applies under DAO 2015-03 which imposed the extraction limit in mining contracts.151

On 14 March 2022, and at the time of this study, DAO 2022-03 or the Revised IRR of the Small-Scale Mining Act152 was published. A number of significant changes appear in DAO 2022-03 affecting the process of the MB application, the requirements for the application of an SSMC, the rights of landowners and claim owners, the environmental management and social development fund, and the management of tailings and waste disposal. Attached herein as Annex B is a table showing the amendments and additions made in DAO 2022-03.

i. Minahang Bayan Application

Under the PSSMA, SSMCs are to be conducted within a declared MB, also referred to as the “People’s Small-Scale Mining Area.”153 These are areas onshore suitable for SSM as declared by the Provincial/City Mining Regulatory Board (P/CMRB).154 To be considered as an MB, the area must not be an active mining area; the mineral found in the area should be technically and commercially suitable for SSM activities; and the area must not be covered by existing forest rights or reservations, and have not been declared as a tourist or marine reserve or parks and wildlife reservation, unless their status as such is withdrawn by the competent authority.155 On the other hand, public lands not subject to any existing right, public lands covered by existing mineral rights which are not active mining areas, and private lands meeting certain conditions — when suitable for small-scale mining — may be declared by the P/CMRB as MB.156 Ancestral Lands of indigenous peoples may also be declared as MB, provided that the concerned cultural communities have given their prior consent. In such instances, the members of the concerned cultural communities shall be given priority in the access to the minerals found therein, pursuant to an SSMC.157

In DAO 2015-03, any interested party, whether organized as a cooperative or not, may file a petition for the declaration of an MB. Thereafter, the P/CMRB shall determine whether the area can be declared. A significant step herein is the required posting of the notice regarding the petition and its forwarding to the NCIP and Sangguniang Bayan.158 The NCIP shall issue a Certificate of Non-Overlap (CNO) or Compliance Certificate, while the Sangguniang Bayan shall issue its endorsement.159

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148 Id.
149 Id.
150 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 [EO 79 s. 2012], § 11
151 Department of Environment and Natural Resources, Revised Implementing Rules and Regulations of Republic Act No. 7076, Otherwise known as the People’s Small-Scale Mining Act, [DENR DAO 2015-03] § 13 (b)
152 Department of Environment and Natural Resources, Revised Implementing Rules and Regulations of Republic Act No. 7076, Otherwise known as the People’s Small-Scale Mining Act, [DENR DAO 2022-03] (2022)
153 RA 7076, § 5. See Annex C for a comparative table of the composition of P/CMRB under DAO 2015-03 and 2022-03 respectively.
154 RA 7076, § 5.
155 DENR DAO 2015-03, § 10.
After the publication of the notice and compliance with other requirements, the DENR Secretary shall clear the petition for the declaration if no oppositions were made. Once the Secretary issues the clearance, the petitioner will be required to secure an ECC before a proposed area could be declared an MB. It will only be upon the securing of the ECC that the P/CMRB will declare the area as an MB.

**Info Box. Certificate of Non-Overlap**

A Certificate of Non-Overlap (CNO) may be issued “when the area is patently and publicly known to be outside any ancestral domain, or the activity is determined, after field-based investigation, not to affect an Ancestral Domain (AD). The Regional Director of NCIP, with the concurrence of the concerned Commissioner, shall issue a CNO, provided however, that the applicant shall execute an undertaking for the conduct of free and Prior Informed Consent (FPIC).”

If the area applied for an MB is within an AD, the application needs to undergo the FPIC process. In accordance with the Revised Guidelines on FPIC Processes, the petitioners must submit the following documents to the NCIP:

1. Company and project profile which shall include: the nature and purpose of the project;
2. Location with an indicative map showing the names of sitios and/or barangays that will be affected;
3. Abstract of proposed project describing the size, pace, reversibility, scope, duration;
4. Preliminary assessment of the likely economic, social, cultural, and environmental effects, including potential risks and how these will be addressed;
5. Indicative budget;
6. Persons to be involved in implementation;
7. Operational plan and activities; and
8. Profile of the applicant.

After the publication of the notice and compliance with other requirements, the DENR Secretary shall clear the petition for the declaration if no oppositions were made. Once the Secretary issues the clearance, the petitioner will be required to secure an ECC before a proposed area could be declared an MB. It will only be upon the securing of the ECC that the P/CMRB will declare the area as an MB.

**Info Box. Certificate of Non-Overlap**

Obtaining an ECC is not an easy process and could be costly. It also requires interested parties to engage another government office and to start a new application. This inadvertently shifts the burden of the process for declaration of an MB to the miners and other non-state actors. It must be noted that according to DAO 2015-03, the declaration must be made within one year from the clearance of the DENR Secretary, otherwise, the petition will be denied. The petitioner therefore has one year to secure the ECC from the DENR for the proposed MB.

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159 Id.
161 Id. § 7.
162 Id. §10.
163 See Ma. Aleta C. Nuñez, Philippines EITI Scoping Study on Small-Scale Metallic Mining at 40 available at https://eiti.org/sites/default/files/attachments/philippines_eiti_scoping_study_on_small-scale_metallic_mining_web_version.pdf (A basic Environmental Impact Assessment (EIA) may cost at least Php2 Million. This simple calculation is based on costs for baseline information gathering of at least Php1 Million, excluding costs for public consultation and information and education, and at least professional fees of Php1 Million for the EIA preparers, at a minimum of 6 consultants working on the (a) social aspect, including indigenous peoples concerns, (b) biodiversity, (c) soil, geology and geohazards, (d) water and hydrology, (e) air quality assessment, for fee of P100,000 – P150,000 each for two months)
Foremost in the application for the declaration of the MB is the determination of what areas are open for such declaration. The list of areas open for such declaration is stated in DAO 2015-03.

"Petition/Proposal to be filed with the Board for declaration of MB.

Open for Declaration as MB

No

Petition denied.

Yes

If yes, viability evaluation by the concerned Regional Office with consideration for Mineral Processing Zone, if applicable

Forward the evaluation result to the Secretary through the Director for initial review

Posting, and publication of notices
  ▶ Notice to other claimants
  ▶ Notice to NCIP and secure Certificate of Non-Overlap or Compliance Certificate
  ▶ Notice to LGU and secure favorable endorsement

Opposition
  ▶ If there is opposition, the Board will resolve
  ▶ If there is no opposition, the petition will be forwarded to the DENR Secretary

Clearance from DENR Secretary

Secure Environmental Compliance Certificate for entire MB area

Declaration of MB

Posting and Publication

Figure 6. Flowchart for MB Petition"
The aforementioned Petition or Request for the Declaration of an area as an MB should specify the coverage of the proposed area in terms of geographic coordinates. When the request eventually gets referred to the MGB Regional Office, it will be checked to see if the area petitioned is clear of prior mining rights and applications, or if it is actually open for mining applications. Afterwards, the application will be sent to the Director of the MGB for initial review, who shall then forward the result back to the P/CMRB for consideration.

The P/CMRB shall afterwards check if the proposed area is in conflict with existing mining permits, contracts, applications, or if the same covers private lands. In such instances, it shall notify the mining permit/contract/applicant concerned or the landowner, as the case may be, to submit their comment. If there are no such conflicts, the proposed MB shall be published in the bulletin boards for seven days, and in a newspaper of local or national circulation. At this stage, the P/CMRB shall likewise request from the NCIP a CNO or Compliance Certificate, and secure an endorsement from the Sanggunian concerned. The posting and publication requirement must be certified by the office concerned.

If there are no adverse claims, protests, or oppositions filed, or upon resolution by the P/CMRB of the same, if any, the P/CMRB shall forward all the requirements to the Secretary of the DENR through the Director of the MGB. Once the Secretary of the DENR clears the declaration of the proposed MB, the petitioners are to secure and submit an ECC for the entire MB. The MB must be declared within one year from the clearance of the Secretary, or its petition will be denied. Once so declared, the notice

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**Info Box. Mineralized Onshore Areas that May be Declared as Minahang Bayan**

Under DAO 2015-03, the following mineralized areas onshore may be declared by the P/CMRB as MB:

- Areas already occupied and actively mined by small-scale miners before 1 August 1987, with qualifications;
- Public lands covered by mining applications;
- Public lands covered by existing mining permits/contracts which are not active mining areas;
- Private lands, subject to the consent of the landowner and a royalty payment that shall in no case exceed 1% of the gross value of the minerals recovered, and payment of damages as determined by the P/CMRB;
- Ancestral lands/AD or in areas verified by the Regional Office or other government agency as actually occupied by Indigenous Cultural Communities, with FPIC obtained in accordance with the procedures prescribed by the NCIP.

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165 DENR DAO 2015-03, § 8.
166 DENR DAO 2015-03, § 9 (a).
167 Id., § 9 (b).
168 Id., § 9 (d), (e).
169 Id., § 9 (f).
170 Id., § 9 (g).
171 Id., § 9 (j).
172 Id., § 9 (k), (l).
of declaration shall undergo publication once more, with the Office of the Provincial Governor and Municipal Mayor, and once in a newspaper of local and national circulation.\footnote{Id., § 9 (m).
Need for Additional PEISS Guidelines from DENR EMB. - The current requirement of the Revised IRR for an ECC to cover the entire MB may require additional PEISS guidelines from the DENR-EMB. As shall be discussed below, the 2014 DENR-EMB guidelines require ECC from all SSM operations. As currently worded, they appear to contemplate proposed single projects as they refer to annual extraction rate and project size. The formulation of such guidelines may again take time. An alternative approach is to categorize such MB as an Environmentally Critical Project for the extraction of metallic ores/minerals on shore with a presumed annual extraction rate of more than 100,000 metric tons, based on the cumulative extraction of the various contractors to be awarded contracts covering portions of the MB, or covering an area of more than 25 hectares, regardless of capacity. In which case, a Programmatic EIS will be required from the petitioner of the MB.}

Once an MB is declared, a SSMC must be secured by a miner, an individual or cooperative licensed by the P/CMRB as small-scale miners, before the area can be utilized for SSM. The MB is not exclusive to those who filed for the petition for declaration. Any licensed miner or cooperative can use an area declared as an MB through the efforts of another. There appears to be a discord therefore, as the petitioner will prepare an ECC for the whole area but the petitioner is not entitled to the entirety of the same. The law only provides that should any conflict arise, the P/CMRB has jurisdiction to resolve the same. Furthermore, it must be noted that there are no additional Philippine Environmental Impact Statement System guidelines for small-scale miners from the EMB.\footnote{Nuñez, supra note 163 at 40 states - ii. Contractual Relations
Any Filipino individual or cooperative can extract minerals or ore-bearing materials from the ground, but they must first register with the P/CMRB. Individuals must have a government-issued identification and proof of Filipino citizenship, while cooperatives must be registered with the Cooperative Development Authority (CDA).

### Info Box. Requirements for the Registration of SSM Cooperatives

In CDA's Memorandum Circular No. 2012-14, the CDA outlined the procedure for the registration of SSM cooperatives wherein it is required that the cooperative must have at least Php 15,000 capitalization requirement, have at least 15 members who are engaged in small-scale mining within the MB, and pay registration fee. Further, these members must already be registered miners. The CDA would also require the cooperative to secure an economic survey. According to the CDA, they provide technical assistance for the formation of cooperatives.

Cooperatives have been considered as a “practical vehicle for promoting self-reliance and harnessing the people’s power towards the attainment of economic development.” However, it seems that this additional burden for the miners could be a hindrance for them to engage in formal and legal SSM as it involves more requirements and processes with a different office. It must be pointed out that the members of the cooperative must first be registered miners with the Board before they can organize as a cooperative. Although the provision on organizing as a cooperative is in adherence with the State’s policy to the right to people’s organization, as well as a vehicle to promote economic development, it seems that the same is not attained in reality.
Notably, although not specifically provided for in the PSSMA, individual miners may also organize as a labor association. Compared to the requirements for making a cooperative, organizing as a workers’ association is less difficult. It only requires the accomplishment of an application form, the names of officers and members, and constitution and by-laws. Forming a labor association does not have a capitalization requirement.

The challenge for both cooperatives and associations is the fact of defining their membership. The law states that their members are those miners registered with the P/CMRB. On the other hand, those registered with the P/CMRB are those engaged in the extraction of minerals. This does not clearly capture those who are involved in auxiliary services which involve mostly women.

SSMCs refer to a co-production, joint venture or mineral production sharing agreement between the government and a small-scale mining contractor for the small-scale utilization of a plot of mineral land inside a People’s Small-Scale Mining Area or MB. On the other hand, a “Small-Scale Mining Contractor” refers to small-scale miners organized as an individual miner or cooperative registered with the Securities and Exchange Commission (SEC) or with the appropriate government agency, which has entered into an agreement with the government for the small-scale utilization of a plot of mineral land within a MB.

Under the law, the P/CMRB is assigned to award duly organized miners a SSMC. In order to be awarded a SSMC, the applicant must first obtain a small-scale mining license from the P/CMRB by submitting an application form, proof of registration with the SEC, the Department of Trade and Industry (DTI), the CDA, or other appropriate government agency. The rules only allow 100% Filipinos to apply for a SSMC. The applicant shall also pay the small-scale mining license application fee of Php 1,000.00 to the DENR Regional Office concerned.

Afterwards, the miner concerned will be eligible to apply for a SSMC. They may apply for the same with the P/CMRB. Contract applicants are expected to comply with further documentary requirements and payable fees. The applicant may be awarded with the SSMC within 30 days from the submission of the application and the additional requirements.

The general provisions of an SSMC are governed by the rules implementing the PSSMA. For instance, it is provided in the rules that the P/CMRB determines the extent of the contract area, which shall not exceed 20 hectares per contractor. The depth or length of tunnels or adits per contract area should also be compliant with the recommended depth or length by the Director of MGB.

The implementing rules also provide that specific terms and conditions should be present in an SSMC. To enumerate, an SSMC should indicate that:

- The contract may cover non-metallic minerals. In the case of metallic minerals, the contract is limited to gold, silver, or chromite.
- The contract shall have a term of two years, renewable for up to a term of six years, provided that: a) the contractor has complied with the terms and conditions of the SSMC and the PSSMA as verified by the P/CMRB; b) the application for renewal shall be filed not later than 60 days prior to the expiration of the contract; and c) the

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175 RA 7076, § 3 (am)
176 RA 7076, § 3 (an)
177 RA 7076, § 9
178 DENR DAO 2015-03, § 7
179 DENR DAO 2015-03, § 12
180 See Annex D for a list of requirements under DAOs 2015-03 and 2022-03
181 See Annex E for a list of requirements for renewal under DAOs 2015-03 and 2022-03
application for renewal shall be accompanied by other requirements.\(^{182}\)

- The contract confers upon the contractor the right to extract and dispose of the authorized minerals within the SSMC area provided that the ore produced shall not exceed 50,000 metric tons annually and shall be processed in a custom mill.

- The small scale mining contractor shall:
  
  - Conduct small-scale mining in accordance with the two-year work program, PEIMP, ASHP, and CDMP, duly approved by the Regional Office concerned and the ECC;
  - Undertake extraction and/or breakage of materials without the use of explosives, blasting accessories, explosives ingredients, and/or sophisticated and/or heavy equipment;
  - Not resort to hydraulicking or compressor mining at any stage of small-scale mining within the contract area;
  - Not use mercury in any phase of small-scale mining;
  - Confine small-scale mining to its contract area;
  - Abide by the Small-scale Mine Safety Rules and Regulations;
  - Comply with the obligations to the holder of the mining permit/contract, if applicable;
  - Sell its production outputs to the BSP or through its authorized buying stations/agents, in case of gold production;
  - Pay all taxes, royalties, and/or government production share as provided by law at the time the SSMC is signed;
  - Comply with pertinent rules and regulations on environmental protection and conservation; and
  - Submit under oath at the end of each month a detailed production report and annual finance report to the P/CMRB.\(^{183}\)

It is only when a mining contract is granted to a miner that the latter is entitled to the right to extract and dispose of minerals and ores for commercial purposes over the area covered by their contract. The rules of the PSSMA, however, place a limitation on the SSMC in that it cannot be subcontracted, assigned, or otherwise transferred to another entity.\(^{184}\) Other than this, the rules do not prevent the contractors from any other stipulation in the mining contract. Thus, Civil Code provisions on contracting apply, such that the parties to an SSMC may establish stipulations, clauses, terms and conditions that they may deem convenient, provided that these are not contrary to law, morals, good customs, public order, or public policy.\(^{185}\)

If an SSMC has provisions whose cause, object, or purpose is unlawful or contrary to morals, good customs, public order, or public policy, such provisions shall be deemed inexistent and void under the law, and the same cannot be ratified by any of the parties, nor can they set up the defense that the illegality of such inexistent or void provision has been waived.\(^ {186}\) In a similar manner, relevant rights, whether borne out of the SSMC or those based on law, although waivable, cannot be waived if such waiver is likewise contrary to law, public order, public policy, morals, good customs, or prejudicial to the rights of a third person.\(^ {187}\) Hence, although the parties to an SSMC can stipulate

\(^{182}\) DENR DAO 2015-03, § 11

\(^{183}\) See Annex E for a list of requirements for renewal under DAOs 2015-03 and 2022-03

\(^{184}\) DENR DAO 2015-03, § 13.

\(^{185}\) An Act to Ordain and Institute the Civil Code of the Philippines [Civil Code], Republic Act No. 386, art. 1306 (1949).

\(^{186}\) Id. art. 1409.

\(^{187}\) Id. art. 6.
provisions, they are limited not only by the PSSMA and its IRR, but also by the relevant provisions of the Civil Code and other applicable laws, if any.

In the event that there are disputes, conflicts, or litigations over conflicting claims within a small-scale mining area, the PSSMA entrusts the P/CMRB to settle the controversy. The same Board is also authorized by the law to formulate and implement their own rules and regulations related to small-scale mining within their area of jurisdiction. In the absence of any specific complaint mechanism, the enforcement of obligations and protection of rights may be demanded through appropriate civil actions in regular courts.

iii. People's Small-Scale Mining Program

It is a declared state policy in the PSSMA to promote, develop, protect, and rationalize viable SSM activities. Through this policy, the State aims to generate more employment opportunities and provide an equitable sharing of the nation's wealth and natural resources. In order to carry out this State policy, the law creates a People's Small-Scale Mining Program (PSSMP) designed to achieve an orderly, systematic, and rational scheme for the small-scale development and utilization of mineral resources in certain mineral areas. The law provides that the program should include such features as:

- The identification, segregation, and reservation of certain mineral lands as people's small-scale mining areas;
- The recognition of prior existing rights and productivity;
- The extension of technical and financial assistance, and other social services;
- The extension of assistance in processing and marketing;
- The generation of ancillary livelihood activities;
- The regulation of the small-scale mining industry with the view to encourage growth and productivity; and
- The efficient collection of government’s revenue.

The implementation of the PSSMP is primarily the responsibility of the DENR Secretary, in coordination with other concerned government agencies. Although these responsibilities are explicit in the law, neither law nor the implementing rules provide the specific mechanism to implement the assistance mentioned.

iv. Environmental Standards

To ensure environmental protection and the development of the host and neighboring communities, small-scale mining contractors and mineral processors are mandated to abide by their ECC, PEIMP, and CDMP. In addition to these, a miner must be aware of other laws mandating environmental protection, such as the RA 9275 or the Philippine Clean Water Act of 2004 and the RA 6969 or the Toxic Substances and Hazardous and Nuclear Wastes Control Act.

RA 9275 aims to protect the water bodies from wastes and various sources. The process of SSM could produce wastes that could lead to the pollution of water bodies around it and thus, the industry must comply with the regulations of the Clean Water Act to prevent and minimize pollution through a multi-sectoral and participatory approach.
involving all the stakeholders.

RA 6969, meanwhile, deals with the regulation, restriction, or prohibition of the importation, manufacture, processing, sale, distribution, use, and disposal of toxic substances and hazardous and nuclear wastes. In its IRR, mercury and mercuric compounds are included as prescribed hazardous waste.

Considering the use of chemicals and other substances in the mining industry, RA 6969 must likewise be observed in small-scale mining projects. EO 79 has also specified that the use of mercury in mining is strictly prohibited. Despite its prohibition, mercury is still being used in small-scale mining projects.

However, even with these laws, environmental protection, social development, safety, and health protection seems to be the sole responsibility of miners and non-state actors rather than the State’s duty. The miners are obliged to comply with environmental laws as pursuant to their SSMCs. While this is reasonable and expected out of the miners and non-state actors in exchange for the benefits they reap out of their contracts, the State needs to have a strengthened monitoring and enforcement mechanism that actively defends the environment.

It must be noted that although the P/CMRB has jurisdiction over conflicting claims, any illegal mining operations and environmental harm arising out of the violation of the provisions of the SSMC is covered by the Rules of Procedure for Environmental Cases. These rules provide simplified, speedy, and inexpensive procedures for the enforcement of environmental rights and duties. Any real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law and may avail of a Temporary Environmental Protection Order. Aside from these, the extraordinary remedies of the writ of kalikasan and writ of continuing mandamus are also available. In reality, however, suits filed under the Rules of Procedure for Environmental Cases take time and are not as speedy as they ideally should be.

v. Access and Use of Hazardous Chemicals

Various implementing orders address the use of mercury and other hazardous chemicals. EO No. 79 institutionalizes and implements reforms in the Philippine mining sector by providing policies and guidelines to ensure environmental protection and responsible mining. This EO explicitly prohibits the use of mercury in small-scale mining. This prohibition on the use of mercury is reiterated by the implementing rules of the PSSMA in that it provides how SSMCs should stipulate that the small-scale mining contractor should not use mercury in any phase of the small-scale mining. The rules also provide that no mercury shall be used in mineral processing.

A more elaborate instruction on the handling of hazardous chemicals can be found in the Small-Scale Mine Safety Rules and Regulations issued by the DENR in 1997. This issuance enumerates 24 rules that small-scale miners must comply with to protect themselves from chemicals and other laboratory hazards.

vi. Gold Processing

Mineral processing is the milling, beneficiation, leaching, smelting, calcination, or upgrading of ores, minerals, rocks, mill tailings, mine wastes,

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194 Supreme Court, Rules of Procedure for Environmental Cases, Administrative Matter No. 09-6-8-SC [A.M. No. 09-6-8-SC], (Apr. 13, 2010)
195 EO 79, s.2012, § 11.
196 DENR DAO 2015-03, § 13 (c) (4).
197 DENR DAO 2015-03, § 14
198 See Annex F
and/or other metallurgical by-products or by similar means to convert the same into marketable products. Under the implementing rules of the PSSMA, mineral processing shall be undertaken only through centralized custom mills under a MPL. Custom mills are plants established within mineral processing zones intended for the mineral processing of ores, tailings, and/or mine wastes from small-scale mining for a fee. MPLs, on the other hand, are issued by the P/CMRB upon application and submission of further requirements.

Once approved, MPLs shall have a term coterminous with SSMCs issued in the MB. MPLs also impose terms and conditions processors must observe. Thus, mineral processors must:

- Assume full responsibility and be liable for damages to properties that may be affected by their operations under the MPL;
- Submit to the P/CMRB production and activity reports;
- Conduct their operations in accordance with the PSSMA and its implementing rules and regulations;
- Respect the right of women workers to participate in policy and decision-making processes affecting their rights and benefits, and not discriminate on the basis of gender;
- Pay fees, taxes, and other financial obligations;
- Give preference to goods and service produced and offered in the Philippines of comparative quality and cost;
- Utilize the best available appropriate and efficient mineral processing technology; and
- Comply with all other applicable provisions of the PSSMA and its implementing rules and regulations.

Rules implementing the PSSMA set the conditions in the establishment and operations of centralized custom mills for processing minerals. Thus, centralized custom mills shall be established and operated in mineral processing zones duly designated by the LGU concerned through the P/CMRB, and shall be strategically situated inside a MB. Custom mills are also to be constituted as the withholding agents for the royalties, production

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**Info Box: Mineral Processing Permit vs. Mineral Processing License**

**A Mineral Processing Permit (MPP)** refers to the permit granted to a Qualified Person for mineral processing that is valid for a period of five years from date of issuance thereof, renewable for like periods but not to exceed a total term of 25 years. It is used for large-scale mining.

**A Mineral Processing License (MPL)** is where small-scale miners can undertake mineral processing through centralized custom mills. The MPL is issued by the P/CMRB and is coterminous with SSMCs issued in the MB.

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199 DENR DAO 2015-03, § 4 (aa)
200 DENR DAO 2015-03, § 14
201 DENR DAO 2015-03, § 4 (k)
202 DENR DAO 2015-03, § 16
203 See Annex G for the list of requirements for the issuance of an MPL.
204 DENR DAO 2015-03, § 18
share, or other taxes due to the government, and shall be registered with the Bureau of Internal Revenue (BIR). 205

vii. Mine Rehabilitation and Closure

In the event that a MB can no longer be legally or feasibly operated on a small-scale basis, the P/CMRB shall revert the same to the State, after providing all small-scale mining contractors within the area a written notice. Small-scale mining contractors are then given the right of first refusal to apply for a large-scale mining permit/contract, if applicable, within six months from the reversion.

