

Philippines EITI Scoping Study On Small-Scale Metallic Mining

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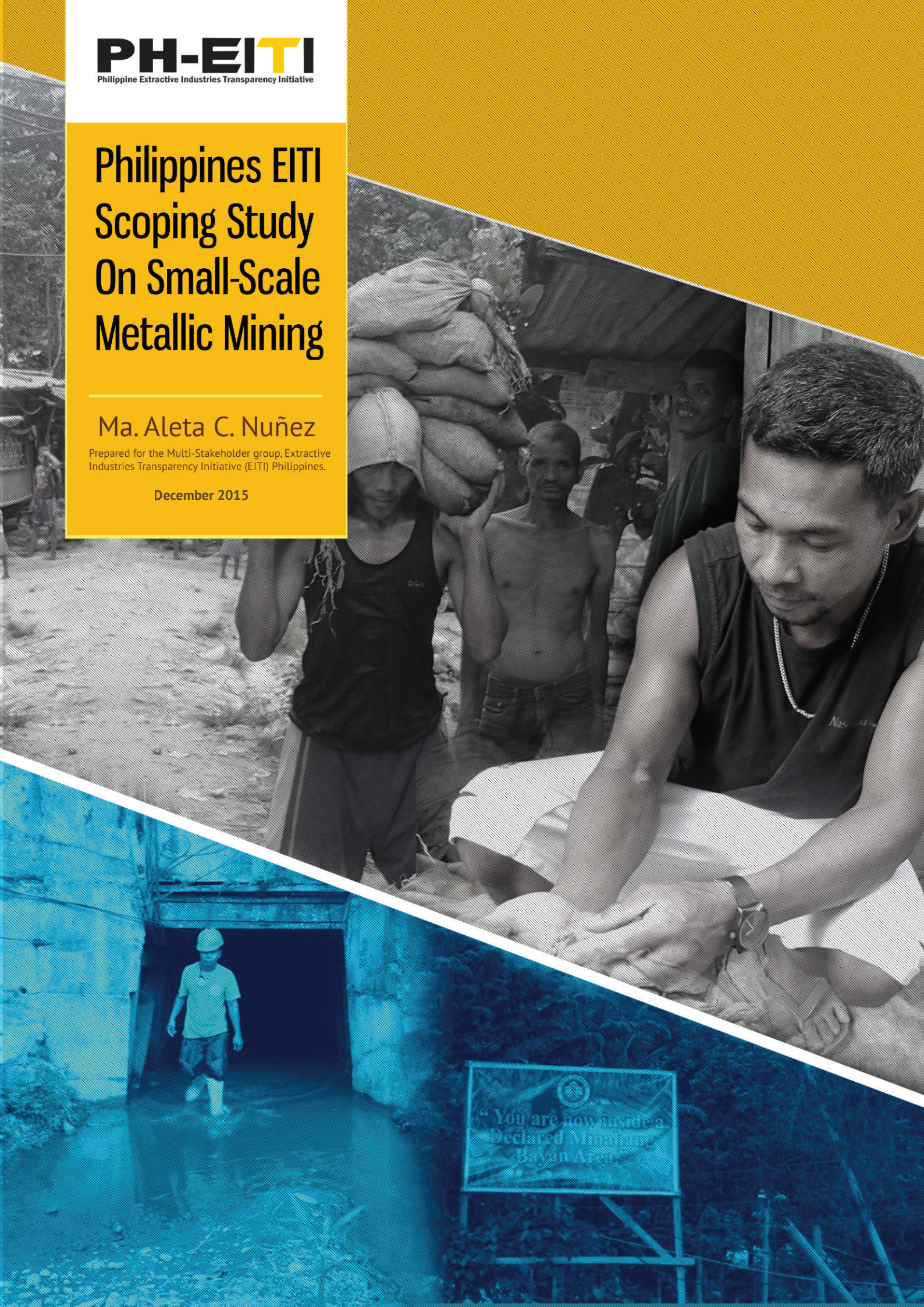


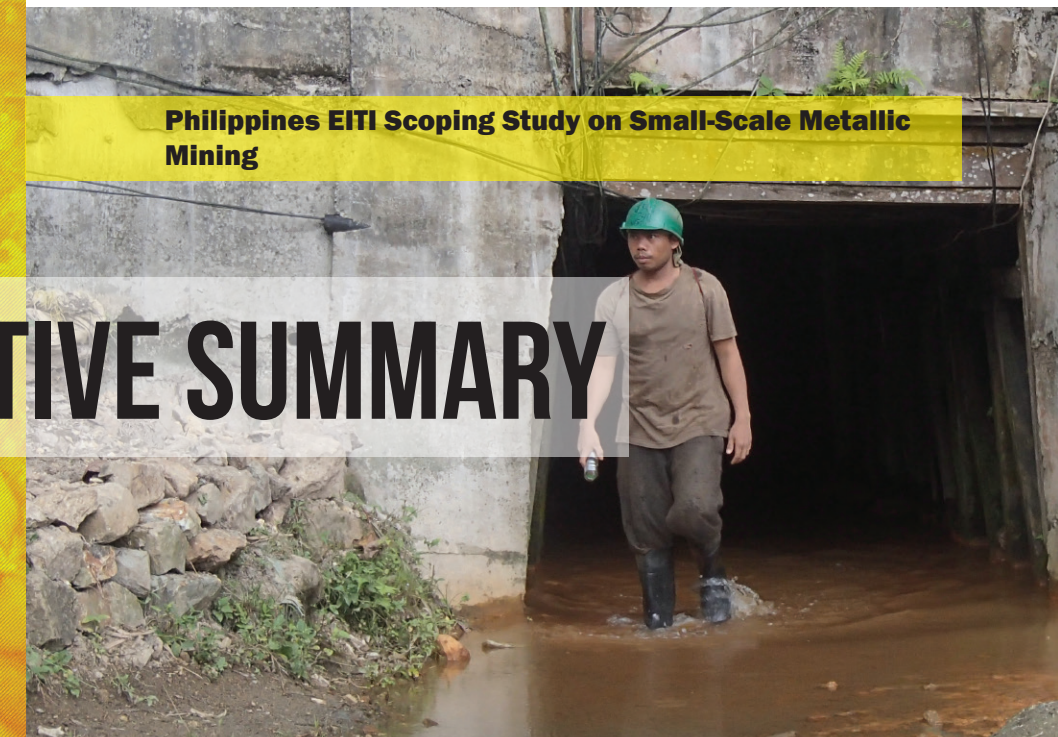
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EXECUTIVE SUMMARY

This study provides the contextual information on small-scale metallic mining that was included in the second Philippine Extractive Industries Transparency Initiative Country Report in December 2015. It particularly focuses on the legal and regulatory framework and the revenue streams as well as the general state of small-scale mining operations of gold, silver and chromite in the Philippines. The report also provides recommendations to the Philippine EITI Multi-Stakeholder Group (MSG) on how to approach the reporting of payments from this sector, considering the current state of available data from government offices and the gaps in the regulation of the small scale metallic mining industry.

LEGAL FRAMEWORK

Under the Philippine Constitution, all minerals and other natural resources are owned by the State. Accordingly, the Philippines, through governmental bodies, controls and supervises small-scale metallic mining carried out by Filipino citizens, cooperatives and corporations. (Art.XII, Sec. 2)

There are two major laws that govern small-scale mining in the Philippines. These are Presidential Decree No. 1899, entitled “An Act Establishing Small-Scale Mining as a New Dimension in Mineral Development” (PD 1899) and Republic Act 7076, entitled “People’s Scale Mining Act of 1991” (RA 7076). There is no express repeal made in the later law and even in the Philippine Mining Act of 1995 (RA 7942). The co-existence of both laws has brought about confusion and conflict in the implementation and regulation of small-scale mining activities between local government agencies and the national government or among the agencies of the national government.

Based on legislative records of RA 7076, PD 1899 is meant to govern small-scale mining for commercial purposes while RA 7076 was enacted to carve out an exception for subsistence small-scale miners to provide access to mining areas that are previously closed to them. However, in 2006, 2007 and then in 2011, the Department of Justice (DOJ) opined that RA 7076 has repealed PD 1899, even while the Department of Environment and Natural Resources (DENR) previously attempted to harmonize the two laws. Subsequently in 2012, the President issued Executive Order No. 79 (EO 79) requiring that all small-scale mining must comply with RA 7076. In 2014, the Supreme Court, in resolving the conflict that gave rise to the first two DOJ opinions, interpreted that the two laws co-exist with each other. Yet, by executive action, the implementation of PD 1899 is currently abandoned, and small-scale metallic mining is being carried out pursuant to RA 7076 only, as directed by EO 79.

SMALL-SCALE OPERATIONS IN THE COUNTRY

Notwithstanding these laws and policies, small-scale metallic mining of gold, silver and chromite remains largely an informal sector. Most operations are done outside the ambit of the law, without the required government permit under PD 1899 or the required contract under RA 7076. There are about thirty-three out of a total eighty-one provinces with reported small-scale metallic mining all over the country. Of these, only the operations in six provinces appear to be authorized. Based on EO 79, all small-scale mining permits issued under PD 1899 are already expired, as of late 2014. Likewise, under EO 79, small-scale mining operations are to be undertaken only within the declared People's Small-Scale Mining Areas or Minahang Bayan pursuant to RA 7076. There are only three Minahang Bayan reported by the DENR-Mines and Geosciences Bureau (MGB) Central Office. These are in the provinces of Dinagat Island, Quezon, and Agusan del Sur. DENR MGB Regional Offices and Provinces, however, report that there are declared Minahang Bayans in the provinces of Compostela Valley, South Cotabato, Sultan Kudarat and Agusan del Norte.

DECLARATION OF MINAHANG BAYAN UNDER RA 7076

DENR-MGB and the Provincial/City Mining Regulatory Boards (P/CMRB) are working to have areas declared as Minahang Bayan. There are currently 104 pending requests or petitions, at different stages of the process, for the declaration of Minahang Bayan in at least eighteen provinces. It is DENRMGB that has jurisdiction over small-scale mining in mineral reservations. Outside of these mineral reservations, the multi-stakeholder P/CMRB that is subject to the review of the DENR Secretary has jurisdiction over small-scale mining. The declaration of additional areas as Minahang Bayan may, however, take a while in light of the revised implementing regulations of RA 7076. The regulations lay down more stringent requirements and processes, including the need for an Environmental Compliance Certificate for the entire proposed Minahang Bayan area. Until these areas are declared as Minahang Bayan, P/CMRBs around the country, that are reportedly organized and active in sixty provinces and cities out of the total 81 provinces and 144 independent cities, cannot award small-scale metallic mining contracts.

REVENUES FROM SMALL SCALE MINING

On account of these largely unregulated operations, there are no significant revenues received by both national and local governments from small-scale metallic mining. This is despite that the country has a large gold and chromite deposit, and a Philippine peso billion production of gold from small-scale mining, as reported by Bangko Sentral ng Pilipinas (BSP). BSP is mandated by law to buy the gold from small-scale miners. The sale of gold to BSP declined to almost 98% within 3 years from 2012, when BSP was authorized by the Bureau of Internal Revenue (BIR) to withhold taxes on the transaction. In 2014, BSP reported gold purchase at a total of 182 kilos valued at Php319 Million for 2013 and 632.8 kilos valued at Php1.011 Billion for 2014. However, for these same years, the Provincial Government of Benguet that is part of the region with the highest gold sales to BSP reports a total revenue of Php80,000 and Php153,435, respectively. The Provincial Government of South Cotabato that has the highest number of registered small-scale metallic mining operations reports the total revenue of Php760,000.00 for 2013 and P1,065,685 for 2014 only. These values are low compared to South Cotabato's income from quarrying or small-scale non-metallic mining at an annual average of at least Php10 Million. The counterpart of these provincial governments at the DENR-MGB Regional Offices did not receive any revenue from small-scale metallic mining for the same period. The BIR Regional District Office (RDO) in La, Trinidad, Benguet reported a total of income tax payment of P3,750.59 in 2013 and P21,123.95 in 2014 for the entire district. BIR RDO Koronadal, South Cotabato reported a total income tax payment of P60,360.00 and P52, 947.00 for the same periods for the entire region mostly from individual taxpayers registered as engaged in small-scale metallic mining.

Even then, these reported sale of gold to BSP does not accurately reflect the total quantity of gold mined in the country by small-scale miners. Most of them tend to sell the gold they mined to the black market or to traders other than the BSP, who are nearer and more accessible, and offer immediate cash payment, instead at designated BSP Regional Office's buying stations. For instance, the BSP Buying Station in Baguio City reports gold purchase at 475 kilograms, more or less, for 2014. Meanwhile, the Benguet Federation of Small-Scale Miners, Inc. discloses gold production at 10,000 kilograms for the same year. This figure does not even include the production in the other provinces in the region. The BSP has guidelines on the sale of gold and buys all gold sold to it based on these guidelines. It does not verify whether the gold is produced from small-scale miners or whether they come from authorized operations or not. Nonetheless, since small-scale miners are mostly informal and the registered ones do not regularly report their production to the P/CMRB, DENR-MGB uses the sale of gold to BSP as a basis to report gold production from small-scale mining.

Prior to 2012, this purported production from small-scale mining is higher than the gold reportedly produced by large-scale mining companies. The BSP's reported purchase of gold ranged from 56% to 70% of the country's total production, compared to the 30% to 44% of the country's gold production reported by large-scale mining corporations. After 2012, the sale of gold to BSP significantly dropped by 98% percent within 3 years. From a total gold purchase by BSP of 68,733.00 kilograms from 2009 to 2011, this decreased to a total of 1,383.855 kilograms from 2012 to 2014. During this time, the BIR started to collect the taxes on the sale of gold to BSP, through BSP as a collecting/withholding agent for the tax imposition.

FISCAL REGIME

By law, small-scale metallic miners, whether individuals, cooperatives, or corporations, are obliged to pay national and local taxes and fees. Under the National Internal Revenue Code, these include income tax and excise tax of 2% of the annual gross production. Local government units, in the exercise of their local taxing powers, also impose taxes and fees such as mineral tax or sales tax on metallic minerals ranging from P1,000 per metric ton to 10% sales tax on 2% of the gross receipts, small-scale mining permit fee ranging from P3,000 – P15,520, filing fees of P10 – 20 per hectare or P500, processing fee of P20-25 per hectare to P150 and verification fee from P500 – P3,600 per hectare and business permit at P150 up to P2,500. These taxes and fees, which vary from one local government unit to another, are collected based on their respective local tax ordinances. Under RA 7076, the miners are supposed to pay government production share, but the law does not specify the rate. There is some confusion as this could refer to the excise taxes under the NIRC; however, the regulations provide that this is payable to the local government units. Applicants for a small-scale mining contract are also required to pay application fees for a small-scale mining license and for a small-scale mining contract, formerly set at minimal rates of P5 and P30 per hectare and now increased to P10,000 and P20,000 respectively, and occupation fee of P100 per hectare.

RA 7076 also creates a People's Small-Scale Mining Protection Fund to be administered by the P/CMRB. This is equivalent to fifteen percent (15%) of the national government's share of the internal revenue tax or production share due the government. The fund is intended for the benefit of the small-scale miners from information dissemination and training on mine safety, health, and environmental protection up to their rescue, recovery and assistance in case of accidents. There are no details to implement this fund; neither has it this been operationalized, to date.

RECOMMENDATIONS FOR INCLUSION OF SMALL SCALE MINING IN THE EITI PROCESS

The Philippines EITI Multi-Stakeholder Group (MSG) will need to consider all the above considerations in the regulation of the sector, and the current status of available data, as it plans to include the revenues and other data on small-scale metallic mining in the Philippine EITI Country Report. The MSG will need to take into account the status of existing data and gaps that need to be addressed. The key consideration is the prevalence of unregistered small-scale metallic mining that is bereft of any records or reporting of revenues. The other considerations are the minimal revenues currently collected from registered operations that may not meet the materiality threshold of EITI; the inadequacy of any organized database that consolidates and centralizes data from each province and region; and the required data collection at the level of hundreds of individual miners and mining cooperatives that any proposed EITI reporting will entail.

Improve regulation of the sector via a facilitative approach

To address these data gaps for the proposed EITI reporting of small-scale mining revenues, the MSG may consider using its mandate in promoting transparency and accountability in the extractive industries to promote the basic implementation of small-scale mining laws. Foremost among the specific recommendation is for the MSG to influence government, through DENR-MGB and the P/CMRBs as well as the local government units to take on a facilitative approach to assist and bring all small-scale miners, especially the subsistence miners, under the ambit of the law, including undertaking safe, environment-friendly small-scale mining operations. The MSG may work with relevant agencies to improve compliance with laws including revisiting some of the revised regulations, prior to including the revenue streams from the sector in EITI reports.

After all, the small-scale mining authorized under RA 7076 is set within the context of a People's Small-Scale Mining Program that includes segregating Minahang Bayan, respecting prior rights, forming cooperatives, extending technical, financial and social services, generating ancillary livelihood, regulating small-scale mining to encourage growth and productivity and efficiently collecting revenues. The program is meant to carry out the declared State policy of developing, protecting and rationalizing viable small-scale mining activities with aims to generate more employment opportunities and to provide an equitable sharing of the nation's wealth and natural resources. Once the program is fully implemented with the corresponding Congressional appropriation and with DENR's prioritization as a major program, only then should DENR, P/CMRB and the LGUs police the ranks of small-scale miners to encourage growth and productivity and to collect the appropriate government share and revenues from small-scale mining. The novel and distinctive example of the Province of South Cotabato, with the support of both public and private partners, through their Minahang Bayanihan, is a best practice that may be replicated all over the country. With the local government's facilitative and participatory approach, almost all small-scale miners are now organized, trained, registered, and monitored. While revenue collection in this province is not that high compared to revenues from quarry, issues on health, safety and the environment, which are very prevalent in small-scale mining, are continuously addressed and reduced.

Strengthen P/CMRBs to improve regulation and data collection

The MSG may also consider strengthening and building the capacities of P/CMRBs that can play a critical role in ensuring the promotion, development and regulation of small-scale mining for more employment opportunities and for an equitable sharing of wealth. More importantly, the P/CMRBs can serve as the official local repositories of small-scale mining data in the provinces and cities to facilitate future EITI reporting. Alongside the strengthening of P/CMRBs, the MSG may

also encourage the formation of associations and federations and/or strengthen existing ones to support small-scale mining carried out in accordance with the law and its policies. These associations and federations can in turn serve as conduits for EITI data collection and for the reconciliation of data from individual small-scale miners and cooperatives in the future as well as agents for self-monitoring and self-policing among their ranks.

All these measures can bridge the implementation of the law to achieve its objectives, including the equitable distribution of national wealth and the consequent increase in revenue collection of the national government. In turn, this would enable the MSG to include material revenue streams in the country’s future report to EITI.

As government reforms the small-scale mining sector and successfully places them within the ambit of the laws and regulations that they recognize and accept as needed and beneficial, including observing health, safety and environmental safeguards, the extraction and production may now be monitored and the correct taxes and fees may be collected. The MSG, after facilitating the basic implementation of the law, may then consider including the revenues that may potentially be higher and will already be recorded for EITI reporting. Until the reforms are in place and the data gaps addressed, that Philippine EITI can help catalyze in the next 1-3 years, it does not yet make sense to include small-scale metallic mining revenues in the EITI reporting, as these would be very minimal and would not even meet the materiality threshold of EITI.

In the meantime, since the sector remains largely informal, with very minimal revenue collection, the MSG may consider including a contextual information only and subsequent updates and progress on small-scale mining for a more comprehensive EITI reporting in the immediate years. After the reforms and the formalization of the sector are achieved, that will bring about increase in revenue collection, with Philippines EITI serving as a catalyst, only then may the MSG consider reporting the revenues from the sector.

PRELIMINARIES

A. Background

The Extractive Industries Transparency Initiative (EITI) is a global standard that promotes revenue transparency and accountability in the extractive sector. It has a robust yet flexible methodology for monitoring and reconciling company payments and government revenues from oil, gas and mining at the country level. Each implementing country creates its own EITI process adapted to the specific needs of the country. EITI implementation has two core components:

- A. Transparency: Oil, gas and mining companies disclose their payments to the government, and the government discloses its receipts. The figures are reconciled and published in annual EITI Reports alongside contextual information about the extractive sector.
- B. Accountability: A multi-stakeholder group with representatives from government, companies and civil society is established to oversee the process and communicate the findings of the EITI Report.

In compliance with the EITI requirements, the Philippines submitted its first EITI country report on December 29, 2014. The value of the report to local stakeholders has been evident from the forums and consultation meetings that ensued following the publication of the report. One pressing concern that has been highlighted, however, is the need to include small scale mining in future EITI reports to give a complete picture of the mining industry. This is important especially for local communities, as there is an observation that a large percentage of small scalesmall-scale miners remainsremain unregulated, thereby making it difficult for local government units to track the volume of production and payments made by these sectors to the government.

To respond to this issue, the PH-EITI Multi-Stakeholder Group has agreed to include information on small scale mining in future EITI reports. Thus, they commissioned the conduct by an independent consultant of this scoping study on the sector, particularly on small-scale metallic mining in the Philippines.

B. Objectives of the Scoping Study

The study aims to provide contextual information on small-scale metallic mining with the objective of including this information in the next EITI report. It also aims to provide recommendations to the MSG on how to approach the reporting of payments from these sectors, considering the current state of available data from government offices and the gaps in the regulation of the small scale metallic mining industry. A summary of this report is included in the second EITI country report submitted in December 2015.

C. Coverage and Methodology of the Study

The study covers five areas related to small scale metallic mining in the country: the legal and regulatory framework, revenue streams and financial arrangements, a general profile on small-scale metallic mining in the country and case study on two sites hosting small-scale metallic mining operations, textual analysis of gaps in existing laws and regulations and recommendations for legislation, and a survey of existing data and gaps that need to be addressed to comply with EITI reporting requirements. The study also includes a list of provinces and cooperatives in the Philippines engaged in small-scale metallic mining.

The study reviews and analyzes relevant laws, policies, regulations, and Supreme Court decisions relating to small-scale metallic mining. To come up with a national situationer on a sector that is largely an informal one, the study relies on best available information provided by government, both national and local, and the cooperatives or individuals engaged in small-scale metallic mining. These are primarily from responses to survey questionnaires sent out to DENR-MGB Regional Offices and to all provinces and independent and highly urbanized cities as well as to the National Commission on Indigenous Peoples and the small-scale metallic mining federations of the two case study sites. Eleven DENR MGB Regional Offices and forty-one provinces submitted responses to the survey questionnaires. Requests for official information were also sent out to the Bangko Sentral ng Pilipinas, the Bureau of Internal Revenue and DENR-Environmental Management Bureau, through their Central Offices and Regional Offices covering the case study sites. Except for the BIR Regional District Offices in the case study sites and DENR-EMB Regional Office 12, none of these offices submitted responses, as of writing, despite continuous follow-up and despite existing laws requiring a 15-day response. The study also uses and analyzes data gathered from the field via key informant interviews, focused group discussions and mini-workshops mostly in the case study sites as well as with the DENR-MGB Central Office, the DENR-EMB EIA Office, the NCIP and BanToxics. (Annexes 1-3) Given the limited resources vis-à-vis the extent of small-scale metallic mining operations in the country, field data collection focuses on two sites recommended by the EITI Multi-Stakeholder Group and the DENR-MGB, which are identified to be the Provinces of Benguet in Luzon and South Cotabato in Mindanao. The study limits the data, especially on payments, to the period 2013 and 2014.

Prior to the start of the study, an anticipated challenge to the data collection is the level of cooperation and support of government agencies and small-scale mining operators in providing prompt and complete data to the study. Another is the extent of knowledge and disclosure by government and communities with respect to illegal mining in their areas. To address these, the consultant worked closely with the PH-EITI Secretariat to ensure that requests for information are sent out in a timely manner, with adequate response time and continuous follow-through. The consultant also worked with the local governments and communities in the two focus sites to apprise them of the objectives of the study and elicit their support and cooperation.

After the deskwork on available secondary information, additional information is solicited through surveys and requests for information and other secondary data. Field visits to the focus sites are arranged to conduct key informant interview, focus group discussions and in South Cotabato, a barangay (village meeting). The target audience are audiences are the officers and staff from the MGB Regional Offices, LGU-Provincial Government-Environment and Natural Resources Officer and Provincial Treasurer and their staff, LGU-Municipality ENRO and Treasurer and cooperatives and individuals engaged in small scalesmall-scale mining operations. After the data is collected and collated, they are analyzed. This is followed by an initial presentation to the Philippines EITI-MSG and then report writing and finalization, with comments and inputs from the Philippines EITI-MSG.

D. Acknowledgments

This scoping study is a product of the cooperation of participating local government units all over the country, national government agencies, non-government agencies, and small-scale federations and individual miners. Each of them took time, and trusted us, to share their knowledge and sentiments, based on their best available records, experiences and even perceptions. The support of each of these entities, through their responses to the surveys, requests for information, interviews and discussions, facilitated the completion of this report on an otherwise unrecorded and unreported sector. All these entities and all the people who directly worked with the team on this scoping study deserve our heartfelt thanks and appreciation.

Without diminishing the assistance of all of those who contributed to this report, we nonetheless make special mention of our key partners in this scoping study. These are from the case study sites in South Cotabato and Benguet: the DENR-MGB Regional Office of CAR, the Provincial Government of Benguet, the Municipal Government of Itogon, the Benguet Federation of Small-Scale Miners, Inc., the DENR-MGB Regional Office XII, the Provincial Government of South Cotabato, the Municipal Government of T'boli, the Barangay Government of Kematu, the Association of Small-Scale Mining in South Cotabato and BanToxics. We also acknowledge the PH EITI Multi-Stakeholder Group, the Philippine EITI Secretariat, Department of Finance, DENR-MGB Central Office, Bantay Kita, Atty. Julius Lotilla for his initial contribution to the legal research and field visits, and Engr. Pinky Peregrin for her invaluable assistance. Finally, we give praise and glory to God who makes all things possible! Ad Majorem Dei Gloriam.

May this preliminary work lead us to a better understanding of the small-scale metallic mining sector and the need for a transparent, accountable, participatory and evidence-based governance. May it impress upon us the urgent task of making the laws work a little better for the good of all, through a facilitative approach in crafting, re-crafting and implementing laws and regulations that take into account the dynamic, albeit sad, realities on the ground. May this report spur more studies, actions and interventions to promote the just, equitable and sustainable use of our non-renewable natural resources that will concretely redound to benefit of all, with preference for the marginalized communities in our society.



All of us can cooperate as instruments of God for the care of creation, each according to his or her own culture, experience, involvements and talents.
- Encyclical Letter Laudato Si of Pope Francis on the Care of our Common Home, June 2016

LIST OF ACRONYMS

| | | | |
|--------|--|--------|---|
| AHSP | Annual Health and Safety Plan | IP | Indigenous Peoples |
| BIR | Bureau of Internal Revenue | IPRA | Indigenous People’s Rights Act |
| BSP | Bangko Sentral ng Pilipinas (then Central Bank of the Philippines) | IRR | Implementing Rules and Regulations |
| CCO | Chemical Control Order | KII | Key Informant Interview |
| CDMP | Community Development Management Plan | LGC | Local Government Code |
| CEMCRR | Certificate of Environmental Management and Community Relations Record | LGU | Local Government Unit |
| DAO | Department Administrative Order | MB | Minahang Bayan |
| DENR | Department of Environment & Natural Resources | MGB | Mines and Geosciences Bureau |
| DILG | Department of the Interior and Local Government | MMT | Multi-Partite Monitoring Team |
| DOF | Department of Finance | MSG | Multi-Stakeholder Group |
| DOJ | Department of Justice | NCIP | National Commission on Indigenous Peoples |
| ECA | Environmentally-Critical Area | NECP | Non-Environmentally Critical Project |
| ECC | Environmental Compliance Certificate | P/CMRB | Provincial/City Mining Regulatory Board |
| ECP | Environmentally-Critical Project | PD | Presidential Decree |
| EIS | Environmental Impact Statement | PEIMP | Potential Environmental Impact Management Plan |
| EITI | Extractive Industries Transparency Initiative | PEISS | Philippine Environmental Impact Statement System |
| EMB | Environmental Management Bureau | PEMO | Provincial Environmental Management Office |
| EMP | Environmental Management Plan | PENRO | Provincial Environment and Natural Resources Office |
| EO | Executive Order | RA | Republic Act |
| EMB | Environmental Management Bureau | RO | Regional Office |
| FGD | Focus Group Discussion | SSMC | Small-Scale Metallic Mining Contract |
| ICC | Indigenous Cultural Communities | SSMM | Small-Scale Metallic Mining |
| IEE | Initial Environmental Evaluation | SSMP | Small-Scale Metallizing Mining Permit |
| | | TWG | Technical Working Group |

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PART 1

LEGAL AND REGULATORY FRAMEWORK GOVERNING SMALL-SCALE METALLIC MINING IN THE PHILIPPINES

A. Mining Policy in General and State Ownership of Natural Resources

1. State Ownership – Regalian Doctrine

The 1987 Constitution of the Philippines provides that all minerals and other natural resources are owned by the State. Accordingly, the exploration, development, and utilization of mineral resources are under the full control and supervision of the State. (Art. XII, Sec. 2) Various mining laws of the country further reiterate these.

The Philippine Mining Act of 1995 or Republic Act No. 7942 (Mining Act) declares as a State policy that all mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State. (Sec. 2) The exploration, development, utilization, and processing of these State-owned mineral resources shall be under its full control and supervision. The State may directly undertake such activities or it may enter into mineral agreements with contractors. (Sec. 4) The earlier law on mining, Presidential Decree No. 463 (PD 463), likewise affirms such State ownership of the mineral resources. (Sec.3) It specifically excludes from other rights to land the minerals therein. PD 463 states that the ownership or the right to use public or private lands whether exposed or submerged, for agricultural, logging, industrial, commercial, residential, petroleum exploration and/or exploitation or purposes or any purpose other than mining, does not include the ownership of, nor the right to develop, exploit or utilize, the mineral deposits found in, on or under the surface of such lands, except with respect to quarry resources as provided in the law. (Sec. 4)

2. Mineral Exploration Policy

Through PD 463, the Philippines lays down as a policy that mineral production is a major support of

the national economy, and therefore the intensified discovery, exploration, development and wise utilization of the country's mineral resources are urgently needed for national development. The Mining Act confers upon the State the responsibility to promote the rational exploration, development, utilization and conservation of mineral resources. The government and the private sector, through their combined efforts, are mandated to carry out this responsibility. The goal is to enhance national growth in a way that effectively safeguards the environment and protect the rights of affected communities. (Sec. 2)

Under the 1987 Constitution, the State may exploit, develop and use the mineral resources through four modes namely: (a) direct undertaking; (b) co-production; (c) financial or technical assistance agreements for large-scale utilization or (d) small-scale utilization. (Art. XII, Sec. 2)

B. Small-Scale Mining Policies, Objectives, Scope, Reforms

1. Statutes and Regulations

Small-scale mining in the Philippines, while largely remaining an informal sector, is recognized and governed by law and regulations. The Constitution authorizes the small-scale utilization of resources by Filipino citizens as may be allowed by Congress. (Art. XII, Sec. 2)

There are currently two major laws governing small-scale mining in the Philippines. The first is Presidential Decree 1899, entitled "An Act Establishing Small-Scale Mining as a New Dimension in Mineral Development" (PD 1899). Exercising both executive and legislative powers during the Martial Law period, President Ferdinand Marcos enacted PD 1899 on January 23, 1984, prior to the 1987 Constitution. The second one is Republic Act 7076, entitled "People's Scale Mining Act of 1991" (RA 7076), approved on June 27, 1991. There is no express repeal made in the later law, and the co-existence of both laws has brought about confusion and conflict in

the implementation and regulation of small-scale mining activities between local government agencies and the national government or among the agencies of the national government.

The Mining Act, which is the most current major legislation pertaining to the mining industry, provides that small-scale mining shall continue to be governed by RA 7076 and other pertinent laws (Sec. 42) which impliedly includes PD 1899. The co-existence of the two valid laws is confirmed by Memorandum Circular 2007-07 (July 5, 2007) issued by the Department of Environment and Natural Resources (DENR) Secretary to all DENR Undersecretaries, Assistant Secretaries, Bureau Directors, Regional Executive Directors, Regional Directors, Heads of Offices and Attached Agencies, Provincial City Mining Regulatory Boards. The circular provides guidelines on how to harmonize the implementation of the two concurrent laws. (DENR-MC 2007-07)

The Department of Justice (DOJ) has three opinions regarding the interpretation of the two laws. The first one, DOJ Opinion No. 74, s. 2006, states that Section 1 of PD 1899 regarding the annual production quota limitation “must be deemed to have been repealed or at least, amended – albeit impliedly – by RA 7076.” This opinion is in response to a request of the Provincial Governor of Agusan del Norte regarding the proper interpretation of the phrase “50,000 nickel-cobalt ore” as appearing in the Small Scale Mining Permits and the Environmental Compliance Certificates. The second one, DOJ Opinion No. 64, s. 2007, maintains the original opinion. This is in response to the DENR Secretary’s request for the immediate rectification of the first DOJ Opinion to make it consistent with DENR-MC 2007-07. In his request, the DENR Secretary forwards the following contentions:

(t)he differences between P.D. No. 1899 and R.A. No. 7076, especially on those who are qualified to apply and the areas open for small scale mining activities, support the contention that R.A. No. 7076 did not repeal P.D. No. 1899; that while the two laws both deal with small scale mining, R.A. No. 7076 requires that the area to be mined should first be declared as People’s Small Scale Mining Area such that when a small scale mining activity is conducted in an area not declared as People’s Small Scale Mining Area, the governing law is P.D. No. 1899; that when the miners are organized into a cooperative, the law that should apply is R.A. No. 7076; and that in compliance with the mandate of R.A. No. 7160 and pursuant to Executive Order Nos. 192 and 503 defining the mandates, organization and functions of the Department of Environment and Natural Resources (DENR), Department Order No. 30 was promulgated to implement the transfer of the devolved functions to the Local Government Units which cover both R.A. No. 7076 and P.D. No. 1899.

Four years later, DOJ issues its third opinion, Opinion No. 29, s. 2011. This is after DENR-Mines

and Geoscience Bureau (MGB) Director requested DOJ to render an opinion to settle “all doubts or confusion regarding the applicable law, insofar as small-scale mining is concerned.” Abandoning the DENR Secretary’s earlier position, the MGB Director’s request for opinion states that the MGB and DENR “have reached the conclusion that R.A. No. 7076 has completely superseded P.D. No. 1899, and thus, the latter is no longer in force and effect.” In the third opinion, DOJ states “that R.A. No. 7076 has completely repealed P.D. No. 1899, and that the latter no longer has the force and effect of law.” It reasons as follows:

Indeed, the later law goes beyond the few and brief provisions of the earlier decree, replacing its basic rules with a comprehensive set of norms for the regulation of small-scale mining. Thus, Section 4 of Republic Act No. 7076 establishes a People’s Small-scale Mining Program to be administered by the Department of Environment and Natural Resources (DENR), a clear innovation of the later statute; while Sections 11 and 15 regulate the easement rights of the contractors and the rights of private landowners, neither of which were regulated under Presidential Decree No. 1899.

Therefore, as can be seen from the provisions of Republic Act No. 7076, the statute provides a complete set of norms for the regulation of small-scale mining. The very completeness of the later law manifests the intention of the legislature to render the provisions of the older statute superfluous and abrogated.

Subsequently on July 6, 2012, the President issued Executive Order No. 79. (EO 79). The order institutionalizes and implements reforms in the Philippine mining sector and provides policies and guidelines to ensure environmental protection and responsible mining in the utilization of mineral resources. It orders that small-scale mining activities shall comply with RA No. 7076 or the People’s Small-Scale Mining Act of 1991 and that pursuant to RA No. 7076, small-scale mining operations shall be undertaken only within the declared People’s Small-Scale Mining Areas or Minahang Bayan.

On June 4, 2014, the Supreme Court, adjudicating the same issue that gave rise to the first two DOJ opinions on the interpretation of the annual production limitation of 50,000 metric tons of nickel-cobalt ore under a Small-Scale Mining Permit, rules that:

Two different laws governing small-scale mining co-exist: PD 1899 and RA 7076. x x x There are other differences between the two laws, but we cannot hastily conclude that there is an implied repeal because of the omission. Both laws may stand. (SR Metals, Inc., et al vs. Secretary, DENR, G.R. No. 179669, June 4, 2014 or SR Metals)

It further rules that the limitation of 50,000 metric tons applied to both small-scale mining permits under PD 1899 and small-scale mining contracts under RA 7076.

The Supreme Court, as the government branch mandated to interpret laws and settle judicial controversies with finality, thus declared the co-existence of the two laws, PD 1899 and RA 7076. This judicial interpretation is consistent with the legislative intent and history of RA 7076 for the two laws to subsist and co-exist.

Based on deliberations by Congress on the bills that later became RA 7076, it showed that Congress was fully aware that there is already an existing law involving small-scale mining governed by PD 1899, that governs partnerships and corporations wishing to engage in small-scale mining for commercial purposes. They recognized that there are three levels of mining ventures: large-scale mining carried out by large-scale mining companies, small-scale carried out for commercial purposes, and small-scale mining carried out for subsistence or by the people. Hence, they crafted a People’s Mining Program or Subsistence Mining through RA 7076, as “really another exception to the existing mining laws x x x to create a way or mode by which small-scale miners can enter through the backdoors by opening up what otherwise would be a closed area of operations.”

During the joint discussions of the House of Representatives and Senate, through the Bi-Cameral Committee, they pointed out that if entities pursue mining as a business venture, then they should be pursued

through the ordinary mining laws; but if they avail of the special law that is RA 7076, that is “an exception to the existing mining laws”, then they should qualify under it, i.e. people’s small-scale or subsistence mining. Corporations wishing to engage in small-scale mining for commercial purposes should fall under existing mining laws, and not on the reconciled bills from Congress that eventually became RA 7076. (Minutes of the meeting of the Bi-Cameral Conference Committee on Natural Resources (January 22, 1991, pp. 15-17)

Congress does intend PD 1899 and RA 7076 to co-exist and govern different levels of small-scale mining operations - PD 1899 for small-scale mining for commercial purposes by partnerships and corporations and RA 7076 for subsistence purposes by cooperatives and individuals. RA 7076 is drafted and passed to address concerns on gold rush such as that in Diwalwal that started in 1983, among others. (Minutes of Meeting, Bi-Cameral Conference Committee on Natural Resources) Through RA 7076, Congress intends to allow subsistence miners to legally engage in people’s small-scale mining, as an exception to the existing mining laws carried out by large-scale mining companies and small-scale partnerships engaged in small-scale mining venture for commercial purposes. For comparison of the two laws, a comparative summary of the salient features of PD 1899 and RA 7076 is shown below:

Figure 1. Comparative Matrix of PD 1899 and RA 7076

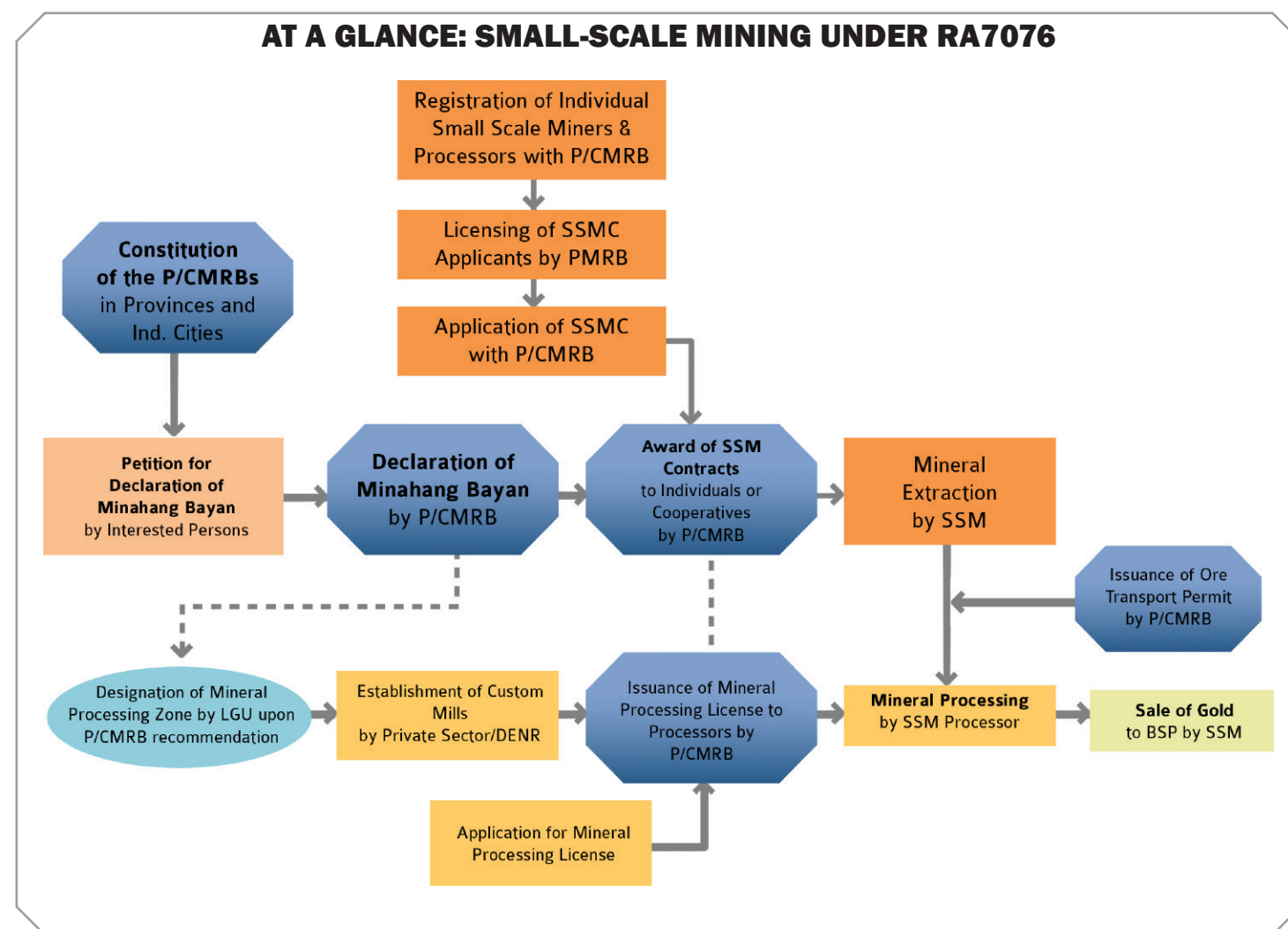
| Features | PD 1899 | RA 7076 |
|--|--|--|
| Type/ Name of Agreement | Small-Scale Mining Permit/ License (SSMP) | Small Scale Mining Contract (SSMC) |
| Allowed Min- ing Activities | <ul style="list-style-type: none">Operation of a single unit mining operation having an annual production not exceeding 50,000 metric tons of run-of-mine ore with the following requisites:<ul style="list-style-type: none">the working is artisanal, whether open cast or shallow underground miningwithout the use of sophisticated mining equipmentminimal investment on infrastructures and processing plantheavy reliance on manual labor (PD 1899)small-scale mining for commercial purposes (Bi-Cam Conference Meeting Minutes) | <ul style="list-style-type: none">mining activities which rely heavily on manual laborusing simple implements and methodsand do not use explosives or heavy mining equipment (RA 7076)annual production of 50,000 m.t. applies to both SSMP and SSMC (DMC 2007-07 and S.R. Metals, Inc. vs. Reyes, G.R. No. 179669, June 4, 2014)people’s small-scale mining by subsistence miners (Bi-Cam Conference Meeting Minutes) |
| Type of Minerals Allowed to be Extracted | <ul style="list-style-type: none">precious metalsprimary gold (& associated metals)other metallics like copper, chromite, mercury, lead, zinc, manganese, iron, and nickeland other mineral commodities as may be included by the Director of the MGB | <ul style="list-style-type: none">limited to only 3 metallic minerals<ul style="list-style-type: none">goldsilverchromite |
| Term of Agreement | <ul style="list-style-type: none">term of 2 years, renewable | <ul style="list-style-type: none">term of 2 years, renewablemaximum of a total of 6 years (Revised IRR-RA 7076, DAO 2015-03) |

| | | |
|------------------------------|---|---|
| Permitting Authority | <ul style="list-style-type: none"> Originally, MGB Regional Director issues the SSMP (IRR-PD 1899), subsequently amended to grant authority to Provincial Governor/City Mayor through Provincial/City Mining Regulatory Board (P/CMRB) to issue SSMP/SSMC outside of Mineral Reservations MGB Director for issuance of SSMP/SSMC within Mineral Reservations (DAO 96-40, Revised IRR-RA 7942, MRDB AO 3/3A, RA 7160, DAO 11-2000, DAO 21-2010) | <ul style="list-style-type: none"> Provincial/City Mining Regulatory Board (P/CMRB), through the Provincial Governor/City Mayor awards the SSMC (RA 7076, DAO 34-92, DAO 11-2000, DAO 21-2010, PD 1899, MRD 41) as of March 2015, MGB Regional Director as P/CMRB Chairperson now awards SSMC (Revised IRR-RA 7076) |
| Qualified Applicants | <ul style="list-style-type: none"> a Filipino citizen, of legal age, and with capacity to contract, or a corporation or partnership authorized to engage in mining, registered with the Securities and Exchange Commission, at least 60% of the capital of which is owned at all times by Filipino citizens (IRR-PD 1899) | <ul style="list-style-type: none"> Filipino citizens who individually or in the company of other Filipinos form a small-scale mining cooperative licensed as small-scale miners (RA 7076) with the MGB Regional Office (Revised IRR-RA 7076) |
| Allowed Area Size | <ul style="list-style-type: none"> maximum area one meridional block or containing an area eighty-one (81) hectares, more or less for metallic minerals; maximum area one-fourth of one meridional block or containing an area 20 (20) hectares, more or less for non-metallic minerals; for individuals, one permit in any one province while partnerships and corporations may be issued a maximum of two (2) permits in any one province covering its own mining areas with option to operate another (2) permits belonging to another person or entity, or a total of (4) permits. (IRR-PD 1899) | <ul style="list-style-type: none"> maximum contract area must not exceed twenty (20) hectares per contractor, and the depth or length of the tunnel or adit shall be subject to the limits imposed by the MGB Director. |
| Areas for Small-Scale Mining | <ul style="list-style-type: none"> areas covered by a valid and existing mining claims and existing mining leases including those already covered by existing mining leases; areas covered by quarry application, permit or licenses and those covered by exploration permits/ applications; all other government reservation except mineral reservations, subject to prior verification by the bureau; new areas not covered by a valid and existing claims before P. D 1899 (IRR-PD 1899) | <ul style="list-style-type: none"> only in areas declared by the P/CMRB as People's Small Scale Mining Areas or Minahang Bayan, subject to review by the DENR Secretary, with priority to areas already occupied and actively mined by small-scale miners before August 1, 1987 new areas not covered by existing forest rights and have not been declared as tourist or marine reserves, parks and wildlife reservations |
| Areas Closed to Mining | <ul style="list-style-type: none"> near or under the building, cemeteries, bridges, highways, waterways, railroads, reservoirs, dams, or any other public or private works unless prior clearance from the government agency or owner concerned is obtained; and all banned areas proclaimed and established by the government | <ul style="list-style-type: none"> areas expressly enumerated under Section 19 of RA No. 7942; protected areas categorized and established under the National Integrated Protected Areas System (NIPAS) under RA No. 7586; prime agricultural lands, in addition to lands covered by RA No. 6657 or the Comprehensive Agrarian Reform Law of 1988; tourism development areas, as identified in the National Tourism Development Plan (NTDP); and, other critical areas, island ecosystems, and impact areas of mining. (EO 79) |

| | | |
|------------------------|--|--|
| Payments to Government | <ul style="list-style-type: none"> income tax payment only exempt from payment of other taxes including but not limited to special import tax, compensating tax, tariff duties, royalties, sales tax, real estate tax, occupation fees/rentals regulatory fees are also imposed (PD 1899) | <ul style="list-style-type: none"> income tax, royalties or government production share, as provided by law (RA 7076) application fee of P1,000 for small scale mining license to the MGB Regional Office application fee to enter into small scale mining contract of P20,000 for metallic excise tax of 2% of the production output/ government production share royalty fee of 5% of the production output in mineral reservations occupation fee of P100 per hectare local taxes imposed by local government units (Revised IRR, DAO 2015-03) |
|------------------------|--|--|

However, with the President's EO 79 directing that small-scale mining activities shall only be undertaken in accordance with RA 7076, the implementation of PD 1899 is effectively abandoned by executive action. Such executive action, however, does not invalidate nor repeal a law. Until Congress repeals PD 1899, it co-exists side by side with RA 7076. The small-scale mining procedures under RA 7076, that EO 79 directs to be followed for all types of small-scale mining, is shown below:

Figure 2. At a Glance: Small-Scale Mining under RA 7076



1.1 Policy

Both PD 1899 and RA 7076 are enacted to promote development of small mineral deposits and develop, protect and rationalize viable small-scale mining activities with aims to generate more employment opportunities. PD 1899 further states that the development of small mineral deposits will alleviate the living conditions in the rural areas and will contribute to additional foreign exchange earnings. RA 7076 expands the policy to include the aim of providing an equitable sharing of the nation's wealth and natural resources. (Whereas Clause, PD 1899; Sec. 2, RA 7076)

1.2 Scope

Under PD 1899, small-scale mining refers to any single unit mining operation having an annual production of not more than 50,000 metric tons of ore. It requires that the working is artisanal, whether open cast or shallow underground mining, without the use of sophisticated mining equipment, minimal investment on infrastructures and processing plant, heavy reliance on manual labor; and owned, managed or controlled by an individual or entity qualified under existing mining laws, rules and regulations. (Sec.1)

RA 7076 defines small-scale mining as mining activities which rely heavily on manual labor using simple implements and methods and do not use explosives or heavy mining equipment. (Sec. 3.b) Based on regulation and the Supreme Court's interpretation, the 50,000 metric tons of ore limit in annual production under PD 1899 is also applied to small-scale mining under RA 7076. (DMC 2007-07, SR Metals)

1.3 Types of Minerals for Small-Scale Metallic Mining

For small-scale metallic mining under PD 1899, a permit covers precious metals, primary gold with or without associated metal such as silver, etc. and other metallics like copper, chromite, mercury, lead, zinc, manganese, iron, and nickel and other mineral commodities as may be included by the Director of the MGB. (Mines Administrative Order No. MRD – 41 Series of 1984 or the Implementing Rules and Regulations of PD 1899). However, under RA 7076, metallic deposits refer only to areas with naturally occurring mineral deposits of gold, silver and chromite. RA 7076 thus limits small-scale metallic mining operations to only three metallic minerals, namely gold, silver and chromite.

Under RA 7076, prior to the award of any small-scale mining contract, the law introduces a new prerequisite. There must be a declaration of an area as a People's Small-Scale Mining Area or Minahang Bayan (MB) before any contract may be awarded. (Sec. 5) This is not required under PD 1899. To harmonize and clarify certain provisions of the two small-scale mining laws, DENR issued DENR-MC 2007-07. The circular states that small-scale mining operations in areas not declared as Minahang Bayan shall be covered by small-scale mining permits issued under PD No. 1899 (SSMPs). Small-scale mining operations in Minahang Bayan declared under RA No. 7076 shall be covered by small-scale mining contracts (SSMCs). (Sec. 2)

As part of the policy of RA 7076, the promotion and regulation of mining activities give due regard to existing rights. The existing mining rights refer to perfected and subsisting claim, lease, license or permit covering a mineralized area prior to its declaration as a people's small-scale mining area. (Sec.3.g) This includes permits and licenses authorized and granted under PD 1899. RA 7076 also expressly declares that small-scale miners who have been in actual operation of mineral lands on or before August 1, 1987, subject to determination, shall not be dispossessed, ejected or removed from said areas, provided they comply with the provisions of the law. (Sec. 23)

2.1 Period of validity

Under PD 1899, an SSMP may be issued and is valid for two (2) years renewable for another two (2) years. (Sec. 2) The two (2)-year term of an SSMP is renewable only once, provided that the pertinent application shall be filed prior to the expiration thereof, among other requirements. No SSMP shall be renewed unless its two (2)-year term is fully consumed. (Sec. 3, DMC 2007-07)

Under RA 7076, an SSMC shall have a term of two (2) years, renewable subject to verification by the permitting authority for like periods as long as the contractor complies with its contractual and legal obligations. (Sec. 13) Similar to SSMPs, no renewal of an SSMC shall be granted unless its two (2)-year term is fully consumed. The law does not provide specific limitations on the term of the renewal period. DENR Administrative Order No. 2015-03 or the Revised Implementing Rules and Regulations of RA 7076 (Revised IRR-RA 7076) issued on March 16, 2015, however, only allows two (2) renewals or a total maximum contract period of 6 years. (Sec. 13.a)

2.2 Area Size of Mined Area under SSMP and SSMC

Under the IRR-PD 1899, the maximum area that may be applied for an SSMP for metallic minerals is one meridional block or containing an area eighty-one (81) hectares, more or less (Sec. 21). An exception to this permit area is for gold mining, panning and sluicing using the gravity separation method, where the permit area must not be more than five thousand (5,000) square meters (Sec. 23). An individual may only be issued one permit in any one province while partnerships and corporations may be issued a maximum of two (2) permits in any one province covering its own mining areas. Such partnership or corporation may also

opt to operate another (2) permits belonging to another person or entity, or a total of (4) permits. (Sec. 10)

Under RA 7076, the maximum contract area must not exceed twenty (20) hectares per contractor, and the depth or length of the tunnel or adit shall be subject to the limits imposed by the MGB Director. (Sec. 10) Only one contract may be awarded to a small-scale mining contractor. (Sec. 12, IRR-RA 7076)

As earlier discussed, EO 79 now erases these distinctions between PD 1899 and RA 7076. It requires that all small-scale mining must be undertaken in compliance with RA 7076 and within Minahang Bayan only.

2.3 Permitting Authority

Originally, under the IRR-PD 1899, applications for SSMPs are filed with either the then Mines and Geosciences Regional Office or with the Mineral District Office concerned. (Sec. 5) The MGB Regional Director grants the permits (Sec. 16), except in case of gold mining through panning or sluicing, where either the Regional Directors or the then Mineral District Officers may issue such permit (Sec. 23).

Under RA 7076, Provincial Mining Regulatory Boards, or in the case of independent or highly urbanized cities, City Mining Regulatory Boards are created in each province or independent or highly urbanized city (P/CMRBs) and are authorized to award SSMCs (Sec. 9, 24.c). P/CMRBs are composed of the MGB Regional Director as Chairperson and representatives of the governor or city mayor, 1 small-scale mining representative and 1 large-scale mining representative and the representative of an environmental non-government organization as members. (Sec. 25).

In 1991, when Republic Act No. 7160 or the Local Government Code was enacted, it devolves powers to local government units (LGUs) in accordance with the constitutional principle of local autonomy. It devolves to provinces and cities the responsibility of enforcing small-scale mining laws, pursuant to national policies and subject to supervision, control, and review of the DENR. (Sec. 17.3 and 4, 484.7). Following this and the reorganization of the DENR pursuant to EO 192 and 503, DENR issued Department Administrative Order No. 30, s. 1992 (DAO 30-92) to provide guidelines for the transfer and implementation of DENR functions devolved to LGU. Originally, DENR 30-92 refers only to small-scale mining activities as defined under RA 7076 and devolves the function of the enforcement of small scale mining laws to the LGUs, subject to the policies, standards and guidelines of the DENR. About 2 months later, DENR Administrative Order No. 37-1992 (DAO 37-92) is issued to amend DAO 30-92 to correct and clarify that the devolved functions to LGUs refer to small-scale mining activities as defined both under RA 7076 or under PD 1899, whichever is applicable. It further clarifies that the LGUs shall be responsible for the enforcement of small-scale mining laws involving areas not declared as government mineral reservations. This means that the enforcement of small-scale mining laws in mineral reservations remains the responsibility of DENR-MGB. For areas outside of mineral reservations, responsibility lies with the local government units. DAO 37-92 moreover

provides that for purposes of attaining an effective system in the issuance of small-scale mining permits prescribed under PD 1899 and RA 7076 in relation to other pertinent mining laws, rules and regulations, the permits shall be issued by the Provincial Governor upon area clearance from the concerned DENR regional office and upon recommendation by the Provincial/City Mining Regulatory Board (Sec. 3.4.b) Thus, the MGB Director issues SSMP or SSMCs within mineral reservations. Outside of mineral reservations, the Provincial Governor/City Mayor through the P/CMRB shall issue SSMPs or SSMCs. (DAO 96-40, Revised IRR-RA 7942, MRDB AO 3/3A, RA 7160, MRDB AO 3/3A, DAO 34-92, DAO 37-92, PD 1899, MRD 41, DAO 11-200, DAO 21-2010, Consolidated IRR-RA 7942).

In 2010, DENR further clarifies that applications for small-scale mining permits shall be filed in the Office of the Provincial Governor/City Mayor through the P/CMRB concerned for areas outside the Mineral Reservation and in the Regional Office concerned for areas within Mineral Reservations. (Sec. 103, DAO 21-2010, Consolidated IRR-RA 7942). DAO 21-2010 provides that the P/CMRB shall, among others, accept, process and evaluate applications and determine administrative charges for small-scale mining permits filed with it. (Sec. 70) Interestingly, the regulation solely uses the term "Small-Scale Mining Permits" without distinguishing SSMPs under PD 1899 and SSMCs under RA 7076. This lapse appears to be due to inadvertence, rather than an intent to limit the application of the rule to small-scale mining under PD 1899.

In March 2015, the Revised Implementing Rules of RA 7076 or DAO 2015-03 provides that the MGB Regional Director as Chairperson of the P/CMRB shall award the SSMCs. (Sec. 12) It also directs the payment of application fees for SSMCs with the MGB Regional Offices, but does not specify whether the application shall still be filed with the Office of the Provincial Governor/City Mayor. (Sec. 10)

2.4 Qualifications of Applicant

Under the IRR-PD 1899, any individual or entity qualified under existing mining laws and regulations may apply for an SSMP. A qualified person means a Filipino citizen, of legal age, and with capacity to contract, or a corporation or partnership authorized to engage in mining, registered with the Securities and Exchange Commission, at least 60% of the capital of which is owned at all times by Filipino citizens. (Sec. 1.j)

Under RA No. 7076, Filipino citizens who individually or in the company of other Filipinos form a small-scale mining cooperative may apply for an SSMC. (Sec. 3.c,e, 4.d, 8, 9). The qualification of who may apply for an SSMC is also a subject of DOJ Opinion No. 29-2011. In its request for the opinion, DENR-MGB contends that SSMC applicants are only limited to cooperatives. The DOJ opines that the law consistently uses the term individuals or cooperatives leading to the conclusion that both may pursue small-scale mining activities. All persons undertaking small-scale mining activities shall register as miners with the Provincial Mining Regulatory Board or in the case of independent or highly urbanized cities, City Mining Regulatory Board (P/CMRB) and may organize themselves into cooperatives in

order to qualify for the awarding of a people's small-scale mining contract. (Sec. 8)

2.5 Capital Investment Required

The maximum capital investment allowed for a single unit small-scale mining operation under PD No. 1899 is Ten Million Pesos. RA 7076 is silent, but regulation applies the same limitation to small-scale mining carried out under the law. This covers raw, additional and existing capital, such as processing plants, mine and hauling equipment, tools, infrastructures, capitalized exploration and development costs, support facilities and working capital. (Sec. 2.b, IRR-PD 1899, DMC 2007-07)

2.6 Conditions and Obligations for Permits under PD 1899

Under PD 1899, the holders of mining rights must meet the conditions of the requirement for small-scale mining activities, shall produce metallic minerals within twelve (12) months from the date of the issuance of the permit or license and shall submit verified periodic reports. (Sec. 3) The mining operations, whether newly-opened, existing or rehabilitated, must have the following:

- a) a single mining unit having an annual production not exceeding 50,0000 metric tons of run-of-mine ore, either an open cast mine working or a subsurface mine working which is driven to such distance as safety conditions and practices will allow;
- b) a total capital investment not exceeding P10 million during the effectivity of the permit and its renewal;
- c) a ratio of labor cost to equipment utilization cost to produce, process and market to one metric ton of ore equivalent to or exceeding one (1).
- d) The extraction and processing of any of the classified commodities as specified by the regulations. (Sec. 2, IRR-PD 1899).

The following terms and conditions of the SSMP are also provided in the IRR-PD 1899 (Sec. 15):

- a) The permit shall be for the exclusive use of the permittee and shall not be transferred without the written approval of the MGB Director or Regional Director, as the case may be.
- b) The permit may be suspended or revoked at any time by the MGB Director or Regional Director, as the case may be, when in their opinion, public interest, welfare and peace and order conditions so requires or demands or upon failure of the permittee to comply with the other terms and conditions stated in the permit or for ecological reasons.
- c) The statements made in the application and those made later in support thereof shall be considered as conditions and essential parts of the permit and any misrepresentation contained therein shall be a cause for the suspension or cancellation of the permit.
- d) The removal or extraction of ores/quarry materials under the permit shall be confined within the area

specified therein, the boundaries of which, according to the application are established on the ground with prominent marks.

- e) The penal provisions of P.D. No. 463, with emphasis on “theft of minerals” are deemed included and adopted.

The permittee shall within twelve (12) months from the date of issuance of the permit, place the area in actual commercial production and shall submit verified quarterly production and integrated annual survey reports, within thirty (30) days after the end of the quarter and year covered by reports aforementioned. The failure of the permittee to place the area in actual production within the said period without justification shall cause the automatic cancellation of the permit. (Sec. 16)

2.7 Requirements for Award of Contracts under RA 7076

A people's small-scale mining contract or SSMC may be awarded to individual miners or cooperatives who have organized themselves and registered with the appropriate government agency. All persons undertaking small-scale mining activities shall register as miners with the P/CMRB and may organize themselves into cooperatives in order to qualify for the awarding of a people's small-scale mining contract. (Sec. 8) However, only one (1) people's small-scale mining contract may be awarded at any one time to a small-scale mining contractor who shall start mining operations within one (1) year from the date of award. The law also grants priority to small-scale miners residing in the province or city where the small-scale mining area is located. (Sec. 9)

An SSMC entitles the small-scale mining contractor to the right to mine, extract and dispose of mineral ores for commercial purposes. The holder of an SSMC is not allowed to sub-contract, assign or otherwise transfer the contract. (Sec. 12)

Under RA 7076, the holder of an SSMC has the following duties and obligations:

- a) undertake mining activities only in accordance with a mining plan duly approved by the P/CMRB;
- b) abide by the MGB and the Small-Scale Mining Safety Rules and Regulations;
- c) comply with his obligations to the holder of an existing mining right;
- d) pay all taxes, royalties or government production share as are now or may hereafter be provided by law;
- e) comply with pertinent rules and regulations on environmental protection and conservation, particularly those on tree-cutting, mineral processing and pollution control;
- f) file under oath at the end of each month a detailed production and financial report to the P/CMRB; and
- g) assume responsibility for the safety of persons working in the mines. (Sec. 13)

Once issued an SSMP or awarded an SSMC, the permittee and contractors are obliged to comply with the terms and conditions of the grant of privilege. This includes the periodic reporting of production of minerals under oath. The obligations of the grantees are shown below.

Figure 3. Obligations of a Grantee under an SSMP and an SSMC

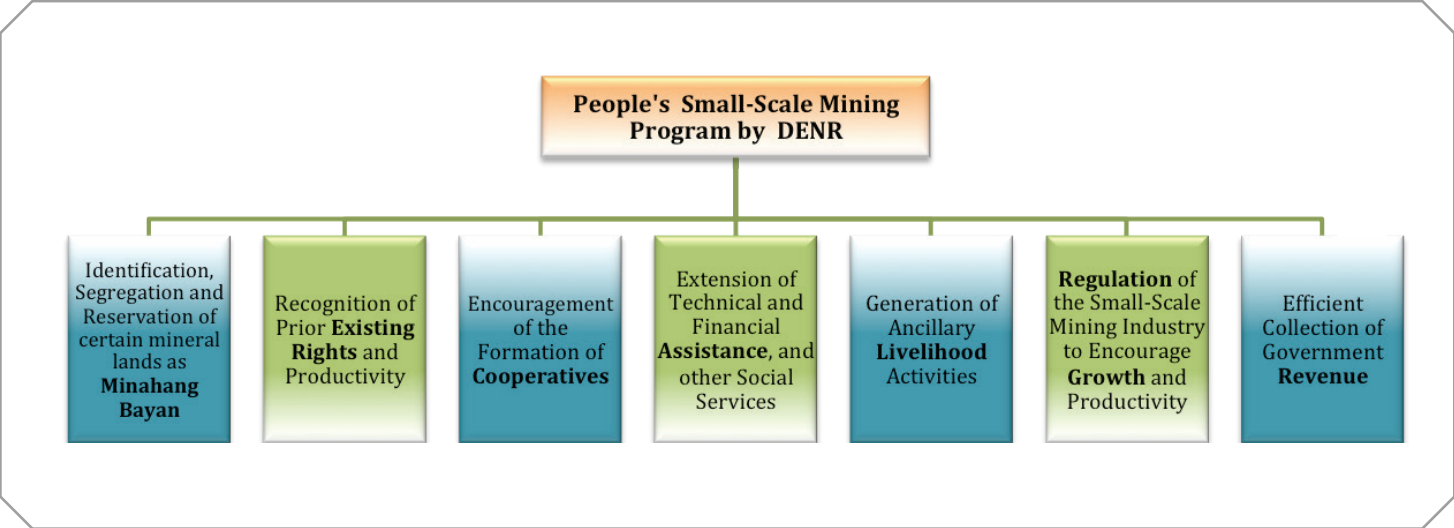
| Terms and Conditions of the SSMP | Terms and Conditions of the SSMC |
|---|--|
| a) place the area in actual commercial production within twelve (12) months from the date of issuance of the permit, subject to automatic cancellation of the permit (Sec. 3) | a) undertake mining activities only in accordance with a mining plan duly approved by the P/CMRB, without right of sub-contracting, assigning or transferring contract (Sec. 12) |
| b) submit verified quarterly production and integrated annual survey reports within thirty (30) days after the end of the quarter and year covered | b) abide by the MGB and the Small-Scale Mining Safety Rules and Regulations |
| c) exclusively use the permit, with right of transfer of permit only upon written approval of the MGB Director or Regional Director, as the case may be. | c) comply with his obligations to the holder of an existing mining right |
| d) confine removal or extraction of ores/quarry materials under the permit within the area specified, the boundaries of which must be established on the ground with prominent marks (Sec. 15, IRR-PD 1899) | d) pay all taxes, royalties or government production share as are now or may hereafter be provided by law; |
| | e) comply with pertinent rules and regulations on environmental protection and conservation, particularly those on tree-cutting, mineral processing and pollution control; |
| | f) file under oath at the end of each month a detailed production and financial report to the P/CMRB; |
| | g) assume responsibility for the safety of persons working in the mines. (Sec. 13) |

2.8. People’s Small-Scale Mining under RA 7076: Program and Minahang Bayan

2.8.1 People’s Small-Scale Mining Program as the Backdrop for an SSMC

Small-scale mining authorized under RA 7076 is set within the context of a People’s Small-Scale Program. The law mandates the DENR Secretary to implement the program. This is to carry out the declared State policy of developing, protecting and rationalizing viable small-scale mining activities with aims to generate more employment opportunities and to provide an equitable sharing of the nation’s wealth and natural resources. (Sec. 2) The People’s Small-Scale Mining Program is designed to 11 achieve an orderly, systematic and rational scheme for the small-scale development and utilization of mineral resources in certain mineral areas in order to address the social, economic, technical, and environmental problems connected with small-scale mining activities. (Sec. 4)

Figure 4. People’s Small-Scale Mining Program under RA 7076



Under the law, the People's Small-scale Mining Program includes the following features:

- a) the identification, segregation and reservation of certain mineral lands as people's small scale mining areas;
- b) the recognition of prior existing rights and productivity;
- c) the encouragement of the formation of cooperatives;
- d) the extension of technical and financial assistance, and other social services;
- e) the extension of assistance in processing and marketing;
- f) the generation of ancillary livelihood activities;
- g) the regulation of the small-scale mining industry with the view to encourage growth and productivity; and
- h) the efficient collection of government revenue. (Sec. 4)

The law does not specify a budget to implement this People's Small-Scale Mining Program.

2.8.2. Pre-Requisite of a Declared People's Small-Scale Mining Area or Minahang Bayan

A key feature of the People's Small-Scale Mining Program is the identification, segregation and declaration of certain mineral lands as people's small-scale mining area or Minahang Bayan, as earlier discussed. The P/CMRB is authorized to declare and set aside people's small-scale mining areas in sites onshore suitable for small-scale mining. The law immediately prioritizes the declaration of Minahang Bayan of areas already occupied and actively mined by small-scale miners before August 1, 1987. It further provides that the declaration of Minahang Bayan is based on the following criteria: (a) areas are not considered as active mining areas (b) the minerals found therein are technically and commercially suitable for small-scale mining activities (c) the areas are not covered by existing forest rights or reservations and have not been declared as tourist or marine reserves, parks and wildlife reservations, unless their status as such is withdrawn by competent authority. (Sec. 5, RA 7076, Sec. 7 IRR)

For future people's small-scale mining areas, the following lands, when suitable for small-scale mining, may be declared by the P/CMRB as people's small-scale mining areas: (a) public lands not subject to any existing right; (b) public lands covered by existing mining rights which are not active mining areas; and (c) private lands, subject to certain rights and conditions, except those with substantial improvements or in bona fide and regular use as a yard, stockyard, garden, plant nursery, plantation, cemetery or burial site, or land situated within one hundred meters (100 m.) from such cemetery or burial site, water reservoir or a separate parcel of land with an area of ten thousand square meters (10,000 sq.m.) or less. (Sec. 6)

The immediate prioritization of the declaration of Minahang Bayan of areas that are already occupied and actively mined by small-scale miners before August 1, 1987 as well as the inclusion in the criteria of areas that are not considered as active mining area, among others, are important. This gives flesh to the text and spirit of the law to carve out an exception to subsistence small-scale miners, i.e. to grant them access to areas that are not actually explored, developed or exploited or under commercially production by existing mining claimowners.

In its deliberations, Congress discussed that the desire is to more or less restrict the area that will be defined as an active mining area of mineral claimants or operators. This is being restricted to areas that are under actual exploration, development for commercial production belonging to the claim owner or operator, where they have made substantial investments within such active mining area prior to the entry of the small-scale miners. By way of example, Congress cited the experience in Diwalwal, where parts of the mountain were occupied by roughly 80,000 small-scale miners, but the areas were part of a claim of one or two big mining corporations that did not do anything substantial in the area. According to Congress, the area which will be defined as an active mining area must be restricted; because otherwise Congress "will forever allow speculators to let claim to vast tracts of mining" and no subsistence small-scale miner may enter and pursue any mining activity in the area. In a sense, Congress wanted to "limit mining companies to areas which are being actively mined by them"; otherwise, according to the Congress, these companies should just leave the area. (Bi-Cameral Conference Meeting Minutes, January 22, 1991, pp 7-8)

RA 7076 thus defines active mining area as referring to areas under actual exploration, development, exploitation or commercial production as determined by the Secretary after the necessary field investigation or verification including contiguous and geologically related areas belonging to the same claimowner and/or under contract with an operator, but in no case to exceed the maximum area allowed by law. (Sec. 3.f) Outside of these active mining areas, even when covered by existing mining claims, a Minahang Bayan may be declared and opened for people's small-scale mining activities.

Under the regulations, for areas not declared as People's Small-Scale Mining Area or Minahang Bayan, the pertinent rules of PD 1899 shall apply. (Sec. 34, IRR-RA 7076)

After the declaration of the Minahang Bayan, the MGB Director, in consultation with the operator, claimowner, landowner or lessor of an affected area, shall determine the easement rights of the small-scale miner. These are rights to existing facilities such as mining and logging roads, private roads, port and communication facilities, processing plants that are necessary for the implementation of the People's Small-Scale Mining Program. The small-scale

miners shall enjoy these easement rights, subject to reasonable fees to operators, claimowners, landowner or lessors. (Sec. 11, RA 7076)

3. Recent Implementation and Regulatory Reforms

One of the basic tenets of RA 7942 or the Philippine Mining Act of 1995 is the responsibility of the State to promote the rational exploration, development, utilization and conservation of the country's mineral resources through the combined efforts of government and the private sector to enhance national growth, effectively safeguards the environment and protects the rights of the affected communities. (Sec. 2) It is based on this principle that the President issued EO 79 on July 6, 2012. EO 79 institutionalizes and implements reforms in the mining sector by providing policies and guidelines to ensure environmental protection and responsible mining in the utilization of mineral resources. Resultantly, DENR also revised the implementing rules of RA 7076 to operationalize these reforms in small-scale mining on March 16, 2015. (Revised IRR-RA 7076)

3.1 Moratorium on New Mineral Agreements under EO 79

EO 79 provides for a moratorium in the issuance of new mineral agreements until legislative reforms have taken place. The order provides that "no new mineral agreements shall be entered into until a legislation rationalizing existing revenue sharing schemes and mechanisms shall have taken effect." (Sec.4) Mineral agreements are contracts between the government and a contractor, involving mineral production-sharing agreement, co-production agreement, or joint-venture agreement. (Sec. 3.ab, RA 7942) The order, however, does not prohibit existing holders of mineral agreements to continue their activities nor invalidate any of the agreements existing prior to the issuance of the order. The DENR is only tasked to review the existing mining contracts and agreements for possible renegotiation of the terms and conditions of the same, which shall in all cases be mutually acceptable to the government and the mining contractor. (Sec. 4) With respect to small-scale mining permits and contracts, EO 79 directs specific measures for reform.

3.2 Small-Scale Mining to comply with RA 7076 and to be pursued in Minahang Bayan only

EO 79 contained guidelines on how to improve and address issues on small-scale mining, through the following measures:

- a) Small-scale mining activities shall comply with RA NO. 7076, or the People's Small-Scale Mining Act of 1991, and the Environmental Impact Statement System requirements under PD 1586;
- b) Pursuant to RA No. 7076, small-scale mining operations shall be undertaken only within the declared People's Small-Scale Mining Areas or Minahang Bayan;

- c) Pursuant to Section 24 of RA No. 7076, P/CMRBs in provinces and cities where they have not been constituted shall be operationalized within three (3) months from the effectivity of EO 79;
- d) Small-scale mining shall not be applicable for metallic minerals except gold, silver, and chromite, as provided for in RA No. 7076;
- e) The use of mercury in small-scale mining shall be strictly prohibited; and
- f) Training and capacity building measures in the form of technical assistance for small-scale mining cooperatives and associations shall be conducted by the concerned government agencies (Sec. 11):

As discussed earlier, EO 79 directs that small-scale mining shall comply with RA 7076 and mandates that all small-scale mining activities can only be undertaken in declared Minahang Bayans. The order did not make any mention of PD 1899, which is the basis for issuance of SSMPs, which are granted without need to declare the permit area as a Minahang Bayan.

According to DAO 2012-07, the Implementing Rules and Regulations of EO 79 (IRR-EO 79), small-scale mining operations covered with SSMPs issued under PD 1899 shall be recognized until their expiration, unless earlier revoked or terminated. The affected small-scale miners operating under SSMPs involving gold silver and chromite were given the option to continue operations through an SSMC issued pursuant to RA 7076. Existing SSMPs with a remaining term of one (1) year may be given a temporary SSMC by the Governor or City Mayor upon the recommendation of the P/CMRB to continue small-scale mining operations within a period of six (6) months or until the area is declared as Minahang Bayan, whichever comes first. (Sec.14.a)

EO 79 thus erases the distinction between small-scale mining under PD 1899 and RA 7076. More importantly, it renders the implementation of PD 1899 ineffective. The order recognizes and specifically authorizes small-scale mining activities to be pursued under RA 7076 only.