Reversion of MB to the State for proper disposition happens on the following grounds:

- The MB can no longer be economically and efficiently operated on a small-scale basis;
- The working conditions endanger the lives and health of the miners;
- Small-scale mining causes significant destruction to the environment;
- There is a continuous disturbance of peace and order for six consecutive months, causing loss of lives and property; and/or
- The decision on the appeal from the denial of the affected mining applications or of the oppositors of the declaration of MB is rendered with finality in their favor. 206

Interestingly, PD 705 207 provides a similar provision resembling an instruction in the event that a mined area is abandoned. The law provides that mining operations in forest lands shall be conducted with due regard to protection, development, and utilization of other surface resources. Mining in forest reservations shall be governed by mining laws and with prior approval and license. Mine tailings and pollutants affecting the health and safety of people, water, fish, vegetation, animal life, and other surface resources shall be filtered. The law further mandates that only clean exhausts and liquids shall be released from filtration devices. Surface-mined areas in forest lands shall be restored to their former natural configuration as close as possible, prior to its abandonment. 208

PD 705 further provides that mineral reservations that are not anymore subject of mining operations, and those where operators have been suspended for more than five years shall be under forest management by the State. Mineral reservations where mining operations have been terminated due to the exhaustion of its minerals shall revert to being forest lands, unless otherwise reserved for other purposes. 209

viii. Labor Standards

The Labor Code of the Philippines 210 primarily governs the labor standards that must be in force in every employment contract. However, for the Labor Code to apply, there must be a prior existence of an employer-employee relationship. For an employer-employee relationship to exist, four elements must first be present: 1) the selection and engagement of the employee; 2) the payment of wages; 3) the power of the employer to dismiss; and 4) the power to control the employee’s conduct. 211 Once an employer-employee relationship has been established, the laborer is entitled to all the rights and benefits and protection provided by the Labor Code. 212

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205 DENR DAO 2015-03, § 15
206 DENR DAO 2015-03, § 32
207 Revising Presidential Decree No. 389, Otherwise Known As The Forestry Reform Code Of The Philippines, Presidential Decree 705 §47 (1975)
208 PD 705, § 47
209 PD 705, § 48
211 Felicilda vs. Uy, GR No. 221241, September 14, 2016 available at https://elibrary.judiciary.gov.ph/thebookshelf/showdocsfriendly/1/62437
212 Labor Code, art. 6
The Labor Code provides employment standards that define the working conditions of the employee. Consistent with the Civil Code provision that contracting parties may stipulate on provisions that they may deem convenient, provided that they are not contrary to law, employers and employees must observe the limitations provided by the Labor Code on hours of work; rest periods; observance of holidays, and provision of service incentive leaves, and service charges; proper payment of wages; medical, dental, and occupational safety; and access to benefits. Notably, the Labor Code also has provisions on the employment of women and minors.

Discrimination against women is strictly prohibited by the Labor Code. Employers are therefore prevented from paying women less compensation for equal work performed by their male counterparts. Employers are also expressly prohibited to favor male employees when it comes to opportunities based solely on sex. Just as equally unlawful as discrimination is the requirement that women shall not get married as a condition of employment. Other relevant prohibitions on preventing discrimination against women under the Labor Code are as follows:

- Denial of legally mandated benefits for women employees;
- Discharging women on account of pregnancy;
- Refusal of readmission of a woman to work for fear that she may again be pregnant.

In order to promote the rights of women employees, there are also special provisions that require employers to provide adequate facilities to cater the needs of women. Employers are also required to grant women Maternity Leave Benefits in appropriate circumstances.

Labor Code provisions on the protection of women find support in the Magna Carta of Women. The Magna Carta of Women aims to affirm women’s role in nation building by ensuring substantive equality between men and women. It recognizes women engaged in small-scale mining as a marginalized group, together with small farmers and rural workers. As members of the marginalized sector, the State guarantees all civil, political, social, and economic rights of women as recognized, promoted, and protected under existing law.

Under the Magna Carta of Women, the State recognizes women’s right to decent work, which means that the State shall, by law, realize and ensure decent work standards for women. This also means that women are entitled to productive and fairly remunerative work, security in the workplace, social protection for families, better prospects for personal development and social integration, freedom to express concerns, organize, and participate in decisions that affect their lives, and equality of opportunity and treatment with men.

Other entitlements related to women’s right to decent work include:

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213 Civil Code, art. 1306
214 Labor Code, Book Three, Title I, Chapter I
215 Labor Code, Book Three, Title I, Chapter II
216 Labor Code, Book Three, Title I, Chapter III
217 Labor Code, Book Three, Title II
218 Labor Code, Book Four, Title I
219 Labor Code, Book Four, Title II
220 Labor Code, art. 133
221 Labor Code, art. 134
222 Labor Code, art.135
223 Labor Code, art.130
224 Labor Code, art. 131
226 Id. § 4 (d) (1).
227 Id. Chapter V.
228 Id. § 22 (a)
Support services and gears to protect women from occupational and health hazards;

Support services that will enable women to balance their family obligations and work responsibilities;

Membership in unions; and

Respect for the observance of indigenous peoples’ cultural practices.²²⁹

The Magna Carta for Women also prohibits discrimination against women.²³⁰ The law provides that those who are found to discriminate against women are liable to pay the victim for damages, without prejudice to any other liability under applicable laws.²³¹

With regard to minors, the Labor Code provides that no 15 years of age shall be employed, except when the child works directly under the responsibility of their parent or guardian, and the employment does not in any way interfere with schooling.²³² Minors aged 15-18 can only be employed for a limited number of hours and days as determined by the Secretary of Labor and Employment,²³³ but in no case shall minors be employed for undertakings that are hazardous or deleterious in nature.²³⁴

In 2003, RA 9231 amended the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, adding to the qualifications of employment of minors under the Labor Code. It provides that the employment of children working under the responsibility of their parents or guardians should not endanger their life, safety, health, and morals, nor impair their normal development.²³⁵

Additionally, RA 9231 introduced the prohibition against worst forms of child labor to the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act. Children may not be allowed to work as small-scale miners, as under the law, “worst forms of child labor” can also refer to “work which, by its nature or the circumstances in which it is carried out, is hazardous or likely to be harmful to the health, safety, or morals of children.” ²³⁶ Among the enumerated works that are so described are those which are performed underground, underwater, or at dangerous heights;²³⁷ those which involve the use of dangerous machinery, equipment, and tools such as power-driven or explosive power-actuated;²³⁸ those that expose the child to physical danger;²³⁹ those performed in environments exposing the child to hazards, elements, substances, co-agents, or processes involving ionizing, radiation, fire, flammable substances, noxious components, and extreme temperatures, noise levels, or vibrations;²⁴⁰ or those performed under particularly difficult conditions.²⁴¹

ix. Occupational Safety and Health

The Occupational Safety and Health Law provides that workplaces shall have safety and health

²²⁹ Id. § 22 (b)
²³⁰ Id. § 34, 35.
²³¹ Id. § 41
²³² Labor Code, art. 137 (a)
²³³ Labor Code, art. 137 (b)
²³⁴ Labor Code, art. 137 (c)
²³⁵ An Act Providing For The Elimination Of The Worst Forms Of Child Labor 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” [RA 7610, as amended], Republic Act 9231 § 12, (2003)
²³⁶ RA 7610, as amended, § 12-D (4)
²³⁷ RA 7610, as amended, § 12-D (4) (c)
²³⁸ RA 7610, as amended, § 12-D (4) (d)
²³⁹ RA 7610, as amended, § 12-D (4) (e)
²⁴⁰ RA 7610, as amended, § 12-D (4) (f)
²⁴¹ RA 7610, as amended, § 12-D (4) (g)
programs that include policies, guidelines, and information on the safety and health in the workplace, prepared by the employer or contractor, in consultation with the workers. By this law, employers or contractors have the duty to provide their employees with safe working environments, safety instructions and information, equipment, and access to emergency treatments. Workers on the other hand, are obliged by the same law to comply with occupational health and safety standards in the workplace.

In order to address the specific safety concerns of miners in the small-scale industry, the DENR issued AO 97-30, which embodies the Small-Scale Mine Safety Rules and Regulations. This Order enumerates numerous health, sanitation, and safety rules and regulations in the context of small-scale mining, to govern all contractors, associations, processors, permittees, operators, workers, individuals, and other entities engaged in any form of small-scale mining, to effect a safe and accident-free operation in mining areas.

**x. Institutional Arrangements**

The P/CMRB is created by the PSSMA to perform specific functions in relation to SSM activities. It is composed of the following members:

The P/CMRB has the authority to 1) declare areas as MB, 2) reserve mineralized areas/mineral lands for future declaration of MBs, 3) award SSMCs to small-scale miners organized as individual miners or cooperative of small-scale miners, 4) formulate its own guidelines and implement rules and regulations related to the PSSMA, 5) settle disputes, conflicts, or litigations over conflicting claims, 6) submit to the DENR and the MGB a comprehensive annual report of the overall operation of the MB, and 7) perform such other functions necessary to achieve the goals and objectives of the PSSMA.

The Supreme Court has elaborated on the roles of different government agencies, in addition to the P/CMRB, with respect to mining in the case of Moncayo Integrated Small-Scale Miners Association vs. Southeast Mindanao Gold Mining. Thus, the following government agencies have the corresponding authorities:

1. **Mines Adjudication Board.** Chapter XIII (Settlement of Conflicts) of the Philippine Mining Act provides for the powers of the panel of arbitrators and the Mines Adjudication Board (MAB). Section 77 states that “the panel shall have exclusive and original jurisdiction to hear and decide on the following:

   - Disputes involving rights to mining areas;
   - Disputes involving mineral agreements or permits;
   - Disputes involving surface owners, occupants and claimholders/ concessionaires; and
   - Disputes pending before the Bureau and the Department at the date of the effectiveness of the Mining Act.

   Section 78 provides for the MAB’s appellate jurisdiction over the decision or order of the panel of arbitrators. Section 79 enumerates the MAB’s powers and functions, including the power “to conduct hearings on all matters within its jurisdiction.”

2. **DENR Secretary.** The administrative supervision over SSM is among the roles of the

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242 An Act Strengthening Compliance with Occupational Safety and Health Standards and Providing Penalties for Violations Thereof [RA 11058], Republic Act No. 11058 § 12 (2017)

243 RA 11058, § 4

244 DENR DAO 2015-03, § 4(e), 21.
DENR Secretary through their representative. For this purpose, the Secretary shall exercise direct supervision and control over the programs and activities of small-scale miners in MBs.\footnote{DENR DAO 2015-03, § 19.}

The Secretary is also authorized by law to cancel, through the P/CMRB, SSMC or MPLs based on the following grounds:

- Failure to comply with the terms and conditions of the SSMC or MPL;
- Violation of any of the provisions of the PSSMA and its IRRs and other applicable laws, rules, and regulations;
- Non-payment of fees, taxes, royalties, and/or government production share for two consecutive years;
- Abandonment of the SSMC area or mineral processing plant;
- Any misrepresentation in any statement made in the application or those made later in support of the same;
- Committing acts of unfair competition
- When national interest and public welfare so require or for environmental protection or ecological reasons; and
- The MB has been reverted back to the State.

Except for the last two reasons above, when the SSMCs are canceled, the secretary may impose additional fines ranging from Php 20,000 to Php 100,000.\footnote{DENR DAO 2015-03, § 31}

In addition to the administrative penalties mentioned above, any violation of the PSSMA and its IRRs can make the offender liable for imprisonment of not less than six months to not more than six years. The offender’s equipment, tools, and instruments will also be confiscated upon conviction.\footnote{RA 7076, § 27}

Section 21.1 of DAO No. 34-92 additionally provides that the DENR Secretary has “direct supervision and control over the program and the activities of the small-scale miners within the people’s small-scale mining area.” Since the DENR Secretary has power of control as opposed to power of supervision, he has the power to affirm with modification the P/CMRB’s decision.

3. Executive Department. The Constitution provides that “[t]he State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens[.]”

Moreover, “[t]he President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country[.]”

xi. Governance Under the Local Government Code

In the case League of the Philippines vs. DENR,\footnote{League of the Philippines v. DENR, G.R. No. 175368, April 11, 2013, available at https://elibrary.judiciary.gov.ph/thebookshelf/showdocsfriendly/1/55843} the Supreme Court ruled regarding the conflict between the LGU and the DENR on the regulation of SSM. The Supreme Court harmonized the Local Government Code and the PSSMA, and stated that “the Local Government Code did not fully devolve the enforcement of the small-scale mining law to
the provincial government, as its enforcement is subject to the supervision, control, and review of the DENR, which is in charge, subject to law and higher authority, of carrying out the State’s constitutional mandate to control and supervise the exploration, development, utilization of the country’s natural resources.” Further, the DENR Secretary has the power to reverse, abrogate, nullify, void, or cancel the permits issued by the Provincial Governor or SSMCs entered into by the Board.

On the other hand, in the case of Calanza vs. Paper Industries, the Supreme Court clarified that small-scale mining permits under the PSSMA must be processed and obtained from the PMRB, not with the governor.

The devolution of other basic services and facilities and decentralization of certain powers from the national government to the LGUs finds support in the Constitution and the Local Government Code. The local autonomy under the Code provides the system and defines powers of provincial, city, municipal, and barangay governments in the Philippines for a more responsive local government structure instituted through a system of decentralization whereby LGUs are delegated more powers, authority, responsibilities, and resources. The implementation of the programs and projects and enforcement of national and local ordinances at the local level is under the power of the local chief executive of the LGUs, namely the governor, city/municipal mayor, and barangay captain.

Under the cover of the General Welfare Clause, LGUs can perform just about any power that will benefit their constituencies. Thus, LGUs can exercise powers that are expressly granted; necessarily implied from the power that is expressly granted; necessary, appropriate, or incidental for its efficient and effective governance; and essential to the promotion of the general welfare of their inhabitants.

In Mandanas vs. Executive Secretary, the Supreme Court ruled that all collections of national taxes should be included in the computation of the base of the just share of LGUs to the same. As an effect, LGUs’ share in the national taxes will substantially increase and thus, will empower them in the delivery of devolved services and facilities. The enforcement of small-scale mining law is one of the services and facilities devolved under the Local Government Code, subject to the supervision, control, and review of the DENR.

Considering this, the Office of the President issued Executive Order No. 138 (EO 138) which requires the submission of devolution transition plans which would state the LGU’s plans for the devolved services. Municipalities are required to provide projects for small-scale mining in their devolution transition plans.

Given that the Mandanas ruling is still in the transition stage, its effects into the enforcement of the PSSMA remain to be seen.

### a. Local Consultation

The PSSMP provided under the PSSMA is a national program under the DENR, and its implementation is subject to the required consultation process provided under the Local Government Code.

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250 LGC of 1991, §
252 Mandanas vs. Executive Secretary, G.R. No. 199802 and G.R. No. 208488, July 3, 2018 available at https://elibrary.judiciary.gov.ph/thebookshelf/showdocsfriendly/1/64325
Section 2 (c) of the Local Government Code provides that it is State policy to require all national agencies and offices to conduct periodic consultations with LGUs, NGOs, and people’s organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.  

In the context of maintenance of ecological balance, national government agencies involved in the planning and implementation of project or program mandated that any projects or program of the national government which may cause the depletion of non-renewable resource, among others, should consult with LGUs, NGOs, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects.  

Such programs or projects shall not be implemented unless such consultations are complied with and prior approval of the local legislative council or sanggunian concerned is obtained.

b. Delegated Legislative Power

The LGUs, through their respective sanggunians, have the legislative power to pass and adopt ordinances in relation to the regulation of ASGM operations. This legislative power is delegated by Congress to law-making bodies of LGUs through the express provisions of the Local Government Code. Under Section 16, the LGUs shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare, which include among others, the enhancement of the right of the people to a balanced ecology, and promotion of full employment among their residents.

The legislative power of the LGUs at the provincial, city, and municipal level, through their respective sanggunian, covers a wide range of concerns to enable them to deliver basic services effectively and promote the general welfare of their constituents. Ordinances that the sanggunian concerned may adopt in relation to ASGM may be on the protection of the environment from acts that will endanger it, maintaining ecological balance, and smuggling of natural resources products, among others. Sanggunians are also mandated to impose the appropriate penalties to prevent such acts.  

They may also adopt ordinances to levy and impose taxes in relation to the income that may be derived from ASGM operations, adopt a comprehensive land use to regulate and rationalize the competing use of land and other natural resources, and adopt the appropriate budget for specific programs and projects of the respective LGUs.

c. Enforcement

Mayors of cities and municipalities have the mandate to issue executive orders as necessary for the proper enforcement and execution of laws and ordinances. They can act as the deputized representatives of the National Police Commission, formulate the peace and order plan for their own city or municipality, and implement that plan, upon its approval, and exercise general and operational control and supervision over the local police in their respective municipalities.

d. Environmental Protection and the ENRO

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255 LGC of 1991 § 2
256 LGC of 1991 § 26
257 LGC of 1991 § 27
258 LGC of 1991 § 16
259 LGC of 1991 § 447
260 LGC of 1991 § 447(1)(vi)
261 LGC of 1991§ 447(2)(vii)
An Environment and Natural Resources Officer (ENRO) of the province, city, or municipality is responsible for formulating measures for the consideration of the sanggunian and for providing technical assistance and support to the governor or mayor, as the case may be, in carrying out measures to ensure the delivery of basic services and provision of adequate facilities relative to environment and natural resources services as provided for under Section 17 of the Local Government Code. The responsibilities of an ENRO include the duty to promote the small-scale mining and the utilization of mineral resources; coordinate with government agencies and NGOs in the implementation of measures to prevent and control land, air, and water pollution with the assistance of the DENR; and to be in the frontline of the delivery of services concerning the environment and natural resources, particularly in the renewal and rehabilitation of the environment during and in the aftermath of man-made and natural calamities and disasters.

However, the appointment of the environment and natural resources officer is optional for provincial, city, and municipal governments.

e. Revenue and Benefit Sharing

The PSSMA provides that the revenue to be derived by the government from the operation of the MB shall be subject to the sharing provided in the Local Government Code. Under the Code, LGUs shall have an equitable share from the revenues generated from the utilization and development in their respective jurisdictions, e.g. operation of MB, including the inhabitants by way of direct benefits. It also provides that in addition to the internal revenue allotment, it has a share of 40% of the gross collection derived by the national government from the preceding fiscal year from royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture, or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

The revenues generated from the operation of MB can be translated into concrete benefits to the people in the form of programs and projects which are provided in the local development plan of LGUs.

The funding of such projects and programs comes from the annual budget adopted by the sanggunian.

f. Local Development Planning and Policy-Based Budgeting

Under participatory governance, local policies on ASGM formalization could be realized through policy-based budgeting. This means that the budget is prepared with due regard to local government policy, which, in turn, should be harmonized with the development plans and reflected in the investment programs that the LGUs are required to prepare pursuant to law. Plans of the provincial government should be harmonized with the plans of the city, municipality, and the barangay. LGUs are required to have a multi-sectoral plan which is operationalized through the programs, projects, and activities contained in the investment program.

In turn, national planning should be based on the plans of the LGUs to ensure that the needs and aspirations of the people as articulated by the LGUs in their respective local development plans.
are considered in the formulation of budgets of national line agencies or offices. The budget shall be formulated as an instrument for the attainment of national development goals and as part of the planning programming-budgeting continuum.

Each LGU shall have a comprehensive multi-sectoral development plan to be initiated by its development council and approved by its sanggunian. For this purpose, the development council at the provincial city, municipal, or barangay level, shall assist the corresponding Sanggunian in setting the direction of economic and social development, and coordinating development efforts within its territorial jurisdiction. The Local Development Council is headed by the local chief executive of the respective LGUs and local NGOs are given representation aside from the members of the committee on appropriations of the respective sanggunian, among others.

g. Cross-Cutting Role of LGUs in the Implementation of Environmental Laws Relevant to SSM

Local governance of LGUs is also indispensable in implementing major environmental laws vis-à-vis the impacts of mining:

1. PSSMA. In relation to the operation of a custom mill, the LGU concerned shall designate a mineral processing zone upon recommendation of the P/CMRB where custom mills may be established and operated safely and efficiently for the processing of minerals or ore-bearing materials. This should be part of a zoning ordinance of any LGU hosting a MB.

2. Philippine Clean Water Act of 2004. The Clean Water Act identifies mining as one of the major sources of wastes aside from commercial, industrial, and household activities. The heavy metals resulting from mining are identified as pollutants that affect water quality in water bodies such as rivers or lakes, among others. Under Section of 20 of the Clean Water Act, LGUs through the ENRO are given the following powers and functions: 1) monitoring of water quality, 2) emergency response, 3) compliance with the water quality management action plan, 4) active participation in all efforts concerning water quality protection and rehabilitation, and 5) coordination with other government agencies, civil society, and concerned sectors in the implementation of measures to prevent and control water pollution.

LGUs can take legal action for reimbursement of clean-up costs, which include not only the removal of the pollutants from the water, but also the cost of restoring the damaged resource.

One of the ways the DENR is mandated to implement the Clean Water Act is by undertaking the establishment of a cooperative effort in partnership with the government, LGUs, academic institutions, civil society, and the private sector to attain the objectives of the said law. Subject to specific conditions, the law also provides for fiscal and non-fiscal incentives to LGUs to encourage them to adopt effective water quality management or to promote or participate in any program or activities in

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272 LGC of 1991, § 305(k)
273 Administrative Code of 1987, § 4
274 § 106, Title 6
275 LGC of 1991, § 107
276 RA 7076, § 18
279 Child labour in the Philippines, supra note 117 at 500.
280 Pe Benito, supra note 278, at 501.
support of its implementation. Consistent with the provisions of the Local Government Code, the DENR may enter into agreement with LGUs to incorporate programmatic environmental impact assessment into the preparation, updating, or revision of local land use plans and area development plans. This, however, is not mandatory for LGUs. But in the context, for instance, of the establishment of MBs, it is desirable that the same be undertaken in order to rationalize and provide evidence-based development planning.

3. Philippine Clean Air Act of 1999. The Clean Air Act provides for the comprehensive pollution policy for implementation by DENR as the lead implementing agency. LGUs have the responsibility in the management and maintenance of air quality within their territorial jurisdiction, which include among others, the implementation of air quality standards. LGUs are also members of the Governing Board mandated to formulate policies and develop plans for the effective implementation of the law.

A novel feature of this law is the grant of certain rights to citizens, such as the right to breathe clean air, demand information, and participate in decision-making processes. These rights are actionable in judicial or quasi-judicial bodies where a complainant may file a petition to compel the rehabilitation and clean-up of affected areas or seek the imposition of penal sanction against any violator. Likewise, any complainant may seek compensation of personal damages from the adverse environmental and public health impact of a project or activity. Thus, ASGM operations are potentially liable under this law given the mercury pollution associated with it.

xii. Gold Trading and Financial Flows

Small-scale miners are obliged by the law to sell all gold they produce in any mineral area to the BSP, or any of its duly authorized representatives. Currently, the BSP has five Gold Buying Stations nationwide: at the National Capital Region, Cordillera Region, Bicol Region, Davao Region, and Zamboanga Region.

Gold sellers intending to sell their gold to BSP are required to submit a Customer Information Packet, a Supply Chain Assessment Form, a Proof of Source of Gold, and other documents to support the information stipulated in the Customer Information Packet. In addition to these, the gold seller needs to submit to BSP their government-issued ID, Tax Identification Number card, passbook or ATM with account number, passport-sized ID photos, acknowledgment of gold delivery and sale, business permit (for traders/companies), authority to credit bank account, authority to release information, letter of authorization, letter of delivery and sale, and any other supporting documents required by the BSP. The BSP’s website provides guidelines and procedures for gold selling, available at [https://www.bsp.gov.ph/Pages/CoinsAndNotes/PoliciesAndPrograms/GoldAndSilverBuyingAndSelling.aspx](https://www.bsp.gov.ph/Pages/CoinsAndNotes/PoliciesAndPrograms/GoldAndSilverBuyingAndSelling.aspx) (last accessed May 24, 2022).