Based on this directive of the President, the DENR-MGB, being under the executive branch, could no longer implement PD 1899 nor authorize small-scale mining activities to be pursued under such law. DENR-MGB could no longer issue SSMPs under PD 1899. However, as discussed above, the Provincial Governor or City Mayor through the P/CMRB issues SSMPs and SSMCs outside of Mineral Reservations. Since the President's power over LGUs is merely of supervision or the power of review for legality of action, and not control or the power to substitute judgment, there runs the question whether the LGUs, through the Provincial Governor or City Mayor can still issue SSMPs under the valid and subsisting PD 1899. But then again, the Provincial Governor or City Mayor cannot issue such SSMP without the recommendation of the P/CMRB that is presided by the MGB Director.

Furthermore, the P/CMRB is under the power of review of the DENR Secretary who is under the control of the President.

Thus, by executive action, EO 79 and its implementing rules ignore the valid subsistence of PD 1899; although such presidential issuance could not invalidate nor repeal the law. Unless Congress amends or repeals PD 1899, confusion in its application and implementation remains unresolved.

3.3 Areas Closed to Mining under EO 79

EO 79 further defines areas that are closed to mining, without distinguishing whether they apply to large-scale or small-scale operations. Applications for mineral contracts, concessions, and agreements are not allowed in the following:

- a) Areas expressly enumerated under Section 19 of RA No. 7942;
- b) Protected areas categorized and established under the National Integrated Protected Areas System under RA No. 7586;
- c) Prime agricultural lands, in addition to lands covered by RA No. 6657, or the Comprehensive Agrarian Reform Law of 1988, as amended, including plantations and areas devoted to valuable crops, and strategic agriculture and fisheries development zones and fish refuge and sanctuaries declared as such by the Secretary of the Department of Agriculture;
- d) Tourism development areas, as identified in the National Tourism Development Plan; and,
- e) Other critical areas, island ecosystems, and impact areas of mining as determined by current and existing mapping technologies, that the DENR may hereafter identify pursuant to existing laws, rules, and regulations, such as, but not limited to, RA 7586. (Sec. 1)

RA 7942 or the Philippine Mining Act of 1995 specifically enumerates areas closed to mining operations and could not be subject of any mineral agreements, namely:

- a) In military and other government reservations, except upon prior written clearance by the government agency concerned;
- b) Near or under public or private buildings, cemeteries, archeological and historic sites, bridges, highways, waterways, railroads, reservoirs, dams or other infrastructure projects, public or private works including plantations or valuable crops, except upon written consent of the government agency or private entity concerned;
- c) **In areas covered by valid and existing mining rights; (emphasis supplied)**
- d) In areas expressly prohibited by law;
- e) In areas covered by small-scale miners as defined by law unless with prior consent of the small-scale miners, in which case a royalty payment upon the utilization of minerals shall be agreed upon by the parties, said royalty forming a trust fund for the socioeconomic development of the community concerned; and

- f) Old growth or virgin forests, proclaimed watershed forest reserves, wilderness areas, mangrove forests, mossy forests, national parks, provincial/municipal forests, parks, greenbelts, game refuge and bird sanctuaries as defined by law in areas expressly prohibited under the National Integrated Protected Areas System (NIPAS) under Republic Act No. 7586, Department Administrative Order No. 25, series of 1992 and other laws. (Sec. 19)

3.3.1 Areas Covered by Valid and Existing Mining Rights as an Area Closed to Mining under EO No.79 and its Apparent Conflict with RA 7076

EO 79 adopts this enumeration in RA 7942 governing large-scale mining and declares areas covered by valid and existing mining rights as closed to mining. On its face then and if applied to small-scale mining, EO 79 disregards the exception carved out by RA 7076, which is to allow people's small-scale mining access to areas that are otherwise closed to them, i.e. areas not considered as active mining areas even if already covered by valid and existing mining rights. In this respect, as applied to small-scale mining, EO 79's declaration of areas covered by valid and existing claims as an area closed to mining may be contrary to the language and intent of RA 7076.

RA 7076 specifically allows small-scale mining in areas covered by existing mining claims that are not actually explored, developed, exploited or commercially producing as determined by the DENR Secretary and declared as Minahang Bayan by the P/CMRB. (Sec. 5, 6, 3.f). RA 7076 expressly provides that in case a site declared and set aside as a small-scale mining area is covered by an existing mining right, claimowners and small-scale miners are encouraged to enter into voluntary and acceptable contractual arrangements with respect to the small-scale utilization of the minerals from the claimed area. In case of disagreement, the law entitles the claimowner to certain rights and privileges such as exemption from annual work obligations and from payment of some fees and taxes, access to the contract area for tests and royalties. (Sec. 14)

The condition of an area as being covered by a claim does not preclude it from being declared a Minahang Bayan for the utilization by subsistence small-scale miners. In fact, unlike in the case of a private landowner who is explicitly required by law to be notified of a proposed declaration of their private land and expressly granted the option to oppose such petition before the P/CMRB, the law is silent with respect to claimowners. (Sec. 14, 15) Impliedly, it would seem that the law leaves it to the DENR Secretary to determine the active mining areas after the necessary field investigation or verification; (Sec. 3.f) and conversely, to identify those that are not active mining areas but are subject to existing mining claims that may be segregated and delineated as Minahang Bayan. (Sec. 5) For the former, this is to respect and protect the existing rights and the economic interests of claimowners who have invested in their mining claims. For the latter, this is meant to carry out the

spirit and text of the law to carve out areas to allow access to people's small-scale miners in areas that are not being mined and are held merely for speculation. This scenario created by EO 79 that contradicts RA 7076 is partially resolved by the Revised IRR-RA 7076 issued on March 16, 2016. The new regulation reiterates the areas open for small-scale mining in accordance with RA 7076. These are namely (a) areas already occupied and actively mined by small-scale miners before August 1, 1987, (b) public lands covered by mining applications, (c) public lands covered by existing mining permits/contracts which are not active mining areas, among others. (Sec. 8) It enumerates, and even provides more details, the same areas provided for in RA 7076, that may be declared and set aside as Minahang Bayan, to include those that are not active mining areas. What is confusing, however, is that the regulation, in the same section, also provides that areas closed to mining applications as provided in EO 79 may not be declared as Minahang Bayan, without qualifying it to exclude areas covered by valid and existing mining rights. (Sec. 8)

The Board shall have the authority to declare and set aside Minahang Bayan in mineralized areas onshore suitable for small-scale mining, **except in areas closed to mining applications as provided in Section 1 of the EO**, subject to review by the Secretary thru the Director. (emphasis supplied)

The following mineralized areas onshore may be declared by the Board as Minahang Bayan:

- a. Areas already occupied and actively mined by small-scale miners before August 1, 1987; provided (i) that such areas are not considered as active mining areas; x x x
 - b. Public lands covered by mining applications x x x
 - c. Public lands covered by existing mining permit(s)/contract(s) which are not active mining areas x x x
2. Areas covered by valid and existing mining permits/contracts; x x x

The Revised IRR-RA 7076 even provides for the denial of the petition or request for a Minahang Bayan after the initial review of the DENR Secretary through the MGB Director if the area applied for is an area closed to mining, without making any exception. (Sec. 9)

3.4 New Procedure in the Establishment of Minahang Bayan under the Revised IRR of RA 7076

Under the same Revised IRR-RA 7076, DENR prescribes a new and longer procedure for the establishment of a Minahang Bayan. It refers the petition and its evaluation to the DENR Secretary twice, for an initial review and for a final clearance prior to the declaration of a Minahang Bayan. Under the old rules, there is only the 30-day review of the Secretary after the P/CMRB has segregated the area for the proposed Minahang Bayan. The revised rules also require the petitioner for the declaration of a Minahang Bayan to secure an Environmental Compliance Certificate for the entire Minahang Bayan within less than 12 months.

The Revised IRR-RA 7076 introduces the following key changes in the declaration of a Minahang Bayan, among others:

- a) initial review by the DENR Secretary through the MGB Director of the MGB Regional Office evaluation results
- b) express requirement to provide notice to the NCIP and the Sanggunian of the results of the MGB Director's initial review;
- c) required, and no longer optional, publication in newspaper of local or national circulation of notice of proposed declaration of Minahang Bayan, in addition to posting of notices;
- d) issuance of a clearance by the DENR Secretary for the declaration of the Minahang Bayan, in case there is no opposition;
- e) the submission of the petitioner of an Environmental Compliance Certificate (ECC) for the entire Minahang Bayan (Sec. 14.b, IRR-EO 79) upon receipt of the clearance;
- f) the declaration of the Minahang Bayan within 7 days from receipt of the ECC
- g) the denial of the petition in case the Minahang Bayan is not declared within 1 year from the receipt of the clearance (Sec. 9)

The detailed changes between the old and revised implementing rules are shown in the figure below. Italics show the revisions in the current regulation.

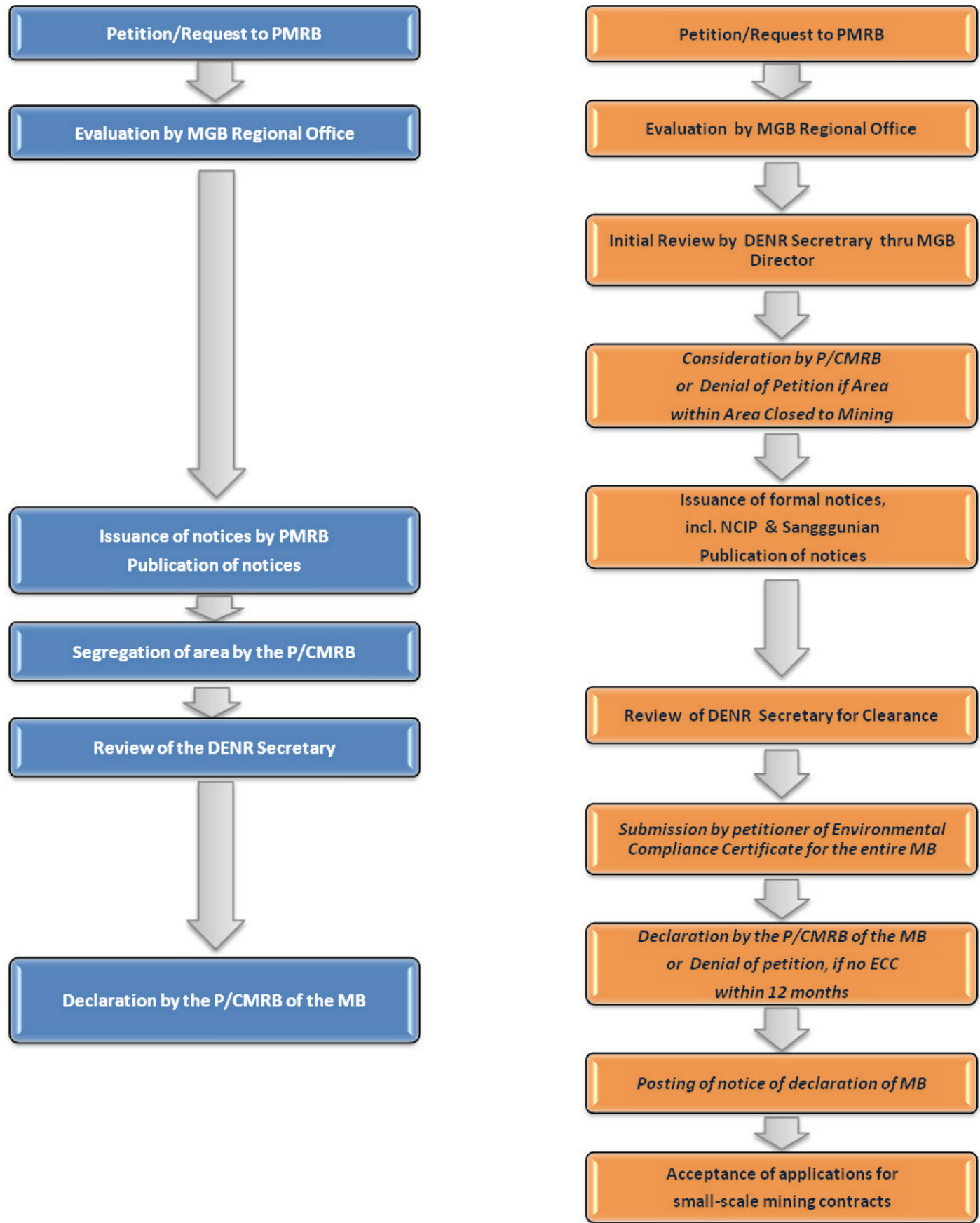
Figure 5. Comparative Procedure for Declaration of Minahang Bayan under Old and New IRR-RA 7076

| Declaration of a Minahang Bayan | |
|---|---|
| Procedure under 1994 IRR-RA 7076 (Sec. 7) | Procedure under 2015 IRR-RA 7076 (Sec. 9) [Changes in Italics] |
| Petition/request from an interested party for declaration of Minahang Bayan (MB) filed with P/CMRB | Petition/request from an interested party for declaration of MB filed with P/CMRB Petition filed with P/CMRB. <i>Recommendation by MGB Regional Office to the P/CMRB other areas for possible declaration of MB.</i> |
| Evaluation by MGB Regional Office (RO) of area for its technical and economic viability and identification of other areas, upon the DENR's initiative | Evaluation by MGB Regional Office (RO) of area for its technical and economic viability, <i>including considering the necessary allocation for a mineral processing zone, after checking its control map the status of the proposed area vis-à-vis prior and existing mining rights and applications and areas closed to mining pursuant to EO 79</i> <i>Submission by the MGB RO, within 15 days from receipt of petition or request, results of the evaluation to the DENR Secretary, through the MGB Director for initial review</i> |
| Issuance of notices by PMRB to claimowners, operators, private landowners, non-government organizations, government agencies and cultural communities for clearance and consent, as the case Publication of notices on provincial/city/municipal halls and/or MGB and other conspicuous places or in newspapers once a week for 2 consecutive weeks. | <i>Initial Review by DENR Secretary through the MGB Director, who then informs MGB RO of the results of initial review and who subsequently forwards results to the P/CMRB</i> |
| Segregation of area by the P/CMRB | <i>Consideration by P/CMRB of results of initial review of MGB Director.</i> <i>Denial of petition by P/CMRB, in case proposed area is inside area closed to mining applications.</i> Issuance of formal notices to holders of mining permits/ contracts or applicants, in case proposed area is within public lands covered by mining applications or existing mining permits/contracts which are not active mining areas or within private lands, <i>for required submission of comment within 15 days from receipt of notice, copy furnished to petitioner</i> |
| | Publication of notices on provincial, city, municipal halls, and MGB RO, for 7 days, copy furnished to concerned barangays and publication of same notice in newspaper of local or national circulation, <i>at the expense of the petitioner, in case proposed area is found to have no prior and existing mining permits/contracts/ application and is not within area closed to mining applications.</i> Forwarding notices of proposed declaration to NCIP with request for a Certificate of Non-Overlap or Compliance Certificate of free and prior informed consent pursuant to RA 8371 and to all Sanggunian concerned for prior approval and consultation pursuant to RA 7160, for the endorsement of at least a majority of the Sanggunian |

| Declaration of a Minahang Bayan | |
|---|--|
| Procedure under 1994 IRR-RA 7076 (Sec. 7) | Procedure under 2015 IRR-RA 7076 (Sec. 9) [Changes in Italics] |
| Review of the DENR Secretary within 30 working days from receipt of the proposal from the P/CMRB | Review by DENR Secretary of documents for declaration of MB forwarded by P/CMRB, within 10 days from date of publication or upon final resolution of adverse claim, protest or opposition |
| Declaration by the P/CMRB in the event that the area is found to be in order by the DENR Secretary after the 30-day period of review. | <i>Clearance</i> by DENR Secretary, in case there is no opposition and all requirements are complied |
| | <i>Submission by petitioner of Environmental Compliance Certificate for the entire MB (Sec. 14.b, IRR-EO 79) within 1 year from the P/CRMB's receipt of the clearance from the DENR Secretary</i> |
| | <i>Declaration by the P/CMRB of the MB, within 7 days from the receipt of the ECC, that must be within 1 year from receipt of the clearance from the DENR Secretary.</i> <i>Denial of petition if the MB is not declared within 1 year from receipt of the clearance from the Secretary</i> |
| | <i>Posting of notice of declaration of MB in bulletin boards of MGB RO, Offices of the Provincial Governor/Mayor for 7 days, copy furnished to the barangays.</i> <i>Publication of notice in newspaper of local or national circulation for 1 day, at the expense of the petitioner</i> |
| | Acceptance of applications for small-scale mining contracts immediately after 7-day posting and 1-day publication |

A comparison of the procedures under the old and new IRR-RA 7076 is shown below, with the changes reflected in italics:

Figure 5.A. Comparative Procedure for Declaration of Minahang Bayan under old and new IRR-RA 7076



C. Environmental, Health, Safety, and Social Regulations and Safeguards

1. Environmental, Health and Safety Regulations and Safeguards

1.1 Environmental Requirements under PD 1899 and RA 7076

On its face, PD 1899 and IRR-PD 1899 do not expressly provide for health, environmental and safety standards for small-scale mining. RA 7076 includes in the definition of small-scale mining the non-use of any explosives (Sec. 3.a), imposes as part of the terms and conditions of the SSMC the obligation of the contract to comply with the pertinent rules on environmental protection and conservation particularly those on tree-cutting, mineral processing and pollution control (Sec. 13.e) and provides for the reversion of the Minahang Bayan when safety, health and environmental conditions warrant (Sec. 22). The implementing rules of RA 7076 provide the details on the protection of the environment by requiring the following:

- submission of an Environmental Compliance Certificate (ECC) issued by the concerned DENR Regional Executive Director as one of the requirements for an SSMC. (Sec. 11)
- inclusion in the SSMC as part of its terms and conditions the obligation of the contractor to:
 - undertake mining activities only in accordance with a Mining Plan duly approved by the P/CMRB (Sec. 13.1), which mining plan includes a schedule of tailings and waste management and mine site rehabilitation. (Sec. 15.2); and
 - comply with the pertinent rules and regulations on environmental protection and conservation, particularly on those on tree-cutting, mineral processing and pollution control (Sec. 13.5)
- protection of the environment by the contractor by complying with the following:
 - ensure that all areas of activity within the contract area are maintained in a clean and organized manner;
 - proceed with the schedule of tailings and waste management and mine site rehabilitation as documented in the approved Mining Plan;
 - be responsible for the control and proper disposal, where applicable, of all wastes produced as a result of mining operations; and
 - comply with all environmental laws, especially with respect to water quality, water course diversion, excess siltation and under

interference with existing agricultural fishing or other legitimate land and water usage. (Sec. 15)

- d) reversion of the Minahang Bayan when small-scale mining operations cause significant destruction to the environment (Sec. 30.3)

As discussed earlier, in 2012, EO 79 was issued to implement mining reforms for environmental protection and for responsible mining. It mandates the full enforcement of environmental standards in mining. It directs the government in general, and DENR in particular, in coordination with concerned LGUs, to ensure that environmental standards in mining, as prescribed by the various mining and environmental laws, rules, and regulations, shall be fully and strictly enforced, and appropriate sanctions meted out against violators. It further provides that only those who are able to strictly comply with all the pertinent requirements shall be eligible for the grant of mining rights under RA 7942. (Sec. 2).

Specific to small-scale mining operations, EO 79 strictly prohibits the use of mercury (Sec.11.e) and the IRR-EO 79 expands the prohibition to include hydraulicking (water jetting) and compressor mining in small-scale mining operations due to serious safety, health and environmental impacts. Violation of the prohibition is a cause for the cancellation of the SSMC/SSMP. (Sec. 14.c) The implementing rules further direct the compliance with the Environmental Impact Statement System requirements under PD 1586. It requires the following documents prior to the issuance of an SSMC: (a) ECC for the entire Minahang Bayan secured through an Environmental Impact Statement from the EMB; (b) Potential Environmental Impact Management Plan (PEIMP), which is a simplified Environmental Protection and Enhancement Program, and a Final Mine Rehabilitation/Decommissioning Plan; and (c) Community Development and Management Program (CDMP), a simplified Social Development Management Program, all approved by the MGB Regional Office. (Sec. 14.b) The IRR-EO 79 also ordered the DENR-EMB to study the use and implementation of the Programmatic Environmental Impact Assessment for small-scale mining operations. (Sec. 20)

The Revised IRR-RA 7076 reiterates these stringent requirements to protect the environment and requires the following:

- submission by the petitioner of a proposed Minahang Bayan an ECC for the entire Minahang Bayan within 1 year from the P/CMRB's receipt of the clearance from the DENR Secretary (Sec. 9.I.m)
- submission by the SSMC applicant as part of the mandatory requirements of an SSMC application of a:
 - PEIMP or an environmental management and rehabilitation plan for the life of the SSMC, approved by the MGB Regional Office concerned (Sec.4.ad, 10.i) and;

- ii. Certificate of Environmental Management and Community Relations Record (CEMCRR) or a certificate issued by the MGB Regional Office concerned attesting to the SSMC applicant's satisfactory environmental management and community relations in their past or present mining-related ventures (Sec. 4.g, 10j); and
- iii. CDMP
- c) inclusion in the SSMC as part of its terms and conditions the obligation of the contractor to:
 - i. conduct mining activities in accordance with the Two-Year Work Program, PEIMP, CDMP and the ECC, among others
 - ii. undertake the extraction and/or breakage of materials without the use of explosives, blasting accessories, explosives ingredients and/or sophisticated and/or heavy equipment;
 - iii. not use mercury in any phase of the mining
 - iv. not resort to hydraulicking or compressor mining at any stage of the mining within the contract area
 - v. comply with pertinent rules and regulations on environmental protection and conservation (Sec. 13.c, Sec. 11.a,e, EO 79, Sec. 14.c, IRR-EO 79)

1.2 Mine Safety and Health Requirements

Similar to the environmental safeguards, the health and safety requirements are detailed in the implementing rules of RA 7076 and PD 1899. Memorandum Circular No. MRD-2, s. 1985, which was subsequently replaced by DENR Administrative Order No. 97-30, Small-Scale Mine Safety Rules and Regulations, provides for the mine safety rules and regulations. The old IRR-RA 7076 requires the following:

- a) inclusion in the SSMC as part of its terms and conditions the obligation of the contractor to:
 - i. abide by the mine safety rules and regulations per Memorandum Circular No. MRD-2, Series of 1985 (Sec. 13.2)
 - ii. assume responsibility for the safety of persons working in the mines (Sec. 13.7, Sec. 13.g, RA 7076)
- b) worker health and safety by the contractor by complying with the following:
 - i. providing adequate sanitation facilities in the form of non-contaminating latrines in accordance with the provisions as directed by the concerned DENR Regional Office;
 - ii. providing and maintaining clean drinking water for all workers
 - iii. being responsible for the health and safety of

- all individual contractors or employees within contract area;
- iv. handling the use of mercury, cyanide or other poisonous substance in accordance with the provisions as directed by the concerned DENR Regional Office; and
- v. notifying the P/CMRB within 5 working days of all accidents causing either death or more than five days of lost working time. (Sec. 14)

The Small-Scale Mining Safety Rules and Regulations prescribe a reporting system and require safety inspectors depending on the classification of the small-scale mine. A safety inspector, who must have undergone accredited safety trainings and have been involved in small-scale operations for at least 6 months, is required for every 50 mine workers in surface mines, for every 25 mine workers in underground mines and for every operation in an underwater mining near shore. (Chapter III)

Pursuant to EO 79 and its implementing rules, the Revised IRR-RA 7076 also provides for more stringent requirements for worker safety and health as follows:

- a) submission by the SSMC applicant as part of the mandatory requirements of an SSMC application of an Annual Safety and Health Program (ASHP) (Sec. 4.a, 10.I):
- b) inclusion in the SSMC as part of its terms and conditions the obligation of the contractor to:
 - i. conduct mining activities in accordance with the ASHP, among others;
 - ii. undertake the extraction and/or breakage of materials without the use of explosives, blasting accessories, explosives ingredients and/or sophisticated and/or heavy equipment;
 - iii. not resort to hydraulicking or compressor mining at any stage of the mining within the contract area
 - iv. not use mercury in any phase of the mining; and
 - v. abide by DAO 97-30-Small-Scale Mining Safety Rules and Regulations (Sec. 13.c., Sec. 11.a,e, EO 79, Sec. 14.c, IRR-EO 79)

The significant changes from the Revised IRR-RA 7076 are the requirement of an ASHP and the ban on hydraulicking and compressor mining and on the use of mercury in any stage of mining. DENR, through EMB, regulates mercury as a toxic substance. The importation, manufacture, processing, use and distribution of mercury is governed by DENR 97-38, a Chemical Control Order (CCO), issued pursuant to Republic Act No. 6969 or The Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990. The CCO is meant to control the use of mercury and its dispersion into the environment to avoid the adverse consequences of mercury. (Sec. 3) Certain entities such as dentists, however, are exempt from the requirements of the coverage of the CCO. (Sec. 6) In 2011, the Philippines, through the DENR-

EMB, developed and adopted a National Strategic Action Plan for the Phase-Out of Mercury by 2020. Hydraulicking and compressor mining are both banned due to serious safety, health and environmental impacts. (EO 79) Hydraulicking is mining with the use of pressurized stream of water while compressor mining refers to underwater small-scale mining with the workers/miners using compressed/pressurized air for breathing. (Sec. 4.j and s, Revised IRR-RA 7076)

In terms of labor, the Philippine Mining Act of 1995 or RA 7942 provides that no person under sixteen years of age shall be employed in any phase of mining. It further provides that no person under eighteen years old shall be employed in underground mining activities. (Sec. 64) This increases by one year the standard minimum age of labor under the Labor Code of the Philippines that is set at fifteen years old. (Art. 139, Labor Code of the Philippines)

Apart from the changes in the environmental and health safeguards, the significant changes between the old and new implementing rules of RA 7076 are shown below. The Revised IRR-RA 7076 provides for (a) the strict adherence to EO 79 institutionalizing reforms for environmental protection and responsible mining; (b) an increase in fees of P5 to P1,000 as license fee and from P30/hectare to P20,000 as SSMC application fee, and other licensing and contracting requirements; (c) a limited maximum term for an SSMC and its renewal for 6 years only; (d) additional environmental requirements including an ECC for the entire Minahang Bayan to be secured within 12 months; (e) a longer process for the declaration of a Minahang Bayan including an initial review by the DENR Secretary through the MGB Director and for final clearance by the DENR Secretary, and (f) reinstates local chief executives as members only from being Co-Chairperson of the P/CMRB, among others.

Figure 6. Significant Changes from Original 1992 IRR and 2015 Revised IRR of RA 7076

| Features | 1992 Original IRR (DAO 34-92) | 2015 Revised IRR (DAO 2015-03) |
|--------------------------------------|---|---|
| Policy | | In consonance with EO 79; Small scale mining activities shall only be allowed in declared Minahang Bayan (MB); prohibition on activities not covered by a SSMC and registration with PMRB |
| Traditional Mining | Areas occupied by a community of traditional small-scale miners subject to the approval of the said community. Where they refuse to allow their areas to be declared a People's Small-scale Mining Area, their customary rights under their mining traditions shall be recognized and protected; In all of the above cases, the laws, rules and regulations protecting the Filipino cultural heritage shall be strictly complied with. (Sec. 6.6) | The concept of traditional small-scale mining no longer appeared in the new IRR. Customary rights are no longer explicitly recognized, as any form of mining outside a declared MB is prohibited. |
| Establishment of Minahang Bayan (MB) | <ul style="list-style-type: none"> • Petition filed with P/CMRB • Evaluation by MGB RO • Issuance & Publication of Notices by P/CMRB • Segregation of area by P/CMRB • Submission of results to DENR Secretary for review • Review by the DENR Secretary • Declaration by the PMRB of MB • A 30-day review period by the DENR Secretary. | <ul style="list-style-type: none"> • Petition with P/CMRB. • Evaluation by MGB RO • Submission of Result to Secretary, thru MGB Director for initial review • Results of initial review to MGB RO • Results to PMRB for consideration, including denial of petition if area falls within area closed to mining. • Issuance and Publication of Notices by PMRB, including notices to NCIP and the Sanggunian. • Submission of Results to DENR Secretary • Clearance from Secretary • Declaration of MB by PMRB of MB • Petitioner must submit ECC for the entire MB within 1 year from receipt of clearance. • PMRB declares MB within 1 year from clearance by the Secretary; otherwise, petition is denied. |

| Features | 1992 Original IRR (DAO 34-92) | 2015 Revised IRR (DAO 2015-03) |
|--|---|--|
| Composition of PMRB | <p>Representative from RO is Chairperson with the Provincial Governor or City Mayor as Co-Chairperson (based on the amendment by DAO 2010-21, IRR of Philippine Mining Act of 1995 and IRR-EO 79)</p> <p>(Governor and Mayor as Member previously under DAO 34, s. 1992)</p> | <p>RD or his authorized representative is Chairperson.</p> <p>Governor and Mayor are members (reinstated provision of DAO 34, s. 1992)</p> |
| Licensing and Registration of Small-Scale Miners, Fees and Requirements | <p>Licensing with MGB/PENRO or CENRO of Filipino citizens as small-scale miners and processors. Fee of P5.00 and P20.00, respectively and Barangay Certificate of Residency that applicant is bona fide resident for at least 6 months. License in the form of an ID Card valid for 2 years. (Sec. 5)</p> <p>Registration with PMRB of all persons who shall undertake small-scale mining. No fee and License and Barangay Certificate of Residency (Sec. 9)</p> | <p>Registration with PMRB of all undertaking or intending to undertake small-scale mining. No fee and Government-issued ID card and proof of Filipino citizenship. A registry to be maintained. (Sec. 6)</p> <p>Licensing of applicants for a Small-Scale Mining Contract. Fee of P1,000.00 payable to MGB RO and proof of registration with the SEC, DTI or CDA and proof of 100% Filipino ownership. License valid for the duration of the SSMC. (Sec. 7)</p> |
| Application for SSMC - Fees | P30.00 per hectare or fraction thereof | P20,000.00 for metallic (gold, silver, chromite) |
| Application for SSMC – Mandatory Requirements | Survey plan; Mining plan; Information on the geographical coordinates | Location map showing geographical coordinates; sketch plan of the area; application for survey order; proposed 2-year work program; sworn declaration by the applicant of the total area covered by SSMC in the entire country |
| Application for SSMC and requirements for health and safety and environmental safeguards | <p>Environmental Compliance Certificate (ECC) for Mined Area</p> <p>Mining Plan duly approved by the P/CMRB that includes a schedule of tailings and waste management and mine site rehabilitation</p> <p>Undertaking as included in the SSMC's terms and conditions to comply with the pertinent rules on environmental protection and conservation, particularly those on tree-cutting, mineral processing and pollution control, control and proper disposal of all wastes produced as a result of mining operations and water quality, water course diversion, excess siltation and undue interference with legitimate land and water usage and for reversion of the Minahang Bayan when small-scale mining operations cause significant destruction to the environment</p> | <p>Environmental Compliance Certificate (ECC) for Entire Minahang Bayan prior to Declaration of Minahang Bayan</p> <p>Two-Year Work Program Potential Environment Impact Management Plan (PEIMP); Certificate of Environmental Management and Community Relations Record (CEMCCR); Community Development and Management Program (CDMP); Annual Safety and Health Program (ASHP)</p> <p>Undertaking as included in the SSMC's terms and conditions to conduct mining activities in accordance with the Two-Year Work Program, PEIMP, CDMP and the ECC, among others; undertake the extraction and/or breakage of materials without the use of explosives, blasting accessories, explosives ingredients and/or sophisticated and/or heavy equipment; not use mercury in any phase of the mining; and not resort to hydraulicking or compressor mining at any stage of the mining within the contract area and comply with pertinent rules and regulations on environmental protection and conservation</p> |
| Worker Health and Safety | Use of mercury, cyanide and other poisonous substance must be handled based on the direction of the MGB Regional Director | <p>Express prohibition on the use of mercury, explosives, blasting accessories and explosive ingredients</p> <p>Also bans hydraulicking or compressor mining</p> |

| Features | 1992 Original IRR (DAO 34-92) | 2015 Revised IRR (DAO 2015-03) |
|---|---|---|
| Award of SSM Contract | PMRB through Provincial Governor (as amended by DAO 11-2000, DAO 21-2010) | PMRB through MGB Regional Director as Chairperson |
| Term of Contract | 2 years, renewable for like period | 2 years, renewable for like period but not to exceed a total of 6 years |
| Payment of Taxes, Government Share and other Fees | <ul style="list-style-type: none"> Income Tax based on NIRC, Sec. 21 Special Import Tax, if applicable Tariff Duties, if applicable VAT, as provided in EO 273 Real Property Tax, if applicable Excise Tax except gold sold to Central Bank which are considered for export Government Share payable to the host Municipality/City, to be apportioned according to RA 7160 or the Local Government Code Occupation Fee of P50/hectare payable to the host Municipality/City | <ul style="list-style-type: none"> National Taxes and Local Taxes, based on NIRC Royalty equivalent to 5% of the gross output for small-scale mining within mineral reservations Government Production Share Occupation Fee of P100/hectare, payable to the host Municipality/City Excise Taxes on gold sold to BSP (as provided in BIR Revenue Regulation 07-2008, BIR Revenue Regulation 06-2012; Section 151(a)(3)(a)(b), NIRC) |

2. Priority Rights, Free and Prior Informed Consent and Royalties of Indigenous Cultural Communities/Peoples: Small-Scale Mining in Ancestral Domains/Lands

2.1 IP Rights over Ancestral Lands: Priority Rights and Royalties

After PD 1899 and RA 7076, Republic Act No. 8371 or the Indigenous People's Rights Act of 1997 (IPRA) was enacted laying down the specific rights of indigenous peoples (IPs) with regard to their ancestral lands and domains. This is pursuant to the 1987 Constitution recognizing and promoting the rights of the IPs and mandating the State to protect their ancestral land rights and ensure their economic, social and cultural well-being, among others. (Art. XII, Sec. 5; Art. XIV, Sec. 17) The IPRA grants to the IPs priority rights in the exploration, development and use of any natural resources within their ancestral lands and domains. Non-IPs may develop and utilize natural resources within ancestral lands, only upon a formal and written agreement with the IPs. (Sec. 57)

Prior to the IPRA, both RA 7076 and the Philippine Mining Act of 1995 or RA 7942 recognize the rights of the IPs. Consistent with the 1987 Constitution, both laws provide that no ancestral lands shall be opened for mining operations without the prior consent of the indigenous cultural community (ICC) concerned. (Sec. 7, RA 7076; Sec.16, RA 7942) RA 7076 provides that in case their ancestral lands are declared as Minahang Bayan, the members of the ICCs shall be given priority in awarding SSMC. RA 7942 requires that in the event of an agreement with an ICC, royalty payment upon the utilization of the minerals shall be agreed upon by the parties. Such royalty payment shall form part of a trust fund for the socio-economic well-being of the ICC. (Sec.16,17) The IRR-

RA 7942 provides for the definition, requirements and procedure for securing the free and prior informed consent (FPIC) of the ICCs/IPs.

2.2 Certification Pre-Condition, Certificate of Non-Overlap and Free & Prior Informed Consent

Under the IPRA, the FPIC is the consensus of all members of the IPs/ICCs to be determined in accordance with their respective customary laws and practices, free from any external manipulations, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community. (Sec. 3.g) The law also enjoins any government agency from issuing, renewing or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the National Commission on Indigenous Peoples that the area affected does not overlap with any ancestral domain or a Certification Pre-Condition. (Sec. 59) The Revised IRR-7076 expressly requires a Certificate of Non-Overlap or a Compliance Certificate from the NCIP prior to the declaration of a Minahang Bayan. (Sec. 9)

Under the IPRA and its implementing rules, the FPIC process for small-scale extractive operations is different from that of large-scale operations. NCIP Administrative Order No. 03-12 dated April 13, 2012 lays down the revised guidelines on FPIC and related processes.

3. Rights and Interests of Private Rights/Surface Owners

As earlier discussed, under the Regalian Doctrine enshrined in the 1987 Constitution, all minerals belong to the State. (Art. XII, Sec. 2) This is regardless of the ownership of the surface area. Nonetheless, RA 7076 recognizes and respects the rights of private landowners and surface owners. In case there is a petition to declare their land as a Minahang Bayan, landowners shall be

notified of such plan or petition. They may oppose such plan or petition in a proceeding and hearing before the P/CMRB. (Sec. 15) Oppositions or protests shall be filed with the P/CMRB within 15 days from receipt of notice from the P/CMRB of the proposed declaration of the Minahang Bayan. (Sec. 9, Revised IRR-RA 7076)

If a private land is declared as Minahang Bayan, the land owner and the contractor are encouraged to enter into a voluntary agreement for the small-scale utilization of the minerals in the private land. The landowner is also entitled to the payment of actual damages that they may suffer as a result of the declaration of their private land as a Minahang Bayan. The owners shall also be entitled to royalty payments in an amount not exceeding 1% of the gross value of the minerals recovered. (Sec. 15)

4. Rights and Privileges of Mineral Claim Owner

4.1 Rights and Privileges of Claimowner

People’s small-scale mining may be allowed in areas covered by existing mining rights, for as long as they are not active mining areas as determined by the DENR Secretary. The law provides for the rights of the claimowners or holders of an existing mining right. (Sec. 5, 6.b, RA 7076)

Under the law, in case a site declared and set aside as a Minahang Bayan is covered by an existing mining right, the claimowner and the small-scale miners are encouraged to enter into a voluntary and acceptable contractual agreement with respect to the small-scale utilization of minerals under the claim area. In case of disagreement, the claimowner are entitled to the following rights and privileges:

- a) Exemption from the performance of annual work obligations and payment of occupation fees, rental, and real property taxes;
- b) Subject to the approval of the P/CMRB, free access to the contract area to conduct metallurgical tests, explorations and other activities, provided such activities do not unduly interfere with the operations of the small-scale miners; and
- c) Royalty equivalent to one and one-half percent (1 and 1/2 %) of the gross value of the metallic mineral output.

The claimowner are entitled to these rights and privileges only if he is not delinquent in the performance of his annual work obligations and other requirements for the last two (2) years prior to the effectivity of RA 7076 on July 18, 1991. (Sec. 14, RA 7076) These rights and privileges granted to the claimowners are meant to give due regard to their existing mining rights. (Sec. 2, 3.g, RA 7076)

4.2 Observations on the Absence of Specific Statutory Right to Oppose Declaration of Minahang Bayan

Unlike in the case of a private landowner whom the law specifically requires to be notified of any plan or petition to declare their land as a Minahang Bayan,

the claimowner is not expressly granted by law such particular right. In the case of a private landowner, the law provides that they may oppose such plan or petition in an appropriate proceeding and hearing conducted before the P/MCRMB. In the case of a claimowner, the law is silent on the matter. (Sec. 15 and 14, RA 7076) They are treated differently.