282 RA 9276, § 19(m)
283 RA 9275, § 17
285 RA 8749, § 9
286 Pe Benito, supra note 285, at 14.
287 The rights enumerated under Section 4 of RA 8749 are: (a) The right to breathe clean air; (b) The right to utilize and enjoy all natural resources according to the principles of sustainable development; (c) The right to participate in the formulation, planning, implementation and monitoring of environmental policies and programs and in the decision-making process; (d) The right to participate in the decision-making process concerning development policies, plans and programs projects or activities that may have adverse impact on the environment and public health; (e) The right to be informed of the nature and extent of the potential hazard of any activity, undertaking or project and to be served timely notice of any significant rise in the level of pollution and the accidental or deliberate release into the atmosphere of harmful or hazardous substances; (f) The right of access to public records which a citizen may need to exercise his or her rights effectively under this Act; (g) The right to bring action in court or quasi-judicial bodies to enjoin all activities in violation of environmental laws and regulations, to compel the rehabilitation and cleanup of affected area, and to seek the imposition of penal sanctions against violators of environmental laws; and (h) The right to bring action in court for compensation of personal damages resulting from the adverse environmental and public health impact of a project or activity.
288 Pe Benito, supra note 285, at 14.
289 RA 7076, § 17
290 Bangko Sentral ng Pilipinas, Gold and Silver Buying and Selling Guidelines, available at [https://www.bsp.gov.ph/Pages/CoinsAndNotes/PoliciesAndPrograms/GoldAndSilverBuyingAndSelling.aspx](https://www.bsp.gov.ph/Pages/CoinsAndNotes/PoliciesAndPrograms/GoldAndSilverBuyingAndSelling.aspx) (last accessed May 24, 2022).
291 Id.
BIR Form 2299, and BIR Form 2200-M, on the date of transaction.292

Interestingly, the BSP has specific requirements for the gold that will be sold to them. Particularly, the gold intended to be sold to BSP must be in bar or disc form; must not contain mercury or any amalgam; must be free of slag and other foreign matter; must have no sign of metallic segregation/layering or poured shortness; and must not be damp or wet. The BSP does not accept gold in powder and jewelry form. Gold bars sold to the BSP should not be bigger than 16.5 cm long, 8 cm wide, and 4 cm thick, while gold discs should be 10 cm in diameter and 5 cm thick maximum. The maximum weight of a gold bar or disc should be 5 kg, while the maximum weight per lot is 12.5 kg.293

Based on the SSMC and consistent with the implementing rules and regulations of the PSSMA, the small-scale mining contractor shall pay all taxes, royalties, and/or government production share as provided by law once the mining contract is signed.294 Elsewhere in the rules, small-scale mining contractors and mineral processors are obliged to pay the government: 1) National and local taxes as provided for in the Internal Revenue Code; 2) royalties equivalent to 5% of the gross output, for small-scale mining within mineral reservations; and 3) government production share.295 In addition to the obligations mentioned, small-scale mining contractors shall also pay the government the occupation fee of Php 100 per hectare or a fraction of a hectare, per year, to the municipality where the mining contract is located.296

Note, however, that RA 11256 enacted in 2019 amended the Internal Revenue Code, such that it now provides that income from the sale of gold pursuant to the PSSMA is excluded in the computation of gross income. Thus, income from the sale of gold to the BSP by registered small-scale miners and accredited traders and income from the sale of gold by registered small-scale miners to accredited traders for eventual sale to the BSP does not add up to the gross income of a taxpayer subject to taxation.297 The law further amends the Internal Revenue Code so that gold sold to the BSP is also exempt from the payment of excise tax.298

The basis for the tax exemptions and non-withholding/collection of taxes under RA 11256 is the BSP Certification.299

A portion of the funds paid to the government redound to the benefit of small-scale miners under the law, through the People’s Small-scale Mining Protection Fund. This is equivalent to 15% of the national government’s share of the internal revenue tax or production share paid to the government. The fund will be used for information dissemination and training of small-scale miners on safety, health, and environmental protection. It can also be used to establish the Mine Rescue and Recovery Teams, as well as for the procurement of the necessary rescue equipment in case of emergencies. The rules provide further that the fund shall be used for the needs of small-scale miners brought about by accidents or fortuitous events.300

a. BSP Gold Sourcing Policy

The BSP Gold Buying Stations advocates responsible
mining to comply with LBMA standards. To be accredited with the LBMA, four risk factors are considered: 1) if the gold has any relation to money laundering; 2) if the production of gold involved child labor; 3) if mercury was used in gold processing; and 4) if the gold is being used in any way to terrorist financing.\textsuperscript{301}

LBMA policies are reflected in local regulations through the implementation of “Know-Your-Source” policies and customer information packets that have to be accomplished by clients of BSP in their first transaction of the year. As a result, an added layer of protection is being enforced where sellers of gold need to disclose where their gold came from, among others, in order to ascertain that the gold bought comes from a clean source.\textsuperscript{302}

In 2015, the BSP issued its Responsible Gold Sourcing Policy which states that in buying gold from gold-supplying counterparties, the BSP shall:

1. **Buy its gold only from known sources and areas that have not used gold to finance any form of crime or conflict, terrorism, human rights violations, and money laundering activities.**

2. **Suspend or discontinue transacting with gold-supplying counterparties** identified as operating in contravention of this policy.

3. **Adhere to the laws and regulations against money laundering, any form of crime, human rights violations, and terrorism and its financing.**

4. **Provide relevant training on this policy** to involved BSP employees and sellers.

5. **Maintain a Quality Management System subject to audit by a third party certifying body.**

This policy has been passed to ensure that the gold buying program of the BSP is not used to finance crimes and money laundering activities.\textsuperscript{303} Given this policy, gold obtained from illegal small-scale mining activities cannot be sold to the BSP.

xiii. **Social Reform and Poverty Alleviation Act: National Anti-Poverty Commission**\textsuperscript{304}

The National Anti-Poverty Commission (NAPC) champions a multidimensional approach to poverty alleviation in which strategies or programs of Government and the civil society shall incorporate:

- **Economic dimension,** highlighting asset reforms which seek to address the issue of economic inequity by widening citizen’s share of resources;

\textsuperscript{301} Interview with BSP Gold Buying Station, Naga, 9 February 2022

\textsuperscript{302} Id.


Social dimension, which focuses on the access to quality basic services and protection of the security of life, person, livelihood, and indigenous culture, and freedom from violence;

Ecological dimension, which ensures the sustainable development of productive resources through effective and sustainable utilization of the natural and ecological resource base; and

Governance dimension, which addresses Equal Representation and Participation in all venues in society, especially in decision-making and management processes that affect their rights, interest, and welfare.

Given that the central aspect of the NAPC mandate is to strengthen partnerships between the national government and key stakeholders of the basic sector, The Social Reform and Poverty Alleviation Act has then categorized the latter into 14 main groupings:

1. Artisanal fisherfolk
2. Children
3. Cooperatives
4. Farmers and landless rural workers
5. Indigenous peoples and cultural communities
6. NGOs
7. Persons with disabilities
8. Senior citizens
9. Urban poor
10. Victims of disasters and calamities
11. Women
12. Formal labor and migrant workers
13. Workers in the informal sector
14. Youth and students

It is significant to note that small-scale mining is categorized under the category of farmers and landless rural workers. Its definition fails to provide nuance to the heterogeneous composition of the ASGM community, its work, and practices. Different constituents would require distinct heterogenous needs. One study, however, finds its heterogeneity to its advantage — meaning that there are many ways to intervene effectively.

xiv. Magna Carta of the Poor

The Magna Carta of the Poor shall adopt an area-based, sectoral, and focused intervention to poverty alleviation where every poor Filipino must be empowered to meet the minimum basic needs through the partnership of the government and the basic sectors.

As a fundamental right of the poor, Section 4(b) states that the right to decent work is the right to the opportunity to obtain decent and productive employment, in conditions of freedom, equity, gender equality, security, and human dignity. To achieve this, DOLE shall ensure compliance with core labor standards, address the job and skills mismatch,
and enhance human capital through education and training. Moreover, DOLE and LGU shall endeavor to assist and strengthen the employability of workers entering the labor market. TESDA, in coordination with LGUs, NGOs, CSOs, people’s organizations, and concerned agencies shall promote and enhance community-based training for special groups and ensure that these are aligned with the needs of the region.\(^{310}\)

Section 4(e) also categorizes the right to the highest attainable standard of health as a fundamental right of the poor. It is the right to have equitable access to a variety of facilities, goods, services, and conditions necessary for the realization of the highest attainable standard of health. The DOH, in coordination with the LGU, shall broaden existing health promotion policies and programs and determine social determinants of health and behavioral risk factors.\(^{311}\)

The law also asserts the right to social protection of the poor in Section 6 where it is stated that the government shall implement a sustainable mechanism to build an effective social protection system to ensure the access of the poor to protection from any risk or contingency. The system shall include social insurance, safety nets, social services, and labor market interventions, which shall be made affordable and accessible.\(^{312}\)

C. Women in ASGM

1. Convention on the Elimination of All Forms of Discrimination Against Women

Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) states that States Parties, “condemn discrimination against women in all its forms.” Article 1 of the CEDAW defines discrimination against women as:

> any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.

While formal environments are able to address, monitor, and record instances of discrimination, the same may not apply to the ASGM sector’s informal setting. Majority may not be aware of the direct, indirect, or intersectional discrimination that is present in the industry with the lack of formal and informal trainings in rural communities.

The CEDAW Committee elaborated on a framework of substantive equality that promotes the dignity and self-worth of the individual and of all regardless of differences in circumstances. In this framework, accessibility for those who have different abilities is widened to provide extra resources (such as training, additional opportunities, or other forms of investments necessary to redress past disadvantages) must be the norm.\(^{313}\) Although there has been a resurgence of women working in ASGM over the past few years, the patriarchal conditions of the industry still consign women to auxiliary roles which allow for unequal access to job opportunities and income.\(^{314}\)

In addition to this, CEDAW’s Shadow Report on Indigenous Women and Mining in the Philippines

\(^{310}\) Implementing Rules and Regulations of RA 11291, Otherwise Known as the “Magna Carta of the Poor”.  
\(^{311}\) Id.  
\(^{312}\) Id.  
\(^{314}\) International Labour Organization: Country Office for the Philippines, Artisanal and small-scale gold mining baseline report, supra note 57.
expressed its concern that women living in rural areas are disproportionately affected by poverty and by food and water insecurity as a result of the discrimination that they face in relation to income, to access to land tenure, to extension services and training, and to participation in decision-making. 315

To address this, the committee directed State Parties to create more enabling conditions. These include adopting temporary special measures such as quotas for rural women’s participation in decision-making at all levels.

Although some areas allow women to be laborers, there are still instances wherein women workers are assigned as administrative staff or as watchers in the milling process to ensure gold processing is in order, while others stated that no women are participating in the mining activities. 316

2. Magna Carta on Women: Violence Against Women Desk

The implementing rules and regulations of the Magna Carta of Women provides for the establishment of a Violence Against Women (VAW) desk in every barangay. The VAW desk is a barangay-level facility which serves as a frontline service provider to victim-survivors who experience physical, sexual, psychological, economic, and other forms of abuse. It is managed by a VAW Desk Officer designated by the Punong Barangay and is usually situated within the premises of the barangay hall. The functions of the Barangay VAW Desk include the following:

- Assist VAW victims in securing Barangay Protection Order (BPO) and accessing necessary services;
- Respond to and record gender-based violence cases brought to the barangay; and
- Develop the barangay’s gender-responsive plan in addressing gender-based violence, including support services, capacity building, and referral system. 317

3. Administrative Order No. 2010-21

The DENR has continuously reiterated that conditions of non-discrimination of gender are included in the mining permits and agreements that they issue to respect the right of women workers to participate in policy and decision-making processes affecting their rights and benefits. As seen in Administrative Order No. 2010-21, 318 which was released pursuant to Section 8 of the Philippine Mining Act, the following stipulations highlight conditions of non-discrimination of gender:

Section 39. Terms and Conditions of Mineral Agreement

i. A stipulation that the Contractor shall not discriminate on the basis of gender and that the Contractor shall respect the right of women workers to participate in policy and decision-making processes affecting their rights and benefits;

Section 56. Terms and Conditions of an FTAA

k. A stipulation that the Contractor shall not discriminate on the basis of gender and that the Contractor shall respect the right of women workers


to participate in policy and decision-making processes affecting their rights and benefits;

Section 79. General Terms and Conditions of a Quarry/Commercial or Industrial Sand and Gravel/Government Gratuitous/Guano/Gemstone Gathering Permit

f. The Permit Holder shall not discriminate on the basis of gender and that the Permit Holder shall respect the right of women workers to participate in policy and decision-making processes affecting their rights and benefits;

Section 113. Terms and Conditions of a Mineral Processing Permit

f. The Permit Holder shall not discriminate on the basis of gender and that the Permit Holder shall respect the right of women workers to participate in policy and decision-making processes affecting their rights and benefits;

4. Access to Mining Rights

The right to consultation and participation specifically of rural or grassroots women from mining communities is not specified in the laws and administrative issuances related to mining. The Magna Carta of Women could be used to require participation of and consultation with grassroots women in decision-making involving extractive projects and the development of Community Development and Management Program (CDMPs).³¹⁹

5. Social Protection

According to a research conducted by various civil society organizations in Asia, mining has a greater detrimental impact on women than on men, despite the fact that men typically profit from the improved job possibilities that mining provides.³²⁰

There is a lack of social protection of workers in the mining sector which can pose specific challenges, especially in a sector with high risks of employment injury and strenuous working conditions.³²¹

6. Labor Standards

Women are primarily involved in ore processing, pabirik, kulipaw,³²² and activities that do not require much physical strength.

To fit within the women’s domestic obligations, ore processing is frequently done at home. Bringing ore processing to the home, however, exposes other family members to the hazards and chemical exposures associated with mineral processing. A study conducted in one of the Philippines’ mining sites revealed that women worked in the milling process, specifically panning, and were exposed to mercury.³²³

When ASGM operations are halted for whatever reason (e.g., heavy rain and flooding), women carry the burden and are forced to find alternative livelihood to support the family’s needs during these times.³²⁴

There have also been reports from various NGOs that data on the working hours of both women and men in the ASGM sector is limited. From individual interviews with artisanal and small-scale gold miners, working hours vary depending on the weather, the productivity of the mines, and the distance of the miners’ homes from the mines. There

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m_in_ph_-_a_scoping_study.pdf.
³²² Kulipaw is where people from the community, mostly women, solicit either money, sacks of ore, or gold from financiers of ASGM operations for free.
³²⁴ Banes, supra note 53.
are accounts where families are forced to migrate to a high-grade site/location for months or years where ASGM operations are rampant and where jobs are readily available for the whole family.\textsuperscript{325}

7. Government Programs for Women in ASGM

To date, there are no national or local government programs that focus solely on women empowerment in the ASGM sector. Most programs for women are embedded in the national poverty programs, livelihood programs, and prevention and elimination of child labor programs of the government. Below are some programs that are available for women artisanal and small-scale gold miners and associations.

1. DOLE’s Registration of Workers Association.

DOLE is required by the Labor Code to process applications for registration of workers’ associations in the formal and informal sectors that are organized for mutual aid and protection of their members or for other legitimate purposes other than collective bargaining.\textsuperscript{326}

2. DOLE-OSHC’s Basic Occupational Safety and Health (OSH) Training.

Mining in general is a hazardous occupation. DOLE, under the Occupational Safety and Health Center (OSHC), holds OSH training specifically to address prevailing working conditions in the artisanal and small-scale gold mining sector.\textsuperscript{327} This training equips participants with the basic knowledge and skills in identifying safety, health, and environmental hazards in their line of work. Training for workers in the ASGM sector is not yet implemented nationwide but can be requested in their region’s respective OSHC offices.

3. DOLE’s Integrated Livelihood Program (DILP).

Women ASGM organizations, unions, associations, or cooperatives registered in DOLE can avail of the livelihood grants assistance with the following components: \textsuperscript{328}

- **Kabuhayan Formation** — enables the poor, vulnerable, and marginalized workers in the informal and formal economies to start individual or group livelihood undertakings;

- **Kabuhayan Enhancement** — enables existing livelihood undertakings to grow into viable and sustainable businesses that provide income at least at par with those of the minimum wage earners;

- **Kabuhayan Restoration** — enables the re-establishment of lost or damaged livelihoods due to occurrence of natural disasters/calamities

\textsuperscript{325} Id.
Grants available are dependent on the number of members of each organization and can amount from P250,000 to P1,000,000.\textsuperscript{329}

4. Department of Social Welfare and Development (DSWD) Pantawid Pamilyang Pilipino Program (4Ps). One of the objectives of 4Ps is social development that aims to break the intergenerational cycle of poverty through investments in human capital. Although the main targets of the program are the children of extremely poor households, the parents are required to attend family development sessions (FDS) to raise their awareness and competencies to alleviate their family from poverty.\textsuperscript{330}

5. DSWD Strategic Helpdesks for Information, Education, Livelihood and other Developmental Interventions (SHIELD). The project aims to educate parents not just about the laws against child labor, but also about their children’s rights and how they may better provide for them. Basic services provided by the project may include any of the following: rescue and recovery, health services, educational assistance, counseling, skills training, financial assistance, legal facilitation, livelihood skills development, capital assistance, and other interventions.\textsuperscript{331}

V. Case Studies: A Tale of Two Mining Communities

A. Casalugan, Paracale

1. The Minahang Bayan and Mining Contract

In Paracale, the entire process of legitimizing an SSM operation can take as long as three years and cost up to Php 1.5 Million. This can be attributed to the lack of technical knowledge on the part of the applicants and the slow process in the government which required frequent follow-ups, under-the-table payments, and the engagement of a fixer. A financier had to intervene to pay for the costly amount of the process, and in exchange, the mining association had to sell a portion of gold to the former.

The Camarines Norte Provincial Environmental and Natural Resources Office (PENRO) describes formalization of small-scale mining in the province to be in its early stages, in spite of the law being enacted as early as 1991. They explain that the difficulties in legitimizing small-scale mining operations in the province is due to mix-ups in how the relevant laws were implemented. In the early 1990s, small-scale mining permits were granted based on PD 1899 by the PMRB, which is an entity created by the PSSMA. During that time, PENRO was the head of PMRB, since MGB had yet to be created by the Mining Act in 1995. The PMRB, however, granted SSMPs approved by the governor, and not SSMCs. The policies at the time were unclear even among the government offices concerned, until EO 79 clarified that PMRB had no authority to issue SSMPs, except for gold, copper, and silver; and that SSMCs should only be granted if there is a prior...
declaration of an MB.

The law provides that only those granted with an SSMC will be entitled to the right to mine, extract, and dispose of mineral ores for commercial purposes. Notwithstanding this, local miners in Paracale who have not been granted an SSMC still mine for gold anyway, by entering into Agreements with those who have been granted a contract.

2. Transfer of Rights and Mining Titles

The PSSMA, DAO 2015-03, and DAO 2022-03 provide that the SSMC cannot be subcontracted, assigned, or otherwise transferred. However, in actual mining operations, financiers and their teams are allowed by small-scale mining contractors to operate within their allotted area inside the MB pursuant to a contract. For example, the SMBC has a template contract for financiers who want to operate within the former’s area. The template contract provides, among others, that:

- The mining contractor allows the financier to operate in two mining holes that should be at least 20 meters apart from each other;
- The financier should mine in accordance with the PSSMA and with the best interest of the miners in view;
- The financier provides two profit shares to the mining contractor, which will be used for the operating expenses, maintenance of the MB, security, environmental rehabilitation, health programs, educational programs, tree plantings, and other such activities;
- The mining contractor does not have liability on any accidents caused by the negligence of the financier; and
- The financier has to provide a container of gas to the mining contractor.

Notably, the financiers and miners who are not part of SMBC are not mandated to join the association under the contract.

3. Relevant Local Resolutions

In support of the declaration of a MB in Paracale, the PMRB issued Resolution No. 5, series of 2020, adopting the procedure for issuance of SSMCs. Prior to the declaration of the MB, the municipality issued various resolutions and ordinances regarding SSM. In 2009, the municipality issued Resolution No. 67-2009, adopting the procedure for application for mining and extraction of minerals in Paracale. In the said Resolution, the Sangguniang Bayan adopted the requirements for the issuance of their recommendation for any mining activity, including that of SSM. The Sangguniang Bayan endorsement is a requirement in the petition for a declaration of a MB. However, it is unclear if compliance with Resolution No. 67-2009 is also required for the application of a SSMC. DAO 2015-03 does not require the Sangguniang Bayan's endorsement in the issuance of a mining contract.

Another significant piece of local legislation in Paracale is Resolution No. 331-2019 wherein the establishment of a processing plant is now limited within an area declared as an MB, which is in accordance with DAO 2015-03.

Significantly, given the strong presence of the SSM industry in Paracale, the local government, in the exercise of its delegated power to implement mining laws, issued various resolutions to monitor compliance with and enforce the laws, especially as to the environment. To wit:

1. Resolution No. 114-2011 — The Sanggunian authorized the chief executive to enter into
an understanding with BAN Toxics for the work to reduce mercury pollution in small-scale mining;

2. **Resolution Nos. 127-2011 and 117-2013** — The Sanggunian urged the investigation by the DENR into the gold processing plants and chemical suppliers in the municipality, as well as the violation of a mining company therein;

3. **Resolution Nos. 18-2012 and 19-2012** — The Sanggunian enjoined the local police to implement the stoppage order used in relation to illegal small scale mining activities in Longos Point and requested the executive to monitor the closure of said mining area;

4. **Resolution No. 117-2013** — The Sanggunian declared Sitio Bulaay as danger zone for small-scale mining;

5. **Resolution No. 122-2013** — The Sanggunian banned mining in the Malaguit River;

6. **Resolution No. 432-2020** — The Sanggunian approved a barangay ordinance regulating activities within the MB.

### 4. Financing Arrangement

A mining association in Paracale with an SSMC charges a registration fee of Php 20.00 and a monthly due of Php 10.00 from its 229 members. They also receive profit shares from miners who operate within their area of operation. The funds collected by the association are used to process official documents and other association activities. Each mining operation, however, is funded by a financier — a person who shoulders all the expenses of their team of miners. Money spent by the financier for their team will be reimbursed once revenue is earned. The financier is also entitled to their share of the gold production.

Not all financiers in Paracale are equal. A “big” financier has about Php 150,000.00 to 500,000.00 capital to fund a mining operation, whereas a “small” financier spends only as much as Php 50,000.00. About Php 1,000.00 per day is spent by a small financier to fund a team of six miners, referred to as “players,” who work for 24 hours. This amount covers the expenses of the team for food and transportation. Players usually have only one financier at a time, as the operations run for 24 hours, with the players having an 8- to 12-hour shift daily.

The usual expenses of the financier vary depending on the gold produced in an operation. Some financiers can thrive with minimal capital if their mine shaft is found to be rich in gold; while some financiers suffer the expensive cost of funding a team for a year, without any luck finding gold in their mining pit. It is estimated that the cost of a 24-hour operation can sometimes reach as much as Php 15,000, which covers the cost of diesel for the generator, food for the players in multiple shifts, the dynamite, and other necessary equipment.

Interest rates vary across lending institutions, but a small financier in Paracale accesses credit through a small-time lender with an interest rate of 3% per month. Other sources of credit include relatives, as well as local “loan sharks” with the arrangement that the financier pays an additional Php 1,000.00 for every Php 5,000 loaned after 40 days. “Loan sharks” have been preferred because of the convenience that they offer, where money can arrive the day after the request for a loan. In contrast, loaning institutions require plenty of documents and it usually takes about a week to process the loan.

### 5. Sharing Agreements

Mining operations in Paracale adopt a profit sharing scheme where revenue from gold sales is distributed proportionately to the share a person has. The members of the mining team have one share each.
Mining tools used can also have shares attributed to them, which redound to the benefit of the financier, who usually owns these tools. A financier may also rent the mining tools from a third party, who bears the cost of maintenance and repairs of the same. In the case of the operations of SMBC within the MB and covered by the SSMC, some miners who are not part of their organization but are operating in the SSMC area may be obliged to include the contractor (SMBC) with shares in exchange for the privilege to mine in the latter’s area.

**Info Box. Earnings Per Person in an ASGM Operation in Paracale**

To know the exact amount that each person can expect when the revenues are divided, the following formula is used:

\[
\text{Earnings per person} = \frac{(\text{Revenue} - \text{Total Expenses of Operations})}{(\text{Total Number of Shares (Financier + Players + Tools)})} \times \text{Individual Shares}
\]

On the occasion that there is zero gold production in a span of one month, a financier provides his team with an allowance ranging from Php 500 to Php 1,000 per week to provide for the basic needs of each player. This arrangement stops once the team is able to produce gold, in which case the allowance provided is deducted from the earnings of the players. Players can also ask for an advance payment, the amount of which will likewise be deducted once revenue is realized.

Between the financier and a small-scale mining contractor, both parties may stipulate their own complaint mechanism. An example of this can be seen in the template contract of SMBC where it is provided in paragraph 12 that if the financier has any complaints, they may take it up with the association directly.

**6. Complaint Mechanism**

As mentioned in the earlier sections, although the parties to an SSMC can stipulate provisions, they are limited not only by the PSSMA and its IRR, but also by the relevant provisions of the Civil Code and other applicable laws, if any. Further, in case of dispute, the PMRB or the regular courts could settle the same.

**7. Incentive Mechanisms**

In Camarines Norte, government agencies have programs for the benefit of those engaged in mining. PENRO-LGU had programs that promoted mining retort so that gold can be extracted without the use of mercury, although the miners did not receive this well, preferring to use the methods which they have grown accustomed to. MGB provided seminars on mine safety in connection with the declaration of the MB in Brgy. Casalugan, Paracale. DOLE provided orientations on health and safety standards, although it was expressed that the agency could

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338 Interview with small time financier at Golden Pabirik, Paracale (February 2022).
339 Interview with Brgy. Captain at Casalugan, Paracale (February 2022).
340 See ANNEX H, page 2, par. 12.
not monitor the same in light of the absence of an employer-employee relationship in small-scale mining operations. DOLE also had a program to help organize self-employed persons so that they can be formally accredited to receive assistance and become program beneficiaries of the government and civil society organizations.