The absence of such grant of right to oppose a plan or petition for the declaration of a Minahang Bayan is consistent with the intent of RA 7076 to carve out an exception and allow access to people’s small-scale mining in areas that would otherwise be closed. This may also be related to the criteria for establishing a Minahang Bayan that must not be an active mining area. (Sec. 3.f, 5, 6) By the provisions of the law, it appears that it presupposes that the DENR Secretary already made a determination, after the necessary field investigation or verification, of active mining areas; and conversely, those areas that are not considered as active mining areas that may be identified by the DENR Secretary as possible Minahang Bayan. Active mining areas refer to areas under actual exploration, development, exploitation or commercial production including contiguous and geologically related areas belonging to the same claimowner or under contract with an operator, but in no case to exceed the maximum area allowed by law. (Sec. 3.f)

Outside of these active mining areas, the remaining mineralized land may already be declared and set aside as a Minahang Bayan. By the language of the law providing for the different treatment of claimowners and private landowners, such declaration proceeds without any express right granted to the claimowner to oppose a plan or a petition for the declaration of a Minahang Bayan. This is consistent with the intent of the law to carve out access to mineralized areas for people’s small-scale mining. This is especially in areas that have been held on to by large-scale mining rights holders for speculation purposes, without any investment in the area, as earlier discussed.

In contrast, however, the Revised IRR-RA 7076 now expressly provides that in case of public lands covered by existing mining permits/contracts that are not active mining areas, the holder of the mining permit/contract must consent to the declaration of their permit/contract area as a Minahang Bayan. (Sec. 8.c.2.iii) Prior to this, the original regulation loosely provides that notices of the proposed declaration of a Minahang Bayan shall be issued to claimowners, operators, private landowners and non-government organizations concerned, government agencies and cultural communities for clearance and consent as the case may be. (Sec. 7.4, IRR-RA 7076) As discussed, this requirement of consent from a claimowner is not found in the law. In fact, the law does not even particularly grant such claimowner the right to oppose a proposed declaration, unlike in the case of a private landowner. (Sec. 14, 15, RA 7076)

By making the consent of the claimholder a pre-requisite to the declaration of the Minahang Bayan, the regulation grants to such claimholder the discretion whether or not to allow people’s small-scale miners

access to such area that is not actively mined. RA 7076 does not provide for such discretion. The law and its intent are clear - to carve out and grant such access for people’s small-scale mining in areas covered by mining claims but which are not actively mined, subject only to payment of royalties and other privileges in favor of the claimowner.

D. Sale of Gold to Bangko Sentral ng Pilipinas

All gold produced by small-scale miners in any mineral area must be sold to the central bank or the Bangko Sentral ng Pilipinas (BSP) or its duly authorized representative, at prices competitive with those prevailing in the world market regardless of volume or weight. (Sec. 17, RA 7076) The BSP is also mandated to establish buying station in areas where there are small-scale gold-mining activities. For BSP’s guidance in establishing the buying stations, the MGB Director of MGB is mandated to furnish the BSP the list of Minahang Bayan for gold. (Sec. 34, Revised IRR-RA 7076)

All gold produced by service contractors in the Diwalwal Mineral Reservation in Mt. Diwata, Monkayo, Compostela Valley, that has been proclaimed as a Mineral Reservation and as an Environmentally Critical Area in 2002 and managed by the Natural Resources Development Corporation, are also required to be sold to the BSP. (Sec. 18, DAO 35-02, Proclamation No. 297, November 25, 2002) This is required by regulation, despite that only a maximum of twenty-five percent of the reservation is allocated for small-scale mining cooperatives covered by RA 7076. (Sec. 10, DAO 35-02)

After BSP liberalized foreign exchange regulations in September 1992, it is only the gold from small-scale miners that must be sold to the BSP. The sale to BSP of all other forms of gold, including primary and secondary gold, is at the option of the owner or producer. Purchases and sales of gold and/or gold-bearing metals in the Philippines may now generally be made by and between Philippine residents without specific approval from BSP. BSP has also relaxed the requirements for the export and import of gold that previously required prior approval of the BSP. (Sec. 102, 106, CBP Circular No. 1353-92) The DENR-MGB, however, continues to regulate the export of mineral ores by requiring a permit. (RA 7942, DENR Administrative Order No. 20-08)

1. BSP Gold Buying Program Guidelines

The sale of gold to BSP must be in accordance with its rules and the guidelines under the BSP Gold Buying Program. Small-scale miners may sell their gold to BSP’s buying stations in the Mint and Refinery Operations Department in Quezon City or in the Gold Buying Stations in the BSP Regional Offices located in Baguio City, Naga City, Zamboanga City or Davao City. BSP has guidelines on its purchase of the sale of gold that includes, among others, (a) documentary requirements to signify compliance with BSP’s standards and (b) physical requirements of the gold sold.

The BSP purchases gold in Philippine Peso at the prevailing international gold buying price and Philippine Peso-US Dollar exchange rate set by its Treasury Department. Gold sellers are required to accomplish certain forms including the Customer Information Packet to signify compliance to BSP’s

Gold Sourcing Policy. Other forms that need to be accomplished are the “Letter of Delivery and Sale” and “Risk Assessment Checklist for the Source of Origin” and “Letter of Authorization” which are all provided by BSP.

Sellers also need to submit photocopies of their government issued identification cards (ID) and Tax Identification Number, two (2) ID-sized pictures, and their registered Bank Account to the Financial Services Group or to the BSP Regional Gold Buying Stations.

The BSP makes an initial payment equivalent to 99% of the value of the delivery based on as-received weight and preliminary assay by specific gravity method. Initial payment are credited to the seller’s registered bank account on or before the third business day for first time sellers and on or before the second business day for returning sellers. Final settlement of the balance is credited to the registered bank account upon completion of final assay, or not later than thirteen (13) business days from date of delivery/sale. The seller is given five (5) business days to file a complaint from the date the final payment is credited to the registered bank account. Otherwise, BSP deems that the seller accepted the final assay and the full payment of the sale. BSP charges processing fee for every sale transaction with a minimum of Php 1,600.00 per lot, and a metal recovery factor applied in accordance with a schedule.

1.1. Physical Requirements for Gold

BSP purchases gold, conditioned on the following required physical form:

- a) Gold should be in a bar or disc; jewelry form is not acceptable
- b) It should not contain mercury or amalgam
- c) It should be free of slag and other foreign material
- d) It should have no sign of metallic segregation/ layering or poured shortness
- e) It should not be damped or wet
- f) It must comply with the following dimensions and weight:

1.2 BSP Responsible Gold Sourcing Policy

Figure 7. Required Dimension and Weight for Sale of Gold to BSP

| Maximum Dimensions | Weight |
|--|--|
| Bar: 16.5 cm long x 8 cm wide x 4 cm thick | Maximum weight of bar or disc: @ 5 kilograms |
| Disc: 10 cm diameter x 5 cm thick | Maximum weight per lot: @ 10 kilograms |
| | Minimum Preliminary Gold Assay – 30% |

Starting April 8, 2015, BSP enhanced the implementation of its Responsible Gold Sourcing Policy to comply with the London Gold and Bullion Standard. It ensures that BSP purchases 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. BSP accepts all gold sold to it that complies with its standards and guidelines. It does not limit the sale nor verify, however, whether the gold sold to it comes from small-scale mining, either registered or unregistered, and or whether the gold is extracted in accordance with existing small-scale mining laws.

Based on the BSP guidelines, BSP has a goal of building customer trust and commits to ensure that its gold products comply with London Gold and Bullion Standard. In transacting with small-scale miner, the BSP takes responsibility for the following:

- a) Purchases 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;
- b) Suspends or discontinues transacting with gold-supplying counterparties identified as operating in contravention of the policy;
- c) Adheres to the laws and regulations against money laundering, any form of crime, human rights violations, and terrorism and its financing;
- d) Provides relevant training on this policy to involved BSP employees and sellers; and
- e) Maintains a Quality Management System subject to audit by a third party certifying body.

While there are safeguards to ensure that BSP purchases only gold from known sources and from areas or operations that that have not used gold to finance any form of crime or conflict, terrorism, human rights violations, and money laundering activities, it appears that based on the foregoing policy, BSP does not specifically inquire whether the gold comes from small-scale mining or whether the gold is extracted in accordance with laws.

2. Taxes on the Sale of Gold

Under the old regulation, a small-scale mining contractor must pay excise tax except for gold sold to the BSP that are considered for export. (Sec. 26.6, IRR-RA 7076)

However, on April 2, 2012, the Bureau of internal Revenue (BIR) issued Revenue Regulation 06-2012 on the Taxation of the Sale of Gold and other metallic minerals to BSP. BIR implements the collection of the 2% excise tax on the sale of gold pursuant to the 1997 National Internal Revenue Code (NIRC) on the excise tax on mineral products (BIR Revenue Regulation 07-2008; Section 151(a)(3)(a)(b), NIRC.)

The BIR also imposes the tax on income on the sale of gold, pursuant to the NIRC (Sec. 24.A, 27.A) Hence, sellers of gold are required to withhold 5% of the income from the sale of gold and pay the same to the government. The BSP is authorized as a collection agent for the BIR. Thus, BSP is obliged to collect the 2% excise tax and the 5% creditable withholding tax on income. Hence, the BSP can either require proof of prior payment of the 2% excise

tax or collect the same for the BIR.

With respect to value-added tax, the sale of gold to BSP is currently zero-rated for value-added tax pursuant to Sec. A(2)(a)(4) of the NIRC.

E. Institutional Arrangements for Small-Scale Metallic Mining

1. Provincial/City Mining Regulatory Boards

Small-scale metallic mining activities outside of mineral reservations are regulated by the DENR-MGB Regional Offices and the Provinces or independent or highly urbanized Cities, through the Provincial or City Mining Regulatory Boards (P/CMRBs), under the supervision of the DENR Secretary, through the MGB Director. Mining in mineral reservations are under the DENR-MGB. The P/CMRBs also regulate other small-scale mining such as quarry of sand and gravel and other non-metallic minerals. RA 7076 mandates the organization of P/CMRBs. (Sec. 24) EO 79 directs that P/CMRBs in provinces and cities where they have not been constituted shall be operationalized within three (3) months from the EO’s effectivity in July 2015. (Sec. 11.c)

Subject to the review of the DENR Secretary, the powers and functions of the P/CMRB are the following:

- a) declaration and segregation of existing gold rush areas for small-scale mining;
- b) reserving future gold and other mining areas for small-scale mining;
- c) awarding contracts to small-scale miners;
- d) formulating rules and regulations;
- e) settling disputes and conflicts within a Minahang Bayan; and
- f) perform such other needed functions to carry out RA 7076. (Sec. 24, RA 7076)

P/CMRBs are headed by the MGB Regional Director, with members composed of the representative of the Governor or the Mayor, of the small-scale miners, of the large-scale miners and of an environmental non-government organization. Regulation in the past allowed the Governor or the Mayor to serve as Co-Chairperson, presumably in deference to their political stature within the provinces or cities. The Revised IRR relegates them again as members as provided in RA 7076. (Sec. 21, Revised IRR, Sec. 25, RA 7076) In 1994, the DENR ordered the automatic membership of the Chairperson of the Committee of Environment and Natural Resources of the Sangguniang Panlalawigan or Panglungsod in the PMRB for purposes of issuing permits under PD 1899 and for sand and gravel and quarry permits, but not for awarding contracts under RA 7076. (DENR Administrative Order No. 21-94)

2. Multi-Partite Monitoring Teams under the Philippine Environmental Impact Statement System

Under Presidential Decree No. 1586 or the Philippine Environmental Impact Statement System, project proponents that have been issued Environmental Compliance Certificates (ECCs) are responsible for monitoring their projects. Multi-Partite Monitoring Teams (MMTs) are organized to encourage public participation, to promote greater stakeholder vigilance and to provide appropriate check and balance mechanisms in the monitoring of project implementation. (Sec. 2.3 (19), EMB Memorandum Circular No. 2007-002, August 2007, Revised Procedural Manual for DAO 2003-30) For small-scale mining projects, however, the organization of MMTs is optional on the part of the DENR Environmental Management Bureau (EMB) Regional Office. Only projects requiring a Programmatic Environmental Impact Statement and Group I – Environmentally-Critical Projects are required to form project specific MMT.

Based on a reading of the regulations, prior to July 2014, small-scale metallic mining falls under Group II-EIS (Non-Environmentally Critically Projects in Environmentally

Critically Areas or NECPS in ECAs) or Group III-(NECPs in Non-Environmentally Critically Areas), depending on where mining takes place. For Groups II-(NECPs in ECAs), the DENR-EMB Regional Offices have the option to require the formation of MMTs. Small-scale metallic mining are now considered Category B – NECPs under the new DENR-EMB Memorandum Circular No. 005-2014 issued in July 2014. However, the issuance of ECCs has been suspended since April 2011.

3. Mandates of Government Agencies with respect to Small-Scale Metallic Mining

As discussed, DENR is mandated to implement the People’s Small-Scale Mining Program and retains responsibility over small-scale mining areas in mineral reservations. Local government units have the devolved function in enforcing small-scale mining laws, except in mineral reservations, pursuant to national policies and subject to supervision, control, and review of the DENR. Apart from DENR and the LGUs, several agencies are also involved in promoting, developing and regulating small-scale mining. These are as follows:

Figure 8: Summary of Mandates of Government Agencies in relation to Small-Scale Mining

| Agency | Mandate/Responsibility | Legal Basis |
|-------------|---|--|
| DENR | Implementation of People’s Small-Scale Mining Program | RA 7076 League of Provinces v. DENR Secretary |
| | Power of Review over People’s Small-Scale Mining | |
| LGUs | Small-Scale Mining outside of Mineral Reservations | RA 7076, RA 7160 |
| | Local Revenue Generation and Collection | |
| DENR-MGB | Policy recommendation and technical advise on mining matters | EO 192, PD 1899, RA 7076, RA 7942 DAO 97-30 Revised IRR-7076 |
| | Small-Scale Mining in Mineral Reservations | |
| | Technical Assistance to Small-Scale Mining | |
| | Mine Safety | |
| | Collection of Licensing and Application Fees | |
| DENR-EMB | Environmental Impact Assessment & Monitoring of ECC | PD 1586 RA 6969, CCO 97-38 RA 9275, RA 8749 |
| | Regulation and Monitoring of Mercury | |
| | Anti-Pollution Control of Air and Water | |
| NCIP | Monitoring FPIC Processes, Issuance of Certificate of Non-Overlap or Certificate of Pre-Condition | RA 8371 |
| | Technical Assistance to IPs/ICCs | |
| BSP | Purchase of Gold | RA 7076 |
| DOF-BIR | Assessment and Collection of National Government Revenues: Excise Taxes, Income Taxes and Royalties | RA 8424 |
| DOF-BTr/DBM | Custody of Collected Taxes/Budget Preparation and Release of Funds/Share to LGUs and the People’s Small-Scale Mining Fund | EO 449, EO 25, RA 7076 |
| PNP | Enforcement of Laws for Protection of Life and Property | RA 6975 |

4. Small-Scale Metallic Mining Associations and Federations

Even while most small-scale mining is carried out informally, individual miners are usually part of a small-scale mining association in some parts of the country, and at times, the associations form a federation. In Benguet, there are 69 associations, composed of a total of 31,229 individual members. These associations form part of Benguet Federation of Small-Scale Miners, Inc., organized on April 2, 2006. The federation provides support to its member associations through representation in government, environmental, technical and safety training in small-scale metallic mining, health and accident support as well as organizational support to the associations. (Survey Response, KII) This even includes litigation or raising issues in court such as in September 2015, when the federation filed an action against the DENR to question the provisions of the new implementing rules of RA 7076 claimed to be prejudicial to their interests. (KII, Initiatory Pleadings)

The small-scale miners associations in Benguet, most of which are also registered with the Securities and Exchange Commission, also provide similar support to their members, including organizing them and issuing worker's identification cards to the individual miners. Among the objectives of these associations are to work for the welfare of the members and residents, foster their peaceful co-existence, to protect the environment, to defend the land as a source of livelihood for the small-scale miners, preserve the unique traditional small-scale mining practices of the community, among others. The Municipality of Itogon additionally requires these associations to get accreditation from the Sanggunian. (SB Ordinance No. 32, s. of 2006, KII)

In South Cotabato, almost all the miners, except the transients from other areas, are part of one of the 9 small-scale mining associations. They also have an active federation, the Small-Scale Association of South Cotabato that the Provincial Government assisted in creating and organizing. The provinces of Ilocos Sur, Apayao, Agusan del Norte, Agusan del Sur, Surigao del Sur, Southern Leyte and Eastern Samar and the cities of Cagayan de Oro and Butuan also have organized associations of small-scale mining operators and workers.

F. Jurisprudence on Small-Scale Metallic Mining

Apart from the statutes and regulations, Supreme Court decisions interpreting the law also forms part of the law that governs small-scale mining. As already discussed, the Supreme Court interprets that PD 1899 and RA 7076 co-exist with each other. (SR Metals, Inc., San R Mining and Construction Corp. and Galeo Equipment and Mining Company, Inc. vs. the DENR Secretary, G.R. No. 179669, June 4, 2014)

In that case, the issues before the Supreme Court are (a) whether of Section 1, PD 1899 on production limit

violates the equal protection clause as there is no substantial distinction between the miners covered under RA 7076, and those covered under PD1899 who were imposed an extraction limit; and (b) whether production limit in PD 1899 covers contracts issued under RA 7076. The Supreme Court rules that two different laws governing small-scale mining co-exist: PD 1899 and RA 7076. The Supreme Court further recognizes that as the agency mandated to protect the environment and the country's natural resources, DENR is authoritative in its interpretation that the 50,000-MT limit applies to both SSMPs issued under PD 1899 and SSMCs under RA 7076. The issue raised on the violation of the equal protection clause is thus moot.

In the *League of Provinces of the Philippines vs. DENR Secretary*, G.R. No. 175368, April 11, 2013, the issue before the Supreme Court are (a) whether or not the act of DENR in nullifying, voiding and cancelling the small-scale mining permits amounts to executive control, not merely supervision and usurps the devolved powers of all provinces; and (b) whether or not Section 17(b)(3)(iii) of the, 1991 Local Government Code and Section 24 of the People's Small-Scale Mining Act of 1991 are unconstitutional for providing for executive control and infringing upon the local autonomy of provinces.

The Supreme Court holds that the DENR Secretary, in the exercise of his quasi-judicial functions in settling conflicts, can set aside Small-Scale Mining Permit issued by the Governor. The Supreme Court clarifies that the constitutional guarantee of local autonomy in the Constitution Art. X, Sec. 2 refers to the administrative autonomy of local government units or, cast in more technical language, the decentralization of government authority. It does not make local governments sovereign within the State. Administrative autonomy may involve devolution of powers, but subject to limitations like following national policies or standards, and those provided by the Local Government Code. Hence, the decision of the DENR Secretary, declaring that the Application for Exploration Permit was valid and may be given due course, and canceling the SSMP issued by the Provincial Governor, emanates from the power of review granted to the DENR Secretary under R.A. No. 7076 and its Implementing Rules and Regulations.

The Supreme Court also rules that an application for SSMP or SSMC must be processed and obtained from the P/CMRB, and not with the Governor. Otherwise, such permit is null and void. This is the ruling in *Leonora P. Calanza, et al. vs. Paper Industries Corporation of the Philippines et al.*, G.R. No. 146622, April 24, 2009. The Supreme Court explains that under PD 1899, applications of small-scale miners are processed with the Director of the Mines and Geo-Sciences Bureau. Pursuant to RA 7076, which took effect on 18 July 1991, approval of the applications for both mining permits and for mining contracts is vested in the P/CMRB. In this case, petitioners filed their small-scale mining permits on 23 August 1991, making them bound by the procedures provided for under the applicable and prevailing statute, RA 7076. Instead of processing and obtaining their permits from the PMRB, petitioners were able to get the same from the Governor of Davao del Norte. Considering that the governor is without legal authority to issue said mining permits, the same permits are null and void.

The Supreme Court also decided four consolidated petitions involving two mining corporations regarding the unilateral cancellation by one party of their operating agreement covering mining areas in Palawan and their corresponding SSMPs. It rules that the Regional Trial Court has the authority and jurisdiction to hear and decide the dispute between the parties to the operating agreement, and not the Panel of Arbitrators under the Philippine Mining Act. (*Olympic Mines and Development Corp., vs. Platinum Group Metals Corporation*, G.R. No. 178188. May 8, 2009. *Citinickel Mines and Development Corporation, vs. Hon. Judge Bienvenido C. Blancaflor*, Regional Trial Court of Palawan, Branch 95, Puerto Princesa City, Palawan, and *Platinum Group Metal Corporation*, G.R. No. 180674. May 8, 2009; *Platinum Group Metals Corporation vs. Citinickel Mines and Development Corporation*, G.R. No. 181141. May 8, 2009; *Platinum Group Metals Corporation vs. Court Of Appeals and Polly C. Dy*, G.R. No. 183527. May 8, 2009) What is interesting in this case is the operating agreement between Olympic and Platinum covers an area of 768 hectares and an area of 1,408 hectares in the Municipalities of Narra and Española, respectively. Both companies applied for and were granted a total of four Small-Scale Mining Permits. This appears to indicate that the large areas were broken down into small sizes to comply with the maximum allowed area of 80 hectares under PD 1899. This anomalous situation was not, however, passed upon by the Supreme Court, as the principal issue is dispute between the two private parties.

In 1971 and 1980, Olympic was granted by the then Secretary of Natural Resources "Mining Lease Contracts" which the Supreme Court says can be considered as a mineral

agreement. In 2003, Olympic entered into an "Operating Agreement" with Platinum that granted Platinum exclusive right to control, possess, manage/operate and conduct mining operations and to market or dispose mining products for a period of 25 years in consideration of a royalty fee of 2 1/2% of gross revenues. In 2004, Olympic and Platinum each filed with and were granted by the PMRB two (2) SSMPs covering the areas. In 2007, another entity, Citinickel was granted, as Olympic's assignee, a Mineral Production Sharing Agreement covering the disputed mining area. In 2006, Olympic unilaterally cancelled the operating agreement with Platinum, thus giving rise to their conflicts.

Finally, in September 2015, five months after the DAO 2015-03 or the Revised IRR-RA 70766 was issued, an action was filed in court to question the validity of some of its provisions for being allegedly inconsistent and not germane to the purpose of RA 7076. In particular, these are on the application for an SSMC, the terms and conditions of the SSMC, the application for a Mineral Processing License, and the composition of the P/CMRB. (Sec. 10, 13, 16, 21d and 21e) This is docketed as the *Benguet Federation of Small-Scale Miners, Inc. vs. DENR Secretary*, Civil Case No. 15-CV-3129 before the Regional Trial Court of La Trinidad, Benguet. Since there is no injunction or order stopping the DENR from implementing its rules, then this does not affect the implementation of the new rules at this time



PART 2

REVENUES AND REVENUE STREAMS FROM SMALL- SCALE METALLIC MINING

A. Payments to Government under RA 7076

Under PD 1899, the SSMP holders are exempted from payment of other taxes, except income tax. (Sec. 4) The exempted duties and taxes of the permittees in the course of their operation includes, special import tax, compensating tax, tariff duties, royalties, sales tax, real estate tax, occupation fees/rentals, among others. (Sec. 19, IRR-PD 1899) However, this exemption does not extend to regulatory fees that may be imposed by the national government, its agencies or local government units.

Under RA 7076, SSMC holders are obliged to pay taxes, royalties or government production share as provided by law. (Sec. 13) The law does not provide other details on the rates and the collecting agencies for these revenues. The Revised IRR-RA 7076 identifies the specific payments to be paid the government, as follows:

- Application fee of P1,000 for small scale mining license intending to apply for an SSMC, payable to the MGB Regional Office (Sec. 7.b)
- Application fee to enter into small scale mining contract of P20,000, payable to the
- MGB Regional Office (Sec. 10)
- National and local taxes provided for in the NIRC (Sec. 28)
- Royalty fee of 5% of the production output in mineral reservations (Sec. 28)
- Government production share (Sec. 28)
- Occupation fee of P100 per hectare payable to the municipality where the contract area is located (Sec. 29)

The application fees for a license and a contract were previously set at minimal rates of P5.00 and P30.00 per hectare while the occupation fee was at P50 per hectare. (Sec. 5, 10, 27, IRR-RA 7076). The old rules also provide for the payment of special import tax and tariff duties, if applicable. It exempts from payment of excise tax the gold sold to the Bangko Sentral ng Pilipinas, which are considered for export (Sec. 26.6)

National taxes imposed under the NIRC (Sec. 21) include excise tax of 2% of the value of the gross production of all metallic minerals (Sec. 151), value-added tax of 12% for sale of metallic minerals, to persons, except sale of gold to BSP which is subject to zero-rated value added tax (Sec. 106) and income tax based on a schedule (Sec. 24, 27). These national taxes are paid to the BIR. Local taxes and fees imposed by local government units include business permits, regulatory fees and taxes on minerals pursuant to their local taxing powers under the Local Government Code and their specific local tax ordinances. These are paid directly to the host provinces, cities/municipalities or barangays imposing the taxes and fees.

With respect to the government production share, RA 7076 provides that the revenue to be derived by the government from the operation of the mining program shall be subject to the sharing provided in the Local Government Code. (Sec. 19) The old regulation further provides that it shall be paid to the municipality or city treasurer where the mining claims are located and shall be apportioned in accordance with the Local Government Code. (Sec. 26.7) This apportionment refers to a sharing arrangement of 20%-45%-35% among the host province, city/municipality and barangay, respectively or a 65%-35% sharing between a highly urbanized or independent city and its barangay. (Sec. 292, RA 7160). Neither the law nor any of the implementing regulations provides for the rate or amount of the government share from small-scale mining to be paid to the host municipality or city.

Pursuant to the Constitution guaranteeing the equitable share of local governments in the national wealth (Art. X, Secs. 7 and 6), the Local Government Code provides that the local government share in the national wealth, in addition to the internal revenue allotment, is 40% of gross collection of the national government from the preceding year from mining taxes, royalties, and other taxes. (Sec. 290) In large-scale mining, this refers to the 40% of the excise taxes collected by BIR and royalty fees collected by DENR-MGB. The excise tax is computed at 2% based on the actual market value of the annual gross output at the time of removal, while the royalty from mineral reservations is 5% of the 90% of the market value of the gross output of the minerals and mineral products extracted or produced. (Sec. 13, IRR-RA 7649)

Insofar as small-scale mining is concerned, there appears to be no specific provision fixing the amount of the government production share.

Following the Constitutional policy on the share in national wealth and by analogy to large-scale mining, government production share may refer to excise taxes of 2%

of the gross production output and royalty fees from mineral reservations. However, unlike in large-scale mining where such excise taxes are collected by the BIR, the designated collecting agency for the government share in the production is the local government unit. This designation is found in the old implementing regulation, as the revised implementing regulation does not state the collecting agency.

Figure 9. Summary of Payments to National and Local Governments under RA 7076

| Payments to Government: Taxes, Fees and Charges under RA 7076 and its IRR | | |
|---|---|--------------------------|
| Nature of Payment | Amount/Rate | Collecting Agency |
| License Application Fee for SSMC Applicants | 1,000 | MGB RO* |
| Application Fee for SSMC | 20,000 | MGB RO* |
| National Taxes under NIRC | | BIR |
| Excise Tax on Production Output** | 2% of the Production Output | BIR |
| Income Tax | Graduated Schedule based on Taxable Income | BIR |
| Income Tax on Sale of Gold, including including 5% Creditable Withholding Tax on Income | Graduated Schedule based on Taxable Income | BIR |
| Royalty Fee in Mineral Reservations | 5% of Production Output | MGB RO (DAO 2010-21) |
| Government Production Share | Unspecified, may pertain to Excise Tax** by Analogy to Large-Scale Mining | Municipal/City Treasurer |
| Occupation Fee | 100/ha | Municipal/City Treasurer |

*as revised by DAO 2015-03

B. Payments to Local Government based on Local Ordinances

In keeping with their local autonomy and power to generate revenues, local government units impose taxes and fees on small-scale mining. (Constitution, LGC) Before they can assess and collect these revenues, LGUs must enact ordinances authorizing such payments to them. The imposed taxes and ordinances include mineral tax or sales tax on metallic minerals ranging from P1,000 per metric ton to 10% sales tax at 2% of gross receipts, small-scale mining permit fee ranging from P3,000 – P15,520, filing fees of P10 – 20 per hectare or P500, processing fee of P20-25 per hectare to P150 and verification fee from P500 – P3,600 per hectare and business permit at P150 up to P2,500. These taxes and fees vary from one local government unit to another, depending on their respective local tax ordinances. Some of the revenue streams from LGUs are found below.

Figure 10. Summary and Range of Payments to Local Government based on Ordinances

| Payments to Local Government in General: Taxes, Fees and Charges | | |
|--|---|----------------------|
| Nature of Payment | Range Amount/Rate | Collecting Agency |
| Mineral Tax or Sales Tax on Metallic Minerals | 1,000/m.t. - 10% Sales Taxes at 2% of Gross Receipts* | Provincial Treasurer |
| Small-Scale Mining Permit Fee | 3,000 – 15,520 | Provincial Treasurer |
| Filing Fee | 10 - 20/ha – 500 | Provincial Treasurer |
| Processing Fee | 20 - 25/ha - 150 | Provincial Treasurer |
| Verification Fees | 500 - 3,600/ha | |
| Business Permit Fee | P150-P2,500 | Municipal Treasurer |
| Tax on Mining Operations | 2% of Gross Receipts of Preceding Year - Graduated Schedule based on Gross Receipts | Municipal Treasurer |

Figure 10.A Some Examples of Revenue Streams from Local Ordinances

| Payments to Local Government in General: Taxes, Fees and Charges | | |
|---|------------------------------|---|
| LGU & Legal Basis | Nature of Payment | Amount / Rate |
| Province of South Cotabato (South Cotabato Revenue Code of 2011) | Mineral Tax | PhP1,000.00/m.t. |
| | A. Small-Scale Mining Permit | |
| | Mining Permit Fee | PhP3,000.00; valid for 2 years |
| | Filing Fee | PhP20.00/ha |
| | Processing Fee | Php20.00/ha |
| | Verification Fee | Php3,600.00 |
| | Project Fee | PhP100.00 |
| | B. Processors Permit | |
| | Processors Permit Fee | PhP6,000.00 |
| | Filing Fee | PhP3,600.00 |
| | PD 1856 Fee | PhP20.00 |
| | C. Ore Transport Permit | |
| | Ore Transport Permit Fee | PhP500.00; valid for 15 days |
| | Filing Fee | PhP5,000.00 |
| | Delivery Receipt | PhP75.00/stub |
| | Surcharge on Late Payment | 25% of the Amount Due |
| | Interest on Unpaid Tax | 2%/month not to exceed 72% of tax due or 36 months interest |

| Payments to Local Government in General: Taxes, Fees and Charges | | |
|--|---|---|
| LGU & Legal Basis | Nature of Payment | Amount / Rate |
| Municipality of T'boli under South Cotabato (Revenue Code of 2003) | Tax on Mining Operations | 2% of Gross Receipts of Preceding Year |
| | Mayor's Permit Fee as: | Graduated Rate based on Asset Size or Number of Workers of Business |
| | Contractor: Ball Mill & Processing Plant | range of 150-1,500 |
| | | PhP150-cottage; PhP500-small; PhP1000-medium; 1,500-large |
| | Dealer: Gold Buying | Range of 200-P1000 |
| | | PhP200-cottage; PhP400-small; Php800-medium; PhP1000-large |
| | Producer: Tunnel | Range of PhP150-PhP2,500 |
| | | PhP150-PhP250-cottage; PhP750-small; PhP1,500-medium; PhP2,500-large |
| Province of Benguet (Revenue Code of 2005) | Forms | PhP20.00 |
| | Application Fee | PhP30.00/hectare |
| | Filing Fee | PhP10.00 |
| | Processing Fee | PhP25.00 |
| | Verification Fee | PhP500.00 |
| | Annual Individual SSM Registration | PhP500.00 |
| | Annual Group Registration | PhP5,000.00 |
| Municipality of Itogon under Benguet (Revised Revenue Code of 2011) | Mayor's Permit or Business Registration | PhP400-PhP3000 depending on asset size or number of workers, whichever is higher |
| | Regulatory Fees | |
| | Business Tax (Applied to Small-Scale Contractors of a Large-Scale Mining Company) | Graduated Schedule based on Gross Receipts (from PhP30.25 for GR of less than PhP5,000 up to 55% of 1% of GR for GR of PhP2Million and More |
| Province of Isabela | Tax on Mining Operations | 2% of Gross Receipts |
| | Small-Scale Mining Permit (SSMP) Application Fee | PhP15, 520.00/year |
| | Imposition of 10% Sales Tax | 0.02 |
| | Extraction Fee per cu.m | PhP 10.00/cu. m |
| | Environmental Guarantee Fund for SSMP | PhP 350,000.00(per permit basis) |
| | Ore Transport Permit Metallic Minerals | PhP5,000.00 per Application |

| Payments to Local Government in General: Taxes, Fees and Charges | | |
|--|-----------------------------|---------------|
| LGU & Legal Basis | Nature of Payment | Amount / Rate |
| Province of Apayao (Provincial Ord. No. 14, Series of 2010) | Extraction Fee | |
| | Provincial Permit Fee | PhP5000.00 |
| | Additional Fee per ballmill | PhP2000.00 |
| | Appication Fee | PhP100.00/ha |
| | Governor's Dev't Fee | PhP500.00 |
| | Registration Fee | PhP500.00 |
| | Verification Fee | PhP500.00 |
| | Processing Fee | PhP150.00 |
| | Forms | PhP150.00 |
| | Filing Fee | PhP100.00 |
| | Secretary's Fee | PhP100.00 |
| Province of Camarines Norte Provincial Ordinance No. 21, s. 1995, Provincial Ordinance No. 26-2009, s. 2010 | Application Fee | PhP200.00 |
| | Filing/Processing Fee | PhP1,000.00 |
| | PD 1056 | PhP10.00 |
| | Inspection Fee | PhP3,000.00 |
| | Environmental Fee | PhP12,000.00 |
| | Provincial Permit | PhP10,000.00 |

C. Collection of Payments due the Government from Small-Scale Mining

1. Revenue Collection of Government based on RA 7076

Prior to March 2015, fees pertaining to SSMC applications such as filing fees, permit fees, verification fees, among others, are imposed and collected by the LGUs. DENR-MGB Regional Offices do not assess nor collect fees from the limited number of registered small-scale mining operations. Both DENR MGB Regional Offices of Region XII and CAR that regulate small-scale metallic mining in South Cotabato and Benguet, respectively, have no income from small-scale mining in 2013 and 2014. The Revised IRR of RA 7076 now directs that the license fees and application fees for an SSMC must be paid to the MGB Regional Offices. To effect these changes, the regulation has to be threshed out and clarified by the MGB Regional Offices and the LGUs with each other to avoid confusion and conflict in the imposition and collection of fees that were previously carried out by the LGUs. LGUs may need to amend their local ordinances in accordance with these changes of the Revised-IRR of RA 7076.

With respect to the government production share, there appears to be no such collection by the host municipality or city from the limited number of registered or authorized small-scale mining operations, in light of the moratorium ordered by EO 79 in 2012. Neither does the national government appear to have any substantial collection from small-scale metallic mining. We did not receive any data from the MGB Central and Regional Offices nor from the BIR Central Office regarding national collection of such revenues from small-scale mining for the covered period of 2013 and 2014, as of this writing. However, the Regional District Office of the BIR in La, Trinidad, Benguet reports income tax payment from small-scale metallic mining in the total amount of P3,750.59 in 2013 and P21,123.95 in 2014 for the entire district. All payments are from individual taxpayers coming from Itogon. The Regional District Office of BIR in Koronadal reports income tax payments from 54 individual taxpayers registered as engaged in small-scale metallic mining at P60,360.00 and P52, 947.00 for the entire region. These reported taxpayers from the region are all from the South Cotabato, and none from any other

provinces. None of the two BIR RDOs reported any excise tax payments received from small-scale metallic mining. (BIR RDO 9 and 18 Responses)

2. Revenue Collection of Local Government based on Local Ordinances

While there are local tax impositions, the revenues from small-scale mining are minimal, as mostly, the sector remains an informal one. In the Province of South Cotabato, the total collection for 2013 and 2014 are P760,000.00 and P1,065,685.00, respectively. The Province has the largest number of registered operations on small-scale metallic mining in the country, at 104 operations, as of September 2015. These revenues are broken down as follows:

Figure 11. South Cotabato's Total Collection from Small-Scale Metallic Mining in 2013 and 2014

| South Cotabato's Total Collection from Small-Scale Metallic Mining in 2013 and 2014 | | |
|---|-----------------------|-----------------------|
| Types of Payments | 2013 Collection (PhP) | 2014 Collection (PhP) |
| Mineral Tax | 624,480.00 | 612,885.00 |
| Permit Fee | 110,000.00 | 118,000.00 |
| Verification Fee | 25,520.00 | 334,800.00 |
| Total Collection | 760,000.00 | 1,065,685.00 |

This income from mineral taxes is shared based on a 30%-30%-40% scheme among the province, municipality and barangay, respectively in accordance with the South Cotabato Revenue Code. Based on these collections, the Province of South Cotabato says it may not be worth reporting in case of the planned EITI country reporting of small-scale metallic mining. According to the Province, their income from quarry or small-scale non-metallic mining is significantly higher at more than P10 Million annually.

The Municipality of T'boli that hosts the small-scale metallic mining operations in South Cotabato has total revenues of P954,459.00 for 2013 and P860,200 for 2014 from small-scale metallic mining. These come from payments from owner/operators of (a) ball mill, (b) processing plant, both of whom are considered as contractors; (c) persons engaged in gold buying, who are considered as dealers and (d) on the extraction of minerals from tunnel.