Miners in the province, however, express that they do not feel any such program from the government. Local miners learn to mine and find gold from custom, as it used to be a common practice to include children in mining sites. They claim that they are influenced by their families to engage in mining as they are exposed to it as early as childhood: they have engaged in mining simultaneously with schooling, and this has become part of their routine. It is through exposure to mining activities that the miners learn the skills and practices that they adopt. As with local custom, the gold mined is sold to local gold buyers.341

8. Access and Use of Mercury and Other Hazardous Chemicals and Equipment

Camarines Norte miners still use mercury to extract gold from the ore despite prohibitions of its use. Mercury is readily available in the market and from gold buyers in Paracale and Jose Panganiban for Php 6,000 per kilo. Although they are aware of the hazards of using mercury, local gold miners continue to use the chemical when extracting gold without any protective equipment because they find it easier this way. It is their belief that continuous exposure to mercury gives them immunity to its harmful effects since there are only minimal reported cases of illness due to mercury use.

Miners have likewise expressed that using explosives has become a necessity. Continuous mining has made gold scarce, that miners needed to go deeper to be able to find gold. Paracale miners now reach depths where rocks are sturdier, for which they require stronger tools.

9. Gold Processing

In Paracale, financiers or landowners commonly own a rod mill or ball mill for processing the gold recovered in mining operations. Gold processed in mining operations is collected weekly by the financier or their trustee, who has discretion on selling gold produced either to a trusted gold buyer or the BSP. To assure maximum profit, financiers keep track of the world market price of gold.

In processing gold, residue may stay in the mills and tailing ponds. The mill owners usually reprocess the tailing using cyanide to extract gold that was not properly processed. If any residual gold is found, it may be bought by the financier from the mill owners.

Owning a mill is another way of earning from gold mining. Small ball mill operators are typically found in communities where there are many artisanal miners and people engaged in kulipaw. Using a mill can cost up to Php 80-100 per batch, inclusive of the chemicals that will be used. It is common that the owner of the mill is also the same person to whom gold is sold. When the mill owner buys gold from those who used their mill, the cost of the use of their mill is subtracted from the price of gold that they buy.

10. Mine Rehabilitation and Closure

Miners believe that proper rehabilitation should be done after mining by covering the entrance of the shaft and planting trees. In practice, this only happens when specifically asked for by the landowner where mining is done outside of an MB. In the experience of the SMBC, abandoned tunnels are merely covered with cement blocks.

341 Interview with “Joseph”, Samahan ng Magkakabod ng Dalas member (February 2022).
11. Labor Standards

Financiers usually have a team composed of 12-20 players who work in shifts in a mining tunnel. Each player in a mining operation has a specific role: they may be a team leader, a digger, a timberman, a blaster, a mucker, a crusher, a panner, a bagger, a barenador, a technician, a cook, or a runner, among others.\(^{342}\) A shift can last for up to eight hours, after which, the players substitute those who worked in the shaft. Although an operation can run for 24 hours straight, there are some that run for only 8 hours. In some operations, a team stays inside the mining shaft for as long as 8-24 hours because traveling up and down a shaft can take hours depending on how complicated it is configured.\(^{343}\) Instead of ascending for a proper meal break, miners bring their own food or have food brought to them inside the mining hole.

Mining teams identify themselves as a “corporation,” although they are not registered with the SEC, by virtue of the shares that they hold in the operation. They do not see any employer-employee relationship among them although the financier has strong influence in how a mining team works. Without a clear employer-employee relationship within mining teams, DOLE is not able to intervene.\(^{344}\) Because of this, DOLE does not have a formal picture of how small-scale mining operates, unlike in large-scale mining where the employer-employee relationships are much clearer. DOLE’s interventions are limited to the development aspect by campaigning against child labor and providing livelihood programs outside mining. DOLE also has other advocacy campaigns on health and safety standards which they extend to miners through their associations.

In order to further provide assistance to small-scale miners, DOLE helps mining associations have legal personality by registering their associations with the Department. Currently, there are 20 miners associations registered with the DOLE.\(^{345}\)

12. Occupational Safety and Health Standards

Miners admit that they do not have the complete set of safety equipment when mining. They perceive hard hats and headlights as the only necessary personal protective equipment (PPE). Hand and foot protection such as boots and gloves are seldom used by the miners due to discomfort. Other PPE such as safety glasses, masks or respiratory protection, and reflective clothing are seen as irrelevant when mining. To ensure safety inside mining holes, a team relies on a timberman, who is tasked to assess the safety of a tunnel and ascertain that it will not collapse. In Brgy. Casalugan, the barangay local government provides first aid training to miners and encourages teams to have a dedicated player assigned to administer first aid.

13. Social Protection

Gold mining has been described to be similar to gambling, in that luck plays a big role in how much gold a miner can find. Because of this, miners also rely on agriculture for stable income, especially when gold is scarce. The miners recognize that not all mining activities can produce gold that would alleviate them from poverty, but in the event that they are able to sell large quantities of gold, they would transition to starting a business different from mining.\(^{346}\)

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\(^{342}\) Interview with Brgy. Captain at Casalugan, Paracale (February 2022).
\(^{343}\) SMD
\(^{344}\) Interview with DOLE Region V Provincial Director at Daet, Camarines Norte (February 2022).
\(^{345}\) See ANNEX I.
\(^{346}\) SMD
Miners recognize the importance of social benefits like Social Security System (SSS), PhilHealth, and Pag-IBIG. However, due to the lack of employer-employee relations between the financier and their players, the former does not pay for the benefits of the latter.

14. Access to Land and Tenurial Arrangement

One of the challenges in successfully declaring an MB is securing the consent of claim owners. Though recognized as a mining province, Camarines Norte is full of tenements, especially in Paracale and Panganiban. To address this challenge, those applying for an MB are advised to directly negotiate with claim owners.347

In the experience of SMBC, a rigorous consultation with Golden River348 took place for about two years before they clinched their approval. Issues on royalty and claims arose during the consultations but were later ironed out by the agreements with the organization.

15. Process of Acquiring Legal Personality

In order to have juridical personality,349 mining associations should register with DOLE as this is much easier than registering with the SEC. Among the advantages of registering with DOLE is that associations become beneficiaries of DOLE programs and seminars.

Miners in Camarines Norte also seek to operate within the MB to avoid rent-seeking behavior. They recognize that mining without an SSMC and outside an MB exposes them to risk of solicitations and demands that they offer shares in mining revenue for operating informally. Failure to satisfy the rent-seeking behavior warrants the closure of the mining operation. One way of avoiding this is by having a declaration of an MB, so that mining is done within the formal legal framework.

16. Enforcement and Monitoring

While small-scale miners in Paracale recognize the existence of the PSSMA, they find complying with it challenging, especially the registration of the SSMC. Even without an SSMC, there are miners who continue to mine informally, as is customary even before the enactment of the PSSMA. This exposes them to the risks of being inspected and shut down by the police, hence the efforts to organize. Due to the prevalence of informal mining operations in Paracale, raids are often conducted and miners are arrested. As much as Php 30,000 must be paid to bail out a miner arrested by law enforcers.

Big-time financiers operating informally prefer to accommodate rent-seeking behavior. This is seen to be more cost-effective to them than applying for a declaration of an MB.

On the other hand, enforcement of the PSSMA is also a challenge to the authorities in view of mining customs and practices that have been in effect prior to the enactment of the law. Authorities sometimes turn a blind eye when the PSSMA is violated because the practices in mining have been part of the culture and livelihood of the miners. Instead, the government is stricter in enforcing the prohibition on illegal drugs, which is found to be common when high-grade gold is discovered. Drug use is rampant in areas where high-grade ores are discovered because most of the ores are found in a deeper depth and drug use is said to help increase their endurance and alertness while working in these unfavorable conditions. In the event that there are suspicions of illegal drug use, the Philippine Drug Enforcement Agency (PDEA) and the police will be asked to intervene to conduct random drug testing in mining areas. Those found using illegal drugs are

347 Interview with Region V PENRO (February 2022).
348 Golden River is a large-scale mining company with claims on the land on which SMBC mines.
349 Interview with mining associations (February 2022).
prevented from entering mining tunnels.

Moreover, there is a lack of data/record of the small-scale mining workers and organizations in the province. The LGUs concerned, from the barangay up to the provincial LGUs, the PMRB, DOLE, and the DENR have no updated account on the number of miners and organizations in the province since ASGM operations are operating largely informally. In Paracale, MGB Region V has a list of ASGM operations in the province but the LGUs seem unaware of this data. The Barangay Local Government Unit (BLGU) has a list of mine workers obtaining barangay certificates, but failed to present a list of all organizations and the total number of ASGM workers in the area due to the inconsistency of ASGM work and lack of monitoring resources. This lack of uniformity and coordination on record keeping of small-scale mining data is also documented in the EITI scoping study.\textsuperscript{350}

17. Local Ordinances on ASGM

There are barangay ordinances regulating the operations of SSM in Brgy. Casalugan where the MB is located. One ordinance requires financiers to register their team with the barangay and to provide information about their mining operations prior to opening a mining tunnel. This is for the purpose of monitoring and preventing instances of crowding in areas where there is high-grade gold found. There is also an ordinance that requires tunnels to be at least 15 meters apart from each other and/or public infrastructures to prevent instances of collapse when the rains are strong. Another ordinance also taxes the outgoing ore that will be brought to processing plants at the rate of Php 7 per bag.\textsuperscript{351}

18. Development Planning

When the provision of basic services from the national government offices were devolved to the LGU pursuant to the Mandanas Ruling, there were no technical personnel that were likewise devolved. Although functions of the national government were shifted, this does not necessarily mean that there is a corresponding person qualified in the LGU who can fulfill the responsibilities and duties of the functions that were devolved.\textsuperscript{352}

Additional positions are required to be created to competently perform as expected when the delegation takes effect, but there are concerns on the budget as the same is limited for the local government. Priorities went to health personnel, among others. Thus, even if the LGU is now mandated to perform more in light of their added responsibilities under the Mandanas Ruling, they tend to face challenges in fulfilling their expectations because of the lack of financial and personnel support.

It must be noted that in accordance with the Local Government Code, the enforcement of PSSMA was devolved to the provinces, supervision, control and review of the DENR.\textsuperscript{353} Furthermore, in accordance with the EO 138 and its IRR, with the implementation of the Mandanas ruling, it was reiterated that the enforcement of PSSMA is devolved to the provinces.

PENRO further explains that there is a confusion in how the law will be implemented in light of the devolution, but they see value in partnering up with the MGB because as the head of the PMRB, they are the ones to issue the SSMCs.

19. COVID-19 Response and Other Emergencies

Mining continued in Brgy. Casalugan when COVID-19 hit the province. Strict implementation of health and safety protocols were enforced to prevent the spread of the virus. A lockdown was also in effect within the barangay where unvaccinated outsiders were

\textsuperscript{350} Nuñez, supra note 163.
\textsuperscript{351} Interview with Brgy. Captain at Casalugan, Paracale (February 2022).
\textsuperscript{352} Interview with Region V PENRO (February 2022).
\textsuperscript{353} LGC of 1991, § 17
not allowed to enter; and unvaccinated residents were recommended to get inoculated. Because of the efforts of the barangay local government, Casalugan achieved a 70% vaccination rate against COVID-19.354

20. Gender and Child Labor

Women’s roles, in the majority of the ASGM operations, often are in the ancillary services, providing back-end support in contrast to the physicality and strength demanded from men workers. Women are often relegated to cooks, runners, recorders, and cleaners in the operation, similar to their roles in the household.355 Their pay is also smaller as compared to the men miners, having an average share of 1/3 per women worker. These tasks are seen by many as essential for the workers to function but non-beneficial to the whole of the operation. Women workers accept this situation because they said it is better than to earn nothing at all.

Women in ASGM also engage in the process of mucking and kulipaw. They can also trade food in exchange for money, sacks of ore, or gold, depending on the person who does the kulipaw. Usually, financiers of high-grade operations freely give kulipaw as a way of sharing their luck and money to the community. Money from kulipaw adds to the income earned by their husbands for the day-to-day expenses of their families.356

According to the Paracale Municipal Police Station, there are a lot of unreported violations on child labor and Violence Against Women and their Children (VAWC) in the ASGM sector. However, VAWC cases are only limited to the non-sustenance of financial support mainly by men ASGM workers to their families due to low income in the mining operations. The Philippine National Police (PNP) have no official report or count on sexual harassment cases in the ASGM sector but cites that there are cases of prostitution in bars/restaurants once an area becomes “high-grade.” Many male miners flock to these bars to relieve their fatigue and exhaustion instead of going home to their families, thus wasting their income on vices rather than spending it on their families.

ASGM operations are also linked with child labor. Children tend to pursue work at a young age to help alleviate the poverty of their families. Children, in turn, refuse schooling since they can now help with the income they earn working at the mines. As noted by the PNP, engagement in child labor is mainly influenced by the families since many of the workers experienced being child laborer themselves. In their time, child labor laws and policies were not yet in place. There is a resistance from the majority to accept that the old ways and practices are now behind the law.

Based on interviews, there had been no ASGM women participation in formulating any development plans concerning them. In addition, there are no LGU plans in place specific to the women ASGM workers. DOLE’s assistance to the women workers are in guise of the programs to address child labor, one of the mandates of DOLE to address. For the PMRB and the provincial government, their assistance to the women miners are incorporated in the general programs being given to the general community. For the PNP, they do not also have specific programs for women involved in the mines. They do not also have proper data/recordkeeping/documentation for VAWC complaints in the ASGM unless it reaches the court.

354 Interview with Brgy. Captain at Casalugan, Paracale (February 2022).
355 FGD with women mine workers (February 2022).
356 Interview with Paracale Municipal Police Station (February 2022).
B. Fidelisan, Sagada

Agriculture remains to be the top contributor in Sagada’s economic activities. Mining ranks fifth. In Brgy. Fidelisan, Sagada, mining has been part of their community since the 1970s. Some participants in the study have been mining since the 1990s. At that time, gold could be easily mined in surface areas but in time, it has become difficult and thus, there was a need to use equipment to excavate.

Similar to Paracale, the MB in Brgy. Fidelisan was approved under the process governed by DAO 2015-03. However, in Sagada, the proposed MB was within the AD of the indigenous peoples belonging to the tribe of Pidlisan, and thus, the involvement of the NCIP is more apparent than in Paracale. Furthermore, small-scale mining therein is also

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Info Box. Gender Dynamics in Paracale and Sagada

Findings from AGC’s contextual study revealed that there are regional differences in the gender division of labor in small-scale mining. Women’s tasks in Sagada are shown to be more diverse compared to the roles of women in Paracale. In the reported survey, women in Sagada MB are more involved in processing activities such as panning and cleaning mills. In Paracale MB, no women were mentioned with regard to their involvement in processing activities. During one of the field visits, however, it was observed that two women were involved in panning and amalgamation. Processing activities are not done by women regularly, which is why they tend not to consider these tasks as one of their main activities.

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heavily influenced by the customary laws and the community, especially the dap-ay elders. The dap-ay is the traditional leadership institution of the Pidlisan tribe.358

1. Northern Sagada Barangay Small-Scale Miners Association, Inc.359

The Northern Sagada Barangay Small-Scale Miners Association, Inc. (NSBSSMAI) is composed of members from the different northern barangays that are members of the Pidlisan tribe. In addition to Barangay Fidelisan, the other barangays include Aguid, Bangaan, and Pide. In 2011, from the group formerly known as Fidelisan Miners, the tribe’s community elders, established and created NSBSSMAI.360 Although already existing for years, NSBSSMAI filed a petition for the declaration of MB only in 2018.

In 2018, the DENR issued a cease and desist order (CDO) ordering the stoppage of all mining operations in the Cordillera Administrative Region (CAR).361 This halted the operations of mining in Fidelisan at that time.362 However, it must be noted that although the CDO was issued in 2018, some operations have continued until before the COVID-19 pandemic.363

A government crackdown on illegal mining in the CAR led to a discussion among the association, including the elders, and the barangay officials that instead of risking the permanent closure of the mining operations, they must take the necessary steps to legalizing it.

2. Application Process

In 2018, NSBSSMAI filed a petition to declare a certain portion of the AD as MB and faced challenges in complying with the numerous documentary requirements. They even had to avail the services of technical experts just to be able to comply. Even with external support, they still struggled.364 Unfortunately, MGB and other relevant government agencies could only provide limited assistance considering that MGB would be the one to evaluate and monitor compliance with these requirements.365

One of the most difficult parts of the process is the compliance with the NCIP requirements. Even considering that the MB would be for the benefit of the tribe, they still had to undergo the rigorous process of the NCIP. It must be noted that while under the Indigenous Peoples’ Rights Act (IPRA) Law, the indigenous people community has priority rights over the extraction, development, or exploitation of any natural resources within the ancestral domains,366 the NCIP must ensure that the valid exercise of such right was in accordance with the spirit and principles of FPIC.367

However, the community is of the impression that the process would be easier considering that they will be the one who will conduct the mining operations and their elders have consented to the proposed MB. Such a concession is, however, not present in the rules of the NCIP.

Financing the cost of filing and processing the petition for the declaration of MB was another hurdle. Expenses

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359 For this study, focus group discussions were conducted with the members of NSBSSMAI who are also miners, regarding their association’s experience with the application process for the declaration of their area as an MB and the overall mining operations. A mining operator/financier and claim owner were likewise interviewed regarding the ASGM operations in Brgy. Fidelisan.
360 planetGOLD Philippines, supra note 357 at 72.
362 planetGOLD Philippines, supra note 357 at 80.; This information has also been confirmed by the FGD participants.
363 planetGOLD Philippines, supra note 357 at 80.
364 FGD with miners; and interview with MPENRO, DENR-MGB Official (February 2022).
365 Interview with DENR-MGB Official (February 2022).
366 IPRA § 57.
367 NCIP AO No. 3 Series of 2012, § 3.
for the cost of complying with legal requirements were sourced from contributions of association members. The cost for the processing of the petition was drawn from contributions by tunnel operators. Such predicament provided financiers a hold on the disposition of gold to be produced from the tunnel by offering advance payment to the association.

In 2020, the PMRB finally issued Resolution No. 001, Series of 2020 declaring a MB covering 10 hectares inside the AD. The whole process took two years, but it is still considered expeditious in comparison to other applications for MB in other regions.\(^{368}\)

Unfortunately, as mentioned, most mining operations stopped when the petition for declaration was lodged, believed to be because of the CDO issued in 2018.\(^{369}\) The stoppage of operations affected the miners who relied on SSM as their primary source of income.\(^{370}\) Some miners resorted to agriculture, but their income from their alternative work was not enough. Miners therefore suffered during the COVID-19 Pandemic.

### 3. Mining Contracts

The declaration of an MB in Fidelisan did not automatically cause the resumption of the mining operations. As per requirement under the law, no mining operation should commence without an SSMC.

Pursuant to PMRB’s Resolution No. 001, Series of 2020, the issuance of an SSMC is subject to the submission of the NCIP Certification, ECC, and designation of a mineral processing zone.

The process of obtaining the SSMC for NSBSSMAI was not exactly in accordance with DAO 2015-03, the prevailing IRR at the time of application. According to DAO 2015-03, the NCIP Certification and the ECC should have been submitted before the declaration of the MB. The declaration of an MB sans the NCIP Certification and ECC is a concession given to small-scale miners considering the difficulty of completing the said requirements.\(^{371}\)

In February 2021, NSBSSMAI filed its application for an SSMC and in May 2021, a ceremonial signing and awarding of the SSMC was held.\(^{372}\) However, the contract is still conditional because of the lack of the NCIP certification and ECC.\(^{373}\)

The case of NSBSSMAI is different from other MBs because a public consultation was held, the NCIP conducted their field-based investigation, and a Certification Precondition (CP) was already recommended. The only issue was the formal signing of the certification and its release from the Office of the NCIP Chairman.\(^{374}\)

Even in other MBs, the ECC has been a major issue because of the technical requirements, as well as its cost. The costs of an Environmental Impact Assessment (EIA), which is required for the issuance of an ECC, could reach millions of pesos and requires the assistance of technical experts.\(^{375}\) While ECC is important, it seems that the requirements for its issuance do not take into account the circumstances of small-scale miners. NSBSSMAI is still working on their ECC.

With the conditional issuance of their SSMC, the miners have resumed limited operations, which is about 20% of their previous regular operations. Although they are aware that such operations are considered illegal, they are propelled by their need to earn for their families and their hope of leniency from the government, especially with the economic

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\(^{368}\) planetGOLD Philippines, supra note 357 at 72.; interview with DENR-MGB, MPENRO (February 2022).

\(^{369}\) planetGOLD Philippines, supra note 357 at 89.

\(^{370}\) FGD with miners (February 2022); planetGOLD Philippines, supra note 357 at 58.

\(^{371}\) Interview with DENR-MGB, MPENRO (February 2022).


\(^{373}\) FGD with miners; and interview with DENR-MGB (February 2022).

\(^{374}\) Interview with DENR-MGB (February 2022).

\(^{375}\) Nuñez, supra note 163 at 40.
shock brought by the COVID-19 pandemic. However, even with the limited operations, the association is diligent in monitoring and ensuring that no violations and no accidents would occur.

4. Membership, Financing, and Sharing Arrangement

Only members of the Pidlisan tribe are qualified to be a member of NSBSSMAI and to undertake, or be employed in, mining operations. Prior to 2019, non-members of the Pidlisan tribe could work in the mines but their work was limited to low positions.\(^\text{376}\) They could not be financiers or team leaders and their usual responsibility was limited to assisting the miners.\(^\text{377}\) Presently, however, all members of the association must be part of the Pidlisan tribe, unless an outsider has established ties to the tribe, notably through marriage. All members are obliged to pay membership fees annually.\(^\text{378}\)

However, the funds generated by the organization from membership fees are insufficient for mining operations. Thus, NSBSSMAI does not operate any tunnels. Consequently, tunnel operations of members are supported by financiers who provide the much-needed capital. Usually, a financier is also the team leader and monitors the mining operations on a day-to-day basis. A team is composed of at least four people. Members of the team who are involved in the actual mining operations are called “regular.”

The share of a “regular” member from the proceeds of the sale of gold mined from the tunnel is determined after deducting the expenses or cost of operations and the difference will be divided among the team members. Respective shares of the team members are based on the number of days each of them has worked and the role he assumed during the entire mining operations.

Compared to the sharing scheme in Paracale, there are mining operations in Sagada’s where the sharing agreement does not allot a specific share to the equipment or machinery brought in by a team member to be used in the mining operations. The expenses for the use of such are considered costs to be deducted from the gross proceeds from the sale of gold. Essentially, in both Paracale and Sagada, the cost of equipment or machinery is taken into account in the finances of the operation. However, the treatment of the machine as if it is human with a share in the operations is more apparent in Paracale than in Sagada.

For financing operations, there is data that some of the miners had access to formal finance and were able to avail loans from microfinance institutions. However, it is unclear whether these loans were “assessed based on SSM-related activities,”\(^\text{379}\) and there is still difficulty for them to access formal financial institutions.\(^\text{380}\)

5. Access to Mining Rights and Tenurial Arrangements

The communal nature of the ancestral land in Fidelisan also influences the conduct of mining operations. The dap-ay system promotes cultural traditions and customary laws which encourage sustainable management of resources.\(^\text{381}\)

The IPRA Law recognizes the indigenous concept of ownership. It “generally holds that ancestral domains are the Indigenous Cultural Communities/Indigenous People’s private community property which belongs to all generations. As such, these

\(^{376}\) FGD with miners (February 2022).

\(^{377}\) Id.

\(^{378}\) According to the Contextual Study conducted by planetGold Philippines, membership fee is PhP1250, lanetGOLD Philippines, supra note 357.

\(^{379}\) planetGOLD Philippines, supra note 357.

\(^{380}\) Id.

\(^{381}\) Flores and Delos Reyes, supra note 358.
properties cannot be sold, disposed of, or destroyed. It likewise covers sustainable traditional resource rights."382 In Northern Sagada, there are four types of land ownership rights — individual, clan, dap-ay, and community. **Dap-ay** is the indigenous socio-political system and structure among the Kankanaey, which governs over a cluster of households in the community and is led by a council of traditional elders who collectively decide on matters concerning its members, through consensual and democratic deliberations.383

1. **Communal land can be clan-owned, community-owned, or dap-ay owned.**

Dap-ay-owned communal land — woodlots and residential lots used by members of the dap-ay

Community-owned communal land—watersheds, water sources, grazing lands, and sacred lots which are utilized and managed for particular purposes

2. **Individual land** — bequeathed over rice fields, residential, and camotal land (land planted to sweet potato or camote). It can be acquired through inheritance or through occupation and work based on the principle of owning the land that one has worked on.