Figure 12. Municipality of T'boli 2013 and 2014 Collection from Small-Scale Metallic Mining

| Municipality of T'boli 2013 and 2014 Collection from Small-Scale Metallic Mining | | |
|--|-----------------------|-----------------------|
| Taxes and Fees | 2013 Collection (PhP) | 2014 Collection (PhP) |
| Mayor's Permit Fees | 157,432.00 | 145,740.00 |
| Tax on Mining Operations | 704,156.79 | 710,411.67 |
| Delinquency | 90,201.63 | 1,877.44 |
| Surcharges | 20,089.19 | 1,897.44 |
| Interest | 2,668.59 | |
| Total Collection | 954,459.01 | |

In the Province of Benguet, the provincial government collection is only P80,000.00 for 2013 and 153,435.00 for 2014, even while the BSP Regional Office-Gold Buying Station in Baguio that covers Benguet records the highest sale of gold among the buying stations in the country. According to Benguet, the number of registered small-scale mining operations is only 11, while the rest of the operations that the province estimates to be more than 60 operations are unregistered or illegal. According to a profiling done by the Benguet Federation of Small-Scale Miner, Inc., there are recorded 2029 small-scale mining adits with a total 31,845 individuals as work force involved and an estimated production of gold of 8,395 kilograms and 10,000 kilograms for 2013 and 2014 in Benguet.

The Municipality of Itogon that hosts the largest number of small-scale mining in Benguet has a total collection of P58,984 for 2013 and P24,025 for 2014 only. The Municipal Treasurer's Office is currently focused on collecting business taxes and regulatory fees from the 22 small-scale mining contractors of Benguet Corporation in its Acupan Gold Project. (Annex 8.B) For the years 2011-2014, the total business tax and regulatory fees, including surcharges and penalties, that are collectible from them is P14,386,301.98 based on total gross receipts of P1,359,499,993.28, as reported by the corporation to the Municipality in June 2015.

D. Creation of a People’s Small-Scale Mining Protection Fund

RA 7076 also creates a People’s Small-Scale Mining Protection Fund equivalent to fifteen percent (15%) of the national government’s share of the internal revenue tax or production share due the government. The fund is for information dissemination and training of small-scale miners on safety, health, and environmental protection, and the establishment of mine rescue and recovery teams including the procurement of rescue equipment necessary in cases of emergencies such as landslides, tunnel collapse, or the like. The fund is also meant to address the needs of the small-scale miners brought about by accidents and/or fortuitous events. The law provides that the fund shall be administered by the P/CMRB. (Sec. 20, RA 7076)

This suggests that national government share from payments from small-scale mining contractors shall be redistributed to allocate and release 15% of such collection to each of the P/CMRB at the provincial or city level. The implementing rules, however, is silent on how this shall implemented; neither has this been operationalized, to date.

E. Payments to Third Parties

The payments to third parties include:

- a. Royalty payment to claimowners of existing mining rights, is the amount agreed upon by the claimholder and the small-scale miner (Sec. 14, RA 7076) or an amount based on the prevailing standard royalty rate in the locality (Sec. 8.c, Revised IRR-RA 7076). In case of disagreement, royalty is equivalent to 1 and ½ % of

- the gross value of the metallic minerals. (Sec. 14, RA 7076) In case there is no prevailing standard royalty, the payment shall be equivalent to an amount not less than 1 and ½% of the gross value of metallic mineral output. (Sec. 8.c, Revised IRR-RA 7076);
- b. Royalty payment to private landowners is equal to not more than 1% of the gross value of minerals recovered and actual damages as determined by the P/CMRB. (Sec. 15, RA 7076, Sec. 8, Revised IRR-RA 7076)
- c. Royalty payment to indigenous peoples (IPs) or indigenous cultural communities (ICCs) from small-scale mining operations within ancestral lands or ancestral domains. RA 7076, IRR and its implementing rules, both the old and the revised, recognize the payment of royalties, but are silent on the amount of royalty payments to be paid to the IPs or ICCs. PD 1899 does not make any reference at all to mining in ancestral lands and royalties to IPs/ICCs. RA 7942 or the Philippine Mining Act meanwhile provides that royalty payment must be paid to ICCs or IPs (Sec. 17), which must not be less than 1% of the gross output. (Sec. 16, IRR); and
- d. Reasonable fees to operator, claimowner, landowner or lessors for easement rights granted to small-scale miners to existing facilities such as mining and logging roads, private roads, port and communication facilities, processing plants which are necessary for the implementation of the People’s Small-Scale Mining Program, as determined by the DENR Secretary in consultation with the operator, claimowner, landowner or lessors.

A summary of the payments from small-scale mining to third parties is shown below:

| Payments to Third Parties: Royalties | | |
|--|--|--|
| Nature of Payment | Amount/Rate | Collecting/Receiving Entity |
| Royalty Payment to Claimowners | agreed amount or 1 and ½% of the ¹ gross value of output | Claimowner |
| Royalty Payment to Private Landowners | not more than 1% of the gross value of minerals recovered & actual damages as determined by the P/CMRB | Private Landowner |
| Royalty Payment to IPs/ICC | agreed amount but must not be less than 1 % of the gross value of output | IP/ICC |
| Reasonable Fees for Easement Rights granted to Small-Scale Miners to Existing Facilities such as Mining and Logging Roads, Private Roads, Port and Communication Facilities, Processing Plants | Unspecified | Operator, Claimowner, Landowner or Lessors |

F. Meeting Materiality Threshold

Given the generally informal nature of small-scale mining in the Philippines and the minimal revenues from the few registered operations at this time, revenues from the sector may not satisfy the materiality threshold of EITI. EITI requires the disclosure of all material payments to government by oil, gas, and mining companies. (EITI Criterion 1 and Requirement 4) Payments and revenues are considered material if their omission or misstatement could significantly affect the comprehensiveness of the EITI Report. In establishing materiality definitions and thresholds, the MSG should consider the size of the revenue streams relative to the total revenues. (Requirement 4.1.a) Some countries have defined materiality in their EITI Reports. This definition ranged from setting a threshold amount of payments, of acceptable levels of difference or discrepancy between payments made and received or materiality of inconsistencies, of excluded payments, or, as vague as, including all flows of payments specific to the extractive sector or have a large impact on state revenue. (PH-EITI Scoping Study on Subnational Implementation) In the Philippines, the Philippine EITI

MSG sets the materiality threshold of national payments in terms of inclusion or prioritization of companies with at least Php1 Billion reported total revenues or total assets. (PH-EITI Country Report, 2014) As may be seen, revenues from the small-scale metallic mining sector do not even come close to this materiality threshold of national payments, even when we apply it to provinces or regions, instead of companies, with at least Php1 Billion or even at least Php1 Million reported total revenues. Thus, the small-scale metallic mining sector would need to be placed within the ambit of the laws so the revenue collection and recording could be improved and thereafter reported to EITI, based on the materiality of the amount of the payments. The Philippine EITI MSG may also opt to base the materiality on the importance of the revenue regardless of the amount, in the same way that they adopted such basis in including local government payments. On this basis, it may be recommended that revenues from small-scale metallic mining be included in the EITI reporting, should the Philippine EITI MSG consider them relevant and important to the host communities. Nonetheless, prior to any planned reporting of revenues regardless of the basis of the materiality to be adopted by the Philippine EITI MSG, the record keeping and tracking of the small-scale metallic mining sector would still need to be improved to facilitate such country reporting.

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PART 3

CASE STUDY ON SMALL SCALE MINING OPERATIONS IN THE PHILIPPINES

A.Small-Scale Metallic Mining Operations in General and Some Commentary

1. General Profile: Reserves, Minahang Bayan, and Operations

1.A Gold and Chromite Reserves

The Philippines is a highly mineralized country with various metallic reserves. DENR reports the following reserves for gold, silver and chromite by Region, as of 2014:

Figure 14. Gold Reserve Inventory, as reported by DENR

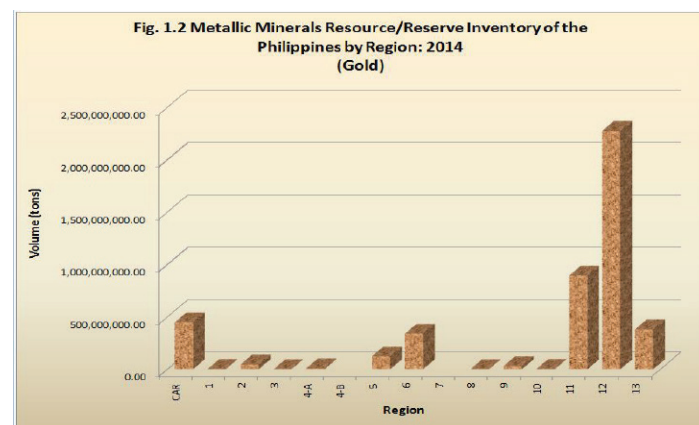


Figure 14.A Silver Reserve Inventory, as reported by DENR

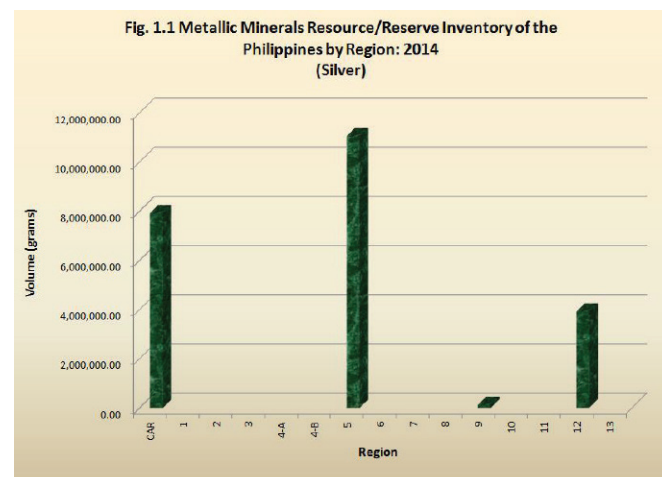
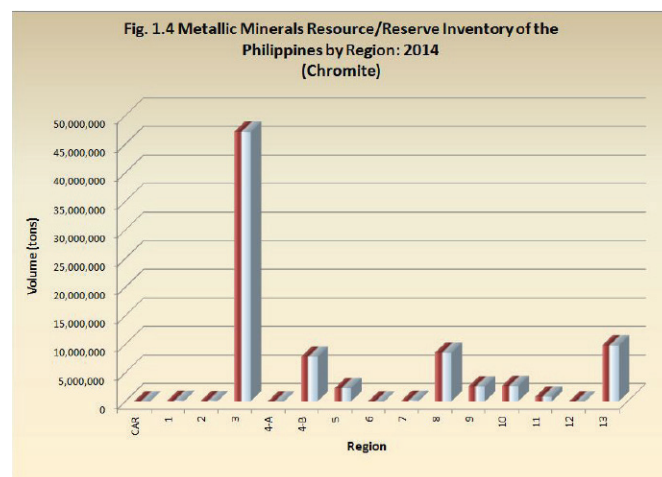
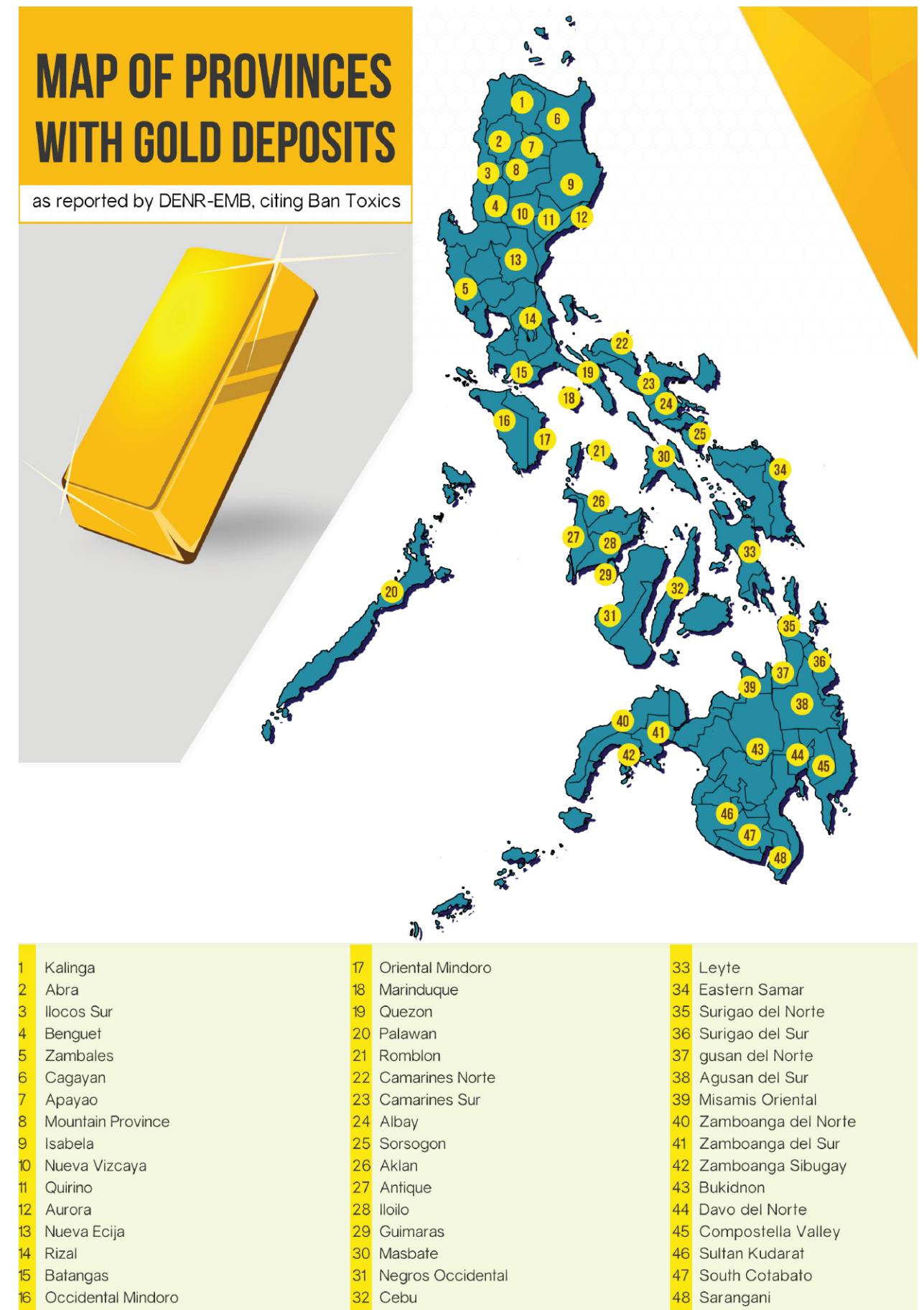


Figure 14.B Chromite Reserve Inventory, as reported by DENR



DENR-EMB, citing data from environmental non-government organization Ban Toxics, reports that there are gold deposits in about 40 provinces as follows:

Figure 15. Map of Provinces with Gold Deposits, as reported by DENR-EMB, citing Ban Toxics



As discussed in Part 1, small-scale metallic mining is now limited to gold, silver and chromite. The President ordered that small-scale mining shall not be applicable for metallic minerals except gold, silver, and chromite, as provided for in RA No. 7076. (Sec. 11.d, EO 79) On its face, RA 7076 does not explicitly provide for such limitation in small-scale mining. A reading of the law, however, shows that except for the definition of “mineralized areas” that refer to areas with naturally occurring mineral deposits of gold, silver, chromite, kaolin, silica, marble, gravel, clay and like mineral resources”, there is nothing in RA 7076 that expressly limits small-scale metallic mining to the three minerals. (Sec. 3 (a), RA 7076 and Sec. 4, DAO 34-1991, IRR-RA 7076)

1.B People’s Small-Scale Mining Areas or Minahang Bayan

Beginning July 2012, the President ordered that small-scale mining operations should be undertaken only within declared People’s Small-Scale Mining Areas or Minahang Bayan. (Sec. 11 (b), EO 79; Sec. 9, RA 7076) According to DENR-MGB Central Office, there are only three Minahang Bayan declared prior to EO 79. These are found in the provinces of Quezon, Dinagat Island and Agusan Del Sur. (KII, MGB Mining Technology Division) However, as shall be discussed below, both DENR-MGB Regional Office XII and the Province of South Cotabato report that there are three Minahang Bayan in T’boli, South Cotabato. DENR-MGB Regional XII also reports six Minahang Bayan in Sultan Kudarat. (LGU and MGB Survey Responses) MGB Central Office explains this discrepancy by distinguishing the 3 Minahang Bayan they recognize as having been formally reviewed by the DENR. According to MGB Central Office, the Minahang Bayan in Region XII may have been “deemed approved,” having been declared as such by the PMRB, that thereafter relied on the lapse of 30 days after its transmittal to the DENR Secretary. Additionally, DENR-MGB Regional Office XI reports that there are 9 Minahang Bayans in Compostela Valley. DENR MGB Regional Office XIII reports that there is 1 Minahang Bayan in Agusan del Norte declared by the PMRB and affirmed by the DENR Secretary. But the same regional office does not report the declared Minahang Bayans in Agusan del Sur nor in Dinagat Island considered by the MGB Central Office and confirmed by the local government units. (MGB Survey Response, KII, Agusan del Sur, Dinagat Island)

There were also other efforts to have Minahang Bayan declared in other areas, but this did not fully materialize nor was it reported in this study. Some examples are as follows:

In the Province of Antique, a resolution of the Sangguniang Panlalawigan or the provincial legislative board reaffirms the declaration by the PMRB of an area of 9.5157 in Ilijan Hill, Sitio Ilijan,

Brgy. Luhod-Bayang, Pandan as a Minahang Bayan for marble, following the procedure laid down by law. (SP Resolution No. 01-96 citing excerpts from the Minutes of the PMRB Meeting, June 11, 1996) It does not however state if the same has been forwarded to the DENR Secretary for review. In the same year of 1996, the Municipality of Paracale, Camarines Norte requested, via a sanggunian resolution, the assistance of DENR-MGB to conduct geological studies to identify areas that may be declared as a Minahang Bayan. (Sangguniang Bayan Resolution No. 102-96, Municipality of Paracale, Province of Camarines Norte)

In 1988, prior to the passage of RA 7076, the DENR Secretary already ordered the delineation of specific areas for small-scale mining operations anticipatory to the Minahang Bayan Law. Thus, the following year, it ordered the suspension of registration of mining claims and other mining rights in the Municipality of Balbalan, Province of Kalinga-Apayao. (DENR Administrative Order No. 122-89 citing DENR Memorandum, July 11, 1988) A similar suspension order was also issued for Central Ticao Island, Masbate, and the same area was reserved for the Minahang Bayan Program. To date, however, there is no declared Minahang Bayan in these provinces, although there is an area pending declaration in Kalinga.

In 1995, citing the same 1988 order of the then DENR Secretary, the DENR Secretary also ordered the suspension of mining claims in the Municipality of Tarragona, Province of Davao Oriental, subject to existing prior rights. It indicated that the 1,273.3200-hectare area of land is reserved either for purposes of declaration as a People’s Small Scale Mining Area under R.A. 7076 or proclamation as a mineral reservation under P.D. 463, as amended, as may be further determined later on by the DENR. There is no reported Minahang Bayan in Davao Oriental at this time.

Meanwhile, in the Province of Catanduanes, the DENR found as early as 1991 that there is no suitable area for small-scale mining and/or labor-intensive mineral utilization. (DENR Administrative Order No. 59-91)

As discussed in Part I, RA 7076 provides for the authority of the P/CMRB to declare areas and set aside Minahang Bayan, subject to review by the DENR Secretary through the DENR MGB Director within a period of 30-days. (Sec. 6 & 7, RA 7076. Sec. 6, DAO 34, s. 1991, IRR- RA 7076)

There is no express requirement for the approval of the DENR Secretary. Following this procedure, the Minahang Bayan declared by the PMRB of South Cotabato finds basis in the law and regulations.

Since EO 79 was issued in July 2012, DENR-MGB and the P/CMRBs around the country have been working to declare and set aside areas for Minahang Bayan. However, despite the lapse of three years, no new area has been declared as Minahang Bayan, as

of November 2015. At present, there are 104 pending petitions and evaluations for the declaration of Minahang Bayan all over the country. MGB Regional Offices report the following status of Minahang Bayan:

Figure 16. Declared Minahang Bayan and Pending Petitions/Evaluations for Minahang Bayan by Region and Province, as reported by MGB Regional and Central Offices

| Region | Declared Minahang Bayan, per MGB Regional Offices | Declared Minahang Bayan, per MGB-Central Office | On Process/Pending Declaration, per MGB Regional Offices |
|--------|---|---|---|
| 1 | None | | None |
| 2 | None | | 6 |
| 3 | None | | None |
| 4-A | No Answer | Quezon - 1 | No Answer |
| 4-B | None | | 1 (Romblon) |
| 5 | None | | 1 (Aroroy, Masbate) 3 (Jose Panganiban, Labo, Paracale, all in Camarines Norte) |
| 6 | None | | 1 - (Libertad, Antique) 1 - (Nabas, Aklan) |
| 10 | None | | 43 (under DAO 2015-03) Endorsed to Central Office: 5 MGB: 10 Evaluation: 28 |
| 11 | Compostela Valley - 9 | | 7 - Compostela Valley (endorsed by PMRB) 1 - Davao Oriental (1 area assessed but not recommended; 1 area recommended but for further study) 2 - Davao del Norte (2 areas recommended for further study) |
| 12 | South Cotabato - 3 Sultan Kudarat - 6 | | 4 |
| 13 | Agusan del Norte, Cabadbaran City- 1 | Agusan del Sur - 1 Dinagat Island - 1 | 4 |
| CAR | None | | 9 (Benguet); 1 (Ifugao); 3 (Mt. Province); 1 (Kalinga); 5 (Apayao); 3 (Abra); 5 (Baguio) |

1.B.1 Some Observations and Comments on the Procedures for the Declaration of Minahang Bayan under the Revised IRR-RA 7076

With the Revised IRR of RA 7076, the declaration of additional Minahang Bayan may take a few more years to be realized. As discussed in Part I, the regulations provide for a longer procedure that requires (a) an initial review by the DENR Secretary through the MGB Director of the MGB Regional Office’s technical and economic evaluation; (b) a clearance from the Secretary of

the declaration of the proposed Minahang Bayan; and (c) the submission of an Environmental Compliance Certificate (ECC) for the entire Minahang Bayan, among others. (Sec. 10)

The regulations state that upon the receipt of the DENR Secretary’s clearance, the P/CMRB shall require the petitioner to secure and submit an ECC for the entire Minahang Bayan within one year from receipt of the clearance. Within seven days from receipt of the ECC, the P/CMRB shall declare the proposed Minahang Bayan. If the

Minahang Bayan is not declared within one year from receipt of the Secretary's clearance, the petition shall be denied. (Sec. 9.I and m)

The regulations impose two additional major responsibilities on the petitioner for a Minahang Bayan: (1) to secure an ECC for the entire area and (2) to secure such ECC within less than 1 year after the Secretary issues the clearance. Otherwise, no Minahang Bayan will be declared. Some concerns regarding this new regulation surfaced during KILs and FGDs. This includes the personality of the applicant for the ECC whose interest is only limited to a maximum contract area of 20 hectares, the limited period of 1 year within which to secure the ECC and the costs of the ECC and the question on who shall bear the cost for an environmental impact assessment. (KII) The regulation does raise numerous concerns that may preclude the declaration of Minahang Bayan in the immediate future. Some of these observations are as follows:

- a. Interest and Liability of the Proponent of the ECC.
 - The rules require the petitioner of a Minahang Bayan to secure the ECC for the entire Minahang Bayan. A petitioner may be any interested party, who may theoretically be an individual, cooperative, federation or even an NGO or an LGU or the MGB Regional Office or even any stranger. The size of a Minahang Bayan's size may theoretically range from at least 20 hectares to hundreds of hectares. A petitioner may be any interested party. On one hand, in the case of an individual or a cooperative that intends to apply for an SSMC, their interest in the Minahang Bayan is limited to the allowed area size of a maximum of 20 hectares only. Yet, they will be obliged to secure the ECC for the entire Minahang Bayan. As the proponent, they will be responsible for the compliance of the terms and conditions of the ECC even beyond their interest in the contract area. The regulations impose upon them a liability that far exceeds their interest. On the other hand, if the petitioner is a federation, an NGO or an LGU, then such petitioner and parties related to them may potentially corner the SSMCs in the Minahang Bayan. This may limit opportunities of other entities not connected with the petitioner from being awarded an SSMC. This may render the awarding of SSMCs political and/or vulnerable to influence peddling by the petitioner.
- b. Costs of the ECC – Similarly, the Minahang Bayan petitioner is presumed to bear the costs of the ECC. 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. The minimum budget allocated, for instance, by the DOST-UP Better Mines Project for the conduct of the shorter and simpler Initial Environmental Evaluation for a small-scale mineral processing plant is P250,000 covering 2,000,000 sq. meters or less than ¼ of a hectare. (KII) This estimated cost might be higher if the more comprehensive and intensive Programmatic Environmental Impact Assessment is conducted, as recommended by EO 79 to be studied to govern mining projects. (Sec.17) Such cost is not commensurate to the limited interest of the individual or cooperative petitioner of a proposed Minahang Bayan. A federation or even an NGO is also likely not to have sufficient funds to pay for such cost. An LGU, especially a province, may theoretically have the capacity to pay; but this would require prioritizing and planning such budget for implementation in 2017. This may, however, be subject to a potential disallowance by the Commission on Audit, if not sufficiently justified. A petitioner of a proposed Minahang Bayan may thus not have the financial capacity to pay for the ECC for the entire Minahang Bayan.

- c. Sufficiency of the Period – While possible, one year may not be enough to secure an ECC for an entire Minahang Bayan. This is especially true if a Programmatic Environmental Impact Assessment will have to be done in a proposed Minahang Bayan that may be considered a co-located environmentally critical project. Based on the regulations, an EIA process that includes screening, scoping, EIA study and report preparation, EIA report review and evaluation and decision-making may take more than 12 months. (DAO 2003-30, DENR-EMB Circular No. 2007-02 and No. 2014-005, KII)
- d. Compliance Monitoring – Since the petitioner is required to secure the ECC and as the proponent will thereafter be obliged by DENR-EMB to ensure compliance with the terms and conditions of the ECC and to perform self-monitoring. Such petitioner, however, will have no control over how the other small-scale mining contractors in the Minahang Bayan will conduct themselves. Apart from the burden of monitoring the other contractors' compliance, this increases the exposure of the petitioner-proponent to liability and damage. The violation of the terms and conditions of the ECC carries penalties of the suspension or cancellation of the certificate and/or a fine of a maximum of Php50,000 per violation. (Sec. 9, PD 1586) In case of suspension or cancellation of the ECC, there arises the question whether such would affect the entire Minahang Bayan and therefore result to suspension of all small-scale mining operations therein? It is unclear what the impact of any suspension or cancellation of the ECC would be on the Minahang Bayan and the various small-scale mining operations, as the ECC covers the entire Minahang Bayan.

- e. Need for Additional PEISS Guidelines from DENR-EMB. - The current requirement of the Revised IRR for an ECC to cover the entire Minahang Bayan may require additional PEISS guidelines from the DENR-EMB. As shall be discussed below, the 2014 DENR-EMB guidelines require ECC from all small-scale mining 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 Minahang Bayan 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 Minahang Bayan, 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 Minahang Bayan. (DENR-

EMB Memorandum Circular 2014-005, July 2014. Sec. 2.1.2, Annex A, Project Thresholds for Coverage Screening and Categorization)

Given these constraints, additional Minahang Bayan may not likely to be declared soon under the new procedures of the Revised IRR-RA 7076. Small-scale metallic mining may continue to proliferate outside the law, until these concerns are sufficiently addressed.

1.C.Small-ScaleMetallicMiningOperations

Small-scale metallic mining activities are largely unregistered in the Philippines. LGUs covering 44 provinces and 27 cities report that there are 417 registered operations in 8 LGUs, compared to the estimated 729 unregistered operations in 12 LGUs; while 12 MGB Regional Offices report 196 registered operations in 6 LGUs and 3,235 unregistered operations/tunnels in 25 LGUs. (LGU and MGB Survey Response, MGB RO XI Presentation, Davao Roadshow) Despite the reforms introduced by the current administration, small-scale mining generally continues to operate outside the law.

Figure 17. Distribution of Registered and Estimated Unregistered SSMM Operations, as Reported by 71 LGUs and 12 MGB Regional Offices

| Region | As Reported by the LGUs | | As Reported by the MGB Reg'l Offices | |
|--------|--|---|--|---|
| | Registered Small-Scale Metallic Operations | Unregistered Small-Scale Metallic Operations | Registered Small-Scale Metallic Operations | Unregistered Small-Scale Metallic Operations |
| CAR | 38 in 2 LGUs | 70 in 2 LGUs | 164 in 2 LGUs | 455 in 7 LGUs |
| 1 | 0 | 1 in 1 LGU | 0 | 1 in 1 LGU |
| 2 | 0 | 6 in 1 LGU | 0 | 12 in 2 LGUs |
| 3 | 164 in 1 LGU | 0 | 0 | 0 |
| 4-A | 0 | 0 | No Answer | No Answer |
| 4-B | 0 | 0 | No Answer | No Answer |
| 5 | 0 | 0 | 0 | 328 in 2 LGUs |
| 6 | | 540 in 1 LGU | 0 | 44 in 1 LGU |
| 7 | 50+ in 1 LGU | 50+ in 1 LGU | No Answer | No Answer |
| 8 | 0 | 0 | 0 | 16 in 2 LGUs |
| 9 | | | 0 | 11 in 4 LGUs |
| 10 | 58 in 1 LGU | 2 in 1 LGUs | 0 | 0 |
| 11 | 0 | 1920 tunnels in 1 LGU (may include unregistered operations) | 1 in 1 LGU | 2,029 in 4 LGUs (may include registered operations) |
| 12 | 104 in 1 LGU | 30 in 1 LGU | 9 in 2 LGUs | 3 in 2 LGUs |
| 13 | 1 in 1 LGU | 29 in 3 LGUs | 0 | 350 in 5 LGUs |
| ARMM | | | No Answer | No Answer |
| TOTAL | 415 in 7 LGUs | 729 in 12 LGUs | 2093 in 5 LGUs | 3,249 in 30 LGUs |

Figure 17.A Comparative Matrix of Reported Registered and Unregistered SSMM Operations

| Region | Provinces/Cities with Registered SSMM Operations | | Provinces/Cities with Unregistered SSMM Operations | |
|--------------|--|---|--|--|
| | As reported by LGUs | As reported by MGB RO | As reported by LGUs | As reported by MGB RO |
| CAR | Apayao - 26 Benguet – 12 | Apayao – 21 Benguet - 143 | Apayao – 10 Benguet – 60 0 – Ifugao, Kalinga, Mt. Province, Abra | Apayao - 19 Benguet - 12 Baguio - 233 Ifugao - 6 Abra - 52 Kalinga -125 Mt. Province - 8 |
| 1 | 0 | 0 | Ilocos Sur - 1 | Ilocos Sur - 1 |
| 2 | 0 | 0 | Nueva Vizcaya - 6 | Nueva Vizcaya- 11 Isabela - 1 |
| 3 | Zambales – 164 | 0 | 0 | 0 |
| 4-A | | | | |
| 4-B | | | | |
| 5 | 0 - | 0 | 0 - Albay, Camarines Norte, Camarines Sur, Masbate | Masbate & Camarines Norte – both at 328 |
| 6 | | 0 | Negros Occidental - 540 | Negros Occidental - 44 |
| 7 | Cebu – 50+ | | Cebu – 50+ | |
| 8 | | | | Southern Leyte-14 Eastern Samar - 2 |
| 9 | | 0 | | Zamboanga Sibugay - 2 Zamboanga del Norte - 4 Zamboanga City -1 Zamboanga del Sur - 4 |
| 10 | Cagayan de Oro - 58 | 0 | Bukidnon - 2 | 0 |
| 11 | 0 | Compostela Valley – 1920 tunnels (may include unregistered operations*) | Davao del Sur – 1 | Compostela Valley – 1920 (may include registered operations) Davao del Sur – 1 Davao del Norte – 4 Davao Oriental – 104 |
| 12 | South Cotabato-104 | South Cotabato-7 Sultan Kudarat-2 | South Cotabato – 30 | Saranggani – 1 Sultan Kudarat - 2 |
| CARAGA | Surigao del Sur - 1 | 0 | Agusan del Norte – 4 Agusan del Sur – 15 Surigao del Sur - 10 | Agusan del Norte Agusan del Sur Surigao del Norte Surigao del Sur Butuan City - all at 350 |
| ARMM | | | | |
| TOTAL | 415+ | 2093* | 729 | 3,249 |

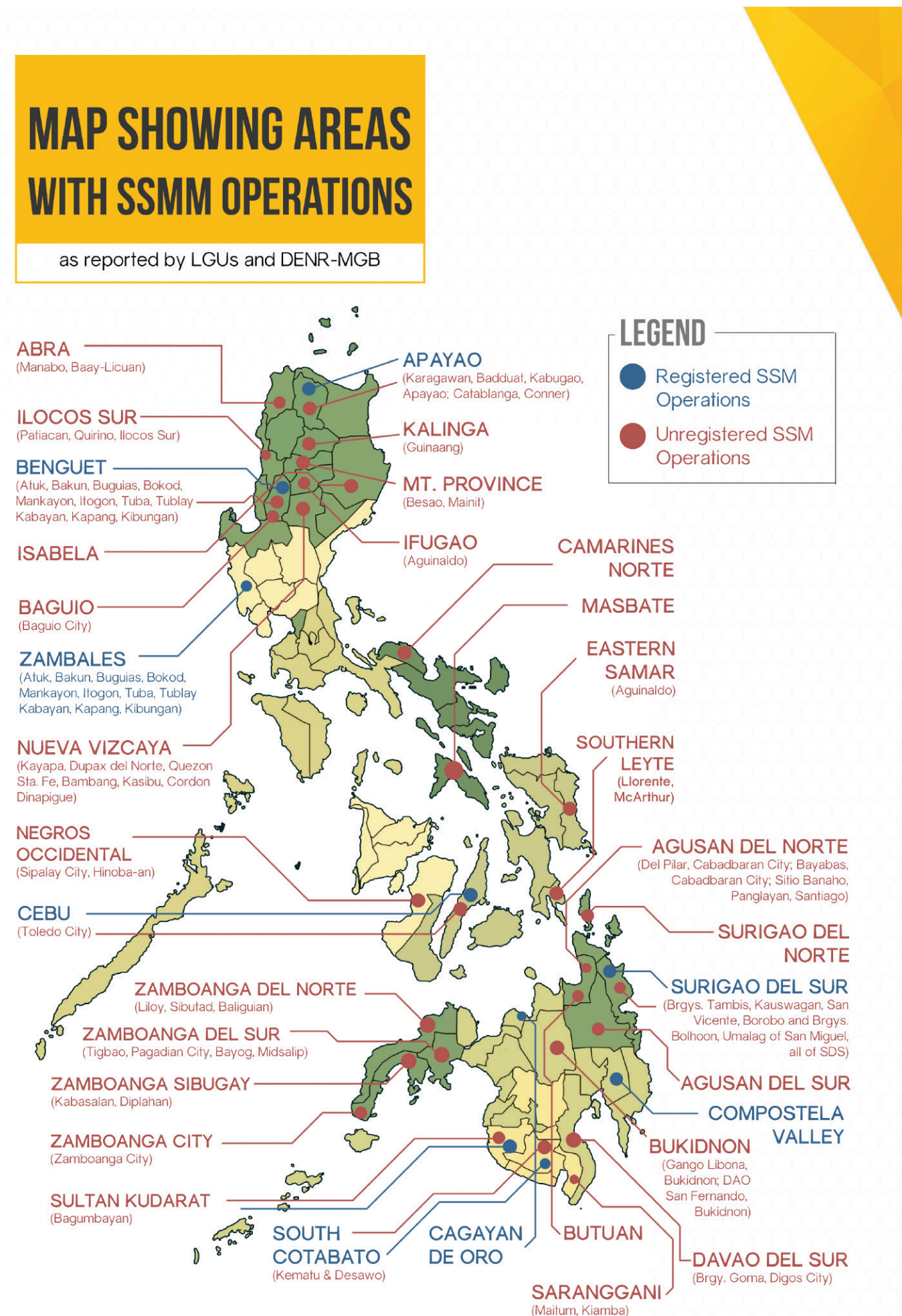
Following the directive of EO 79, the only authorized small-scale mining operations at this time will only be those in the six provinces of Quezon, Dinagat Island, Agusan Del Sur, South Cotabato, Sultan Kudarat and Compostela within their declared Minahang Bayan. As discussed in Part I, on July 6, 2012, EO 79 mandates that no small-scale mining may be carried out except in Minahang Bayan pursuant to RA 7076. Under EO 79, existing valid small-scale mining permits issued under PD 1899 may be temporarily extended for six months or until their area is declared a Minahang Bayan, whichever comes first. (Sec. 14.a, IRR-EO 79) Since SSMPs are only for a term of two years, a newly-issued permit under PD 1899 or a newly-awarded contract under RA 7076 before the effectivity date of the IRR of EO 79 on October 25, 2012 is valid until October 24, 2014. This could theoretically be extended for another 6 months or until April 25, 2015. Therefore, except for small-scale mining contracts covering areas within the Minahang Bayan of the aforementioned six provinces, all other small-scale mining operations are no longer without authority under RA 7076 and EO 7, as of this time.

Neither the Provinces of Dinagat Island, Quezon, and Agusan del Sur nor the corresponding MGB Regional Offices IV-A and XI report any registered small-scale metallic mining in these three provinces. (Survey Responses) The Province of Quezon states that small-scale metallic mining operations are now under the MGB

Regional Office IV-A that did not provide data to the study team. (Letter Response, October 2015) The Province of Dinagat Island reports that since the world market prices of chromite fell a few years back, no small-scale metallic mining is conducted in their area. (KII, November 2015) The Province of Agusan del Sur reports that there is no on-going operation in the Minahang Bayan. It says that the MGB Regional Office has not allowed any small-scale mining in the Minahang Bayan by the petitioner corporation. (KII, November 2015) According to the Province of Agusan del Sur, the Minahang Bayan was declared based on the petition of a corporation (KII), and not by an individual or a cooperative that the law authorizes as an awardee of a small-scale mining contract. (Sec. 9, RA 7076)

In the Province of South Cotabato with formally declared Minahang Bayan before EO 79, there are 104 registered small-scale mining operating in the three declared Minahang Bayan, as of October 2015. (LGU Survey Response). The MGB Regional Office XII reports that there are also registered mining operations in the six declared Minahang Bayan in Sultan Kudarat. The MGB Regional Office XI also reports mining operations in the nine declared Minahang Bayan in Compostela Valley. The Provinces of Benguet, Apayao, Zambales, Cebu, and Surigao del Sur report registered small-scale metallic mining in their areas (LGU Survey Response), but appear to be without any declared Minahang Bayan.