3. **Clan-owned communal land** — woodlots, residential lots, and parcels of land found amidst woodlots that one works on and eventually owns. While clan-owned, Rules govern the ownership, and it cannot be sold in order to keep the land for the use of seven clan members in the present and the next generation.384

As the miners know, the mining area is communal land which is community-owned. Thus, they understand that its utilization and management is subject to the consent of the community and to the guidance of the council of traditional elders.385

Some areas are privately owned, and this has been a source of conflict. An interviewee who claims rights over a portion traversed by the mining tunnels said that their consent should have been asked first.386 According to him, the association would ask for consent from those whose land will be excavated on the surface. However, this process is not followed for those whose land was traversed underground.387

Apparently, while the effect on the land is not apparent because no hole is dug, its productivity could still be affected. Based on his knowledge, the community agrees to the use of their land for mining as long as no irrigation or rice fields would be affected. However, his rice field became unusable due to the mining operations. While he wanted to raise the issue to the elders, he knew that the result would be unfavorable to him and thus, did not bother.388

It seems that this is not an isolated case as problems with tunnels which do not comply with the agreed boundaries have been an issue.389 Based on these experiences, it is apparent that even the individually owned land is still within the bounds of influence of the dap-ay.

The dap-ay also has an influence on the management and utilization of mining resources, being community-owned. This is apparent in the fact that the elders were key in the establishment of NSBSSMAI. Even the miners have emphasized that the elders have great influence in the mining

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382 IPRA, § 5.
384 Id.
385 FGD with miners (February 2022).
386 Interview with a former miner who is also claiming rights over the land where tunnels were built.
387 Id.
388 Id.
389 planetGOLD Philippines, supra note 357 at 87.
activities. They are crucial in the management and protection of the tribe's natural resources.

6. Conflict Resolution

Conflict resolution in relation to the mining operations is largely informal with no or little interference from the government. The community adheres to their customary laws. Thus, even in times of conflict, for instance, the landowner whose consent was not properly obtained by the association so his land could be utilized for mining operations believed that there was no way that he could file a complaint against the association. He perceived the association to be in a position to persuade the barangay lupon or even the council of elders against his complaint. He just accepted the offer of compromise from the association in the form of work in the mine site.

On the other hand, current members of the association related that they have their own mechanism of resolving conflict. According to them, when there is any conflict within the association or the community, the issue is always raised to the association, the community, the elders, and the barangay who work together to come up with a resolution that would be fair and just for all. So far, this has worked for them. Their culture and tradition, especially their respect for their elders, play a big role in the mining operations of the community and this has ensured peace within their community.

7. Actual Mining Operations

The small-scale miners in Fidelisan are aware of rules and regulations which must be followed in the conduct of their mining operations. This is a result of training, seminars, and other information drives of various government agencies.\(^{390}\)

Since the declaration of a MB in their community, miners have gone back to “de mano” mining. This means that they only use simple implements and methods. They mentioned that their tools are the traditional tools that they made and have been part of their culture. These tools were used back when the mining of gold could be easily done on the surface. Even their process of gold extraction remains to be traditional, namely, gravity methods such as sluicing and panning.\(^{391}\) This is expected considering that the elders established the NSBSSMAI to “remind the miners on the sustainable use of resources through the utilization of non-chemical extraction of gold.”\(^{392}\)

Although there is an effort to limit the use of equipment, it remains difficult to be compliant with the PSSMA. Admittedly, before the MB declaration, heavy machinery and even explosives were used, though very sparingly, in order to build tunnels. These equipment have remained unused since the declaration. The miners would rather use simple tools, even if the production is lower, than risk the closure of their mining site.\(^{393}\)

After gold extraction, the tailings are then transported to Benguet or Baguio for further processing. Before the 2020 COVID-19 pandemic, the miners also sold tailings to Chinese buyers.

8. Labor Standards

Mining is a traditional occupation for the Pidlisan tribe. Most of the men have acquired their mining skills at a young age. As such, the community is oblivious to the issue of child labor and other relevant labor standards in small-scale mining.

\(^{390}\) FGD with miners (February 2022).
\(^{391}\) FGD with miners; planetGOLD Philippines, supra note 357.
\(^{392}\) planetGOLD Philippines, supra note 357 at 72.
\(^{393}\) FGD with miners (February 2022).
Efforts by the government to inform and educate the community about labor standards and child labor led to the eradication of child laborers. The Regional Office of DOLE visited their area and educated their barangay, including their tribe elders, about child labor and its legal implications. An outcome of such efforts is the keen interest of the community in maintaining a zero child labor policy while giving importance to the value of hardwork.

Mining as a family enterprise relegated Fidelisan women to typical work of cooking and cleaning. On the other hand, women elders manage the funds of the organization, which is a valued role in the community.

There is a community belief that the mining site is also a sacred place which should be treated with respect. This respect is extended to women and children as it is consequential to do otherwise. They believe their gold production will be affected if they mistreat women and children.

Even the LGU and PENRO recognize how women as mothers and wives bring the issue of health and safety in relation to the environmental consequences of SSM operations within their association and to the LGU. In one public forum by the provincial government, the women were the ones who spearheaded the discussion on the pollution of a river brought about by the use of cyanide by a mining community in Northern Sagada. For the women, water is an important resource given their domestic burdens at home and its impact on farming which is a primary source of their livelihood.

Updated data on the involvement of both women and children in the mines continue to be lacking even though officials from the municipality acknowledge their participation in the sector. LGU has an estimate of 10-15% of their population involved in the mining sector (based on their population of 12,673 as of December 2020).

According to the Municipal Social Welfare and Development Office (MSWDO), they have protection policies to protect women from discrimination and abuse. Despite this, both economic and social stigma still hamper women from forwarding their case to the respective authorities.

9. Role of Women

Women in Fidelisan engaged in ASGM appear to be treated differently at home, within the association, and in the community. At home, they deal with financial abuse from their husband which is partly due to the unpredictable income derived from working in the mines. However, it is commonplace that such cases are settled between the involved parties only, and therefore not properly recorded as official cases in the municipality.

The association is also looking into the improvement of the social welfare benefits of their members. Currently, they provide death benefits and financial assistance in case of accidents.

Figure 7. Certification of Barangay Fidelisan as a Child-Labor Free Barangay

Updated data on the involvement of both women and children in the mines continue to be lacking even though officials from the municipality acknowledge their participation in the sector. LGU has an estimate of 10-15% of their population involved in the mining sector (based on their population of 12,673 as of December 2020).

According to the Municipal Social Welfare and Development Office (MSWDO), they have protection policies to protect women from discrimination and abuse. Despite this, both economic and social stigma still hamper women from forwarding their case to the respective authorities.
An issue was also raised that the municipality is not often reached by the programs of DOLE and DSWD, and that they are only catered to by request (e.g. when they are in need of resource persons for seminars). Nevertheless, the LGU has blanket programs for both women and children — programs that are general for the vulnerable and marginalized communities, and not sector-based (e.g., interventions for solo parents, effective parenting, child labor, livelihood assistance, and skills training). Although there is no official registered organization of a women's group for ASGM, the MSWDO affirmed that women are well-represented and they effectively participate in special bodies of the LGU such as the municipal development and peace and order councils, and the VAWC desk.

Women hold a wide range of roles when it comes to their involvement in the sector. But while their socio-cultural environment may uphold the protection of women, financial abuse still persists. Their economic dependence on their husband and the lack of financial opportunities in the community further limits the women's right to economic autonomy.

10. Occupational Safety and Health Standards

Miners in Fidelisan do not use mercury, cyanide, or any other harmful chemical in their operation because they are fully aware of its harmful impact to health and to the environment. However, they still use explosives for the purpose of tunneling. They use the traditional panning method to extract gold from ore. They normally use gloves, boots, and hats as protective gear while working in the mine site, which for them, are sufficient to shield them from the hazards of working in the mines. Such practice existed prior to the declaration of MB in Fidelisan and even without prodding and monitoring from government agencies. The association and the barangay are also very diligent in monitoring compliance with the use of such protective gears.

11. Environmental Protection

Environmental protection in relation to the conduct of mining operations is reinforced by the elders. Gold as a non-renewable and finite mineral resource is deeply ingrained in the consciousness of the community. Hence, they are fully aware of conducting their mining operations responsibly. This is also the main reason why they oppose the use of any chemicals in the process of gold recovery. The association has conducted tree planting and river dredging programs in line with their commitment to protect the environment, which they plan to expand beyond the MB areas. On the part of the government, there were efforts from government agencies to educate the miners about the effects of mining on the environment.

Issues about the environment are resolved through customary practices. No investigation will be conducted unless there is a complaint before the LGU or local enforcement agency, such as the PNP. This is illustrated by the recent account of conflict with the communities of Eastern Sagada, specifically Barangays Kilong, Tetep-an Sur, Tetep-an Norte, and Antadao. Members of the Kildepan (Kilong-Antadao-Tetep-an) tribe complained about mine wastes that pollute the river flowing downstream. It was alleged that the cause was the use of chemicals, specifically cyanide, in the mining operations. This issue was resolved by the two communities among themselves. With the elders of the Northern Barangays, the Eastern Barangays imposed a penalty of Php 1 million, which was based on a Memorandum of Agreement previously signed by and between the
organizations of small scale miners of Pidlisan and the leaders of the Kiltepan.\(^{394}\)

This is not the first time that the Pidlisan tribe had a conflict with other tribes and which they resolved in accordance with customary laws. In 1999, the Pidlisan tribe and the Dalican tribe of Bontoc fought over the control of a critical water source. The tribes only came to an agreement years later.\(^{395}\)

12. Mine Rehabilitation

One method of mine rehabilitation being practiced is backfilling tunnels which are no longer used with muck. Miners also do tree planting activities to replace the trees that were cut down for timber used to support the shafts in the tunnels. However, they have yet to receive formal training on rehabilitation.\(^{396}\)

13. Enforcement and Monitoring

Interviews with various key informants showed that although the local government and police were aware of illegal mining operations within the municipality, they have been unable to make the illegal miners accountable and find it difficult to monitor and enforce the small-scale mining law.

Even if miners were already operating before the declaration of the MB, they were not arrested or reprimanded because when police tried to infiltrate, they would find no operations ongoing. It seems that the strong and close-knit community of the Northern Barangays prevented the LGU or the police from going inside their community. Further, any issue or complaint regarding mining is usually resolved within the community as well, in accordance with the tribe’s customary laws.

14. Local Development Planning

The development plan of the municipality has identified the northern part as the mining area based on the proposed Comprehensive Land Use Plan. However, there are no projects that specifically target the miners and there are no immediate plans for such given the limited financial capacity of the municipality. Both the municipality and the province admit that monitoring of the SSM activities is lacking. This accounts for the lack of information-driven programs and development planning processes.

However, while there are no programs designed to address miners’ specific concerns, they benefit from the mainstream efforts of the local government e.g., immunization programs as well as various maternal and child care interventions.\(^{397}\) There are also efforts from the LGU and national government agencies that help women gain financial independence and access to alternative livelihoods and skills training. There is also the conditional cash transfer program, or the *Pantawid Pamilyang Pilipino Program* or the 4Ps, of the DSWD.

15. Impacts of Mandanas Ruling

The local chief executive of Sagada, Mayor James Pooten, Jr., is not keen on the prospects of new funds coming in as a result of the Mandanas ruling. It appears that the devolved functions to the LGU will just offset any new funds from the increased share in the internal revenue allotment (IRA) of the municipality. Programs that would be devolved are the bottom-up projects of various agencies. The increase in the Municipality’s IRA will be earmarked for the agriculture and tourism sector. Hence, the ASGM sector will have to contend with

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\(^{396}\) planetGOLD Philippines, *supra* note 357 at 192.

\(^{397}\) planetGOLD Philippines, *supra* note 357.
the status quo unless the sector will engage the LGU for improved support to their sector, although the LGU would like to improve its intervention to the ASGM sector, given the critical issues associated with the informal operations of ASGM such as child labor, environmental issues among others. The LGU could conduct skills and livelihood training and reforestation activities. However, it is constrained by the perceived resistance of the mining community in Fidelisan to work within the formal regulations of the LGU.

For the MGB, it is still difficult to fully devolve the implementation of the PSSMA to the local government because the local governments are not yet technically equipped for the proper implementation of the law. The law states that the government’s assistance to the miners is technical and financial. The MGB, with its limited resources, had difficulty addressing the technical needs of the miners. While the LGU may be equipped to ensure the implementation of the law in terms of preventing illegal mining, it may not have the capacity and expertise to assist the miners in their technical needs.

C. Gold Trading and Financial Flow in Paracale and Sagada

Theoretically, the process flow of money from pre-mining operations up to gold trading, should be straightforward in view of the fact that all gold from SSM should be sold to the BSP or their authorized representatives. Likewise, assistance from government agencies should be extended to formal small-scale gold mining organizations and workers who bear mining contracts through related programs. When mining organizations and workers are able to produce gold, they are liable to pay taxes to the local government, if any, and should also sell exclusively to the BSP or their authorized representatives. Proper declaration of income sources also warrants the correct amount of local government taxes to be collected and paid, which benefits the LGU imposing the tax.

Benefit streams to stakeholders in SSM who may be state or non-state actors vary depending on their role in the supply chain.

Table 1. Relevant Stakeholders in the Municipality of Paracale, Camarines Norte

<table>
<thead>
<tr>
<th>Stakeholder</th>
<th>Function</th>
<th>Benefit Derived</th>
<th>Possible Role in Formalization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local financier</td>
<td>Finances the whole mining operation, oversees all transactions in the operation</td>
<td>Financial profit</td>
<td>Assist in the financial requirement of organizations/miners applying for MB and SSMC</td>
</tr>
<tr>
<td>Mining workers</td>
<td>Any individual engaged in extraction or removal of gold from the ground</td>
<td>Share in the net proceeds</td>
<td>Lead the application of MB and SSMC in their area</td>
</tr>
<tr>
<td>ASGM Organizations</td>
<td>Community organizations formed by mining workers that advocate for the establishment of MB</td>
<td>Membership fees and annual fees; income (from ore share and organization fees) from mining operations both formal and informal</td>
<td>Ensure that rights and responsibilities of ASGM workers be upheld in the MB operations</td>
</tr>
</tbody>
</table>

Although RA 11256 excludes income derived from the sale of gold pursuant to the Small-Scale Mining Act, the law does not prevent LGUs from imposing tax on small scale mining activities within their locality.
<table>
<thead>
<tr>
<th>Role</th>
<th>Responsibility</th>
<th>Benefits</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landowners/Claimowners</td>
<td>Approve the MB in areas with existing mining rights/private land</td>
<td>Royalty</td>
<td>Enter into an acceptable contractual agreement for the utilization of the mineral values from the private land</td>
</tr>
<tr>
<td>PMRB</td>
<td>Tasked to implement the rules and regulations related to SSM in the province</td>
<td>Collection of fees</td>
<td>Declare and monitor MB and award contracts for SSMC</td>
</tr>
<tr>
<td>LGU</td>
<td>Oversees regulation of ASGM in their area of jurisdiction</td>
<td>Collection of local taxes, payment for business permit registration</td>
<td>Encourage ASGM miners to enter into the formal economy by applying for MB</td>
</tr>
<tr>
<td>Local Jeweler</td>
<td>Transforms raw gold into an essential value added product</td>
<td>Income/profit from labor of producing jewelry</td>
<td>(Shall be omitted in the formalization process as gold should only be sold to BSP but local jewelry making can be proposed as an alternative livelihood for ASGM workers, especially women in ASGM, by producing value-adding products from raw gold)</td>
</tr>
<tr>
<td>Equipment Owners</td>
<td>Provides heavy equipment needed for a mining operation to function (generator, compressor, etc)</td>
<td>Profit in the sharing agreement of gold produced in the operation</td>
<td>(Shall be omitted in the formalization process, heavy equipment use is not allowed in RA 7076)</td>
</tr>
<tr>
<td>Chemical Suppliers</td>
<td>Supplies legal and illegal chemicals (cyanide, mercury, etc) to artisanal and small-scale gold miners to easily capture gold</td>
<td>Income for selling chemicals</td>
<td>Ensure that only allowed chemicals are used in the Mineral Processing Plants (i.e. ensure MPL shall not use mercury)</td>
</tr>
<tr>
<td>BSP</td>
<td>Where gold produced by ASGM operations should be sold at a competitive price</td>
<td>Increase in gold reserves of the country</td>
<td>Registration/accreditation of gold traders; certification of tax-exempted gold-supplying counterparties; ensures that the gold sold by ASGM operations compliant with due diligence standards</td>
</tr>
<tr>
<td>Mineral Processing Plant Owners/Workers</td>
<td>Processes the gold mined and tailings of an ASGM operation</td>
<td>Income/profit</td>
<td>Source of gold produced from formal ASGM operations complying with due diligence standards</td>
</tr>
</tbody>
</table>
### Table 2. Relevant Stakeholders in the Municipality of Sagada, Mountain Province

<table>
<thead>
<tr>
<th>Stakeholder</th>
<th>Function</th>
<th>Benefit Derived</th>
<th>Possible Role in Formalization</th>
</tr>
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<tbody>
<tr>
<td>Local financier</td>
<td>Finances the whole mining operation, oversees all transaction in the operation</td>
<td>Income/profit</td>
<td>Assist in the financial requirement of organizations/miners applying for MB and SSMC</td>
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<tr>
<td>Mining workers</td>
<td>Any individual engaged in extraction or removal of gold from the ground</td>
<td>Share in the net proceeds</td>
<td>Lead the application of MB and SSMC in their area</td>
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<td>ASGM Organizations</td>
<td>Community organizations formed by mining workers that advocate for the establishment of MB</td>
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<td>Ensure that rights and responsibilities of ASGM workers be upheld in the MB operations</td>
</tr>
<tr>
<td>Provincial Mining Regulatory Board (PMRB)</td>
<td>Tasked to implement the rules and regulations related to SSM in the province</td>
<td>Collection of appropriate fees</td>
<td>Declare and monitor MB and award contracts for SSMC</td>
</tr>
<tr>
<td>LGU</td>
<td>Oversees regulation of ASGM in their area of jurisdiction</td>
<td>Collection of local taxes and registration fees for business permit</td>
<td>Encourage ASGM miners to enter into the formal economy by applying for MB</td>
</tr>
<tr>
<td>IP Community (community of elders)</td>
<td>Oversees regulation of ASGM in their area of jurisdiction</td>
<td>Collection of local taxes, payment for business permit registration</td>
<td>Ensure that the environment and community will not be compromised in the formalization of any ASGM operation in the community</td>
</tr>
<tr>
<td>BSP</td>
<td>Where gold produced by ASGM operations should be sold at a competitive price</td>
<td>Increase in gold reserves of the country</td>
<td>Registration/accreditation of gold traders; certification of tax-exempted gold-supplying counterparties; ensures that the gold sold by ASGM operations compliant with due diligence standards</td>
</tr>
<tr>
<td>Local Gold Buyer</td>
<td>Buys and sells gold mined in the ASGM operation, regardless of seller, in a lower price than the standard</td>
<td>Income/profit</td>
<td>Authorized buyer/seller of gold sourced from ASGM operations</td>
</tr>
</tbody>
</table>
In practice, the financial flow and gold trading which involve actors in small-scale mining operations both in Paracale and Sagada such as the SSM associations, financiers, gold traders, gold processors, women and children, and public officials among others (see Figures 7 and 8) follow a complex pattern. Legal, informal, and illicit transactions between and among the actors either co-exist or intersect at certain points in the process.

The following are the observable trends:

1. **Dominance of Local Financiers in Mining Operations**

The lack of access to formal credit forces small-scale miners to apply for work with informal financiers who provide the capital of the mining operations and who, in return, receives a share in the profits derived from gold mining depending on how much capital has been invested. Aside from being prone to rent-seeking behavior, informal miners and mining organizations without an SSMC may experience difficulty in selling to the BSP in light of the added documentary requirements to ascertain responsible gold sourcing. Consequently, informal miners prefer to sell to the local gold buyers who are not necessarily accredited by the government.

Financing of mining operations, both in Paracale and Sagada, are generally from informal sources. Common reason is the relative ease of borrowing money from these sources. Another factor is accessibility of the funding source on account of their physical location, acquaintance, relations, or community reputation as a diligent borrower. A common traditional informal source is what they call “5-6 lending scheme.” Others go to lending investors where the amount of Php50,000 can be easily borrowed with an interest.

Some financiers are either miners themselves who are able to save their earnings as a miner from selling “high-grade gold” and investing their earnings in other businesses like selling fish or engaging in construction business. Funds can also be sourced from relatives who lend money with minimal interest and flexible date of payment. But this is usually to augment the funding obtained

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**Tailings Buyer**

Buys tailings from ASGM operations and process it to get potential gold residues

**Income/profit**

Ensure that mine waste/tailings be disposed of in accordance with existing regulations

**Mineral Processing Plant Owners/ Workers**

Processes the gold mined and tailings of an ASGM operation

**Income/profit**

Source of gold produced from formal ASGM operations complying with due diligence standards

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399 A “5-6” lending scheme is a practice by mostly Indian nationals who charge an interest of 20 percent per month for loans.
from other sources for mining operations.

Another source for miners operating formally is the organizational funds coming from annual registration and monthly dues of their members.

In the Contextual Study by planetGOLD Philippines, it was found that access to formal financing is limited. Although some stakeholders loaned from banks and financial institutions to finance their SSM activities, such loans were not approved on the basis of the SSM activity. It is reasonable that the said borrowers did not declare that the purpose of their loans is for SSM activities considering that such is informal.

Given the recent declaration of MB in both Sagada and Paracale, and the organization of their respective associations, it is interesting to note if future mining activities will be financed by formal financial institutions such as banks.

2. Use of Traditional Technology

In the sale of gold, the local gold buyers use scales to weigh how much was extracted from the ore. To measure the exact amount, the gold buyer uses a bahay, which is a small weight tantamount to a half or a whole gram. Local miners prefer to use scales rather than a digital measuring device because they have grown accustomed to the former and they are more comfortable in using the same, compared to the latter.

3. Unreported Mining Operation to the Government

Since informal miners are also operating outside the legal framework, the LGUs are not able to recognize their benefits in the movement of gold within their locality. The most that local governments can benefit from illicit gold trade is experienced indirectly, as when the miners spend the profits they receive in selling gold in the local markets.

4. Trading of Gold Through the Black Market

Small-scale gold mining in Camarines Norte has been assessed as high risk based on LBMA risk factors, which is why the BSP conducts mining site inspections. This does not mean, however, that the BSP will not accept gold from small-scale mining from this area; rather, gold from small-scale mining will be subjected to verification and submission of additional requirements, depending on the assessment of the compliance officers of BSP. If any of the risks are identified, the client relationship will be terminated with the small-scale miner and/or accredited trader because it means that the gold produced by the latter will not conform to the LBMA policies. Also included in the due diligence practices of BSP is the conduct of background checks of the persons transacting with them.

The BSP is open to considering putting up new gold buying stations subject to feasibility studies. BSP previously considered putting up a buying station in Camarines Norte, but it was found to be logistically disadvantageous because the area did not have an airport, which is critical as final assaying is performed in Quezon City. However, due to BSP’s shift to active gold buying, the agency is now reassessing the feasibility of another gold buying station in Camarines Norte. Among the factors considered are the volume of gold per area, as determined by the MGB. With regard to accredited gold traders, the BSP discloses that there are only three in Naga and one pending in Paracale.

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400 Interview with BSP Gold Buying Station, Naga, 9 February 2022
401 Id.
Although the authorities are not certain as to who exactly comprises the black market, they recognize that gold from small-scale mining is being sold outside of the BSP. It is suspected that gold sold to the black market eventually ends up outside the Philippines, to countries that do not comply with LBMA standards, in order to avoid the responsible gold sourcing policy being implemented.

In both Paracale and Sagada, there were accounts of foreign buyers, mostly Chinese nationals, buying gold with small-scale miners through a conduit or representative. This was rampant prior to the COVID-19 pandemic and subsided thereafter, due to the stoppage of production in both areas on account of the health restrictions that were implemented by the national and local government. The sale of mine tailings to Chinese buyers in Fidelisan for instance, is a mode where gold evades government regulation.

Sale of gold in the black market negates the contribution of the SSM sector to the economy. The dominance of trading of gold in the black market is not only a function of the informal and unregulated SSM operations. Policies adopted by the government are also a factor. It can be recalled that in 2010, the BSP and BIR imposed a 5% tax on gold production of SSM. According to a study, this only led to “unintended consequences,” one of which is the drastic drop in the sale of gold to BSP. In 2020, RA 11256 was adopted with the aim, among others, of providing exemption in the payment of excise and income tax for the gold produced from SSM and sold to BSP. MGB viewed this as a positive development in terms of providing the SSM sector with the needed incentive and in capturing the sale of gold through the BSP.

Among the common reasons why small-scale miners both in Paracale and Sagada prefer to sell the gold they have produced to the black market are: a) relative ease of transaction given the absence of documentation for traceability and taxation purposes; b) decision of financier on where to sell; c) apparent lack of proper information regarding the BSP’s gold buying program is widespread, as confirmed in the Contextual Study; d) lack of BSP accredited traders; e) distance of the BSP gold buying stations which is a security concern in the transport of gold; and f) personal relations established between the trader and miners (although this is specific to Sagada only).