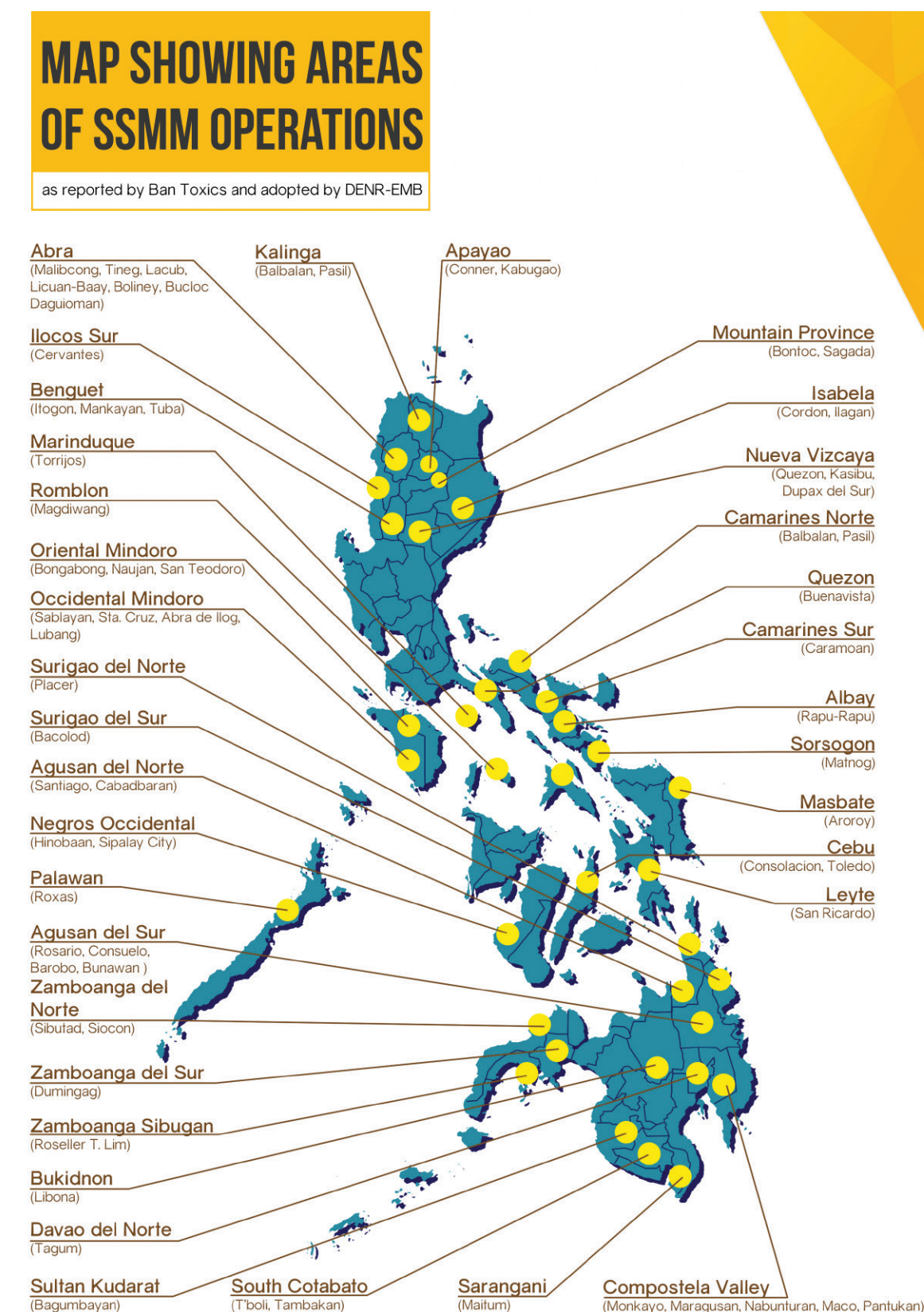
Figure 18. Map Showing Areas with SSMM Operations, as reported by LGUs and DENR-MGB Regional Offices, as of 2015*



*Registered operations are based on report of LGUs and MGB Regional Office. Of these reported registered operations, only South Cotabato, Sultan Kudarat and Compostela Valley have reported declared Minahang Bayan.

These numbers show a total of thirty-three provinces with small-scale metallic mining based on information from the government agencies. A 2011 study showed the existence of small-scale gold mining in thirty-two provinces. (DENR-EMB 2011 National Strategic Action Plan for the Phase-Out of Mercury adopting and annexing BanToxics Study). BanToxics developed the map through a baseline study conducted in 2010-2011. (KII)

Figure 18.A Map Showing Areas of SSMM Operations, as reported by Ban Toxics and adopted by DENR-EMB



Meanwhile, some local government units declared moratorium on small-scale mining in their provinces. The province of Oriental Mindoro declared a 15-year moratorium. (Provincial Ordinance No. 28-2013) The province of Romblon also has a similar moratorium. (Exec. Order No. 001, s. 2011)

1.C.1 Some Observations and Commentary on Small-Scale Metallic Mining Operations

Comparing these two data, there were some LGUs and MGB Regional Offices with reported small-scale metallic mining operations that did not provide information, as no response to the survey questionnaire was submitted. These are the following LGUs: Ilocos Norte, Romblon, Masbate, Biliran, Marinduque, Eastern Samar, Northern Samar, Samar, Southern Leyte, Zamboanga Sibugay, Zamboanga del Norte, Zamboanga del Sur, Compostela Valley, Davao Oriental, Sarangani Province, Sultan Kudarat, Surigao del Norte. The Province of Romblon informed the study team that there is a moratorium on small-scale metallic mining declared since 2011. MGB Regional Offices covering LGUs with reported small-scale metallic mining operations that did not provide any response to the survey questionnaire are the following: Regions 4-A, 4-B, 7, and 11. Region 4-B reports that there is no small-scale mining in their region and did not furnish any of the requested data anymore, while Region 11 did not submit any data, except those that they presented during an EITI roadshow activity. These may imply the following: (a) government agencies do not have first-hand knowledge of these operations; (b) government agencies may be aware of these operations but do not want to report them to the study team; or (c) government agencies are indifferent or uncooperative in sharing these information to the study team, contrary to the Constitutional provision on access to information, the policy on transparency and accountability and the law requiring government response within a fifteen days from request.

As may be seen above, despite the issuance of EO 79 in 2012, illegal small-scale mining operations appear to operate on a business as usual scenario, except in areas where there is intervention, support and assistance from LGUs and NGOs as shall be discussed below. In fact, with the additional requirements and burdens imposed by the Revised IRR-RA 7076 as discussed in Part I, the new regulations may perpetuate even more the situation of small-scale mining as an informal sector.

As mentioned above, first, small-scale miners have to hurdle the first requirement of having a Minahang Bayan declared so small-

scale mining may be carried out in these areas. Second, the regulation increases the licensing fees of individual or cooperative small-scale miners from P5.00 to P1,000.00. Third, the application fee for a small-scale mining contract has been increased to P20,000.00 from a range of minimal fees of P 30.00/per hectare. These licensing and application requirements were hardly complied with by the miners then at such a low fee, compared now to the cost of 200 times more than the original registration fee. Yet, the regulations do not provide for new mechanisms or incentives to promote and facilitate better compliance of the law and regulations.

2. Existing Institutional Arrangements

2.1 Provincial or City Mining Regulatory Boards or P/CMRBs

As discussed in Part 1.D, the DENR-MGB Regional Offices regulate small-scale mining in mineral reservations. For operations outside these mineral reservations, the DENR-MGB Regional Offices and the Provinces or independent or highly urbanized Cities, through the Provincial or City Mining Regulatory Boards (P/CMRBs), under the power of control, review and supervision of the DENR Secretary, regulate small-scale metallic mining activities. These P/CMRBs also regulate other small-scale mining such as quarry of sand and gravel and other non-metallic minerals. RA 7076 mandates the organization of P/CMRBs. (Sec. 24) EO 79 directs that P/CMRBs in provinces and cities where they have not been constituted shall be operationalized within three (3) months from the EO's effectivity in July 2012. (Sec. 11.c) Based on data submitted to the study team, three new PMRBs were constituted since July 2012. To date, there are sixty PMRBs all over the country, with seven of them non-operational. This is out of the total eighty-one provinces and one hundred forty-four independent cities. While not all of these LGUs may have metallic mineral reserves of gold, silver or chromite, most if not all of the LGUs have quarry or non-metallic mining operations within their jurisdiction that requires the constitution of a PMRB for the grant of privileges.

In the Province of Compostela Valley, where the Diwalwal gold rush started in 1983, the DENR created the PMRB in 1998 (DENR Special Order No. 961-00), but DENR MGB Region 11 did not provide data regarding the status of the other PMRBs in the region.

Figure 19. PMRBs in the Country, as reported by DENR-MGB Regional Offices

| Region | Provinces/Cities | Year Created FR-For Reconstitution | Status ✓ -Operational Non-Operational | Frequency of Meeting M-Monthly Q-Quarterly A-Annually | Source of Information |
|--------|--|--|--|--|--------------------------|
| CAR | Baguio Benguet Ifugao Abra Apayao Kalinga Mt. Province | | ✓ ✓ ✓ ✓ ✓ ✓ ✓ | As needed As needed As needed As needed As needed As needed As needed | MGB |
| 1 | Ilocos Norte Ilocos Sur La Union Pangasinan | 1999 1999 1999 1999 | ✓ ✓ ✓ ✓ | M M Q M | MGB |
| 2 | Cagayan Isabela Nueva Vizcaya Quirino | 1999 1999 1999 1999 | ✓ ✓ ✓ ✓ | Q Q Q As Needed | MGB |
| 3 | Aurora Bulacan Pampanga Tarlac Zambales | 2004 2003 2010 2009 2007 | ✓ ✓ ✓ ✓ ✓ | Q Q M Q Q | MGB |
| 5 | Albay Camarines Norte Masbate Sorsogon | 2015 2015 2012 2008 | ✓ ✓ ✓ ✓ | Q Q Q Q | MGB |
| 6 | Iloilo Negros Occidental Guimaras Aklan Antique Bacolod | 1995 1995 1996 1996 1999 1999 | ✓ ✓ ✓ ✓ ✓ ✓ | M M As needed As needed As needed As needed | MGB |
| 8 | Leyte Southern Leyte Biliran Samar Eastern Samar Northern Samar Ormoc Tacloban | | Non-operational ✓ Non-operational Non-operational ✓ ✓ ✓ Non-operational | Frequently M No meeting No meeting Irregular Irregular M No Meeting | MGB |
| 9 | Zamboanga City Zamboanga del Norte Zamboanga del Sur Zamboanga Sibugay | FR FR 2009 FR | Non-operational ✓ ✓ Non-operational | | MGB |
| 10 | Iligan City Cagayan de Oro Misamis Oriental Misamis Occidental Bukidnon Camiguin Lanao del Norte | | ✓ ✓ ✓ ✓ ✓ ✓ ✓ | Q M Q A As needed A As needed | MGB |

| Region | Provinces/Cities | Year Created FR-For Reconstitution | Status ✓ -Operational Non-Operational | Frequency of Meeting M-Monthly Q-Quarterly A-Annually | Source of Information |
|--------|--|--|---|---|--------------------------|
| 12 | North Cotabato South Cotabato Sultan Kudarat Gen. Santos Saranggani | | ✓ ✓ ✓ ✓ Non-operational | Q Q Q Q No Schedule | |
| 13 | Agusan del Norte Agusan del Sur Surigao del Norte Surigao del Sur Dinagat Island Butuan | | ✓ ✓ ✓ ✓ ✓ ✓ | M M M M M M | MGB |

The MGB Regional Director, heads the P/CMRBs with members composed of the representative of the Governor or the Mayor, of the small-scale miners, of the large-scale miners and of an environmental non-government organization. Regulation in the past allowed the Governor or the Mayor to serve as Co-Chairperson, presumably in deference to their political stature within the provinces or cities. (Consolidated IRR-PD 7649) Right now, these LGU chief executives are relegated again as members as provided in RA 7076. (Sec. 21, Revised IRR-RA 7076; Sec. 25, RA 7076)

Where there are small-scale metallic mining operations authorized by the P/CMRB, staff from the DENR-MGB Regional Office and the LGU-Environment and Natural Resources Office usually makes up a joint team during the application process to conduct verification of the applied area.

By law, DENR-MGB provides the staff support to the P/CMRB. In practice, the LGUs, especially those with Provincial Environment and Natural Resources Offices that usually have more staff complement than the DENR-MGB Regional Offices, often provide the secretariat support to the boards and the MGB staff provides the technical support. This arrangement provided by the LGUs may change with the Revised IRR, providing more authority and responsibility to the DENR-MGB and less to the LGUs.

2.2 Monitoring Teams

Some LGUs and MGB Regional Offices report the existence of Monitoring Teams that aid the board. These are as follows:

Figure 20. Monitoring Teams that assist the PMRBs in Some LGUs

| Region | Provinces/Cities | Year Created | Status | Frequency of Monitoring |
|--------|---|--|--|--|
| 1 | Ilocos Norte (Burgos-Pasuquin) Ilocos Norte (SIMMC) Pangasinan (Group 1 and 6) Pangasinan (Group 2) | 2001 2012 2008 2002 | Non-Operational Non-Operational ✓ ✓ | Quarterly Quarterly Trimester Quarterly |
| 5 | Albay Camarines Norte Camarines Sur Masbate | | ✓ ✓ ✓ ✓ | Quarterly Quarterly Quarterly Quarterly |
| 6 | Iloilo Negros Occidental Guimaras Aklan Capiz Antique | 2001 2001 2002 2001 2002 2003 | ✓ ✓ ✓ ✓ ✓ ✓ | Quarterly Quarterly Quarterly Quarterly Quarterly Quarterly |

Other MGB Regional Offices and LGUs report that composite teams usually monitor activities, when there are complaints received from the public or reports of illegal operations.

2.3. Multi-Partite Monitoring Teams under the Philippine Environmental Impact Statement System

As discussed in Part I, under the Philippine Environmental Impact Statement System, project proponents that have been issued Environmental Compliance Certificates (ECCs) are responsible for monitoring their projects. Multi-Partite Monitoring Teams (MMTs) are also organized to encourage public participation, to promote greater stakeholder vigilance and to provide appropriate check and balance mechanisms in the monitoring of project implementation.

For small-scale mining projects, however, the organization of MMTs is optional on the part of the DENR EMB Regional Office. Only projects requiring a PEIS and Group I – ECP are required to form project specific MMT. Prior to July 2014, small-scale metallic mining fall under the Group II-EIS (Non-Environmentally Critically Areas in Environmentally

Critically Areas or NECPS in ECAs) or Group III-(NECPs in Non-Environmentally Critically Areas). For Groups II- (NECPs in ECAs), the EMB Regional Offices have the option to require the formation of MMTs. (Sec. 2.3 (19), EMB Memorandum Circular No. 2007-002, August 2007, Revised Procedural Manual for DAO 2003-30) Currently, small-scale metallic mining are considered Category B – NECPs under the new EMB Memorandum Circular, but the issuance of ECCs have been suspended since 2011. There is no MMT organized specifically to monitor small-scale mining in the different regions. (KII, DENR-EMB)

2.4 Small-Scale Mining Associations and Federations

As discussed in Part 1, while small-scale mining remains largely an informal sector, miners in some regions are organized into associations and some into federations. The Provinces of Benguet and South Cotabato have strong federations that coordinates with the various small-scale mining associations.

Figure 21. Map Showing Small-Scale Mining Associations and Federations, as reported by LGUs and MGB, as of 2015

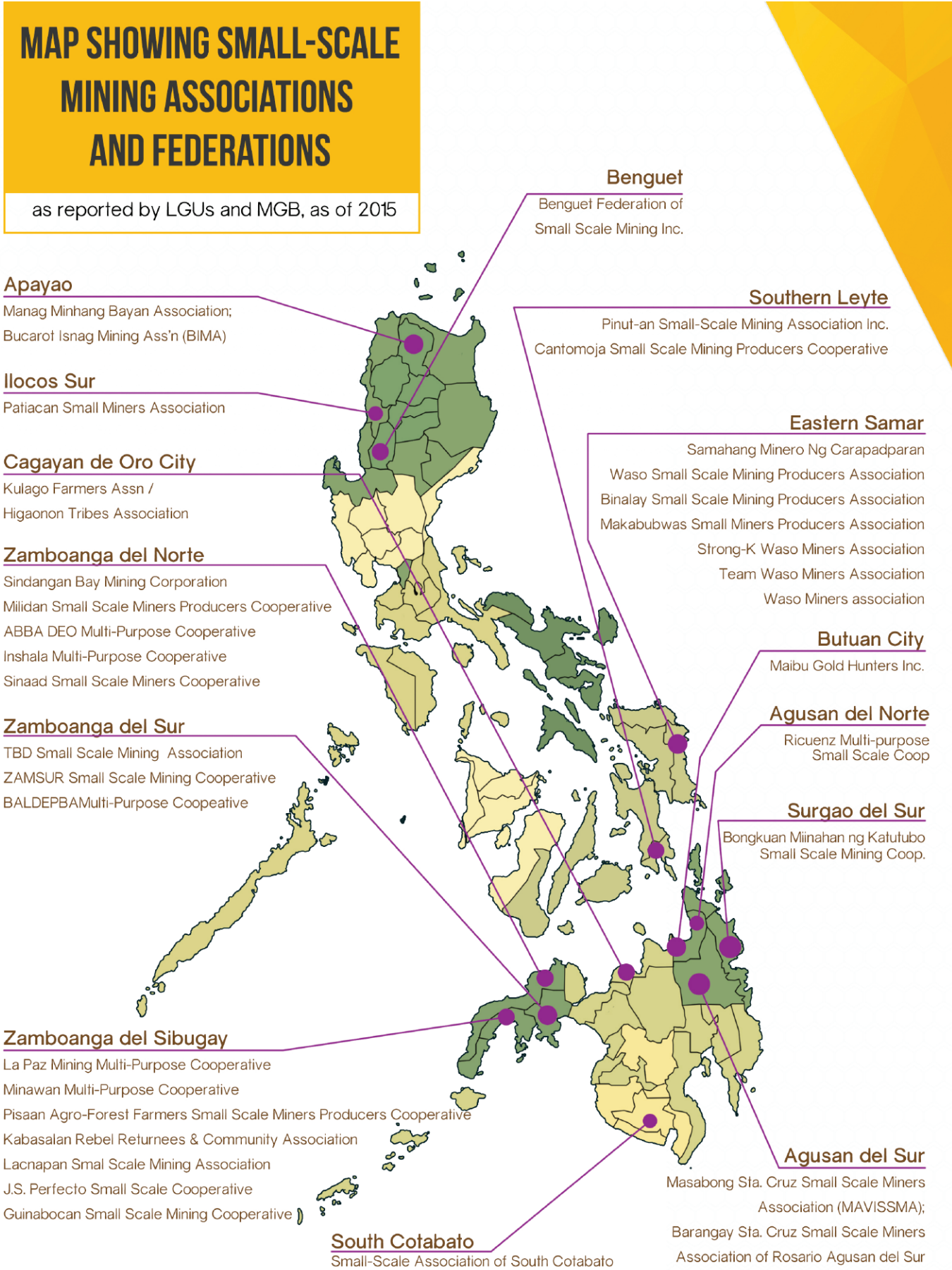


Figure 21.A. Small-Scale Mining Associations in the Philippines, as reported by MGB

| Region | Provinces/Cities | Name of Association |
|--------|--------------------------------|---|
| CAR | Apayao | Manag Minahang Bayan Association Bucarot Isnag Mining Association (BIMA) |
| | Benguet | Benguet Federation of Small Scale Mining Inc. (with 69 Member Associations) |
| 1 | Ilocos Sur | Patiacan Small Miners Association |
| 8 | Southern Leyte | Pinut-an Small-Scale Mining Association Inc. Cantomoja Small Scale Mining Producers Cooperative |
| | Eastern Samar | Samahang Minero Ng Carapdapnan Waso Small Scale Mining Producers Association Binalay Small Scale Mining Producers Association Makabubwas Small Miners Producers Association Strong-K Waso Miners Association Team Waso Miners Association Waso United Small Miners Association |
| 9 | Zamboanga Sibugay | La Paz Mining Multi-Purpose Cooperative Minawan Multi-Purpose Cooperative Pisaan Agro-Forest Farmers Small Scale Miners Producers Cooperative Kabasalan Rebel Returnees & Community Association Lacnapan Small Scale Mining Association J.S. Perfecto Small Scale Cooperative Guinabocan Small Scale Mining Cooperative Sindangan Bay Mining Corporation Milidan Small Scale Miners Producers Cooperative ABBA DEO Multi-Purpose Cooperative Inshala Multi-Purpose Cooperative Sinaad Small Scale Miners Cooperative |
| | Zamboanga del Norte | TBD Small Scale Mining Association ZAMSUR Small Scale Mining Cooperative BALDEPBA Multi-Purpose Cooperative |
| | Zamboanga del Sur | |
| 10 | Cagayan de Oro | Kulago Farmers Association/ Higaonon Tribes Association |
| 12 | South Cotabato | Small-Scale Association of South Cotabato (w/ 8 Member Associations) |
| 13 | Agusan del Norte | Ricuenz Multi-purpose Small Scale Coop Del Pilar Small Scale Mining Association, Inc. |
| | Agusan del Sur | Masabong Sta. Cruz Small Scale Miners Association Barangay Sta. Cruz Small Scale Miners Association of Rosario Agusan del Sur |
| | Surigao del Sur Butuan City | Bongkuan Minahan ng Katutubo Small Scale Mining Coop. Maibu Gold Hunters, Inc. |

Previously in 1986, DENR-MGB Region 5 implemented a 3-year project with funding of 869,183.79 to assist in the formation of ten (10) small-scale gold mining associations comprising of approximately 200 members in Camarines Norte and Masbate. (DENR Project Brief/Report, Technical Assistance to Gold Small-Scale Miners in Camarines Norte and Masbate) The project aimed to enhance the development of small but high grade gold deposit, also targeting the location and underground mapping of 1,718 mine workings, conducting safety inspection of 1,917 mine workings and 87 safety lectures and demonstration, with a goal of reaching about 21,300 small-scale miners as beneficiaries. Likewise, in 1991, after the passage of RA 7076, DENR MGB Region 1 implemented a 3-year project with funding of P1.7 Million with a target of establishing 4 small-scale mining areas and 4 small-scale mining cooperatives, among others. (DENR Project Brief/Report, Enhancement of Small-Scale Mining in Region I). However, there is neither reported association in these four provinces nor declared Minahang Bayan in Ilocos Norte and Pangasinan, at this time.

3. Gold Production and Sale of Gold to BSP

As discussed in Part I, all gold produced by small-scale miners in any mineral area shall be sold to the Bangko Sentral ng Pilipinas (BSP), or its duly authorized representatives, which shall buy it at prices competitive with those prevailing in the world market) regardless of volume or weight. (Sec. 17, RA 7076) In practice, however, most small-scale miners sell their gold to traders or the black market for the convenience and the immediate payment of the value of their production. (FGD and KII) A 2010 study also asserts that due to the distance of buying stations to most mining communities and the difficulty of miners to meet certain criteria set by the

bank, a significant portion of their production ends up in the black market. (BanToxics, The Price of Gold) This was even aggravated starting April 2012, when the Bureau of internal Revenue (BIR) implemented the collection of the 2% excise tax on the sale of gold and tax on income on the sale of gold, pursuant to the 1997 National Internal Revenue Code (NIRC) (BIR Revenue Regulation 07-2008, BIR Revenue Regulation 06-2012; Section 151(a)(3) (a)(b), Sec. 24.A, 27.A NIRC.) and authorized BSP as a withholding/collection agent. From a total gold purchase by BSP of 68,733.00 kilograms from 2009 to 2011, this dropped to a total of 1,383.86 kilograms from 2012 to 2014, or a decrease of about 98% within three years. This is shown by the figures below, based on the MGB, as declared by BSP.

Figure 22. Sale of Gold to BSP, based on MGB as reported by BSP

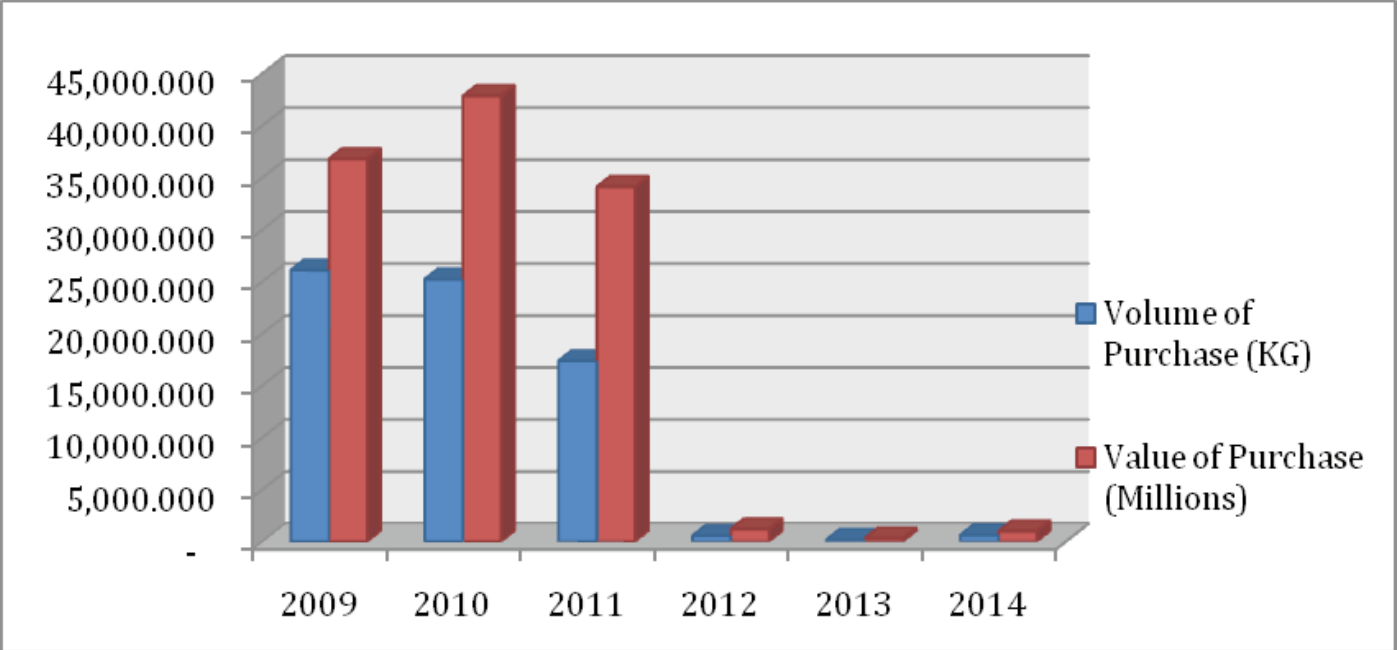


Figure 22.A Sale of Gold to BSP, based on MGB as reported by BSP

| Gold Purchase | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|----------------------------|--------|--------|--------|-------|------|---------|
| Volume of Purchase (KG) | 26,112 | 25,232 | 17,389 | 569 | 182 | 632.855 |
| Value of Purchase (PhP -M) | 36,816 | 42,866 | 34,129 | 1,215 | 319 | 1,011 |

The MGB Central Office bases the annual gold production of small-scale miners on this sale of gold to BSP, through its buying stations. MGB Central Office does not rely on the reports of small-scale miners to the P/CMRB. This is because not only is majority of the production unregistered, but also the few registered small-scale miners do not fully comply with the required monthly and annual production reporting to the P/CMRB.

Even when small-scale miners report their production to the P/CMRB, this information is not completely and promptly shared to the MGB Central Office. Hence, the MGB Central Office uses the information from the BSP gold purchase in reporting gold production from small-scale miners. There are currently efforts underway from the DENR-MGB Regional Offices and the P/CMRB to enforce the reportorial requirement.

Figure 23. Sale of Gold & Silver to BSP by Buying Station for 2014, based on MGB as reported by BSP

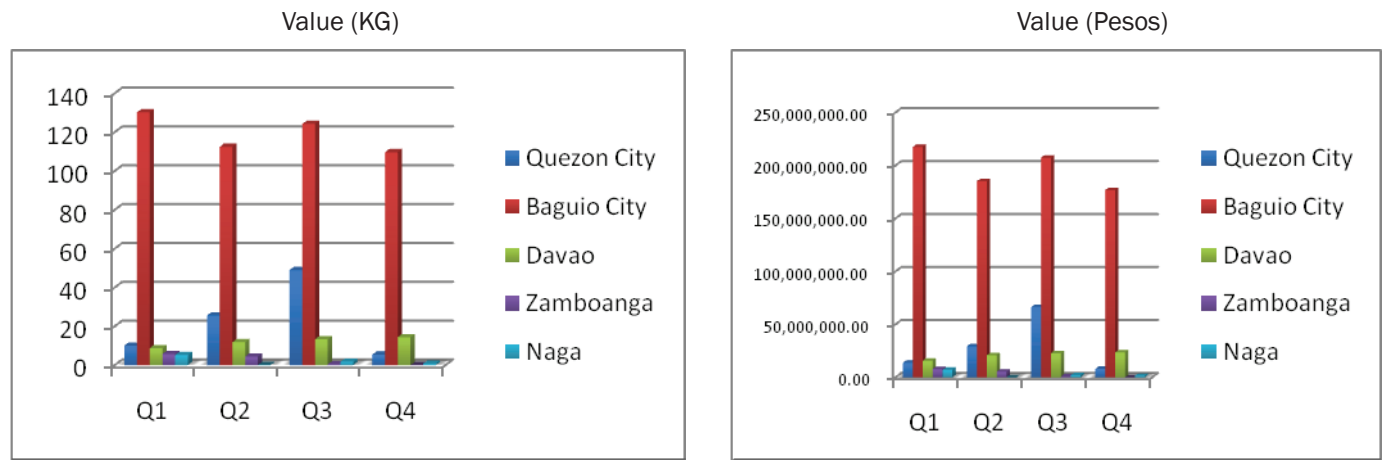


Figure 23.A. Sale of Gold & Silver to BSP by Buying Station for 2014, based on MGB as reported by BSP

| Buying Station | 1 st Quarter | | 2 nd Quarter | | 3 rd Quarter* | | 4 th Quarter* | |
|----------------|-------------------------|----------------|-------------------------|----------------|--------------------------|----------------|--------------------------|----------------|
| | Volume (KG) | Value (Pesos) | Volume (KG) | Value (Pesos) | Volume (KG) | Value (Pesos) | Volume (KG) | Value (Pesos) |
| Quezon City | 9.989 | 13,767,882.29 | 25.555 | 29,360,675.26 | 48.966 | 66,405,855.44 | 5.442 | 7,954,535.64 |
| Baguio City | 130.188 | 217,466,253.44 | 112.435 | 185,140,171.76 | 124.224 | 207,237,703.83 | 109.626 | 176,699,347.65 |
| Davao | 8.744 | 15,771,764.16 | 11.832 | 20,908,289.60 | 13.267 | 22,728,867.52 | 14.367 | 23,433,483.24 |
| Zamboanga | 5.744 | 7,838,969.31 | 4.391 | 5,400,905.39 | .468 | 868,102.05 | 0 | 0 |
| Naga | 5.163 | 7,030,761.02 | 0 | 0 | 1.723 | 2,042,399.39 | .721 | 1,243,893.10 |
| TOTAL | 159.828 | 261,875,630.22 | 154.213 | 240,810,042.00 | 188.648 | 299,282,928.23 | 130.166 | 209,331,259.63 |

*Some figures are based on preliminary assay, subject to adjustment.

As discussed in Part I, the BSP accepts all gold sold to it based on its regulations. A reading of the regulations seems to suggest that BSP neither traces the source of gold it buys to verify if the same is produced from small-scale miners nor verifies the legality of the small-scale mining operations (BSP Responsible Gold Sourcing Policy). For example in 2014, BSP's Buying Station in Naga reports a purchase of gold, but there are no registered small-scale mining operations in the region. While the BSP has a Responsible Gold Sourcing Policy, the policy is more concerned with ensuring that the gold purchased is from known sources, referring to who they are and what they do in terms of legal identity and organization and areas that have not used gold to finance any form of crime or conflict, terrorism, human rights

violations, and money laundering activities. BSP relies on the information supplied by the buyer, as indicated in their BSP Customer Information Packet. The policy, based on the language, does not appear to look into whether or not the source is from an operation covered with a permit and is conducted responsibly in accordance with small-scale mining regulations. For as long as the buyers who can be miners, traders or panners, are able to show that they have legal identities and the gold comes from areas that do not fund any crime, conflict, terrorism, human rights violation and money laundering, based on their representations in paper, then BSP will buy such gold. Theoretically then, it may be posited that the BSP may be buying gold that does not necessarily come from small-scale mining but from all other potential sources.

Unlike small-scale miners, large-scale mining corporations are not required by law to sell the gold they extract to BSP. Prior to 2012, BSP's purchase of gold was comparatively higher than the gold reportedly produced by large-scale mining corporations. The BSP's reported purchase ranged from 56% to 70% compared to the percentage of gold reported by large-scale mining corporations that ranged only from 30% to 44%. After the BIR imposed taxes on the sale of gold to BSP,

the figures changed, with more gold now being reported by large-scale mining operations at a percentage of 96% to 98% compared to the BSP's purchase of 4% to 2%. Comparative graphs and tables of the gold production of small-scale miners based on the sale of gold to BSP and of large-scale miners as reported to MGB on company production reporting are found below.

Figure 24. Comparative Graph of Gold Production based on (a) Reported Sale of Gold to BSP as Proxy for Small-Scale Mining Production and (b) Reported Production by Large-Scale Mining Companies to MGB by Volume and Value

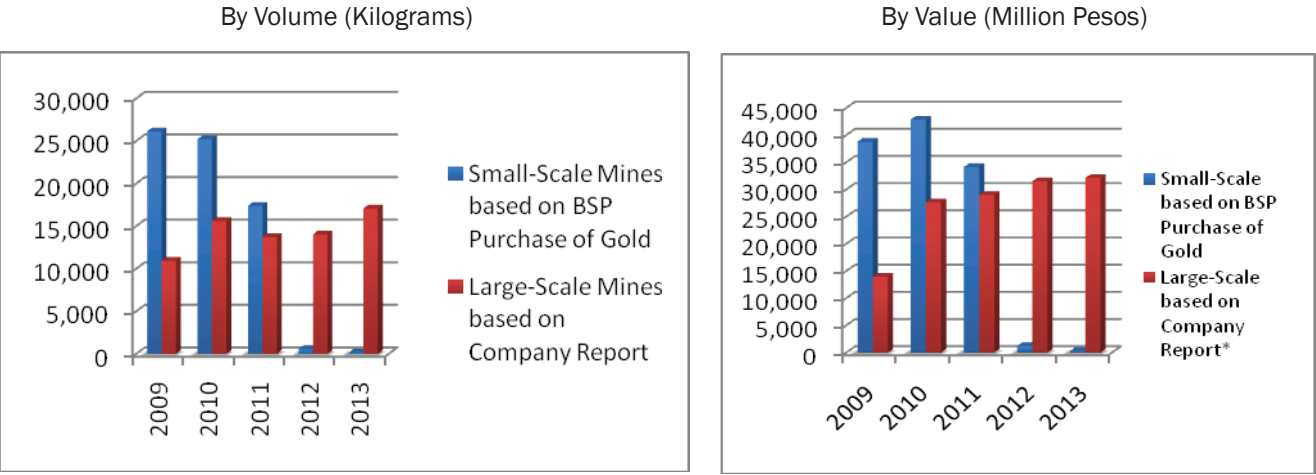


Figure 24.A. Comparative Table of Gold Production based on (a) Reported Sale of Gold to BSP as Proxy for Small-Scale Mining Production and (b) Reported Production by Large-Scale Mining Companies to MGB by Volume and Value

| GOLD | Volume of Production (Kilograms) | | | Value of Production (Million Pesos) | | |
|------|---|---|--------|--|--------------------------------------|--------|
| | Small-Scale Mines, based on Sale of Gold to BSP | Large-Scale Mines, based on Company Report* | TOTAL | Small-Scale Mines, based on BSP Purchase of Gold | Large-Scale based on Company Report* | TOTAL |
| 2009 | 26,112 | 10,935 | 37,047 | 38,816 | 13,952 | 52,768 |
| 2010 | 25,232 | 15,615 | 40,847 | 42,866 | 27,642 | 70,508 |
| 2011 | 17,389 | 13,731 | 31,120 | 34,129 | 29,014 | 63,143 |
| 2012 | 569 | 14,027 | 14,596 | 1,215 | 31,506 | 32,721 |
| 2013 | 182 | 17,066 | 17,248 | 319 | 32,122 | 32,441 |

*This includes secondary gold producers that have copper as primary product with gold and silver as co-products.