There are new accredited traders within Sagada assisted by the planetGOLD Philippines. The fact that the SSMC is conditional factors in why there are only a few accredited traders in Sagada.
Figure 8. Financial Flow in Paracale, Camarines Norte

Figure 9. Financial flow in Sagada, Mountain Province
Government agency assistance extended to formal small-scale gold mining organizations and workers who bear mining contracts through related programs.

<table>
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<tr>
<th>LICIT FLOW</th>
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<tbody>
<tr>
<td>Financiers as the source of funding for the mining operation</td>
<td>Rent-seeking behavior with government agencies (in their personal capacity)</td>
</tr>
<tr>
<td>Pays informal ASGM workers, which can also be women in ASGM and sometimes children</td>
<td>Supplies from chemical supplier</td>
</tr>
<tr>
<td>Lease from equipment owners</td>
<td>Permission from landowners/ claim owners</td>
</tr>
</tbody>
</table>

ASGM Organizations and workers are liable to pay fees for registration and licensing to the government, and taxes to the local government, if any.

Gold produced is sold to authorized or unauthorized gold buyers, the BSP, or even jewelers, who may later sell to gold buyers.

Gold produced is sold to the BSP or its authorized buyers.

Profit from the sale of gold is distributed to shareholders.

Community can indirectly benefit from illicit ASGM operations when money is used in local market.

Gold buyers may sell to foreign buyers.
VI. Analysis

A. Conducive Policy Environment for a Human-Rights Based Approach to Formalization of ASGM

The constitutional framework provides a conducive environment for an HR-based ASGM formalization. The freedoms and entitlements of Filipinos engaged in artisanal and small-scale mining find lawful guarantee under the Constitution itself, although these may not be explicit in the text of the law. Reviewing the Constitution, however, would bear one to realize that small-scale miners are entitled to the protection of their civil, political, social, cultural, and economic rights.

Notable is the social justice provisions of the Constitution which aim to level the playing field by creating more economic opportunities for the underprivileged by giving highest priority to the protection and enhancement of the right of all people to human dignity; reduction of social, economic, and political inequalities; removal of cultural inequities through the diffusion of wealth and political power for the common good; and the regulation of the acquisition, ownership, use, and disposition of property and its increments. The Constitution further recognizes that commitment to create economic opportunities based on freedom of initiative and self-reliance is key to the promotion of social justice.

There are also national laws that provide policy support for the formalization of ASGM from an HR perspective. Notable among these national laws is the Magna Carta of the Poor that mandates the State to address the alleviation of poverty and to provide opportunities for growth and development to marginalized sectors. Certain provisions of the Local Government Code provide for public participation in local development planning and prior public consultation on any planning or implementation of a program or project of any government agencies that would affect the maintenance of ecological balance. Rights of women and their participation in national development are provided under the Magna Carta for Women. These national laws offer policy direction for ASGM formalization beyond legalization and technical regulations.

B. Inadequacies of the Regulations Provided by the People’s Small-Scale Mining Act

The PSSMA as the centerpiece legislation of the government to bring the informal nature of ASGM operations within the radar of government regulations aims to promote, develop, protect, and rationalize small-scale mining to generate employment opportunities and provide an equitable sharing of the nation’s wealth and natural resources.

However, such policy objectives lack the enabling provisions to fulfill the state obligation to protect, respect, and fulfill the rights of the rights holder. Although the laws and rules so far mentioned give recognition to the small-scale mining sector, it does not provide enough support for its formalization in terms of improving their capacity to comply with standards and regulations. Indeed, the PSSMA establishes the licensing process to legalize and regulate small-scale mining, but it lacks the necessary framework to monitor and enforce the
laws and to empower the ASGM actors. Although these responsibilities are explicit in the law, neither law nor the implementing rules provide the specific mechanism to implement the assistance mentioned.

Literature on ASGM formalization lends plausible explanations on the inadequacies of the PSSMA to address the complex dimension of ASGM informality. Global policy in managing the mining sector in the early part of the 1980s shifted to privatization and encouragement of foreign investments. Governments of developing countries, the Philippines included, adopted such a policy as part of the prescription of the structural adjustment imposed by the IMF and the World Bank. This meant among others, greater participation of the private sector and less governmental intervention in the affairs of the mining sector. It also resulted in the reduction of state resources through austerity measures and deregulation for the traditional realm of governance such as provision of social protection, public health programs, and environmental management, among others.

Although there is an allocation of rights under the PSSMA through the designation of an MB and mining contract subject to specific regulatory requirements, the small-scale miners envisioned by the said law are those with a certain level of organization, resources, and capacity. Locating these groups within the socio-political realities in mining communities in the Philippines, showed that they may be the local politician, money lender, small entrepreneur, or traders and rarely the unorganized skilled or semi-skilled individuals who are partly involved in farming or other rural occupations. The law fails to capture the sub-groupings within ASGM. One study on ASGM described it as undertaking family enterprises, where women and children are actively involved. This holds true for Paracale, where family members over the years have assumed various positions in mining operations and the informal technology has been handed down from one generation to the next.

Based on the review of the documentary requirements and application process for the declaration of an MB, it is unlikely that members of the ASGM sector will be motivated to move from their informal operations to the legalization process provided under the PSSMA. Even the cost of compliance is prohibitive. Thus, the law itself provides a legal barrier for the members of the sector operating within the informal continuum.

Recently, MGB promulgated DAO 2022-03 to address the foregoing legal barriers for MB application. The following are the notable changes:

1. **Registration of SSM is streamlined.** Registration fee was reduced by 70%, the documentary requirements simplified, and its validity was extended. Even for the application to enter an SSMC, the requirements were reduced from 13 items to 6 items and the period for issuance of the SSMC from receipt of requirements was reduced to 15 days from 30 days. Apparently, this is to address the complaints of SSM regarding the difficulty of complying with the documentary requirements.

2. **Clarified the areas open for declaration as Minahang Bayan.** Public lands which are covered by existing mining rights can be...

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408 Inception Workshop supra note 24.
subject of application as MB provided the same are not active mining areas and the holder of the permit consents and receives royalty payment. Historically, tensions between large-scale mining companies and small-scale miners have risen on conflicting claims. In DAO 2022-03, the parameters of what makes a mining area inactive are clearly stated therein. Furthermore, DAO 2022-03 does not state that consent from the permit holder over an inactive mining area is needed. This seems to address the common problem in cases where large-scale mining companies withhold their consent for areas where they hold mining rights and are subject to MB applications.

3. Clarified procedure involving other agencies in the processing of MB applications. Submission of requirements to be issued by agencies like NCIP for the CNO/CP for areas within the ancestral domain and the EMB for the ECC is only required as a condition for the issuance of SSMC. This change would indeed speed up the process for the declaration of an MB but not the commencement of legal mining operations. It must be emphasized that no entity shall engage in small-scale mining without an SSMC. Apparently, this is in response to the situations in the case studies where MB declarations have been made even pending the submission of the CNO/CP and/or the ECC. Instead, the submission of such requirements is made a condition before the issuance of an SSMC.

DAO 2022-03 still does not fully solve the two major choke points in MB application, namely the issuance of ECC and obtaining NCIP Certification for mining areas within the ancestral domain since these two requirements are within the jurisdiction of the DENR-EMB and the NCIP. However, it seems to provide a way for an application of SSMC to still move forward even without NCIP’s Certification Precondition. In the event that said Certification Precondition is not issued within the period prescribed, it allows applicants to submit the NCIP’s Field-Based Investigation Report and Memorandum of Agreement with the IP community instead.

A way forward would be the issuance of a joint administrative order between or among the agencies involved. This can help harmonize the required process in the respective agencies in view of their regulatory mandates and streamline the application process.

Further, the lack of a specific mechanism for the implementation of assistance to the miners, as stated in Section 38 of DENR DAO 2022-03, is apparent. Such assistance, especially technically, is shown to be important to the miners.

Clearly, while the DENR DAO 2022-03 must be applauded for its efforts to address issues in legalization, it also shows that formalization is more than just the legalization of small-scale miners. The DENR MGB cannot address all issues because the problems are not limited to the declaration of an MB and issuance of SSMCs and MPLs.

Finally, a mutli-dimensional State intervention in the ASGM sector is in order. The complexity of the problems associated with ASGM such as child labor, mercury use, environmental degradation, and illicit money flows among others require systematic and multi-disciplinary approach from the State. The role of the private sector is undeniably necessary along with other non-state actors, but a responsive policy

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409 Pascual et al., Answering, supra note 25.
410 DENR DAO 2022-03, § 5.
411 Pascual et al., Answering, supra note 25.
change for ASGM formalization can only be realized through State intervention, the State being the resource owner and manager of mineral resources.

The various laws to protect the environment and social protection measures to address poverty which cut across the marginalized sector are conducive to ASGM formalization. It is important, however, that the sub-groups be named, recognized, and documented as part of national statistics. This highlights the need for government information on the economic importance of the sector.412 This should inform the formalization of ASGM and the national development planning process. Thus, amending the definition of SSM is a major policy change worth considering along the direction of articulating the nuances, scale, and mode of extraction, and spectrum of informality that characterize the various rights holders within the ASGM sector.

C. De facto Open Access to Gold Mining Through Informal Community Arrangements and Local Institutions

Informal operations of ASGM in Paracale and Sagada reflect the minimal presence of the State in protecting and regulating the rights of various rights holders engaged in the mining operations. Even prior to the declaration of MB in both municipalities, and even while in the process of applying for MB, ASGM operations continued.

Local informal institutions like the council of elders in Sagada have imposed the exclusion of non-members of the Fidelisan tribe to take part in ASGM operations. The non-use of mercury is also imposed by the council as a recognition and awareness of its negative impacts on health and the environment. The established rules on sharing agreement among miners is part of the tradition that has no basis in law, except that it may be legally viewed in the nature of an unwritten contract, the terms of which are mutually acceptable to the miners and may not necessarily be in compliance with the legal standards, such as the public policy that only the State can allow the exploitation, management, and utilization of mineral resources. Although the council of elders under IPRA is a recognized institution and an attribute of the autonomy of an indigenous peoples community, the process of SSM is clearly specified by law. But given its cultural foundations, the council of elders’ authority has substituted formal state regulation by the national and local government due to weak governance and political will to enforce the laws. Although the barangay is actively engaged in local governance in relation to ASGM, most of its members are also members of the council of elders. The mineral resources being mined is considered a community property to which the elders hold moral and political authority in terms of accessing it.

In Paracale, the local mining organization or informal groups of miners through their support to the local barangay are recognized for the support they provide to the community. This may be in the form of ayuda or aid during the pandemic, akin to corporate social responsibility or through the local jobs generated, stimulating local entrepreneurial activities. Engagement in agriculture is a recognized economic activity but the “jackpot” mentality for high-grade gold is ingrained as a commonly shared aspiration in the community. This may be due in part to the geological knowledge shared by the community on the abundance of mineral resources like gold in their locality. Despite their awareness of the risks and dangers of the informal ASGM

412 Hilson & Maconachie, supra note 38.

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operations, the community accepts them as part and parcel of the trade that generations before them have relied on.

Interestingly, the LGU of Paracale has memorialized gold mining as a major economic activity of the municipality by putting up a gold museum showcasing the ingenuity and craftsmanship of local jewelers. Yet the municipality lacks baseline information of the ASGM sector, including a local development plan for the sector. Although there are ordinances adopted by the local sanggunian, their implementation is also challenged by lack of funds and effective enforcement.

A financier is a major stakeholder in ASGM informal operations in Paracale and Sagada, and is crucial to the direction of the financial flows linked to ASGM. The legality of financial flow is highly dependent on the motivation and incentive of a financier in the absence of effective regulation from the State. From sharing agreements or payment of wages, processing, and trading of gold, a financier directs or influences the outcome and benefit stream from the ASGM operations. Aside from the motivation of hitting the jackpot, a financier like any entrepreneur has to deal with the competitive nature of doing business, for instance, deal with the burden of paying interest and avoiding risk to his or her investment. In the scheme of the formalization of ASGM, a financier occupies a critical role in providing the investment needed which the government could not adequately provide.

D. Alignment of National Laws on ASGM with International Regulatory Frameworks and Initiatives

The Minamata Convention on Mercury provides a bridge to the formalization of ASGM. The NAP to eliminate mercury-use in ASGM is a distinct process from the national development process of formalizing ASGM. It is necessary to identify the areas of convergence for the NAP on Minamata Convention with the sectoral action plan for ASGM formalization to avoid duplication, among others.

The Convention highlights the distinct global responsibility of the ASGM sector in addressing the elimination of the anthropogenic source of mercury emission. Such responsibility becomes even greater in the context of the global climate action on mitigation and adaptation. This places the ASGM sector at the local level with a major role in environmental protection and local climate adaptation and mitigation plans. Market approaches to address the elimination of mercury use should be dealt with caution.

Compliance by the Philippine Government as a state party to the Convention should go beyond technical improvements, the impacts of mercury use, and its management. They should be aligned with other state policies on environmental management, conservation, and protection. The synergism with other commitments of the Philippines with other MEAs should be explored. Equally important is the capacity building of government agencies that will implement and monitor compliance to the Convention, including policy and institutional reforms.

Other international frameworks that would add value to ASGM formalization are the various voluntary guidelines on certification, due diligence initiatives, and traceability schemes. The different certification schemes on ASGM have their respective limitations and application. These frameworks operate through a third party, usually a private firm or a government agency aimed at auditing the
performance or behavior of a member in accordance with a set of criteria.

It is interesting to explore responsible gold frameworks that involve the stakeholders themselves. A reference to other sectors, for instance, organic product certification through the Participatory Guarantee Systems of the International Federation of Organic Agriculture Movements. As a certification mechanism for organic food products, the Participatory Guarantee System is based on the principle of self-governance, participation, trust, and transparency.

According to a report, the stakeholders of ASGM are the following: 1) artisanal and small-scale gold miners, 2) ASGM communities and adjacent villages, 3) government, both national and local, 4) multi-sectoral boards (e.g., PMRB, Protected Area Management Board), 5) church, 6) NGOs and other cause-oriented groups, 7) gold and mercury traders (including jewelers), 8) large-scale mining companies, and 9) research and academic institutions. This proposal for a responsible sourcing guideline organized and managed by ASGM stakeholders themselves is for the purpose of highlighting the necessity of bringing greater stake for ASGM stakeholders in the formalization process for its sustainability.

E. Invisibility of Women in ASGM

Generally, the Philippines is considered one of the countries with substantial laws and policies on women and gender equality. However, the women working in the ASGM sector have yet to be recognized as a sub-group needing protection and at the same time with significant economic contribution. In the context of the integration of the ASGM in the global economy, women and children are recognized as vulnerable groups that need protection from the negative impacts of mercury-use under the Minamata Convention on Mercury.

Women are subsumed under the sector of rural workers. Their practical and strategic needs are hidden from appropriate policy interventions of the State. The policy of non-discrimination of women which is constitutionally mandated and operationalized in various laws, policies, and projects is rendered ineffectual. Women in ASGM face a triple-burden which is equally true with women in other sectors. However, environmental degradation associated with ASGM in informal and even illegal operations may add another layer of burden to them. For instance, pollution affecting water sources due to mercury use may require women as household keepers to fetch water for washing or cooking from remote sources. Women in ASGM are also placed in a disadvantaged position in terms of accessing mining rights as existing rules and regulations are silent in this regard despite the explicit constitutional policy on the role of women in development and specific provisions under the Magna Carta of Women that seeks to eliminate forms of discrimination and the recognition, protection, fulfillment, and promotion of their rights particularly those in the marginalized sectors. They are also generally relegated to traditional work for women in relation to mining operations. But this should be taken in light of the degree of their participation in decision-making in the mining operations and in the distribution of benefits.

415 Id.
416 Inception Workshop supra note 24.
As discussed in planetGOLD Philippines’ Gender Analysis Report in Philippine Small-Scale Mining, the country already has an enabling policy environment for the promotion of women’s rights in SSM. However, there is still no explicit directive for SSM governing bodies to integrate gender-responsive interventions in the SSM communities. This includes agencies such as MGB, PMRB, and other LGUs.

F. Significant and Indispensable Role of LGUs in ASGM Formalization

Existing laws and policies on local governance clearly indicate the significant and indispensable role of LGUs in the process of ASGM formalization. LGUs are mandated with specific power and functions in regulating, monitoring, and enforcing laws and regulations on small-scale mining operations and relevant environmental laws subject to certain supervisory functions of the DENR.

The Local Government Code, which ante-dated the PSSMA and other environmental laws, operates within the general framework of SSM. Thus, it is blind to the conception of ASGM as a complex system of activity involving heterogeneous rights holders subject to state protection and regulations. The LGU, given its position in the hierarchy of governance, is in a significant position to influence the implementation and outcome of ASGM formalization. A broader view of formalization that takes into account community participation and localized actions provides a better alternative to the previous top-down approach on ASGM formalization.

Community-based resource management is an institutionalized approach in environmental governance in the Philippines. This is particularly significant in fisheries and forest management, protection, and conservation. Integrating a community-based approach to minerals management is worth exploring. This logic is founded in the fact that forest areas are also the sites for MB, making them prone to environmental risks, hazards, and degradation. Under existing regulations, forest rehabilitation is a requirement in the post-mining stage. The PSSMA is clear on the requirement of mine rehabilitation, but given the informal and even illegal operations of ASGM, mine rehabilitation is not being practiced nor monitored by government agencies.

If the concept of MB is broadened from a mere site of extraction of gold to a unit of management that license holders should manage throughout the entire stages of mining operations, the negative environmental outcomes may be properly addressed. This is by analogy to the best practices in forestry and fisheries management where the principles of co-management are applied.

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417 Barney, supra note 45.
418 See Robert S. Pomeroy & Rebecca Rivera-Guibè, FISHERY CO-MANAGEMENT (A PRACTICAL Handbook), (2006) available at https://www.idrc.ca/sites/default/files/openebooks/184-1/index.html (Cooperative management or co-management can be defined as a partnership arrangement in which the community of local resource users (fishers), government, and other stakeholders (boat owners, fish traders, boat builders, businesspeople, etc.) and external agents (non-governmental organizations (NGOs), academic and research institutions) share the responsibility and authority for the management of the fishery. Through consultations and
However, the application of co-management as applied in coastal resource management may be limited given that gold is a non-renewal resource compared to fisheries and aquatic resources. But the operational mechanism where the State as the owner of mineral resources, and through LGUs, share with key stakeholders, decision-making functions, implementation and the allocation of rights and benefits is worth looking into. The local legislative powers of LGUs can provide enabling mechanisms through effective enforcement of rights, imposition of penalties, promotion of incentivized norm or behavior, and incorporation of the management system in local development planning, among others.

Theoretically, the Mandanas Ruling would have the effect of increasing internal revenue allocations of all LGUs. However, regional government agencies and LGUs share the view that the increase will cover the cost for the devolved functions to the LGUs. In effect, there will be no additional budget for other equally important concerns which have been perennially given little priority in budget allocation. The ASGM sector is one of those, and thus, may have to compete with other equally important concerns of the LGUs.

The illegality of financial flow is influenced primarily by the informal arrangement which certain non-state actors in the supply chain find beneficial to maintain. Likewise, informal institutions whose legitimacy is traditionally accepted within the community like the council of elders provide the de facto authority which extends to the sharing agreement in the area. Compared to Sagada, the sharing agreement in Paracale is more lopsided in favor of the financiers where individuals with financial resources and political influence assume the dominant authority in the flow of money and benefits. The laws to curb, if not to eliminate, illicit transactions are adequate but are usually hindered by weak governance and enforcement. Information and evidenced-based policing is wanting both at the national and local levels.

There are intervention points in the illicit financial flow which can be addressed through effective enforcement and communication strategies for actors in ASGM to transition to the formal system, selling of gold to informal gold buyers or to the black market; and, 3) imposition of “protection money” or extortion by public officials or law enforcement officers.

It should be noted that the value referred here is not only in terms of monetary transactions but also the rent or value for instance of improper disposal of waste or rehabilitation of the mine site. But this would require further investigation and appropriate methodology for its proper valuation. The unpaid rent in terms of environmental damage or disturbance could be minimized through effective enforcement and monitoring using the conditionalities provided under the ECC. Again, this is a function of inadequate enforcement and effective environmental governance at the local level.

IFFs linked to ASGM manifest either in the form of maximizing profit and/or extracting values from actors in the supply chain of ASGM. The informal operations of ASGM both in Paracale and Sagada as shown earlier (see figure 8 and 9) are linked to IFF in terms of the following: 1) non-payment of proper taxes both to the local and national government, 2)
although it should be noted that operating formally is not limited to registration of the organization and operating within the MB. The entire process of conducting mining should be compliant with the required health and safety, labor, and environmental legal requirements. Non-compliance with these standards readily brings the flow of benefit towards IFF. Non-payment of proper share, wage, taxes, or compliance with environmental standards and regulations lead to rent being retained by non-complying actors in the value chain, notably the financier. Hence, relevant government agencies like DOLE, EMB, MGB among others, can help mitigate the impacts of associated issues on child labor, health and safety standards, gender discrimination, and environmental protection, among others.

The absence of, or inadequate or fragmented, baseline information at the local and national levels indicates how ASGM as a sector is considered in development planning, notably on poverty reduction efforts of the State. Data for planning rests on a robust data collection for effective programming, policy coherence, and systematic targeting of beneficiaries.

Much of the associated issues with the informality of ASGM like smuggling, tax evasion, or bribery, that perpetuate or enable the actors engaged in IFFs, should be dealt with the full force of the law. However, considering that poverty and lack of economic opportunities are major drivers for most of the miners to engage in informal ASGM, and wittingly or unwittingly are involved in IFFs, strategies to address such issues should be framed within the sustainable development planning framework and should go beyond the usual law enforcement and security approach.

Instructive on this note is the government’s poverty reduction program under the Magna Carta of the Poor which mandates the progressive realization of the National Poverty Reduction Plan and the local

poverty reduction of LGUs plan through a bottom-up approach. The engagement of this platform through an organized ASGM sector can be a pathway to mitigate IFFs linked to ASGM.

ASGM in both Paracale and Sagada face the following challenges in financing their operations:

▶ **Creditworthiness of miners.** To secure loans for operations from formal lending institutions, a borrower is subject to due diligence to determine one’s capacity to repay the loan to be obtained, including the interest. Part of which is appraisal of any collateral in obtaining the loan. Although there are skilled or semi-skilled individuals who are engaged in ASGM, they do not have sufficient collateral and financial documents required in obtaining a loan from banks. Since most of the ASGM miners are in the informal sector and do not have a fixed salary, financial literacy, more so owning a bank account, is not a priority of the miners/workers.

▶ **Absence of investors who will not participate in or influence the pricing and trading of gold.** It is a common practice that the financier, gold trader, or the person who invested in the mining operations has a pre-existing arrangement to buy the gold from the miners. Since the profit in an ASGM operation relies on the gold production, financiers as main investors have an immense influence on when and where to sell the gold produced by the operation.

▶ **Lack of documentation and insufficient collection of legally mandated payments to the government.** Both the local government of Sagada and Paracale have no available data on the number of people engaged in ASGM and their respective activities. Even with respect to collection of production data from mining sites
within the MB, the LGU laments the apparent resistance of the miners to provide the necessary information. It seems from the perspective of the miners or members of the community, any inquiry from the LGU in relation to the number of sacks of ore produced or taken out of the mining site would mean the imposition of taxes or fees. If given proper orientation, technical and financial support, and training, miners from both Paracale and Sagada can comply with the documentation requirements under existing regulations.

- **Lack of regulation of the value chain.** *Bringing the entire value chain of ASGM under state regulations is one of the desired outcomes of its formalization.* Under existing regulations, the BSP should be the main endpoint of gold produced by ASGM. However, gold smuggling remains a major problem for BSP due to its lack of accessibility, resources, and enforcement function.

In terms of complying with BSP regulations for gold trading, the following are the key challenges of ASGM:

- **Compliance with documentary requirements.** *The required documentation alone is daunting for persons interested to be accredited in selling gold.* Gold sale has specific requirements and burdens to the seller, which may translate to additional red tape in benefitting from ASGM. Although tax exemptions are available to gold sellers, prior documentary requirements have to be fulfilled. Accredited gold buyers are also not publicly listed, making gold sale difficult for people who want to follow licit gold trade measures.

- **Traceability/sourcing of gold.** *Compliance of artisanal and small-scale gold miners with BSP requirements, for instance, disclosure of the source and manner of producing the gold, is hindered by their reliance on informal operations and traditional practice with little or no documentation.* In both Sagada and Paracale, documentation of work hours, which are bases for their share, are not a priority of the miners. They either rely on memory recall or trust with the members of the team. Since most of the miners were self-taught or trained as part of family tradition of working in the mines, there is very little innovation in the operations, and that includes the recognition of the importance of documentation. Though they are aware that they are operating informally and are hardly compliant with legal standards (e.g. occupational and safety and labor standards) and are aware of the consequences of not complying with them, it is still a function of accessibility of government support and appropriate information and affordability of the cost of compliance.

- **Inaccessibility of the government gold trading center/hub.** There are only five BSP buying stations in the country. For Paracale miners, the nearest Gold Buying Station is in Naga City, about 127 km away. Meanwhile in Sagada, the nearest buying station is the one located in Baguio City, which is about 150 km away. The geographical location alone of the buying stations presents security concerns for the miners, let alone the cost of bringing the gold to the buying station. In Sagada, there are newly accredited gold buyers who have yet to have a transaction with local sellers as production of gold has yet to resume.
VII. Conclusion

Although the laws to protect, respect, and fulfill the rights of small-scale miners with their corresponding responsibilities of rights holders are in place, the same have to be fine-tuned with the realities, nuances, and dynamics of informal ASGM operations. Notable is the recognition of ASGM as a heterogeneous community of rights holders of men and women, with varying interests and motivations. The sector is engaged in a socially constructed arrangement on the exploitation of gold mineral resources, terms of determining access to it, use and level of technology for its extraction, and the distribution of benefits and financial flows once it has been processed, and traded. Usually, gold is traded outside of BSP, the only legal channel under the law.

Existing laws and regulations in petitioning for a MB and the application for mining contracts by interested ASGM organizations are considered hurdles due to the prohibitive costs of processing the application and bureaucratic red tape. The piecemeal policy reforms only worked to slow down the momentum for the legalization of ASGM organizations, not to mention the coherence in its implementation by concerned agencies.

The lack of or fragmented information about the ASGM sector on the specific role and contribution of women remains a challenge to evidence-based policy making, implementation, monitoring, and enforcement. Women in ASGM face a double burden due to their invisibility in government statistics. The invisibility of women in policy discourses in ASGM leads to their further marginalization. It is argued that policy in ASGM should consider their perspective and suggestions for improvement to avoid failure of policy interventions.

The impact of the recently promulgated rules and regulation under DAO 2022-03 remains to be seen on how it will reform the ASGM sector in terms of ease of compliance by small-scale miners and improved enforcement mechanisms among others.

On the government’s end, the de facto open access to mineral resources diverts much needed revenue away from the government’s coffers. Such should have been plowed back to the ASGM sector and the

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420 Hirons, supra note 406.
community hosting the ASGM operations through public investment in projects and programs for poverty alleviation and social protection, among others. Of great concern are the challenges posed by IFFs linked to ASGM due to poor enforcement and regulation of the entire supply chain of ASGM.

The global drive to formalize the ASGM is an indication of the significance of the sector in terms of people employed in the sector and the environmental problems associated with the use of mercury. International agreements like the Minamata Convention and voluntary guidelines of OECD on due diligence and other international mechanisms for gold certification and traceability offer a template to induce policy reform in the ASGM sector. It also adds political pressure to the government to improve the performance of the ASGM sector in terms of making concrete plans to formalize it. However, the transition requires improvement of the capacity of relevant government agencies as well as the required resources for capacity building. Adoption of international guidelines based on convention or voluntary guidelines, however, should be adopted in the local context. It should be effectively communicated to make it accessible and acceptable to the ASGM stakeholders.

The strategy to formalize ASGM should be sensitive to and recognize the heterogeneity and complexity of the sector. It should address the elimination of their social and economic vulnerabilities both at work and at home considering the mode of operation of ASGM as a family enterprise. Analysis of gender norms within the spectrum of ASGM informality should be incorporated as part of an HR-based approach to formalization.

The State as duty bearer is bound to curb, if not eradicate, the development issues of poverty, environmental degradation, child labor, and discrimination against women, among others associated with ASGM as it also undermines rule of law. Respect and protection of HR is possible only when the rule of law is enhanced and strengthened as it ensures the enjoyment of rights and entitlements, and the accessibility and availability of remedies to rights holders for any HR harm or violation.\footnote{UNITAR & UN Environment, Handbook, supra note 3. power’. Co-management is also called participatory, joint, stakeholder, multi-party or collaborative management.)}

Literature on ASGM formalization and the experiences and aspirations of people on the ground reflect a common thread of effective involvement of the rights holders, including non-state actors in the governance of the entire supply chain of ASGM. The State as the duty bearer has the legal obligation among others, to implement the laws and its commitments to international agreements like the Minamata Convention, but also to amend them to suit the existing needs and realities of the ASGM sector. It has the correlative duty of providing effective legal and non-legal remedies. The sustainability of ASGM formalization through an HR-based approach will thrive under the rule of law and good governance. But rights holders should be capacitated by the State to enable them to claim their rights and perform their responsibilities and pursue a life with dignity. Thus, it takes a community to mine and sell gold with dignity.
VIII. Pathways to Formalization of ASGM

The review of the laws and policies on ASGM at the local, national, and international levels coupled with the case studies on Paracale and Sagada provided a perspective on the legal, economic, political, and social context on which the process of formalization may be carried out. Formalization as a policy intervention should be geared to integrate ASGM in the development processes being done by the State. Hence, this will require developing the capacity of and organizing the small-scale miners to be able to participate and contribute to the desired outcome of ASGM formalization such as poverty reduction, elimination of the use of mercury, environmental protection, protection of women and children, and licit gold production and trading, among others. The State as duty bearer has the obligation to provide the conditions that will enable the ASGM actors (miners, women, financiers, etc) to participate and engage the formalization process effectively and free from discrimination. This means recognition of the ASGM actors as key stakeholders in the formalization process.

From an HR-based perspective, the recommendations for the formalization of ASGM are disaggregated in terms of the duties of the State (e.g., implementation and enforcement of policies and regulations, capacity-building of rights holders, etc.) and rights and responsibilities of ASGM actors as rights holders (e.g., participation in capacity building activities, organizing their ranks, compliance with government regulations and standards).

A. For the Duty Bearers

1. For the MGB to lead the review of the concept of MB to broaden it from a mere extraction site to a management unit within the framework of an ecosystem approach that adheres to science-based management to protect the environment and community. The MB in legal terms is the State’s regulated access to mineral resources through contracts and required regulatory mechanisms. Thus, it should be a platform for stakeholders to improve their economic and social condition built on their active participation in the planning and decision-making process, that they be informed and capacitated to perform their specific roles and responsibilities. The process should be matched with appropriate capacity building and support mechanisms.

In the same vein, the definition of small-scale mining should be revisited. The current definition of SSM is blind to the specificities of ASGM such as the artisanal and subsistence nature of its operations, labor-intensive, low-level of technology that does not require capitalization in the scale of SSM, and the participation of women, among others. Thus, this will entail the amendment of the PSSMA.

2. Conduct a regular monitoring and assessment of the implementation of the DAO 2022-03. This should involve the participation of the ASGM and other stakeholders in order to inform the improvement of its implementation.
3. Mainstream the transition process of ASGM formalization in all levels of government development planning.

- Create an inter-agency task force headed by MGB in coordination with the National Economic and Development Authority (NEDA) for the drafting of the NAP on the formalization of ASGM with representation from all stakeholders. NEDA, being the primary agency in national development planning, is in a strategic position to lead and mainstream ASGM formalization across agencies and levels of governance, from national to local. The plan should ensure a pre- and post-formalization strategy that aims to provide technical, logistical, and financial support for the organizational and individual strengthening of capacity of the ASGM actors.

- Determine the areas of convergence with the NAP on Minamata Convention to streamline the process and involvement of relevant agencies and to avoid duplication of the two development planning processes.

- The Department of Interior and Local Government (DILG) can mandate the LGUs where ASGM are significantly present to systematically include the ASGM actors such as the miners, women, local financiers among others in local development planning.

- Enhance the current initiative of BSP of engaging other agencies at the Regional Development Council processes to address the mitigation of IFFs through a developmental approach.

4. Develop a systematic and effective documentation based on solid baseline information of the ASGM actors:

- Mandate the PSA to include the ASGM sector in the national census taking into account the relevant information that will be needed for the development of NAP. This should be done with MGB and PMRB.

- Tap the support of NGOs with relevant expertise in developing the information baseline.

5. Mitigate IFFs and illegal gold trading.

- Address illegal trade of chemicals and IFFs through effective law enforcement and prosecution. Involvement of the community through education and information campaigns has been shown to be effective in environmental and coastal law enforcement. This can be replicated in ASGM communities. Other state actors such as the prosecutors and judges should likewise be engaged by MGB and BSP to strengthen prosecution of violators of illegal trade of chemicals and illegal gold trading, respectively. This assumes an informed and capacitated law enforcement agency and a bureaucracy adhering to good governance, transparency, and accountability. The outreach program of BSP on licit gold trading should be combined with an effective communication strategy that takes into account appropriate content, language, media, and social media platforms for wider and effective reach of the target audience. This should be done within the framework of the NAP on Minamata Convention which specifically mandates an appropriate communication strategy on the elimination of mercury-use and the role of women.

- Strengthen ASGM as a sector by assisting them not only to register as a formal organization but also by providing them with capacity building.
activities which include financial literacy and investment planning, among others.

- For LGUs where MB is constituted: Adopt ordinances that incentivize registration of ASGM miners, reporting of relevant information like production data and other relevant information to enable the LGU to implement evidence-based regulations. Incentives may be in the form of increased budget allocation to the sector or supplemental livelihoods.

- Study the development of a system of localized certification of the mining areas in terms of compliance with labor and environmental standards among others, which should involve the stakeholders, notably the communities which are directly and to a certain extent, indirectly affected by ASGM operations. This is in the nature of self-regulation based on cultural and social practices of the community but are consistent with laws and public policy. For instance, in Paracale, their annual festival on gold jewelry making should have a criteria that the gold to be used by the jewelers participating in the contest should be licitly sourced. This can help institutionalize the notions and processes of responsible gold sourcing, due diligence, and traceability at the local level and may in turn ripen to a best practice that can be replicated in other areas.

- Other ASGM actors such as entrepreneurs with sufficient capital and resources and are capable of complying to formal guidelines and standards should operate ASGM and be provided with support to access funds and investments from private and public financial institutions. The government can provide tax incentives for instance, to financial institutions to develop a portfolio specific to the needs of ASGM operations, embedding therein the appropriate due diligence guidelines. Financiers organized as a sole-proprietorship, corporation, association, or cooperative should in turn be required to adopt an HR policy and adherence to relevant due diligence guidelines, certification, and traceability mechanisms appropriate to the scale of their capital and operations in their internal rules and regulation to be able to avail of the financing opportunities that may be provided by public or private financing institutions.

6. Revisit the gold trading policy of BSP.

- BSP should adopt an effective social marketing strategy to entice and convince the stakeholders in ASGM to patronize the gold buying program. Part of the goal should be to make the appropriate content accessible in terms of language and to articulate a nuanced explanation of relevant international standards that BSP is promoting and implementing. Ultimately, it should encourage self-reporting of relevant information that will help in mitigating IFFs in ASGM. This would entail coordination with other appropriate national agencies and LGUs where ASGM is significantly present.

- Extend to gold trading a multi-stakeholder approach to formalization. Explore involvement of other non-state actors such as gold traders, jewelers, and even pawnshop owners, among others, who are usually the end-users of gold from both legal and informal sources. They are also the stakeholders within

422 See Communication Theory, Social Marketing Theory, available at https://www.communicationtheory.org/social-marketing-theory (last accessed May 24, 2022). Social marketing theory is a collection of theories that focus on how socially valuable information can be promoted. This theory has been used by social and welfare organizations to help promote or discourage various behaviors. The theory is administrative in nature in such that it seeks to outline a framework that can be used to design, implement and evaluate information campaigns. The target audience is identified based on their information needs. Once this is done information is packaged and distributed in a manner that will be easily accessible to the intended audience. negotiations, the partners develop a formal agreement on their respective roles, responsibilities and rights in management, referred to as 'negotiated
the reach of government regulations at the local level who can influence the desired behavior in terms of ethical sourcing and consumption of gold through effective communication strategies and information and education outreach programs by government and NGOs. Organizing them around the framework of localized ethical gold sourcing and trading, free and non-complicit to environmental degradation and HR abuse, or under the banner of “Gold with Dignity” is worth studying.

7. Address the invisibility of women in ASGM in terms of their practical and strategic needs:

- Both the national government and the LGU should conduct a more proactive approach in the reporting and documentation of women and children involved in the ASGM sector. Efforts on documentation should be refined through inter-agency collaborations amongst DSWD, MGB, and the LGU so as to formally recognize the involvement of women in the sector and address the burden that they carry. Cooperation with the PCW and NGOs can also improve the resources for VAWC victims and survivors in terms of capacity building and psycho-social support, among others.

- Streamline the documentation and reporting on VAWC especially among local interagency authorities. Moreover, documentation should not only be limited to formal cases settled in court, but also include out-of-court cases. Information and education on VAWC reporting at the barangay level should be enhanced and appropriate capacity building for first responders to reported VAWC cases should be provided.

- Map the involvement of women in ASGM which are site-specific to determine appropriate intervention and support that should be given to them to reduce and address their vulnerabilities and marginalization in terms of social and economic benefits and participation in decision-making in ASGM operations.

- Tap the expertise of private sector or NGOs working on women sector for social preparation of the women in ASGM to enable them to participate in the formalization process.

B. For the ASGM Actors as Right Holders

1. Undertake organizational development and strengthening programs in areas such as organizational management, financial management, and literacy and consolidation of membership, among others.

2. Review the organizational processes in order to address exclusion or discrimination of women within the organization.

3. Conduct capacity building training to improve knowledge and compliance to laws and regulations affecting ASGM operations at the local and national levels. This can be done for instance in partnership with NGOs providing legal and para-legal trainings or with government agencies such as DOLE and DSWD.

4. Participate in local development planning and
References


- Bangko Sentral ng Pilipinas. (n.d.). *Gold and Silver Buying and Selling Guidelines*. Coins and Notes - Policies and Programs. bsp.gov.ph/Pages/CoinsAndNotes/PoliciesAndPrograms/GoldAndSilverBuyingAndSelling.aspx


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**Laws and other Government Issuances**

- *1987 Philippine Constitution*


- *An Act Creating a People’s Small-Scale Mining Program and for Other Purposes [People’s Small-scale Mining Act of 1991], RA 7076.*


- *An Act Providing for a Comprehensive Air Pollution Control Policy and for Other Purposes [Philippine Clean Air Act of 1999] RA 8749.*


- *An Act Providing for a Magna Carta of the Poor [Magna Carta of the Poor] RA 11291. (2018).*


- *An Act Strengthening Compliance with Occupational Safety and Health Standards and Providing Penalties for Violations Thereof [RA 11058]. (2017).*

- *An Act to Ordain and Institute the Civil Code of the Philippines [Civil Code]. RA 386. (1949).*

References

- Civil Code of the Philippines.
- DENR. Revised Implementing Rules and Regulations of Republic Act No. 7076 [People’s Small-Scale Mining Act]. [DAO 2015-03].
- Full Devolution of Certain Functions of the Executive Branch to Local Governments, Creation of a Committee on Devolution, and for Other Purposes, Executive Order No. 138 s. 2021
- Implementing Rules and Regulations of EO No. 138 s. 2021
- 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 s. 2012.
References

- 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, s. 2012.

Jurisprudence

- *Batangas CATV vs Court of Appeals*, G.R. No. 138810, September 29, 2004
- *Calanza v. Paper Industries*, G.R. No. 146622, April 24, 2009
- *League of the Philippines v. DENR*, G.R. No. 175368, April 11, 2013
- *Felicilda vs. Uy*, GR No. 221241, September 14, 2016
- *Reyes v. People*, G.R. No. 237172, September 18, 2019
- *Mandanas vs. Executive Secretary*, G.R. No. 199802 and G.R. No. 208488, July 3, 2018
References
ANNEXES

ANNEX A Minamata Convention Annex C
Annex C - Artisanal and small-scale gold mining National Action Plans

1. Each Party that is subject to the provisions of paragraph 3 of Article 7 shall include in its national action plan:

(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; and

(k) A schedule for the implementation of the national action plan.

2. Each Party may include in its national action plan additional strategies to achieve its objectives, including the use or introduction of standards for mercury-free artisanal and small-scale gold mining and market-based mechanisms or marketing tools.
### ANNEX B Comparative Table of DENR DAO 2015-03 and DAO 2022-03

<table>
<thead>
<tr>
<th>Sec. 1</th>
<th>Title</th>
<th>DAO 2015-03</th>
<th>DAO 2022-03</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title</td>
<td>Same</td>
<td>Same</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>Sec. 2</th>
<th>Policy</th>
<th>DAO 2015-03</th>
<th>DAO 2022-03</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy</td>
<td>Same</td>
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<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sec. 3</th>
<th>Objectives</th>
<th>DAO 2015-03</th>
<th>DAO 2022-03</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objectives</td>
<td>Same - slightly different wording for (a)</td>
<td>Additional and Definition of Terms</td>
<td></td>
<td>The new DAO includes the definition of angle of repose, claimowner, flood cycle, free board, mill tailings, mill tailings storage, Mineral Processor’s license, mines waste, mines waste dump and petitioner. Removed definition for Certificate of Environmental Management and Community Relations Record (CEMCRR) and EO 79. Amended the definitions of Potential Environmental Impact Management Plan</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sec. 4</th>
<th>Definition of Terms</th>
<th>DAO 2015-03</th>
<th>DAO 2022-03</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of Terms</td>
<td>Additional and Definition of Terms</td>
<td></td>
<td></td>
<td>The requirements were simplified, the application fee was reduced, and the validity period extended.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sec. 5</th>
<th>General Provision</th>
<th>DAO 2015-03</th>
<th>DAO 2022-03</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Provision</td>
<td>Same</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sec. 6</th>
<th>Registration of Small-Scale Miners</th>
<th>DAO 2015-03</th>
<th>DAO 2022-03</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registration of Small-Scale Miners</td>
<td>Amended</td>
<td>All persons undertaking or intending to undertake small-scale mining shall register as small-scale miners with the Board, subject to the submission of a valid government issued identification card and proof of Filipino citizenship. For the above purpose, the Board shall maintain a registry of small-scale miners within its jurisdiction.</td>
<td>The requirements were simplified, the application fee was reduced, and the validity period extended.</td>
<td></td>
</tr>
</tbody>
</table>
ANNEX B Comparative Table of DENR DAO 2015-03 and DAO 2022-03

<table>
<thead>
<tr>
<th>Sec. 7</th>
<th>Licensing of Small-Scale Mining Contract Applicants</th>
<th>DAO 2015-03</th>
<th>DAO 2022-03</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Changed to Areas Open for Declaration as Minahang Bayan; removed, licensing of SSMC applicants.</td>
<td></td>
<td></td>
<td>The new DAO provided a revised listing and parameters for areas open for declaration and clarified the process. It must be noted that in this DAO, it defines an inactive mining area and further does not require the petitioner to obtain consent of the holder of the existing mining right</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sec. 8</th>
<th>Areas Open for Declaration (became Sec. 7)</th>
<th>NEW</th>
<th>The DAO now provides conditions for suitability of a minahang bayan declaration</th>
</tr>
</thead>
</table>

| Sec. 9 | Procedure in the Declaration of Minahang Bayan | Amended | Notable change is the removal of the requirements of ECC and NCIP certification for the declaration of a minahang bayan but required for the issuance of an SSMC. The initial review by the Director is likewise removed. |

| Sec. 10 | Application to Enter into a SSMC | Amended (lesser requirements; from 13 to 6) | There are lesser requirements and shorter periods for the Board to check if the area is free from conflict. There is also the provision in case the Certification Precondition is not issued within the prescribed periods. |

| Sec. 11 | Extent of Small Scale Mining Contract Area | Amended | The DAO provides the specific measurement, especially for the length and depth of the tunnel. Compared to the previous DAO where it is subject to the recommendation of the Regional Director |
## ANNEX B Comparative Table of DENR DAO 2015-03 and DAO 2022-03

<table>
<thead>
<tr>
<th>Sec. 12</th>
<th>Award of People’s Small-Scale Mining Contract</th>
<th>Amended</th>
<th>From 30 days to 15 days upon receipt; mining operations shall start 1 year from award</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 13</td>
<td>Terms and Conditions of SSMC</td>
<td>Amended</td>
<td>Some notable changes include:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>The distinction of metallic and nonmetallic was removed. Renewal of application requirements includes an approved 2-Year Work Program, PEIMP, CDMP, and ASHP covering the renewal period and submission of updated GIS. The amended provision also provides that the SSMC holder who was not a petitioner in the declaration shall reimburse the petitioner proportionally. An added provision is the assumption of responsibility for compliance with RA 9231.</td>
</tr>
<tr>
<td>Sec. 14</td>
<td>Mineral Processing – General Provision</td>
<td>Amended</td>
<td>Processing may be done outside MB as long as there is an MPL</td>
</tr>
<tr>
<td>Sec. 15</td>
<td>Establishment and Operation of Centralized Custom Mills and Mineral Processing Zones</td>
<td>Amended</td>
<td>MPZ may be declared outside MB Areas</td>
</tr>
<tr>
<td>Sec. 16</td>
<td>Application for Mineral Processing License</td>
<td>Amended</td>
<td>The fees were reduced and lesser documents are required</td>
</tr>
<tr>
<td>Sec. 17</td>
<td>Processing/Registration/Issuance of a MPL</td>
<td>Amended</td>
<td>There is a reduced period for notice.</td>
</tr>
</tbody>
</table>
### ANNEX B Comparative Table of DENR DAO 2015-03 and DAO 2022-03

<table>
<thead>
<tr>
<th>Section</th>
<th>Original Description</th>
<th>DAO 2022-03 Description</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 18</td>
<td>Terms and Conditions of a MPL</td>
<td>Amended</td>
<td>The term is five years, renewable for like periods for a total term of 25 years compared to the term in previous DAO which is co-terminous with the SSMC in the MB. It provides that MPL should only process ores from Small-Scale Mining Contractors and/or other MPL holders, a condition not stated in the previous DAO. The new DAO only requires Processor to have PEIMP, CDMP and ASHP. The feasibility study requirement was removed.</td>
</tr>
<tr>
<td>Sec. 19</td>
<td>Administrative Supervision over Small-Scale Mining</td>
<td>Same</td>
<td>An additional power of the Board is as follows: Suspends, cancels and revokes for cause after due process small-scale mining contracts and mineral processor’s license</td>
</tr>
<tr>
<td>Sec. 20</td>
<td>Provincial/City Mining Regulatory Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sec. 21</td>
<td>Composition of the Board</td>
<td>Amended;</td>
<td>It added a clause as follows: In areas with existing ICCs/ IPs, the Board may issue a resolution to include representations from other agencies, as observer.</td>
</tr>
<tr>
<td>Sec. 22</td>
<td></td>
<td>Amended;</td>
<td>It added a clause as follows: The provincial/city government concerned shall allocate funds for the operational expenses, including honorarium, of the Board and its secretariat/staff</td>
</tr>
</tbody>
</table>
## ANNEX B Comparative Table of DENR DAO 2015-03 and DAO 2022-03

<table>
<thead>
<tr>
<th>Sec. 23</th>
<th>Easement Rights</th>
<th>Same</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 24</td>
<td>Rights under a SSMC</td>
<td>Same</td>
<td></td>
</tr>
<tr>
<td>Sec. 25</td>
<td>Ownership of Mill Tailings (now Sec. 27)</td>
<td>New: Rights of claimowners</td>
<td></td>
</tr>
<tr>
<td>Sec. 26</td>
<td>Environmental Protection and Social Development (now Sec 28)</td>
<td>New: Rights of private landowners</td>
<td>Added: The Contractor and Processor shall submit to the Board copy furnished the regional office concerned a report on the sale/disposal of mill tailings</td>
</tr>
<tr>
<td>Sec. 27</td>
<td>Safety and Health</td>
<td>Ownership of Mill Tailings -Formerly sec 25</td>
<td></td>
</tr>
<tr>
<td>Sec. 28</td>
<td>Payment of Taxes and Government Production Share</td>
<td>Environmental Protection and Community Dev’t and Management Program (formerly sec 26) -Amended -added provisions -set up of Envi management and social devt fund</td>
<td>Added provision is the setting up of the Environmental management and social Development Fund</td>
</tr>
<tr>
<td>Sec. 29</td>
<td>Payment of Occupation Fee</td>
<td>Safety and Health -Amended</td>
<td>There is an added provision on submission of annual safety and health program</td>
</tr>
<tr>
<td>Sec. 30</td>
<td>People’s Small-Scale Mining Protection Fund -REMOVED</td>
<td>Mine wastes Dump and Tailings storage facility</td>
<td>This is a NEW PROVISION</td>
</tr>
<tr>
<td>Sec. 31</td>
<td>Cancellation of Small-Scale Mining Contracts/Mineral Processing License and Administrative Fines</td>
<td>Submission of Sworn Annual Report on the amount of Mine wastes and tailing produced, contained and/or utilized</td>
<td>This is a NEW PROVISION</td>
</tr>
</tbody>
</table>
### ANNEX B Comparative Table of DENR DAO 2015-03 and DAO 2022-03