Figure 25. Comparative Graph of Gold Production based on (a) Reported Sale of Gold to BSP as Proxy for Small-Scale Mining Production and (b) Reported Production by Large-Scale Mining Companies to MGB by Per Cent Distribution

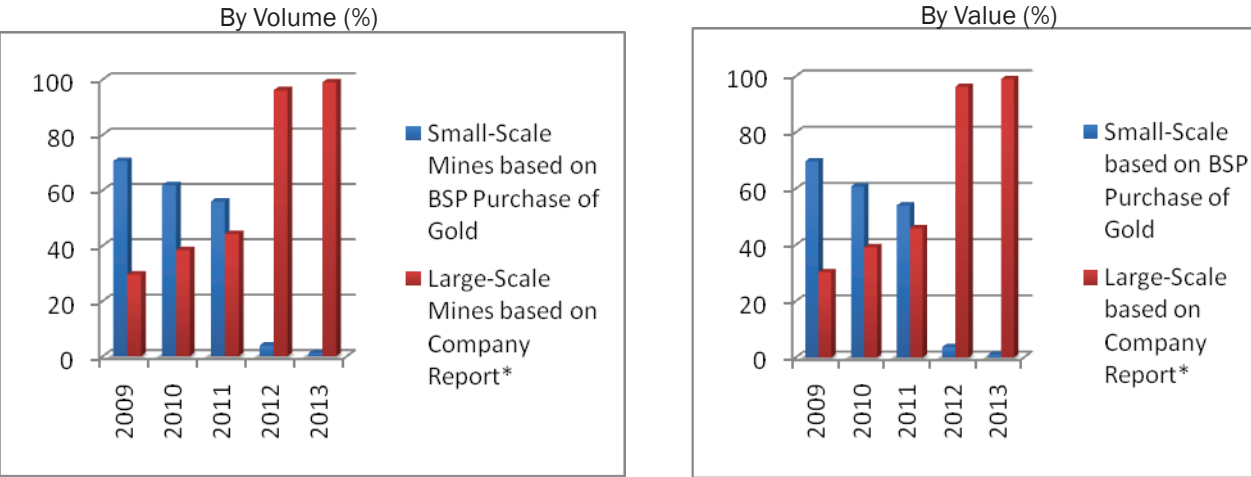


Figure 25.A. Comparative Table of Gold Production based on (a) Reported Sale of Gold to BSP as Proxy for Small-Scale Mining Production and (b) Reported Production by Large-Scale Mining Companies to MGB by Per Cent Distribution

| Gold | Per Cent Distribution by Volume (%) | | Per Cent Distribution by Value (%) | |
|------|---|--|---|--------------------------------------|
| | Small-Scale Mines based on Gold Sold to BSP | Large-Scale Mines based on Company Report* | Small-Scale based on BSP Purchase of Gold | Large-Scale based on Company Report* |
| 2009 | 70.48 | 29.52 | 69.77 | 30.33 |
| 2010 | 61.77 | 38.33 | 60.80 | 39.20 |
| 2011 | 55.88 | 44.12 | 54.05 | 45.95 |
| 2012 | 3.90 | 96.10 | 3.71 | 96.29 |
| 2013 | 1.06 | 98.94 | 0.98 | 99.02 |

*This includes secondary gold producers that have copper as primary product with gold and silver as co-products.

4. Health, Safety and Environment

4.1 Mercury in Small-Scale Mining for Gold

A major concern in small-scale metallic mining, particularly involving gold, is the use of mercury usually in processing gold, through a process called mercury amalgamation. Based on the DENR Chemical Control Order that regulates the import and use of mercury, mercury and mercury compounds are toxic to aquatic life even at low concentrations, especially the methylated forms of mercury. It is also known to bio-concentrate greatly in the food chain causing risks to humans who become ecological receptors through fish ingestion. In man, it has been shown to cause neurological disorders through the inhalation of mercury vapors and ingestion of methylated forms of mercury. It is one of the most toxic metals known to man. It bio-accumulates in the food chain, and becomes increasingly concentrated at higher levels. Mercury poisoning can lead to skin irritation, fever, headaches, nausea, irritability, fatigue, loss of speech and memory, decline in sensory ability, blindness, depression, kidney disease, tremors, brain damage, serious birth defects and even death. (Sec. 3.4, DENR AO No. 1997-38)

Despite the environmental and health hazards of mercury use, Ban Toxics cites various reasons for its continued use in small-scale mining. Primarily, this is

due to the quick results and the quick money derived from using mercury in processing gold and the further recovery of gold from their mine tailings brought to cyanide processing plants. These reasons were also confirmed during interviews with informants in South Cotabato. The other reasons are the ease of using mercury and its high effectiveness at capturing gold under field conditions, accessibility from retail stores and gold dealers, including dental clinics, and cheap price of mercury at P4-P10 per gram, lack of awareness of the risks of mercury use and lack of knowledge of mercury-free gold production alternatives.

The amount of mercury used by miners varies depending on when it is applied. Miners practicing whole ore amalgamation use about 10-25 grams of mercury for every gram of gold produced, while those who practice amalgamation after grinding use about 1-3 grams. (Ban Toxics, The Price of Gold) Ban Toxics further reported there are also 8 other provinces that use mercury in small-scale gold mining, as of 2010. This is in addition to at least 10 provinces using mercury, as of 2002, (BanToxics citing Human Exposure to Mercury in Fish in Mining Areas in the Philippines) DENR-EMB reports also three more provinces using mercury in small-scale mining. (National Strategic Plan for the Phaseout of Mercury in Artisanal and Small-Scale Gold Mining in the Philippines 2011-2021, 2013) These provinces are as follows:

Figure 26. Provinces with Use of Mercury in Small-Scale Mining for Gold

| Provinces with Reported Use of Mercury in Small-Scale Mining for Gold | | |
|---|-------------------|-------------------|
| Benguet | Agusan del Sur | Compostela Valley |
| Camarines Norte | Surigao del Norte | Isabela |
| Negros Occidental | Davao del Norte | Nueva Vizcaya |
| Zamboanga del Norte | Abra | South Cotabato |
| Zamboanga del Sur | Kalinga | Romblon |
| Bukidnon | Apayao | Quezon |
| Agusan del Norte | Oriental Mindoro | Southern Leyte |

DENR-EMB’s assessment in 2008, using a UNEP toolkit, showed that primary virgin metal production, mainly claimed to be from small-scale mining of gold and silver, contribute the highest mercury emission at 32% or 74,769 kilograms of mercury per year. (Mercury Assessment in the Philippines using UNEP Inventory Toolkit; Associated Mercury Action Plan for the Philippines, DENR-EMB, 2008) The assessment further reports that the large-scale mining companies no longer use mercury and the emissions are claimed to be from the small-scale mining, which supplies about half of the gold production in the Philippines. The report, however, says that even this assumption cannot be verified by the DENR-MGB since some small scale and artisanal miners are illegal and not included in any listing including gold trading. Globally, a UNEP assessment revealed that emissions of mercury from artisanal and small-scale gold mining reported for 2010 are more than twice those reported for 2005. UNEP claims that while the rise in the price of gold (from USD 400 per ounce in 2005 to USD 1100 per ounce in 2010), along with the increase rural poverty, may have caused more activity in mining, the increased estimate for mercury emissions is considered to be due primarily to some more and better data from many countries and regions. (Global Mercury Assessment, UNEP, 2013)

The unlawful, unsafe and unhealthy child labor in small-scale mining is also reported in some parts of the country. A 2015 study documents the continuing concern on the involvement of children in underwater mining in Camarines Norte and Masbate (Human Rights Watch, What If Something Went Wrong? September 2015)

4.2 Environmental Compliance Certificate

As discussed in Part I, extractive industries such as major mining projects are covered by the Philippine Environmental Impact Statement System (PEISS). Under DENR-EMB regulations, small-scale mining projects are considered as a minor mining activity and falls under Category B: Non-Environmentally Critical Projects. At present, however, all small-scale mining projects, regardless of their location, are required to secure Environmental Compliance Certificate (ECC) from the DENR-EMB Regional Offices. The EIA report or document required from small-scale mining projects depend on the volume of production and on the size of the area mined. The extraction of metallic ores on shore that are greater than 20,000 metric tons but less than 100,000 metric tons and covering an area that is less than 25 hectares require an Environmental Impact Statement (EIS). Smaller operations that annually produce less than 20,000 metric tons and cover an area of less than 25 hectares require an Initial Environmental Evaluation (IEE) Checklist only. (DENR-EMB Memorandum Circular 2014-005)

Prior to July 2014, small-scale mining is similarly considered as a minor mining project and a Non-Environmentally Critical Project, but not all operations are required to secure an ECC. Whether or not an

ECC is required and the type of EIA report required depends on whether the operation is done within an Environmentally Critical Area (ECA) or outside.

If done within an ECA, then DENR-EMB categorizes such small-scale mining as falling under Group II – Non-ECP in ECA requiring an ECC. Such minor mining project, described as extraction of metallic ores on shore, using methods other than open pit method with mechanical operations, blasting or combinations, with an annual extraction of metallic minerals of less than 100,000 metric tons in an area of less than 25 hectares, requires an IIEE Report or IEE Checklist prior to the issuance of an ECC. (DENR-EMB Memorandum Circular No. 2007-002) If the small-scale mining operation is not done within an ECA, then it falls under Group III – Non-Environmentally Critical Project in Non-Environmentally Critical Areas. For this group of projects, only a Project Description Report is required to be submitted for Enhancement and Mitigation Projects as basis for confirmation of the benign nature of the proposed activity and a Certificate of Non-Coverage is required to be secured. All other projects, including small-scale metallic mining, shall be at the option of the proponent to prepare a PDR as basis for a Certificate of Non-Coverage, should the proponent or the small-scale mining operator opt to secure one. (Group III.A, DENR-EMB Memorandum Circular No. 2007-002)

DENR-EMBSuspended the processing of applications and issuance of ECC for small-scale metallic mining on April 19, 2011. (DENR-EMB Memorandum to All Regional Directors) This was pursuant to the instructions of the President to implement stricter environmental standards in the field of small-scale mining. This suspension remains and has not been lifted, to date. (KII, EMB-EIA)

This means that existing small-scale mining contracts that have been awarded by the P/CMRBs in the country prior to July 2014 most likely fall within the Group III Project. With the new guidelines set by DENR-EMB, small-scale mining contracts issued after July 2014 are either not supported by an ECC issued by the DENR-EMB Regional Offices or the DENR-EMB Regional Offices issued ECCs contrary to the directive of the DENR-EMB Central Office.

In South Cotabato, based on data supplied to the study team by the DENR-EMB Regional Office XII, two ECCs were issued for small-scale mining in the Province of South Cotabato since 2007. These were issued on 6 August 2007 and on 11 June 2012. The said office did not issue any ECC from 2013 to 2015. DENR EMB Regional Office XII also reports that it has no created Multi-Partite Monitoring Team for the small-scale mining industries. It claims that its monitoring of the environmental compliance of the project focuses on the different conditions stipulated under the issued ECC and the Environmental Management Plan of the submitted IEE of the project. (Response to Request for Information, October 2015)

5. Small-Scale Mining in Ancestral Lands

As discussed in Part 1, any small-scale metallic mining within ancestral lands must comply with the requirements of the laws and regulations. This includes securing the free and prior informed consent of the indigenous peoples and indigenous cultural communities (IPs/ICCs). The NCIP Regional Offices report that there are small-scale metallic mining operations within ancestral lands, but none went through the formal processes of securing such consent laid down by the law and regulations. In the Provinces of South Cotabato and

Benguet, the PMRB accepts the consent of the IPs/ICCs in the form of the individual consent of the occupant of the ancestral land. In South Cotabato, the PMRB also requires that the agreement for the share from the production or the royalty is already included as part of the application requirements.

The NCIP Regional Offices report the following observed or known operations in ancestral lands/domain, while NCIP Regional Offices covering Region 6, 7 and 8 do not have knowledge on the existence of small-scale metallic mining in their areas and Regions 3 and 4 report there is no such operation. (FGD/NCIP Survey Questionnaire)

Figure 27. Operations of Small-Scale Mining in Ancestral Domain/Ancestral Lands

| Region | No. of SSM Operations | Host Province of SSM | Host City/ Municipality | Ancestral Domain/ Ancestral Land |
|-----------|-----------------------|---|-------------------------------|--|
| Region 1 | Unknown | Isabela | Quirino | Kankanaey ² |
| Regions 2 | No Answer | Isabela | Dinapigue | Agta/Dumagat ³ |
| Region 9 | 3 | Zamboanga Del Sur | Midsalip Tigbao Pagadian City | Subanon ⁴ |
| | | Zamboanga Sibugay | Diplahan | |
| | | Zamboanga del Norte | Pres. Roxas Sindangan | |
| Region 11 | 2,000, more or less | 2 out of 5: Compostella Valley | Pantukan | Mansaka Mandaya |
| Region 12 | | 1 out of 4: South Cotabato | T'boli | T'boli CADT |
| Region 13 | 19 | 2 out of 4: Agusan del Sur and Agusan del Norte | Rosario Cabadbaran | Rosario (CADT 078) Cabadbaran (CADT 092) |
| CAR | Unknown | 6 out of 6 Provinces and 2 Cities ⁵ | | |

Figure 27.A Existence of Small-Scale Mining in Ancestral Domains/Ancestral Lands

| Existing Operations within Ancestral Domains/ Ancestral Land | | No Existing Operations within Ancestral Domains/ Ancestral Land | Unknown to Regional Office |
|--|------------------|---|----------------------------|
| Region 1 | Region 12 | Region 3 | Region 6 |
| Regions 2 | Region 13 | Region 4 | Region 7 |
| Region 9 | CAR ⁶ | Region 5 ⁷ | Region 8 ⁸ |
| Region 11 | | | |

² According to NCIP Regional Office 1, the operations are carried out by IPs.

³ According to NCIP Regional Office 2, the FPIC Report is in progress.

⁴ According to NCIP Regional Office 9, the operations are carried out by non-IPs, but there is no FPIC nor CP.

⁵ According to NCIP CAR Regional Office, 86% of CAR is “native title” area and all of Benguet is ancestral domain.

⁶ According to NCIP CAR Regional Office, 86% of CAR is “native title” area and all of Benguet is ancestral domain.

⁷ According to NCIP Regional Office 5, there is small-scale mining in the region, but not within ancestral domain or ancestral lands. Moreover, they do not have any data about the operations.

⁸ According to NCIP Regional Office 6, 7 & 8, there are no IPs in Region 8 nor Ancestral Domain and Ancestral Lands

At present, NCIP Regional Offices report that, in some regions, there are efforts to go through the formal processes of securing the required free and prior informed consent from the IPs/ICCs. There are also efforts to coordinate the concerns on small-scale metallic mining on the part of the DENR-MGB with the NCIP Regional Offices. The details are shown below:

Figure 28. Status of Permits and Licenses of Small-Scale Metallic Mining in Ancestral Lands/Domain

| Region | With SSM Permit/ Contract (Y/N) | Declared Minahang Bayan (Y/N) | Carried out by IP(Y/N) | With FPIC (Y/N) | With Certificate of Pre-Condition (Y/N) |
|-----------|---------------------------------|-------------------------------|-------------------------------|----------------------------|---|
| Region 1 | No | No | Yes | No/NA | No/NA |
| Region 2 | Yes | Yes | Yes, with Private Individuals | FPIC Report is in progress | FPIC Report is in progress |
| Region 9 | No | No | No | No | No |
| Region 11 | No | No | Mixed | No | No |
| Region 12 | Yes | Yes | No | No | No |
| Region 13 | Unknown | Unknown | Mixed | Unknown | Unknown |
| CAR | Unknown | Unknown | Mixed | No | No |

Figure 29. Coordination of NCIP Regional Office with IPs, PMRB, MGB, EMB⁹

| Region | Coordination with: (Yes, Sometimes, None at All) | | | |
|-----------|--|-------------|-------------|-------------|
| | IP | DENR-MGB | PMRB | DENR-EMB |
| Region 1 | None at All | Sometimes | Sometimes | Yes |
| Region 2 | Yes | No Answer | No Answer | No Answer |
| Region 9 | None at All | Sometimes | None at All | Sometimes |
| Region 11 | Yes | Yes | Yes | Yes |
| Region 12 | Yes | Yes | Yes | None at All |
| Region 13 | Sometimes | Sometimes | Sometimes | Yes |
| CAR | Sometimes | None at All | Sometimes | None at All |

Based on perception of the NCIP Regional Offices, they report the following issues and concerns regarding small-scale metallic mining in ancestral lands and domains. These revolve around illegal operations of small-scale miners, non-observance of the requirement of a free and prior informed consent, environmental and safety concerns regarding the use of mercury and the corresponding pollution of rivers and creeks and the payment of taxes and royalties. The NCIP Regional Offices also recommend measures to address these issues and concerns. These include not only stronger monitoring and enforcement, but also facilitation of compliance with the laws and inter-agency coordination, among others. The details are found below:

Figure 30. Issues and Concerns regarding Small-Scale Metallic Mining in Ancestral Lands/Domains

| Region | Issues Identified by NCIP Regional Offices on Small-Scale Mining in Ancestral Domains/Ancestral Lands | | |
|----------|---|--|---|
| Region 1 | No safety measures in the conduct of SSM | Disposal of hazardous chemicals (mercury) | Illegal operations |
| Region 3 | No endorsement from regulating agency or LGU | Hesitation of IPs in reporting or filing charges against illegal operators | SSM as a cause of conflict among IPs/ICCs |

⁹ This excludes NCIP Regional Offices that indicated that there are no or unknown SSM in AD/ALs.

| Region | Issues Identified by NCIP Regional Offices on Small-Scale Mining in Ancestral Domains/Ancestral Lands | | |
|-----------|---|--|---|
| Region 4 | Non-observance of FPIC process | PMRB’s non-recognition of the FPIC process | Environmental degradation is unregulated |
| Region 5 | No awareness of Small-Scale Mining, Hence, no data | No application for SSM in the Region | |
| Region 10 | Illegal operations; No permits issued. | Pollution of rivers and creeks | |
| Region 11 | Non-regulation of Small-Scale Mining | No proper accounting of taxes and royalty fees | Peace and order |
| Region 12 | No environmental considerations | Issue on Benefit-Sharing | |
| CAR | Large-scale nature of Small-Scale Mining with no database, no regulation, no attempt to rationalize | Environmental degradation: unregulated toxic chemical use, destruction of the forest/underground and land use, diseases from toxic chemicals and disasters | Insurgency, militarization and foreign purchase of metals without governing rules |
| CAR | Destruction of the environment | Safety concerns | Unregulated SSM, allowed by LGUs to operate without permits |
| Region | Applications for SSM do not pass through the NCIP | No coordination between PMRB and NCIP field office | |
| Region | Use of Mercury | Unregulated Operations | |

Figure 31. Recommendations to Address Issues and Concerns in Small-Scale Mining

| Recommendations to Address Issues in SSM | | | |
|--|--|--|---|
| Region 1 | Mitigating Measures for SSM | Proper Disposal of Wastes and the IEC on New Technologies in Processing Gold | Declaration of Minahang Bayan |
| Region 3 | Check by MGB of SSM for More Transparency | Support/Assistance from PNP, AFP & Civil Society/NGOs | Strengthening of IPs/POs |
| Region 4 | Inclusion by PMRB the FPIC as a Pre-Requisite to Permit Issuance | Requirement of Declaration of Minahang Bayan as Spelled out by EO 79 | Environmental Protection be made Prime Consideration of SSMM Entities |
| Region 5 | Requirement of Securing Certificate of Pre-Condition from NCIP | LGUs’ Requirement of Securing CP prior to Issuance of Permit | |
| Region X | Strict Monitoring of Permits | | |
| Region XI | Implementation by PMRB of NCIP A.O. No. 3, s. 2012 | Establishment of Proper Tax-Based and Royalty-Based Mechanism | Deployment of Law Enforcers (PNP, AFP, etc |
| Region XII | Inclusion of NCIP in PMRB | Creation of One-Stop Facilitation of Permit | |
| CAR | Provision of Alternative Livelihood | Exercise by DENR of its Regulatory and Prohibitory Power | Prohibition on the LGUs from Issuing Permits |

| Recommendations to Address Issues in SSM | | | |
|--|--|--|--|
| Region — | Reinforcement of Monitoring Systems by Concerned Agencies (DENR, PNP, etc) | | |
| Region — | Inter-Agency Attention to SSM with Political Will that is Coordinated, Sustained and Focused | Enforcement of All Environmental Laws, Rules and Regulations | State Purchase of Gold and Market Management with the SSM and Their Commodities as the Center of SSM |

Insofar as coordination with the NCIP Regional Offices, the P/CMRBs may work closely with these offices. This should be readily facilitated as both agencies work together, especially as most NCIP Regional Offices have already completed their mapping of ancestral lands and domains. Except for Regions 2 and 10 that have partially mapped out these areas, and Region 4 that have not done any mapping yet, all other NCIP Regional Offices have mapped ancestral domains and lands within their regions. These areas may be easily overlaid with any proposed declaration of Minahang Bayan to show where laws and regulations must be complied with and where the NCIP and the P/CMRBs must work closely together.

Figure 32. Mapping of Ancestral Domains and Ancestral Lands

| Completely Mapped | | | Partially Mapped | No Mapping Yet |
|-------------------|-----------|-----------|------------------|----------------|
| Region 1 | Region 7 | Region 12 | Region 2 | Region 4 |
| Region 3 | Region 9 | Region 13 | Region 10 | |
| Region 5 | Region 11 | CAR | | |
| Region 6 | | | | |

Notwithstanding these concerns and issues in small-scale mining in ancestral lands and domains, the NCIP Regional Offices recommend including small-scale metallic mining in the country reporting for EITI. They share the following reasons and justifications:

Figure 33. Reasons for the Recommendation of Including SSM in EITI Philippines Country Reporting

| Reasons for Inclusion of SSM in EITI Country Reporting |
|---|
| 1. Income is received from SSM |
| 2. Environmental damage and concerns from SSM that must be monitored. |
| 3. Gold production in the country may be monitored |
| 4. Reporting will promote transparency in SSM |
| 5. Reporting will enhance the regulation of SSM |
| 6. SSM involves health issues and concerns that must be reported. |
| 7. SSM involves child labor that must be reported and regulated. |

6. Challenges and Recommendations: From the Results of the FGD and Roadshows

Based on focus group discussions with representatives from LGUs, the LGUs identify the following challenges in small-scale metallic mining. These are primarily the prevalence of operations without permit and the non-collection of revenues from small-scale mining.

Figure 34. LGU-Identified Challenges from Focus Group Discussions at Roadshows

| Results from FGD with Provinces/Cities | Identified Challenges in Small-Scale Metallic Mining |
|--|--|
| Palawan | - The problem is more on non-metallic mining. |
| Luzon | - CAR: MGB and DENR conflict with respect to collection of fees - Nueva Vizcaya: Miners operate without permits, despite objection from the LGUs. - Region 5: Small-scale mining is rampant in the area but there are no revenues collected because these operations are unregulated. |
| Mindanao | - Compostela Valley: The declaration of a Minahang Bayan is very tedious - There is unclear price of ore from SSMM. Selling appears like a black market - SSMM operations are unregulated and LGU does not get any income from them - Zamboanga del Norte: There is difficulty in collecting fees. The government has to go to the mining areas to collect. |
| Cebu | |
| Butuan | - There is a lack of the implementation of regulation - SSMM is more environmentally-destructive than large-scale mining - There are no social development programs - There is no payment of fees due from small-scale mining. - There is a lack of public awareness regarding the law on small-scale mining. |

Figure 35. LGU-Identified Recommendations for SSMM from FGD Roadshows

| Results from FGD with Provinces/Cities | Identified Challenges in Small-Scale Metallic Mining |
|--|--|
| Palawan | None |
| Luzon | - CAR: For MGB and DENR, to settle their conflicts. - Region 5: For MGB, to copy furnish LGUs with data from MGB for budget projection. - Nueva Vizcaya: Grant LGUs the autonomy to decide whether they approve of mining or not, considering that they are the ones who will be directly affected. EITI should also look into the relationship between MGB and LGUs. EITI to give attention to the companies’ compliance to the regulatory functions of the LGUs. |
| Mindanao | - Compostela Valley: For BSP, to setup buying stations near SSMM operation areas where operators can sell their goods. - Give more attention to regulate SSMM. - Make requirements for permitting lighter. |
| Cebu | - Eastern Samar: Observe prior consultations with the barangay and the community before the issuance of permits and certifications, such as the Environmental Compliance Certificate from DENR. Consent from inhabitants in the area of extraction is important regardless of the type of mining operation, large-scale or small-scale |

| Results from FGD with Provinces/Cities | Identified Challenges in Small-Scale Metallic Mining |
|--|--|
| Butuan | <ul style="list-style-type: none"> - Repeal EO 79 - Declare Minahang Bayan |

The foregoing national situationer on small-scale metallic mining are based on data provided by 44 Provinces and 27 Independent Cities and 12 MGB Regional Offices through the survey questionnaires sent out by Philippines EITI from July – December 2015 as well as from NCIP Regional Offices survey questionnaires, key informant interviews from the MGB Central Office and DENR-EMB Central Office, and requests for official information from BSP and BIR-Central Office, DENR-EMB Central Offices and their respective Regional Offices for Benguet and South Cotabato. Results from focus group discussions with LGUs in Luzon, Visayas and Mindanao and NCIP Regional Offices were also used. In addition, the study focuses on two provinces in the country, Benguet and South Cotabato, to examine in detail small-scale mining operations in their areas. (See Annexes 1-3 for List of Participants for KII, FGD and Survey Questionnaire)

B. Small-Scale Mining in the Province of Benguet and the Municipality of Itogon

1. Background/Situationer

The Province of Benguet is located in the Cordillera Administrative Region (CAR) in Northern Luzon, with a total land area of 298,160 hectares and a population of 403,944 persons.¹⁰ According to the NCIP-CAR, all of Benguet is claimed as ancestral domain by indigenous peoples and indigenous cultural communities. (Annex 7.B NCIP List of Approved Certificate of Ancestral Domain Titles in Benguet)

Mining, next to agriculture, is the second major economic activity in the province, providing employment to about 30% of its residents and from other provinces.¹¹ Large-scale metallic mining corporations in Benguet hold 4 patented mining claims, 8 mineral production-sharing agreements and 2 exploration permits covering 15,547.1583 hectares. Of these, only 4 are producing or commercially operating, as of December 2014.¹² Small-scale metallic mining operations in the entire province are estimated at 72 operations,¹³ mostly done in large-scale mining claim areas.¹⁴ Eleven operations are registered with the PMRB and are operating in Itogon, Mankayan, Bakun and Tuba covering an area of at about 127 hectares, as of December 2014.¹⁵ (Annex 7 List of Registered Contractors in Benguet). As of July 2015, the Province considers 12 operations to be registered and authorized by the PMRB.¹⁶ (Annex III.B.3.A: PG-Benguet List of SSM Contractors in Benguet, as of August 2015) There are a total of 119 registered individual small-scale miners from 8 small-scale mining associations.¹⁷

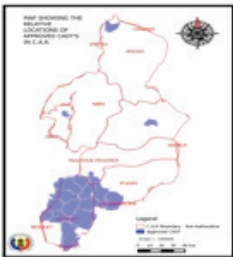


Figure 36. Source: NCIP CAR, October 2015

The remaining 60, more or less, are carried out illegally, involving the extraction of gold, with copper and silver as by-products, covering an area of about 1,440 hectares. According to the Province, these are in 11 out of the 13 municipalities of the province, namely Atok, Bakun, Buguias, Bokod, Mankayan, Itogon, Tuba, Tublay, Kabayan, Kapangan and Kibungan. (KII) MGB Regional Office for CAR however says that there is no small-scale metallic mining in Buguias and Kibungan. (KII) For the entire province, the provincial government estimates that there are more than 20,000 unregistered small-scale miners, as of this time. In 2010, the Province undertook a profiling of small-scale miners that yielded a partial count of 8,090 small-scale miners only. This number excludes those who did not voluntarily participate in the profiling. (KII) As of December 2014, the Benguet Federation of Small-Scale Miners, Inc.’s profile summary of member-associations shows a total workforce of 31,845.

The Municipality of Itogon has the largest concentration of small-scale metallic mining, followed by Mankayan. Most of these are conducted within existing mining claims of large-scale mining companies. (KII, Itogon, Benguet) There are 6 small-scale mining operations in Itogon that have been issued temporary contracts, as of August 2015. (Survey Response, Benguet)¹⁸ Four of them operate in Barangay Ampucao, while the 2 operate in Barangay Loacan and Tuding, covering a total area of at least 21.575 hectares. They employ a total of at least

Survey Questionnaire Answered indicated 12 registered operations.

¹⁶ Benguet Survey Questionnaire Answer.

¹⁷ KII with Benguet, supported by List of Registered SSM of Benguet.

¹⁸ PG-Benguet Letter dated January 14, 2015 to Municipality of Itogon and Annex.

154 workers. Three of these contractors have their own processing plants, and thus the Municipality opines that they should no longer be considered as small-scale mining but as medium-scale mining.¹⁹

The Province reports that there are about 32 small-scale mining operations in Itogon that operate without any permit or contract. These involve a total workforce of about 6,121 workers and an area of about 223.49 hectares, as of December 2014. (Annex 8) The Municipal Treasurer’s Office, however, lists a total of 52 small-scale miners associations operating in Itogon, based on records obtained from MGB-CAR. (Annex 8.A)

Some of the small-scale miners in Itogon carry out mining operations as contractors of large-scale mining corporation Benguet Corporation in its Acupan Gold Project (AGP). Benguet Corporation resumed its large-scale operations, entering into contracts with small-scale mining associations as the AGP contractors. For 2011-2014, Benguet Corporation has 22 AGP Contractors. (Annex 8.B) This arrangement is covered by a Memorandum of Agreement, which stipulates the terms and conditions.

While small-scale metallic mining largely remains unregistered with government, the miners are organized into associations and a province-wide federation. The Benguet Federation of Small-Scale Miners, Inc., organized on April 2, 2006, has 69 member associations, with a total recorded 2029 adits, and a total 31,229 individuals as work force involved in small-scale mining. (Annex 9). This number excludes the women and the children who are also usually involved in small-scale mining, the same being considered as a family enterprise.

2. Permitting of SSMM Operations in the Province

2.1 Permitting Procedure and Requirements

The PMRB of Benguet, currently led by the MGB Regional Director with the Provincial Governor as the Co-Chairperson, regulates small-scale metallic mining in the province. According to MGB CAR, the PMRB was created based on a DENR Special Order issued in 1997. Provincial Ordinance No. 04-91 of Benguet also mandates the creation of the PMRB. (Survey Response) The PMRB, in turn, created a Technical Working Group (TWG) composed of 2 representatives each from the MGB Regional Office and the Provincial

Government. The TWG assists the PMRB in the processing of applications and in the monitoring of small-scale mining operations. Upon recommendation of the PMRB that meets every quarter, the Provincial Governor issues Small-Scale Mining Permits then under PD 1899, and with the issuance of E.O. 79, Temporary Small-Scale Mining Contracts under RA 7076.

In terms of budget, Provincial Government funds PMRB meetings and activities and DENR-MGB also has its appropriation. MGB CAR has a budget item for small-scale mining-related activities ranging from P200,000 to P250,000. (KII) For 2013 and 2014, the Province allocated a budget of P130,000 and P110,000, respectively, for PMRB meetings. (KII) The PMRB conducted 7 meetings in 2013²⁰ and 5 meetings in 2014.²¹

Applications are filed with the PMRB, either through the Office of the Provincial Governor that then forwards it to the Provincial Government’s Provincial Environment and Natural Resources Office for assistance or through MGB-CAR.²² In case of the former, this is then coordinated with the MGB CAR for verification by the PMRB TWG. The PMRB TWG checks the application in terms of the following documentary requirements, together with the payment of the application/filing fee:

- accomplished application form
- survey plan of area applied with technical description prepared by a licensed Geodetic Engineer, together with a sketch plan for gold panning/slucing
- indorsement from the barangay and municipality
- area and status clearance from MGB
- written consent of claimowner, landowner, operator, etc
- surety bond of P20,000 to guarantee payments of any damages
- articles of partnership, incorporation, association and by-laws
- special power of attorney, if filed by an agent²³

Once determined to be complete, a site verification of the applied area is done by the TWG. With the TWG report, the application is forwarded to the PMRB for deliberations during their regular meetings every third Thursday of the month. The PMRB evaluates and makes it recommendation to the Provincial Governor for the

meeting) and April 3, all in 2014.

²² According to MGB CAR, based on the PMRB Minutes of the Nov. 7, 2012 Meeting, small-scale mining applications shall be processed by MGB, while sand and gravel by the PG-ENRO. MGB CAR states that in adherence to this, MGB made formal and oral request for folders files of SSM applications with the PG-ENRO to transfer them to MGB-CAR; but no folders were submitted to MGB CAR.

²³ PMRB Checklist Application for Small-Scale Mining/Gold Panning/ Sluicing Permit pursuant to PD 1899.

¹⁹ KII with Itogon. According to the MGB, there area only 3 operations that have been issued Temporary Contracts in Itogon. 2 of them are in Virac while 1 is in Ampucao, and all with processing plants of their own.

²⁰ Based on the Minutes shared with the Study Team by MGB CAR, meetings were held on December 3, November 12 (special meeting), October 24, August 8 (ExeCom meeting), July 25, April 18, and February 19, all in 2013.

²¹ Based on the Minutes shared with the Study Team by MGB CAR, meetings were held on October 24, August 14, April 29 (special

issuance of a permit. (Annex 6. Sample SSMP, Benguet)

After EO 79 and its IRR were issued in 2012, the PMRB issued Temporary Small-Scale Mining Contracts to the existing registered small-scale mining associations and individuals. (PMRB Resolution No. 30, S. 2014.) The PMRB issued the temporary contracts based on Sec. 14.a of the IRR of EO 79 (DAO 2012-07) that allows holders of small-scale mining permits with a remaining term of less than 1 year to be given such temporary contract by the Provincial Governor upon the recommendation of the PMRB to continue small-scale mining operations within a period of 6 months or until their area is declared as Minahang Bayan, whichever comes first. Of the 12 existing operations covered by a permit, the 4 others were not able to comply with documentary and/or reportorial requirements. (KII) These temporary contracts were for a period of 6 months, with the last permit expiring on 23 April 2015. (Annex 5. Sample Temporary SSMC, Benguet)

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With the issuance of the Revised IRR of RA 7076, the PMRB will have to be reorganized and the permitting procedure needs to be modified. This will include the relegation of the Provincial Governor as a mere member, and no longer as Co-Chairperson, of the PMRB and the acceptance of the application by the MGB Regional Office, among others.

2.2 Minahang Bayan

As discussed in Part I, EO 79 enjoins the implementation of RA 7076 that requires that there can be no small-scale mining activities unless the contract area is declared as a Minahang Bayan. Prior to 2012 and up to the present, there is no declared Minahang Bayan in Benguet. The MGB and thereafter the PMRB then authorized and regulated small-scale mining under PD 1899. There are several attempts, up to the present, to declare Minahang Bayan in the province. This includes one covering an area in Sitio Bagtangan, Brgy. Gambang, Municipality of Bakun way

back in 2004, but it did not materialize. After EO 79 was issued, the PMRB held several sessions to discuss the declaration of Minahang Bayan in Benguet. They thereafter deliberated and approved the proposed guidelines for the declaration of a Minahang Bayan. These guidelines were prepared and presented by the TWG that was then tasked to verify the areas. In its Resolution No. 1, s. 2014 (October 24, 2014), the PMRB generally declared areas already occupied and actively mined by small-scale miners before August 1, 1987 within Benguet as “People’s Small-Scale Mining Areas or Minahang Bayan”, pursuant to Section 5 of RA 7076. Section 5 of RA 7076 provides such authority to the PMRB, subject to review by the DENR Secretary. The PMRB thus authorized the identification, delineation, segregation and validation on the ground of the areas applied for as Minahang Bayan. At present, there are 9 pending applications for the declaration of a Minahang Bayan in Benguet. (MGB Survey Response)

3. Permits and Contractual Arrangements

The permits as referred to in PD 1899 and the contracts as referred to in RA 7076 issued to the small-scale miners set forth their obligations as well as the terms and conditions of their permit. The discussion below distinguishes the standard permit issued prior to EO 79 and the temporary contract issued after EO 79. (Annexes III.B.7 and III.B.8: Pre-2012 Sample Permit and Post 2012 Temporary Small-Scale Mining Contract)

3.1 Pre-EO 79

3.1.1 General Provisions: Term, Exclusive Use, Non-Transferability, Revocation

Prior to EO 79, the Small-Scale Mining Permit issued by the Governor to the qualified association for a specific delineated area was for a term of 2 years, renewable for the same periods. The permit was for the exclusive use of the permittee and is non-transferable unless with the written approval of the Governor. The permit may be suspended or revoked any time by the Provincial Governor, when public interest, welfare, peace and order require or upon failure of the permittee to comply with the terms and conditions of the permit or for ecological reasons. The permit may also be suspended or cancelled in case of any misrepresentation in the permitting process by the permittee.

The permit also provides that in the event the permit encompasses prior valid and subsisting mining claims, the permit shall be automatically cancelled. If it only involves a partial conflict, then such area in conflict with prior valid and subsisting mining claim shall be automatically excluded from the area.

3.1.2 Obligations of the Permittee: Production, Payments, Environmental Standards, Mine Safety

Under the permit, the permittee is required to confine its activities only within the metes and bounds of the permit area. The permittee must also place the permit area in actual production within 12 months from the date the permit was issued; unjustifiable failure can be a ground for automatic cancellation. The permittee is also required to submit to the Provincial Government a quarterly production report within 30 days after the end of each quarter.

Apart from being obliged to police the permit area against forest fires, illegal cutting of trees, illegal mining and processing, the permittee is also expected to establish a nursery and conduct tree planting activity within the permit area once a year. The permit does not specify the requirements in terms of area or number of seedlings for such annual tree planting requirement. In case of timber needs for underground operations, the permittee is explicitly required to secure said timber from legal sources. Moreover, it is the duty of the permittee to ensure that the effluents of its operations conform with the standards of DAO 35 (Water Quality Standard for Effluents) and DAO 29 of RA 6969 (Toxic Substances and Hazardous and Nuclear Waste Control).

In terms of mine safety, the permittee is required to observe safe mining and extraction procedures in accordance with DAO 97-30 (Small-Scale Mine Safety Rules and Regulations). The terms of the permit requires the permittee to be responsible for the safe of the miners and workers and for any damage resulting from his mining operations. The permittee may also call upon concerned government agencies if there is a need for safety, health and environment monitoring. The Association is made responsible for compensating all damages to public or private properties attributed to its small-scale mining operations.