<table>
<thead>
<tr>
<th></th>
<th>DAO 2015-03</th>
<th>DAO 2022-03</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 32</td>
<td>Reversion of Minahang Bayan</td>
<td>Small scale mine wastes and tailings fees</td>
<td>This is a NEW PROVISION</td>
</tr>
<tr>
<td>Sec. 33</td>
<td>Assistance to Small-Scale Miners</td>
<td>Payment of Taxes and Government Production Share</td>
<td>-AMENDED&lt;br&gt;The amount of 5% of gross output is removed</td>
</tr>
<tr>
<td>Sec. 34</td>
<td>Payment of Taxes and Government Production Share</td>
<td>New: Rights of claimowners</td>
<td>-new number&lt;br&gt;-same number provision</td>
</tr>
<tr>
<td>Sec. 35</td>
<td>Sale of Gold</td>
<td>Payment of Occupation Fee</td>
<td>This is a NEW PROVISION</td>
</tr>
<tr>
<td>Sec. 36</td>
<td>Penal Sanctions</td>
<td>Grounds for Suspension and Administrative fines</td>
<td>The new DAO provided for new grounds for cancellation</td>
</tr>
<tr>
<td>Sec. 37</td>
<td>Actual Occupation by Small-Scale Miners</td>
<td>Reversion of Minahang Bayan</td>
<td>The grounds became generalized (no longer feasible and/or endangers health, environment and safety.) The right of refusal of small-scale miners to apply for large-scale mining was also removed.</td>
</tr>
<tr>
<td>Sec. 38</td>
<td>Repealing Clause</td>
<td>Assistance to Small-Scale Miners</td>
<td>-new number&lt;br&gt;-same number provision</td>
</tr>
<tr>
<td>Sec. 39</td>
<td>Separability and Amending Clause</td>
<td>Sale of Gold</td>
<td>-new number&lt;br&gt;-The provision was amended and RA 11256 was mentioned</td>
</tr>
<tr>
<td>Sec. 40</td>
<td>Effectivity</td>
<td>Transport and Export of Mineral Mineral Products</td>
<td>-new number&lt;br&gt;-amended; in old, “consistent with applicable provisions of DAO No. 2010-21” to “consistent with applicable provisions of the existing implementing rules and regulations RA No. 7942”</td>
</tr>
</tbody>
</table>
### ANNEX B
Comparative Table of DENR DAO 2015-03 and DAO 2022-03

<table>
<thead>
<tr>
<th>Sec.</th>
<th>DAO 2015-03</th>
<th>DAO 2022-03</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>41</td>
<td>Penal Sanctions</td>
<td>- new number</td>
<td>- same provision</td>
</tr>
<tr>
<td>42</td>
<td>Actual Occupation by</td>
<td>- new number</td>
<td>- same provision</td>
</tr>
<tr>
<td></td>
<td>Small-Scale Miners</td>
<td></td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>Repealing Clause</td>
<td>- new number</td>
<td>- same provision</td>
</tr>
<tr>
<td></td>
<td>Separability and Amending</td>
<td>- new number</td>
<td>- same provision</td>
</tr>
<tr>
<td></td>
<td>Clause</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Effectivity</td>
<td>- new number</td>
<td>- same provision</td>
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## ANNEX C Composition of the P/CMRB

<table>
<thead>
<tr>
<th>Designation</th>
<th>Members under DAO 2015-03</th>
<th>Members under DAO 2022-03</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairperson</td>
<td>MGB Regional Director or duly authorized representative</td>
<td>MGB Regional Director or duly authorized representative</td>
</tr>
<tr>
<td>Member</td>
<td>Provincial Governor/City Mayor or representative</td>
<td>Provincial Governor/City Mayor or representative</td>
</tr>
<tr>
<td>Member</td>
<td>Small-scale mining representative</td>
<td>Small-scale mining representative</td>
</tr>
<tr>
<td>Member</td>
<td>Large-scale mining representative</td>
<td>Large-scale mining representative</td>
</tr>
<tr>
<td>Member</td>
<td>Environmental NGO representative</td>
<td>Environmental NGO representative</td>
</tr>
<tr>
<td>Observer</td>
<td>N/A</td>
<td>For areas with existing IPs, representatives from other agencies, upon resolution of the board.</td>
</tr>
</tbody>
</table>
## ANNEX D List of requirements for the SSMC

<table>
<thead>
<tr>
<th>Requirement under DAO 2015-03</th>
<th>Descriptions</th>
<th>Under 2022-03</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application Form</td>
<td>The application form must be duly accomplished and notarized</td>
<td>This is still required.</td>
</tr>
<tr>
<td>Application Fee</td>
<td>Php 10,000.00 for non-metallic minerals and Php 20,000.00 for gold, silver and/or chromite, payable to the DENR Regional Office concerned</td>
<td>The distinction has been removed and a standard PhP 10,000.00 fee is imposed. Further, the fee is payable to the Provincial/City Government.</td>
</tr>
<tr>
<td>Copy of small-scale miner’s license</td>
<td>Requires: 1.) prior submission of application form to the Provincial/ City Mining Regulatory Board; 2.) prior registration with the SEC/DTI/CDA; 3.) payment of Php 1,000.00 application fee</td>
<td>This was removed. However, copies of either the DTI registration, or SEC Registration, or CDA Registration, must be submitted. Authorized Capitalization shall be PhP10,000,000.00 with minimum paid up capital of PhP625,000.00</td>
</tr>
<tr>
<td>Location map</td>
<td>Map of the proposed SSMC area showing its geographic coordinates/ meridional blocks and boundaries in relation to the Minahang Bayan, major environmental features, and other projects using a NAMRIA topographic map in a scale of 1:50,000 or 1:10,000 duly prepared by a deputized Geodetic Engineer</td>
<td>This is still required together with the sketch plan.</td>
</tr>
<tr>
<td>Sketch plan</td>
<td>Plan of the proposed SSMC area at a convenient scale duly prepared by a deputized Geodetic Engineer</td>
<td>This is still required.</td>
</tr>
<tr>
<td>Proposed SSMC</td>
<td>The contract must have the terms and conditions under Sec. 13 of DAO 2015-03.</td>
<td></td>
</tr>
<tr>
<td>Survey order application</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposed two-year work program</td>
<td>The two-year schedule of engineered small-scale mining, including its corresponding budgetary requirement, duly prepared and signed by a licensed Mining Engineer.</td>
<td>This is still required.</td>
</tr>
</tbody>
</table>
### ANNEX D List of requirements for the SSMC

<table>
<thead>
<tr>
<th>Requirement under DAO 2015-03</th>
<th>Descriptions</th>
<th>Under 2022-03</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PEIMP</strong></td>
<td>The Potential Environmental Impact Management Plan (PEIMP) is an environmental management and rehabilitation plan for the life of the SSMC/mineral processing license (MPL), approved by the DENR Regional Office concerned.</td>
<td>This will be submitted at a later stage.</td>
</tr>
<tr>
<td><strong>CEMCRR/Certificate of Exemption</strong></td>
<td>The Certificate of Environmental Management and Community Relations Record (CEMCRR) is issued by the DENR Regional Office concerned, attesting that the SSMC or MPL applicant has satisfactory environmental management and community relations in their past and/or present mineral resource use or mining-related ventures. If the applicant has neither past nor present mineral resource use or mining-related ventures, the applicant is to submit a Certificate of Exemption in lieu of a CEMCRR.</td>
<td>This is not required in an application for an SSMC.</td>
</tr>
<tr>
<td><strong>CDMP</strong></td>
<td>The Community Development and Management Program (CDMP) is a program approved by the DENR Regional Office concerned, which aims to assist in the development of responsible, self-reliant and resource-based host and neighboring communities.</td>
<td>This will be submitted at a later stage.</td>
</tr>
<tr>
<td><strong>ASHP</strong></td>
<td>The Annual Safety and Health Program refers to a program approved by the DENR Regional Office concerned, which ensures just, safe, and humane working environments for small-scale miners or mineral processing plant workers.</td>
<td>This will be submitted at a later stage.</td>
</tr>
<tr>
<td><strong>Sworn declaration</strong></td>
<td>Declaration of the total area covered by the applicant’s SSMCs/applications in the entire country[^23]</td>
<td>This requirement was removed.</td>
</tr>
</tbody>
</table>

[^23]: DENR DAO 2015-03, §10
## ANNEX E

Other requirements for the renewal of a Mining Contract

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Description</th>
<th>Under DAO 2022-03</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application Form</td>
<td>Must be duly accomplished and notarized</td>
<td>This is still required.</td>
</tr>
<tr>
<td>Proof of Payment of Application Fee</td>
<td>Php 10,000.00 for non-metallic minerals, or Php 20,000.00 for gold, silver, and/or chromite, payable to the DENR Regional Office concerned</td>
<td>The distinction has been removed and a standard PhP 10,000.00 fee is imposed. Further, the fee is payable to the Provincial/City Government.</td>
</tr>
<tr>
<td>Certification from the Board</td>
<td>Certification of compliance with the terms and conditions of the mining contract, issued not earlier than 90 days prior to the expiration of the SSMC</td>
<td>This will be issued not earlier than 60 days prior to the expiration</td>
</tr>
<tr>
<td>Proposed Two-Year Work Program for the renewal period</td>
<td>This requirement is not stated in DAO 2015-03</td>
<td>This is required under DAO 2022-03</td>
</tr>
<tr>
<td>Approved PEIMP, CDMP, ASHP</td>
<td>This requirement is not stated in DAO 2015-03</td>
<td>This is required under DAO 2022-03</td>
</tr>
</tbody>
</table>
ANNEX F

Responsibilities of Small-Scale Miners under the Small-Scale Mine Safety Rules and Regulations

- Exercise extra precaution in handling concentrated lime pulp and reagent solution;\(^{424}\)
- Be required to wear respiratory protective equipment and gloves, in case they are workers handling and mixing mill reagents such as acids, frothers, collectors, cyanides, etc. \(^{425}\)
- Immediately remove cyanide and other toxic chemical spillages;\(^{426}\)
- Be required to know the antidotes for poisoning from cyanide and dangerous chemicals if they are mill workers; \(^{427}\)
- Handle chemicals only if authorized;\(^{428}\)
- Clearly label bottles containing acid or dangerous chemicals; \(^{429}\)
- Slowly pour acid into water with constant stirring of the mixture when diluting an acid with water, and not pour water into acid; \(^{430}\)
- Isolate any line or container that has held a liquid or gas under pressure on either side of the break, before breaking, and ensuring that the area is clear of other persons; \(^{431}\)
- Destroy or clearly mark containers, pipes, or hoses used in handling and conveying poisonous materials in accordance with the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990 and its implementing rules and regulations; \(^{432}\)
- Take adequate measures to prevent damage to structural parts of equipment or apparatus in areas where corrosive liquid, gasses, fumes, mists, or vapors disperse; \(^{433}\)
- Keep receptacles closed securely, except when extracting its contents; \(^{434}\)
- Maintain the dryness of floors of rooms where corrosive liquids are handled or used; \(^{435}\)
- Never allow sawdust, waste, or other organic materials to absorb spillage or escaping corrosive acids and alkalies, but flush the same out with water or neutralize with appropriate solutions; \(^{436}\)

\(^{424}\) DENR DAO 97-30, Rule 190.  
\(^{425}\) DENR DAO 97-30, Rule 191  
\(^{426}\) DENR DAO 97-30, Rule 192  
\(^{427}\) DENR DAO 97-30, Rule 193  
\(^{428}\) DENR DAO 97-30, Rule 194  
\(^{429}\) DENR DAO 97-30, Rule 195  
\(^{430}\) DENR DAO 97-30, Rule 196  
\(^{431}\) DENR DAO 97-30, Rule 197  
\(^{432}\) DENR DAO 97-30, Rule 198  
\(^{433}\) DENR DAO 97-30, Rule 199  
\(^{434}\) DENR DAO 97-30, Rule 200  
\(^{435}\) DENR DAO 97-30, Rule 201  
\(^{436}\) DENR DAO 97-30, Rule 202
- Make clean running water readily accessible to employees where corrosive liquids are handled or used;  
  437

- Cautiously handle red-label chemicals such as chlorates, nitrates, and peroxides which are apt to cause violent explosions and produce fire, and ensure that such chemicals are covered by the necessary permit upon proper indorsement of the authority concerned;  
  438

- Secure necessary permits for toxic chemicals used in mineral beneficiation process from the concerned government agency upon indorsement of the authority concerned;  
  439

- Properly locate fuel systems of furnaces and burners, and install proper shut-off valves;  
  440

- Provide assay furnaces with appropriate chimney connector pipes for its entire length;  
  441

- Prohibit water within the immediate vicinity where molten metals are handled;  
  442

- Maintain the cleanliness of floor areas and clear obstructions if working near or carrying molten metal;  
  443

- Carefully quench hot materials;  
  444

- Keep dry or preheat molds for molten metals before using the same;  
  445

- Wear spats, asbestos gloves, apron, goggles, and full face protection if working with molten metal;  
  446

- Encourage the use of the retort system during the separation of gold from mercury prior to blow torching/refining.  
  447
### ANNEX G

**Requirements for the issuance of a Mineral Processing License**

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Description</th>
<th>Applicable to corporations/associations/partnership/cooperative?</th>
<th>Applicable to Individuals?</th>
<th>Under DAO 2022-03 (in addition to CNO/CP and ECC)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Filing fee</strong></td>
<td>Fifty thousand pesos</td>
<td>Yes</td>
<td>Yes</td>
<td>Fee is Ten Thousand Pesos</td>
</tr>
<tr>
<td><strong>Certificate of Registration</strong></td>
<td>Issued by the SEC or government agency concerned</td>
<td>Yes</td>
<td>No</td>
<td>This is still required</td>
</tr>
<tr>
<td><strong>Certified Articles and By-Laws</strong></td>
<td>Articles of Incorporation/Partnership/Association and By-Laws, with a minimum capital of ten million pesos</td>
<td>Yes</td>
<td>No</td>
<td>This is still required</td>
</tr>
<tr>
<td><strong>Location map/sketch plan</strong></td>
<td>map/plan of the area of the proposed processing plant using NAMRIA topographic map in a scale of 1:50,000 or 1:10,000</td>
<td>Yes</td>
<td>Yes</td>
<td>This is still required</td>
</tr>
<tr>
<td><strong>Feasibility study</strong></td>
<td>Study that includes work programs, plant site, mill and plant layout/design, details of technology to be employed in the proposed operation, anti-pollution devices/measures, and plant capacity prepared by a licensed metallurgical engineer. Note: applicants with existing small-scale mineral processing plant may submit a Project Description and a detailed financial statement for operations with social and environmental expenditures, taxes, and fees paid, in lieu of a feasibility study</td>
<td>Yes</td>
<td>Yes</td>
<td>This was removed. However, a project description and plant layout/design is now required.</td>
</tr>
<tr>
<td><strong>CDMP</strong></td>
<td>The Community Development and Management Program is a program approved by the DENR Regional Office concerned, which aims to assist in the development of responsible, self-reliant and resource-based host and neighboring communities.</td>
<td>Yes</td>
<td>Yes</td>
<td>This will be submitted in a later stage.</td>
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<tr>
<td><strong>PEIMP</strong></td>
<td>The Potential Environmental impact Management Plan is an environmental management and rehabilitation plan for the life of the small-scale mining contract/mineral processing license, approved by the DENR Regional Office concerned.</td>
<td>Yes</td>
<td>Yes</td>
<td>This will be submitted in a later stage.</td>
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<tr>
<td><strong>CEMCRR/Certificate of Exemption</strong></td>
<td>The Certificate of Environmental Management and Community Relations Record is issued by the DENR Regional Office concerned, attesting that the small-scale mining contact or mineral processing license applicant has satisfactory environmental management and community relations in their past and/or present mineral resource use or mining-related ventures. If the applicant has neither past nor present mineral resource use or mining-related ventures, the applicant is to submit a Certificate of Exemption in lieu of a CEMCRR.</td>
<td>Yes</td>
<td>Yes</td>
<td>This was removed.</td>
</tr>
<tr>
<td><strong>Proof of technical competence</strong></td>
<td>Proof of capacity such as the copy of the income tax return of the preceding year, and proof of bank deposit and/or credit line, in the amount that shall not be less than the project cost</td>
<td>Yes</td>
<td>Yes</td>
<td>This is still required.</td>
</tr>
<tr>
<td><strong>Proof of financial capacity</strong></td>
<td>Certification on the use of chemicals in compliance with existing laws, rules and regulations, if applicable</td>
<td>Yes</td>
<td>Yes</td>
<td>This is still required.</td>
</tr>
</tbody>
</table>
### ANNEX G

**Requirements for the issuance of a Mineral Processing License**

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</thead>
<tbody>
<tr>
<td>Supply contract/Agreement with small-scale mining contractors</td>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td>This is still required.</td>
</tr>
</tbody>
</table>
ANNEX H
Contract between Mining Contractor and Financier of SMBC

[Text in Filipino]

PAGPAPATUNAY

5. Na, Ang PANGALAWANG PANIG ay magbibigay pahintulot sa PANGALAWANG PANIG na mag-operate o mag-bol on na limitado sa dalawang (2) butas o bol-on lamang at may pagitan na hindi kumakalang sa 20 metro bawat bol-on.

6. Na, Ang PANGALAWANG PANIG ay sumasang-ayon at sumapalay na makatulog na magmina sa angkop na wastong paraan na may maliit na mga trabahador at kapaligiran sumusog sa tinatadhana ng BATAS (RA 7076) para sa kaayusan ng Minahang Bayan.

5. Na, Ang PANGALAWANG PANIG ay magbibigay ng Dalawang (2) Share sa bawat partisyon na siyang gaganin na para sa mga pangangalangan sa Pomamahala,pagsasa-ayos ng Minahang Bayan, butaw sa berangay ,Security Environmental Rehabilitation ,Health Program ,Educational Program, Tree Hedging , at iba pa.
ANNEX H
Contract between Mining Contractor and Financier of SMBC

Na, Ang PANGALAWANG PANIG ay hindi pinalikha't ma-aktibado ng iba (pora) ng hindi
agad pahintulutan ang karaniwang operasyon, o ang kadahilanan maging malaking o makakaw nr
ng iba ay hindi pahintulutan makapaso sa loob ng Minahang Bayan.

Na, hebang umirala ang kasusudlang ito, ang UNANG PANIG o ang kanyang tagapamahala ay
may karapatan na ipasok sa loob ng PANGALAWANG PANIG na iloob, at labas, upang magsuro ang kaligtasan ng laban sa pananagutan ng “SAFETY
INSPECTION GROUP” ng Samahan.

Na, Ang PANGALAWANG PANIG ay inaasahan na diin ang lahat ng mga petekarang nakalakip sa
kasusudlang ito para sa iligal na PASMINA, kahulugan at kahulugan ng laban ng maliw ng Minahang Bayan, ganso din ang pagtakbo sa umirala na bata na nakakainde sa RA 7076 o

Na, Ang ano ang akseederie na mangyari dahilan sa kapabayaan ng PANGALAWANG PANIG
ay walang pananagutan ang UNANG PANIG.

Na, Ang sinumang lusabag sa alin man sa kasusudlang lito ay may kektib na
kaparusaahan na maaayon sa irehala na batas ng Samahan ng mga Musero sa Barangay
Casubihan sa RA 7076, dadaan sa pagligis (DUE PROCESS) para sa karuhatan
kaparusaahan o multa.

Na, Ang PANGALAWANG PANIG ay magbibigay ng 1 container na krode bilang pang-aayuda sa
pagsilmas ng bal-os/mainshaft.

Na, Ang PANGALAWANG PANIG ay may kasalagan at mag-apela sa Samahan
kung maaayon sa nagmamayala/nag-aabusan ka kasapi ng samahan.

Na, Ang kasusudlang ito ay magkatungo ng bisa-rosasip at lahat ng DALAWANG PANIG
(UNANG PANIG AT PANGALAWANG PANIG), sa harap ng rebo tulog, at matapos malapat na
Notary Publico, na ang bisa nito ay tatagap ng Umang toon (5) o't malaking mapa walang bisa
o mabago ang kasalatan ito ayon sa napakiusap na dalawang panig.

Sa Pagkatapos o pagkakawalan bisa ng kasusudlang lito, kung hindi na magkatungo ng "RENEWAL OF CONTRACT" Ang PANGALAWANG PANIG ay bibigyan ng tatlongyug (3) esaw
upang alam ang kanyang mga kaganapan sa loob ng Minahang Bayan, na hindi na kaibang ang
ang samang “NOTICE” para ito ay alain , ang samang ishiklura hna hindi nagagawa ay
magaling pag-aari ng UNANG PANIG mawalahan ng karapatan ang PANGALAWANG PANIG.

Bilang Patanay, kami ay lumagda sa ibabawa ng kasusudlang lito ng uming buong pangalan ng
walang pag-aalinlangan ngayong ikar-1, ng Oktubre 2012 sa Paracale, Camarines Norte.

SMBC PRESIDENT

G/ING. financer
PANGALAWANG PANIG

|Page 2 of 3|
ANNEX H
Contract between Mining Contractor and Financier of SMBC

ACKNOWLEDGEMENT

Republic of the Philippines
Province of Camarines Norte
Municipality of Paracale

SUBSCRIBED AND SWORN to before me this _____ day of _______ 2023 at the office of
Samahan ng mga Minero sa Bicol Region, officers exercising to me their NOTARIZE powers.

Dev. No.  
Page No.  
Book No.  
Series of 2023
### ANNEX I

**List of Mining Associations registered with the DOLE Camarines Norte**

<table>
<thead>
<tr>
<th>No.</th>
<th>Name of Association</th>
<th>President</th>
<th>Address</th>
<th>Registration Number</th>
<th>Registration Date</th>
<th>Contact No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Samahan Magkapakabot ng Talaas (SMED)</td>
<td>Matias F. Magbanua</td>
<td>Talaas, OH</td>
<td>RO500-CN-0120-005-17</td>
<td>January 20, 2017</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Tugon Small Scale Miners Association</td>
<td>Regi Jr=M.</td>
<td>P-4 Tugon, Paracale, CN</td>
<td>RO500-CN-0352-014-17</td>
<td>March 02, 2017</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Big Vein Miners Association</td>
<td>Agatino Jorge, Del Paco B.</td>
<td>P-6 Vein, Brgy. Tavag, Paracale, CN</td>
<td>RO500-CN-0327-006-17</td>
<td>March 27, 2017</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Big Vein Miners Association</td>
<td>Agatino Jorge, Del Paco B.</td>
<td>P-6 Vein, Brgy. Tavag, Paracale, CN</td>
<td>RO500-CN-0327-006-17</td>
<td>March 27, 2017</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Cagayan Small- Scale Miners Association</td>
<td>Benicio Q. Marabon</td>
<td>P-4 Brgy. Malaga, Paracale, CN</td>
<td>RO500-CN-0417-059-17</td>
<td>April 17, 2017</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Pinahan Small Scale Miners Association</td>
<td>Chooni A. Licapoy</td>
<td>P-4 Brgy. Luyukan Sur, Jose Panganiban, CN</td>
<td>RO500-CN-0528-009-17</td>
<td>May 23, 2017</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Magbankaban Small Scale Miners Association</td>
<td>Regal M. Magat</td>
<td>P-4 Brgy. Malaga, Paracale, CN</td>
<td>RO500-CN-0528-009-17</td>
<td>May 23, 2017</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Guba Small Scale Miners Association</td>
<td>Regal M. Magat</td>
<td>P-4 Brgy. Malaga, Paracale, CN</td>
<td>RO500-CN-0528-009-17</td>
<td>May 23, 2017</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Samahan ng mga Mineros na Barangay Casanigan</td>
<td>Eduardo E. Dioceso</td>
<td>P-1 Brgy. Casanigan, Paracale, Camarines Norte</td>
<td>RO500-CN-0227-013-18</td>
<td>February 27, 2018</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Mambulo People’s Small- Scale Miners Association</td>
<td>Gil E. Lamentillo</td>
<td>P-2 Brgy. Plantio, Jose Panganiban, Camarines Norte</td>
<td>RO500-CN-0705-032-18</td>
<td>July 5, 2018</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Gumaon Paracale Camarines Norte Minahang Bayan Association</td>
<td>Edgardo J. Balsem</td>
<td>P-2 Brgy. Malaga, Paracale, Camarines Norte</td>
<td>RO500-CN-0917-051-18</td>
<td>September 17, 2018</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Small Scale Mining Casanigan Paracale Association (SSMCPA)</td>
<td>Theonation A. C.</td>
<td>P-4 Brgy. Malaga, Paracale, Camarines Norte</td>
<td>RO500-CN-1227-051-18</td>
<td>December 28, 2018</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Samahan ng mga Magkapakabot ng Barangay Tawag (SMFMT)</td>
<td>Melojo S. Ponce</td>
<td>P-6 Brgy. Malaga, Paracale, Camarines Norte</td>
<td>RO500-CN-0719-017-19</td>
<td>July 19, 2019</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Samahan ng mga Magkapakabot ng Barangay Tawag (SMFMT)</td>
<td>Seraphin E. Dacal</td>
<td>P-6 Brgy. Malaga, Paracale, Camarines Norte</td>
<td>RO500-CN-0719-017-19</td>
<td>July 19, 2019</td>
<td></td>
</tr>
</tbody>
</table>