3.2 Post EO 79

After EO 79 was issued, the Temporary Small-Scale Mining Contracts executed by the Provincial Governor on behalf of the Republic of the Philippines, as grantor, and by the permittee, were for a period of 6 months only, renewable for like periods, or upon the discretion of the PMRB in accordance with existing laws. The document issued to a qualified applicant, now

denominated as a contract, provides for the right of the contractor to mine, extract and dispose mineral ores for commercial purposes, subject to the following conditions:

- a. undertake mining activities in accordance with a mining plan duly approved by the PMRB;
- b. abide by the Small-Scale Mining Safety Rules and Regulations and allow access for authorized inspections teams of the PMRB for monitoring;
- c. submit to the PMRB the required agreement, consent or waiver of the holder of mining rights, owners of ancestral domain or land, where the small-scale mining activities are located;
- d. pay all taxes and fees as may be provided by law;
- e. comply with laws and regulations on environmental protection and conservation such as on tree cutting, pollution control, mineral processing, use of toxic chemicals;
- f. file a sworn details production and financial report to the PMRB at the end of each quarter
- g. assume responsibility for the registration with the PMRB of all its members as miners and ensure their safety at all times while working in the mines;
- h. agree to the establishment of a common, safe and efficient custom mills to process minerals or ore-bearing minerals and tailings storage facilities which shall be limited within the contract area upon approval of the Board;
- i. undertake mining activities only within the metes and bounds of the area approved by the PMRB; and
- j. endeavor to pursue their application for the declaration of a Minahang Bayan during the pendency of the contract.

Like the permit, the contract also provides that is it non-transferable and may be suspended, rescinded, cancelled for violations of any of the conditions, upon due notice and hearing by the PMRB.

The temporary contracts issued by the PMRB provide that the contractor shall undertake to apply for the declaration of the permit area as Minahang Bayan during the pendency of the contract.

On the face of the temporary contract, the basic difference with the previous standard permit, apart from its temporary term of 6 months, are the three

²⁴ Sample Signed and Notarized Temporary Small-Scale Mining Contract, October 2014.

stated requirements (a) to undertake mining activities based on an approved mining plan approved by the PMRB, (b) to submit the required documents where the mined area is an existing mining claim or ancestral domain or land, and (c) to pursue the application for the declaration of the permit area as a Minahang Bayan. The contract also no longer provides for the tree-planting requirement previously required under the permit. According to MGB CAR, this is already incorporated in Environmental Impact Management Program for environmental protection and enhancement, as required under the Revised IRR.

With the Revised IRR of RA 7076, the PMRB will need to revise the Small-Scale Mining Contract to incorporate the changes in the new rules. According to MGB CAR, the MGB Central Office provided a draft template of a small-scale mining contract for presentation to the P/CMRB

3.3 Extension of the 6 Months Term of the Temporary Small-Scale Mining Contracts

During its March 19, 2015 regular meeting, the PMRB deliberated and unanimously resolved to make the duration of each Temporary Small-Scale Mining Contract to two (2) years. This was based on the observation of the PMRB that the original period of 6 months is a short time for the contractors to apply for the declaration of a Minahang Bayan. The extended period was conditioned on the compliance of the contractor with the required submission of quarterly production reports and the registration of the individual miners with the PMRB. This is now contained in PMRB Resolution No. 10, s. 2015 (March 19, 2015), signed by the Governor as Co-Chairperson and the two members representing the non-government organization and the federation of small-scale mining associations, but bearing no signature of MGB CAR Regional Director nor of the representative of large-scale mining. Subsequent to the meeting, it was learned that DENR issued the Revised IRR of RA 7076 on 16 March 2015 that enjoined the strict implementation of RA 7076. Resultantly, the Chairperson MGB CAR Regional Director and the representative from the large-scale mining, who were both at the meeting and concurred with the deliberations, did not thereafter physically sign the resolution. This resolution has now become a bone of contention among the members of the PMRB, particularly between the Province and MGB CAR.

Since March 2015, no PMRB meeting has been called and conducted, as of December 2015. The resolution passed and concurred by the members in March 2015, even while it is not supported by the new regulation, appears to subsist, there being no withdrawal nor revocation by the PMRB. The Province uses this resolution as a basis to recognize that the existing temporary contracts are already extended up to a period of 2 years. MGB CAR, however, does not support this position.

4. Revenue Streams and Payments for 2013 and 2014

4.1 Payments to Provincial Government of Benguet

One of the main obligations of the permittees is to pay the appropriate taxes and fees due to the Provincial Government. As shown in Part II, the Province of Benguet collects the following taxes and fees on small scale mining, based on its Revenue Code of 2005:

Figure 37. Benguet's Taxes, Fees and Charges Imposed on Small-Scale Mining Activities

| Taxes, Fees, Charges | Rate (Php) |
|------------------------------------|---------------|
| Forms | 20.00 |
| Application Fee | 30.00/hectare |
| Filing Fee | 10.00 |
| Processing Fee | 25.00 |
| Verification Fee | 500.00 |
| Annual Individual SSM Registration | 500.00 |
| Annual Group Registration | 5,000.00 |

For 2014 and 2015, the Province of Benguet collected the total amounts of P80,000.00 and 153,435.00, respectively. This is despite that the highest sale of gold among the buying stations in the country is highest in the BSP Regional Office in Baguio City that covers Benguet.

The Provincial Government's Provincial Environment and Natural Resources Office issues the Order of Payments. Permit-holders/contractors make the payment to the Office of the Treasurer that receives and records the payment. All payments receive form part of the general funds of the province that are spent for the general programs of the provincial government.

Prior to EO 79 and the Revised IRR, the MGB Regional Office does not impose nor collect any fees. As discussed in Part II, under the Revised IRR, the MGB Regional Office is now mandated to collect application fees of P1,000 for a small-scale mining license by individual miner and P20,000 for a small-scale mining contract.

4.2 Payments to the Municipal Government of Itogon

The Municipality of Itogon imposes the following fees and charges on small-scale mining-related activities based on its Revised Revenue Code of 2011:

Figure 38. Itogon's Imposed Taxes, Fees and Charges on Small-Scale Mining Activities

| Types of Payments | Rate per Ordinance | Legal Basis |
|---|--|------------------------------|
| Mayor's Permit or Business Registration | P400-P3000 depending on asset size or number of workers, whichever is higher | Art. 20. Sec. 1 |
| Business Tax or Regulatory Fees | Graduated Schedule based on Gross Receipts (P181.50 for GR of P10,000 – P26,812.50 for GR of P5M-6.5M or at a rate of 41.25% of 1% for GR of P6.5M or more from P30.25 | Art. 1, Sec. 1 ²⁵ |

The Municipality of Itogon that hosts the largest number of small-scale mining in Benguet collected a total of P58,984 and P24,025 for 2013 and 2014 only.

For 2013 and 2014, the Municipality issued business permits to 8 and 6 associations/individuals engaged in small-scale mining, respectively. For 2015, the Municipality issued business permits to 7 miners, but only 1 of them has an existing temporary contract issued by the PMRB. Of the 6 miners operating in Itogon with temporary contracts issued by the the PMRB, 5 of them do not have business permits from the Municipality.

The Municipal Treasurer's Office is currently focused on collecting business taxes and regulatory fees from the 22 contractors of Benguet Corporation in its Acupan Gold Project. For the years 2011-2014, the total business tax and regulatory fees, including surcharges and penalties, that are collectible from them is P14,386,301.98 based on total gross receipts of P1,359,499,993.28, as reported by the corporation to the Municipality in June 2015.

5. Monitoring

As stated in the permits, the TWG is responsible for conducting monthly monitoring of the permittees. In practice, the TWG acts and addresses complaints regarding small-scale mining operations, based on the public's report or complaint. There is no regular monthly monitoring to determine the compliance of the permittees. The Province says it endeavors to do quarterly monitoring but only of the registered operations. Most times, small-scale mining operations are only monitored upon permit/contract renewal. These are mostly for safety inspection for safety conditions; rather than on the compliance with the terms and conditions of the permit or contract.

This is largely due to limited staffing and financial resources. Benguet's Provincial Environment and Natural Resources Office has 21 staff, of which 10 staff are assigned on small-scale mining concerns; and with no dedicated mining engineer tasked to work on mining concerns. According to MGB CAR, the small-scale mining program is one of their banner programs. It has 4 staff assigned on small-scale mining concerns, in addition to their regular functions and tasks. As aforestated, there is minimal budget allocated to small-scale mining program by MGB CAR and by the Province. Despite the earnest and diligent efforts of these LGU and DENR-MGB Regional staff, the human and the financial resources are still not enough to ensure the monitoring of small-scale mining in the province, given the extent of operations.

During their meetings, the PMRB discusses the complaints and reports on illegal small-scale mining or conflicts among small-scale miners. On this basis, as authorized by the PMRB, the MGB CAR Regional Director, as PMRB Chairperson, issues Stoppage Orders or Cease and Desist Orders. (PMRB Minutes of Executive Committee Meeting, August 8, 2013) According to MGB CAR, the implementation of the CDO or SO must be initiated by the PMRB with the assistance of the Philippine National Police and with the LGU concerned. There is an issue, however, on which agency should enforce such orders. MGB CAR needs to rely on the Philippine National Police; however, the Philippine National Police sometimes hesitate to enforce such orders, if there is no supporting court order. (PMRB Minutes of Meetings)

For safety reasons, when warranted by weather conditions such as tropical typhoons, the MGB Regional Office, through its Regional Director/PMRB Chairperson, issues advisories and warnings in times of typhoons, to direct small scale miner not to go to their small-scale mining areas. The Provincial Governor as Chairperson of the Provincial Disaster Risk and Reduction Management Council also issues memorandum to temporarily suspend small-scale mining activities. This is to ensure the welfare of small-scale miners against imminent threats or adverse effects of weather disturbances.

²⁵ July 15, 2015 demand letters to the contractors of Benguet Corporation cite this specific section on the graduated business tax on manufacturers, assemblers, re-packers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers or any article of comer of whatever kind or nature based on a schedule.

6. Sale of Gold

As discussed in Part 1, small-scale miners are required to sell their gold to the Bangko Sentral ng Pilipinas. BSP has a buying station in its BSP Regional Office in Baguio City. Some sell their gold to BSP, as required by law, while some sell them to traders or the black market. However, the Province notes that since the BIR Regulation was issued imposing income tax on the sale of gold, the sale to BSP has significantly dropped. Most small-scale miners have resorted to selling their gold to the black market, where rates are also comparable to the international market prices and payments are immediately made in cash, without any tax deductions.

7. Small-Scale Metallic Miners, their Associations and their Federation

As discussed above, small-scale metallic miners in Benguet are organized into associations, which are in turn organized as a federation. There are 69 small-scale mining associations, with 31, 229 individual members, that form part of the Benguet Federation of Small-Scale Miners, Inc. The Federation reports that there are about 31, 845 workers directly involved in small-scale mining in a total of 2,029 adits and further reports following estimated production of gold and silver for 2013 and 2014 by its members:

Figure 39. Benguet Mineral Production, as reported by the Federation

| Mineral Production | 2013 (KG) | 2014 (KG) |
|--------------------|-----------|-----------|
| Gold | 8,395 | 10,000 |
| Silver | 10,000 | 15,000 |

The federation provides support to its member association through representation in government, environmental, technical and safety training in small-scale metallic mining, health and accident support as well as organizational support to the associations. In July 2015, the Benguet Federation of Small-Scale Miners, Inc., on behalf of its members, filed a petition against the Department of Environment and Natural Resources before the Regional Trial Court. This is to question the provisions of the new implementing rules of RA 7076, particularly on the fees, that they feel are oppressive and disadvantageous to them. The case is docketed as Civil Case No. 15-CV-3129 and is pending before RTC Branch 10, Benguet.

The small-scale miners associations in Benguet, most of which are registered with the Securities and Exchange Commission, also provide similar support to their members, including organizing them and issuing worker’s identification cards to the individual miners. Among the objectives of these associations are to work for the welfare of the members and

residents, foster their peaceful co-existence, to protect the environment, to defend the land as a source of livelihood for the small-scale miners, preserve the unique traditional small-scale mining practices of the community, among others. In the Municipality of Itogon, these associations are required to get accreditation from the Sanggunian. SB Ordinance No. 32, s. of 2006 mandates the accreditation of livelihood ventures, people’s organization and non-government organizations, including small-scale mining associations. As of August 2015, there are 4 small-scale mining associations accredited by the Sangguniang Bayan out of the many associations operating in the municipality.

In Barangay Virac, Municipality of Itogon, individual small-scale miners are required to get a barangay working clearance permit before the end of the January of each year.²⁶ The Barangay effectively implements this with respect to the AGP contractors of Benguet Corporation. Otherwise, the other individual small-scale miners remain part of the informal sector.

8. Concerns and Challenges in Regulating and Monitoring Small-Scale Metallic Mining

Some of the major concerns and challenges in regulating small-scale metallic mining in Benguet were identified and expressed during key informant interviews and focus group discussions,. Foremost of these challenges are the registration of small-scale mining operations and the continued use of explosives in their operations.

a) Registration of Small-Scale Mining: Acceptability and Knowledge of the Laws Regulating Small-Scale Mining

The key challenge in Benguet is the registration of the small-scale mining operations, as provided in existing laws and regulations. Small-scale mining have been traditionally carried out for more than a hundred years, pre-dating the laws that were passed to regulate the activities. First, there is the issue on the legitimacy or the acceptability of the law imposed on small-scale miners. The question at hand is that, “How can government require and provide permit to those who have been traditionally mining in the area?” Second, there is also the issue of non-familiarity with the laws and regulations. Small-scale mining have been carried out for generations, family members would take this as a traditional livelihood that is passed on to them, thus resulting in perpetuated unregistered operations.. It is also noted that the law’s definition of small-scale mining is not reflective of the realities on the ground. RA 7076 prohibits the use of heavy equipment and emphasizes reliance on manual labor. However, actual small-scale mining operations in Benguet provides otherwise, some of

the operations no longer rely on manual labor, but already use heavy equipment and sophisticated technology and process with intensive capitalization. It is asserted that they should no longer be considered as small-scale; but classified as medium-scale mining to distinguish it from the manual operations carried out by individuals. Further, it is also observed that some small-scale miners own and operate their own processing plants.

b) Compliance with Permitting Process, In General

The permitting process and requirements for small-scale metallic mining are difficult and costly.. This discourages miners from applying for permits or contracts with the government. The Revised IRR lays down an even more tedious application, which requires the Regional Office to transmit for the Secretary’s action the Area Status Clearance, among others. The additional fees and taxes imposed under the Revised IRR may also discourage small-scale miners from getting their license and the contracts for their operations. In order to move small-scale mining from the informal sector to the formal sector , the application process for a permit or a contract must be made simpler and easier.

c) Compliance with Permitting Process: Coverage of Areas with Idle Mineral Claims/Consent of Mineral Claim Holders/Surface Right Owners

A key challenge in implementing the laws and regulations on small-scale mining in Benguet is the need to secure the consent of mineral claim holders and surface rights owners. Most of the areas in Benguet are covered by large-scale mining claims that are both active and inactive or non-operational. Small-scale miners find it difficult to secure such consent from large scale-mining operators or applicants of MPSA due to its technology and use of explosives, which can go beyond 10-20 meters below the ground.

d) Compliance with Permitting Process: Moratorium issued by EMB on Environmental Compliance Certificates (ECC)

The issued moratorium on the issuance of ECC was a concern of the Province since it effectively precluded miners from securing a small-scale mining contract. On 19 April 2011, DENR-EMB issued a moratorium on ECC issuance, pursuant to the implementation of stricter environmental standards in small-scale mining. Given this, processing of applications and issuance of ECC for projects were suspended, and without the ECC, miners cannot secure a small-scale mining contract.

e) Use of Explosives in Mining Operations

In Benguet, miners continue to employ explosives in both the extraction and processing of gold. The ready access and availability of the explosives in the area is being questioned, when these should have been regulated and monitored by regulatory government agencies. (KII) There is a need for proper coordination and cooperation among these agencies to ensure that these explosives are not readily-accessible to small-scale miners.

Currently, there is a UP-DOST Project on Alternative Methods from Cyanidation and Amalgamation in the Recovery of Gold being implemented in Benguet. The project aims to present an alternative way of recovering gold without the use of explosives. The PMRB approved the project subject to requirements of a Mineral Processing Permit and an ECC. The PMRB also required that the project be constructed in an area with a Small-Scale Mining Permit to ensure that its feed shall be from a legal source.²⁷ According to the MGB-CAR, however, the project was subsequently set up in an area that was not covered by a permit. Such location, according to the MGB CAR, may send the wrong signal that government is tolerating illegal small-scale mining. (FGD, CAR)

f) Challenge of Monitoring Operations and Enforcing Stoppage Orders

As discussed above, resources allocated for the monitoring of small-scale mining are limited. Likewise, while the PMRB and MGB CAR are quick to act on complaints and reports on small-scale mining operations. However, they do not have the strength and force, or the command of the Philippine National Police, to implement corresponding stoppage order or cease and desist order. It was stated that the Philippine National Police will only enforce orders if the court already sanctions it.

g) Impasse between MGB and the LGU under the New IRR: Interpretation of Regulations; Local Autonomy and Devolution

According to MGB-CAR, this impasse is attributable to the different interpretation and non-acceptance by some members of the PMRB on the effectivity of EO 79. After the Revised IRR of RA 7076 was issued, there seems to be more tension between the Province of Benguet and MGB CAR with respect to the permitting of small-scale metallic mining. As discussed above, after the advent of EO 79 and its IRR, in October 2014, the PMRB issued Temporary Small-Scale Mining Contracts for 6 months. In its March 19, 2015 meeting, the PMRB deliberated and resolved to grant a 2-year duration for every temporary small-scale mining contract, since it was observed that

²⁶ Ordinance No.1,s 2008 and Barangay Resolution No. 59, s. 2014 enacting an Ordinance amending Ordinance No. 1, s. 2008 by increasing the fees to P125.00 for professionals/contractors and p100 for skilled workers from P30.00 and P25.00, respectively.

²⁷ As stated in the Minutes of 24 October 2014 PMRB Meeting

the grant of 6 months is short. This was conditioned on the contractors' compliance with the required submission of quarterly production report and with the registration of their respective small-scale miners with the PMRB. The issuance of the Revised IRR of RA 7076 the DENR Secretary on March 16, 2015 constrained the MGB and the representative of the large-scale mining from signing on the March 19, 2015 PMRB resolution. Since then, no PMRB meeting has been called and conducted to formally discuss the status of this resolution or even its revocation.

In the meantime, the Province continues to rely on the March 19, 2015 signed resolution, the representatives of the small-scale miners and of the non-government organization considers the existing temporary small-scale mining contracts of the contractors, the last of which expired in April 2015, as having been extended to up to 2 years.

The Province is also not supportive of the Revised IRR that appears to clip their powers and authority, and expands that of the MGB, contrary to the principle of local autonomy and devolution. First, the Province claims that the Revised IRR relegates the Governor as a mere member of the PMRB. Second, it is now the MGB that is mandated to accept the application and the corresponding fees. Third, the MGB Regional Director, as the PMRB Chairperson, and no longer the Governor, now awards the small-scale mining contract. These are some of the issues raised by the Province with respect to the Revised IRR. They also question the lack of consultation and participation in the drafting of the implementing rules, which MGB-CAR refutes, there having been regional and national consultations held prior to the promulgation of the rules.

h) Allocation of Minimal Funds by National Government for Support to SSM

Despite the stated policy objectives of RA 7076 of generating more employment opportunities and alleviating poverty in the rural areas, the Province as well as the Federation laments that government has not allocated resources to support the small-scale mining industry. There is a robust legal framework, but in terms of implementation, government has not supported small-scale miners. The Province compares the plight of the small-scale miners to the farmers who are provided support and subsidy by the national government such as trainings, farm-to-market roads and seeds; whereas small-scale miners are just being regulated, without support from government. The Province reports that together with the MGB-CAR, they conducted a Mine Safety Training, but registration fees were collected, so only those who can afford to pay were able to avail of the training.

i) Perception of Laws and National Government's Preference for Large-Scale Mining

There is perception among small-scale miners that the laws regulating small-scale mining do not serve them and their interests. More importantly, they perceive that

the laws appear skewed in favor of large-scale mining, pushing the small-scale miners to the margins. They observe that small-scale miners feel that the laws are being implemented to protect and to provide preference for large-scale mining. They cite the law's requirement of the consent of mining claimants, even when these are mere applications and not approved claims. While RA 7076 states employment generation as one of the objectives of the law, small-scale miners do not feel this objective being accomplished through its implementation. This is related to the issue of legitimacy of the laws, as discussed above.

This perception is fed even more by the issuance of the Revised IRR of RA 7076 that was passed without sufficient consultation and places more burdens on the small-scale miners. There are questions raised on the alleged lack or sufficiency of the consultation of the stakeholders, alleging that there was only a one-day consultation in November 2014 in Manila. Even then, the Revised IRR came out differently from the points discussed and raised during the consultation. As discussed in Part 1, the Revised IRR provides for a lengthier process for the declaration of the Minahang Bayan, a higher rate for registration and for application, a shorter maximum contract term, and more stringent environmental and social requirements from the small-scale miners, among others.

j) Non-Observance of the Requirements of the IPRA

The NCIP CAR Office notes that the regulation of small-scale mining in Benguet does not follow the requirements of the IPRA. Considering that the entire province is declared as ancestral domain, then the free and prior informed consent of the indigenous peoples and the certificate of pre-condition from the NCIP should cover any small-scale mining operations. There are small-scale mining operations authorized by the PMRB; but none of them went through the processes neither before the NCIP nor with the indigenous peoples. According to the NCIP CAR Office, there is no coordination at all between MGB, although sometimes the PMRB coordinates with the NCIP. (Survey Response, FGD) According to MGB-CAR, it is firm that the IPRA requirement must be followed unless the NCIP issues certificate of non-coverage of the free and prior informed consent requirement.

k) Challenge of Implementing the Revised IRR

The Revised IRR of RA 7076 has created more implementation and enforcement hurdles.. First, as already discussed, the rules appear to reduce the role and authority of the LGUs in regulating small-scale mining, creating tension between MGB CAR and the Province.. Second, the rules provide for a more tedious application process, including the procedure for declaring Minahang Bayan and securing an Area Status Clearance that requires the clearance and/or approval of the Secretary. Third, the higher fees and tax burdens spelled out by the regulation will

discourage small-scale miners from registering with government. Individual miners need to register and pay the fee of P1000. The Federation questions these fees as unreasonable and oppressive, comparing it with the minimal registration fee paid by professionals with the Professional Regulatory Commission and the application fees paid by large-scale mining companies. Fourth, the rule limits the operations of permittees to a maximum of 6 years to provide opportunities to other miners to undertake small-scale mining. It is noted, however, that an operator cannot recover its investment within 2 years nor within 6 years. Original operators will not easily vacate their permit areas. Fifth, questions are also raised on how government will implement the centralized custom mills and mineral processing areas on account of the resources it will entail. Additionally, it is also observed that some small-scale mining in Benguet are no longer doing ball mill processing, but are already doing large-scale processing involving carbon pulp or carbon leachate. Nevertheless, as pointed out by MGB-CAR, EO 79 and its IRR mandates that the LGUs and the DENR-MGB, working together, shall strictly implement RA 7076.

All these concerns and challenges are apart from the constraints on staffing and financial resources common to government agencies. As earlier stated, the Province, through the Provincial Natural Resources and Environment Office, has dedicated 10 staff who works on small-scale mining concerns while MGB CAR assigns 4 staff to oversee and handle small-scale mining concerns, on top of the other regular functions of such staff. As also shown above, the Province allocates a minimal budget to cover PMRB meeting costs, as well as MGB CAR for small-scale mining regulation. Despite earnest efforts of the PMRB, the Province and MGB-CAR, this has nonetheless left the laws largely unimplemented and the small-scale mining industry without any substantial support, resulting to the informal nature of small-scale mining operations.

C. Small-Scale Metallic Mining in the Province South Cotabato and the Municipality of T'boli

1.0 Background/Situationer

The Province of South Cotabato is a first class province located in Southern Mindanao, with a total land area of 3,706 square kilometers.²⁸ It has a total population of 857,584, as of 2012, majority of whom are Ilonggo and Catholics, and also includes the T'boli indigenous cultural community.²⁹

South Cotabato has rich mineral reserves particularly in the Municipality of Tampakan where gold and copper deposits are found and in the Municipality of T'boli where there are also gold deposits. The Provincial Government claims that exploration activities of small-scale mining companies in the province revealed an indicated reserve of 2.2 billion tons of copper ;2.4 million tons of inferred gold; and about 2 million inferred iron reserves.³⁰

According to the Provincial Government, only the Municipality of T'boli, the second largest town in the province consisting of 807 square kilometers, hosts small-scale metallic mining operations for gold in Barangays Kematu and Desawo. These small-scale metallic mining operations began only less than thirty years ago. The Province has an inventory of 104 small-scale mining contractors in the entire province, as of September 2015. The PMRB of South Cotabato awarded Small-Scale Mining Contracts, valid for 2 years, to these operators. These operators come from one of the 9 small-scale mining associations in the province. They also have a federation called the Small-Scale Association of South Cotabato that coordinates and works with these associations. 5 of the associations operate in Barangay Kematu and the remaining 4 are based in Barangay Desawo, as of August 2015. A detailed information on these associations³¹ is found below:

| Name of Association | No. of Members | Mineral | Location |
|--|----------------|----------------|--|
| Brgy. Kematu, T'boli | | | |
| MCSSMAI – Maguan Clan Small-Scale Mining Association, Inc. | 30 | Gold Silver | 21 Hectares within the approved MPSA of TMC, Sitio Tunnel 116 Areas within the approved MPSA of TMC, Sitio Tunnel |
| TMBMPC – T'boli Minahang Bayan Multi-Purpose Cooperative | 26 | Gold Silver | 21 Hectares within the approved MPSA of TMC, Sitio Tunnel |

²⁸ <http://www.southcotabato.gov.ph/geography/>. Accessed on 9 September 2015.

²⁹ <http://www.southcotabato.gov.ph/population-and-people/> Accessed on 9 September 2015.

³⁰ <http://www.southcotabato.gov.ph/mineral-resources/>. Accessed on 9 September 2015.

³¹ DENR MGB Inventory of Small-Scale Mining, Quarrying and Sand and Gravel Operating within South Cotabato for CY 2015.

| Name of Association | No. of Members | Mineral | Location |
|---|----------------|----------------|---|
| DLSSMAI-Datu Legel Small-Scale Mining Association | 21 | Gold Silver | within the APSA of TMC, Sitio Ipil-Ipil |
| UMSMAI-Uhab Maguan Clan Small-Scale Mining Contractors Association, Inc. | 15 | | No contract, Non-operational at this time |
| LLSSMAI – Lam Lok El Small Scale-Mining Association | 15 | | No contract, Non-operational at this time |
| Brgy. Desawo, T'boli | | | |
| F/TCSSMAI-Fagalas/Tolik Clan Small-Scale Mining Association, Inc. | 15 | Gold Silver | within APSA 051 of TMC, Desawo |
| DISSMAI-Desawo Integrated Small-Scale Mining Association, Inc. | 24 | Gold Silver | Desawo |
| MTFPC-Mindanao Tribal Farmers Producers Cooperative | 14 | | No contract, Non-operational at this time |
| TISSMAI – T'boli Integrated Small-Scale Mining Contractors Association, Inc | | | Newly-Formed, Permit On-Process |

1.1 Minahang Bayan

According to the Provincial Government of South Cotabato and the DENR MGB Regional Office 12, there are currently 3 *Minahang Bayan* in the province. (Survey Response, South Cotabato, DENR MGB RO 12) MGB Central, however, reports that there are only three declared *Minahang Bayan* in the country, at present. These are in Quezon, Dinagat Island and Agusan Del Norte. MGB Central does not make any reference to the *Minahang Bayan* in South Cotabato. Based on the records furnished by the Provincial Government to the Study Team, the declaration of the two *Minahang Bayan* appears to have followed the procedures laid down by law as discussed in Part 1.

The first *Minahang Bayan* in South Cotabato, covering an area of 20 hectares located in Brgy. Kematu, T'boli,³² was declared in 1994. The small-scale miners who organized themselves into a cooperative, the T'boli Minahang Bayang Multi-Purpose Cooperative (TBM MPC), filed the petition before the PMRB in May 1994 to delineate an area for small-scale mining. This was in view of the influx of small-scale mining and a large-scale mining operation under a Mineral Production Sharing Agreement to extract gold at Brgy.

Kematu. The small-scale miners recognized that the large-scale mining operations may eventually displace their small-scale operations. Upon evaluation, then DENR-MGB Regional Office XI delineated an area and recommended its proclamation. After deliberation, the PMRB, in its PMRB Resolution No. 3, s. 1994, proclaimed the area as a *Minahang Bayan* of TBM MPC. On October 20, 1994, then Provincial Governor Hilario L. De Pedro III issued E. O. No. 12, s. 1994³³ declaring the area as a *Minahang Bayan*. This declaration was endorsed for review to the DENR Central Office in November 1994.

The PMRB thereafter introduced changes to the declared *Minahang Bayan*. In October 2011, the PMRB passed Resolution No. 3, s. 2011 to amend Resolution No. 3, s. 1994 maintaining the area as a *Minahang Bayan*, but opening it to all interested small-scale mining operators, with priority to indigenous peoples. The PMRB, in its resolution, noted three points to justify the changes to their original resolution. First, the declaration of the area in 1994 as a *Minahang Bayan* created conflicts and disputes among the mining operators. Second, TBM MPC failed to comply with the mandatory requirements for their renewal of their contract and their application was thus denied.³⁴

Third, the priority must be given to indigenous peoples in awarding small-scale mining contracts in areas within their ancestral lands, as required under DAO No. 34, s. 1991 or the IRR-RA RA 7076. Currently, after eventually securing a permit, TBM MPC continues to operate in the area. However, the same is also covered by the Mineral Production Sharing Agreement of the Tribal Mining Corporation (TMC) signed on December 29, 1997 and valid until September 2, 2022, with contract area of 84.98 hectares. This overlap by TMC’s large-scale mining operations in the *Minahang Bayan* is questioned and raised by the TBM MPC³⁵ before the court, which is still pending litigation. A map showing this overlap is found below:

Figure 41. Overlap of 1997 Large-Scale MPSA Area with 1994 Declared Minahang Bayan



The second *Minahang Bayan*, covering an area of 81 hectares located in Brgy. Desawo, T'boli,³⁶ was segregated in 1999. This was based on a request by Datu Legel Small-Scale Mining Association (DISMAI), through their Board Resolution No. 6 dated 13 December 1996 of DISSMAI and their petition filed with the PMRB on January 29, 1997, which was approved on the same day.³⁷ DISSMAI alleged that they are the organized holders of a Stewardship Agreement covering the area and requested the permanent

segregation of the area from existing mining claims to become the site of their small-scale mining exploration activities. After its technical evaluation, then MGB Regional Office XI strongly recommended and endorsed the petition. After publication in a local newspaper and posting of notices in government offices in June 1997, Holon Mining Corporation and the alleged surface occupants and tribal people of Sitio Lam-asam, Brgy. Kematu filed their opposition with the PMRB. The alleged surface occupants claimed that the area is within their ancestral land and that there was no consultation made. In October 1997, the PMRB dismissed these oppositions, subject to the mining corporation’s right for under Sec. 14 (a)(b) and (c), RA 7076 or payment royalties, among others. Since no appeal was made, the PMRB promulgated an Entry of Judgment on March 3, 1999. On June 11, 1999, the PMRB endorsed the proposed area segregated as a *Minahang Bayan* to the DENR Secretary, through the MGB Director for confirmation and/or approval. The PMRB then considered the area as approved after the 30 day period of the review by the DENR Secretary. Thus, on October 21, 1999, with the recommendation of the PMRB Chairman/MGB Regional Director, then Provincial Governor Hilario L. De Pedro III issued E.O. No. 21, S. of 1999 segregating the area as a people’s small-scale gold mining area.

With respect to the third *Minahang Bayan*, the study team was not furnished documents pertaining to its declaration. Both MGB Regional Office and the Province of South Cotabato reported, and accordingly observe, that there are 3 *Minahang Bayan* in the province.

2.0 SSM Regulations and Operations in the Province

2.1 Permitting

The Province of South Cotabato enacted its Small-Scale Mining and Processing Operation Ordinance of the Province of South Cotabato, as amended in 2005, to specifically regulate small-scale mining activities in the province, pursuant to RA 7076. It provides for the permitting process beginning with an application, site verification, review of documents and recommendation by the PMRB and the approval of the Provincial Governor. It also requires permittees to provide environmental and safety safeguards as well as to contribute to the socio-economic development of the host community. The Provincial Environment Code of South Cotabato enacted in 2010 further strengthened the provincial policy that the use of mineral wealth shall be based on contributions to the economic growth and general welfare of the constituents.

³² The geographical coordinates are from 6° 11’ 45” to 6° 12” 00” north latitude and 124° 51’ 15” to 124° 51’ 30” east longitude. E.O. No. 12, s. 1994 of Prov. Governor Hilario L. De Pedro III.

³³ Another copy of the executive order furnished to the Study Team indicated E.O. No. 18.

³⁴ In its Resolution No. 2, s. 2011 (October 2011), the PMRB denied the application for renewal of TBM MPC for its failure to comply with the mandatory requirement of a Free and

Prior Informed Consent/Certification of Pre-Condition, without prejudice to TBM MPC’s re-filing. Denial was made after the 2 grants of extension of 6-months to allow TBM MPC to finish securing the FPIC and CP, thereby allowing small-scale miners the same grace period to rationalize their mining operations, on consideration of the onslaught of El Nino, per its PMRB Resolution No. 1, s. 2011 (April 2011) and PMRB Resolution No. 2, s. 2010 (March 2010).

³⁵ TBM MPC’s 2007 Small-Scale Mining Permit then issued under PD 1899 carries a notation that it is subject to the outcome of the court judgment.

³⁶ The area is bounded by geographical coordinates 124-51-15 to 124-15-45 east longitude and 6-11-00 to 6-11-30 north latitude.

E.O. No. 21, s. 1999.

³⁷ E.O. No. 21, s. of 1999 of Prov. Governor Hilario L. De Pedro III.

An applicant is required to submit the following documents, as provided under the South Cotabato Revenue Code of 2011 (Revenue Code):

- Accomplished Application Form
- Survey Plan/Sketch Plan of the Proposed Area;
- Registration documents from the Securities and Exchange Commission or Cooperative Development Authority, if applicant is a partnership, corporation or cooperative;
- Area Clearance from concerned government agency/ies that may be affected by the applicant
- Memorandum of Agreement with the Landowner granting permission to enter and occupy land for mining operations;
- An Undertaking to protect the ecological balance of the area;
- A project study/project information for projects with capitalization of not more that P10 Million and with annual production of not more than 50,000 metric tons; and
- Other supporting documents that the Provincial Governor may require. (Sec. 72)

According to the Provincial Environment Management Office, the other supporting documents include a barangay certification, a certification from the Municipal Environment and Natural Resource Officer, a business permit, and zoning certification. E.O. No. 37, s. 2013 of the Provincial Governor additionally required the following documents:

- Oath of Undertaking to Abide with the Small-Scale Mine Safety Rules and Regulations or DENR-AO No. 97-30
- Area Status Clearance must be also certified that the applied site is not within a highly critical disaster-prone area
- Mining Plan and Work Program duly approved by the DENR MGB Regional Director
- Tribal Resolution/Certification interposing no objection on the application if the area applied is within ancestral domain

2.1.1 Requirements for Environmental and Safety Safeguards

The Revenue Code explicitly provides that no application shall be approved without the submission of an Environmental Compliance Certificate and a report on the field verification. (Sec. 72.j) It further provides that permit holders and operators shall comply with all mining safety regulations (Sec. 95) and shall undertake an environmental protection and enhancement program as well as socio-economic development covering the permit period. (Sec. 101) This

Environmental Protection and Enhancement Program and a Community Development Plan are some of the requirements introduced by the local ordinance. To comply with this requirement for an environmental protection and enhancement program as well as socio-economic development, individual permit holders and operators enter into agreements with their association for a consolidated program. A Memorandum of Agreement with the Association regarding the shared responsibility for environmental protection and enhancement as well as the socio-economic development thus becomes one of the application requirements of the PMRB. The ordinance also bans both mining operations and mineral processing with the use of mercury and explosives, and the cutting of trees within the immediate vicinity of the mine working to maintain ground stability. (Sec. 93)

DENR-EMB Region XII reports that there are only two ECCs issued for small-scale mining from 2007 up to present. These are for TMBMPC³⁸ and DST³⁹ issued in 2007 and 2012, respectively. It appears that the PMRB finds sufficient submission of an environmental protection and enhancement program as well as socio-economic development.

The provincial government of South Cotabato also requires that all operations employing more than 25 workers shall have at least 1 safety inspector who has at least 5 years experience in mining operations. (Sec. 97) It also prohibits the employment of persons below 18 years of age in the underground mine; and provides that no person under 16 years of age shall be employed in any mining or processing operations, (Sec. 96) consistent with RA 7649. Apart from imposing the permit holder's obligation to rehabilitate the mined area, the ordinance also provides for the creation of a mine rehabilitation fund based on the permit holder's approved work program. The rehabilitation fund shall be deposited in a government depository bank and will be used for physical and social rehabilitation of areas and communities affected by the mining activities. Failure to comply with this is a ground for immediate suspension or closure of the mining activity. (Sec. 102)

2.1.2 Reporting Requirements

The Revenue Code provides for the reporting obligation of the contractor. A permittee is required to report to the Provincial Governor, copy furnished the PMRB and the MGB Director, the monthly production of the kind and volume of minerals extracted, transported and stockpiled. This is due within 15 working days after the end of the month. A sworn integrated annual report of production is also required within 2 months after the end the each year. Failure or delay on the part of the permit-

holder is subject to administrative sanctions such as fines or even non-renewal of contract. (Sec. 84) Similarly, failure to immediate report accidents in the mined area carries administrative sanctions. (Sec.100)

Figure 42: South Cotabato Ore Production for 2013 and 2014, as reported to PEMO

| Reported Ore Production in South Cotabato for 2013 and 2014 (Metric Tons) | |
|---|---------|
| 2013 | 1436.58 |
| 2014 | 1143.31 |

For 2013 and 2014, the PEMO reports the following total production, as reported by 11 permittees. Some permittees did not operate during these years, and compliance with the reporting requirement is generally low. Currently, PEMO is enforcing the requirements through notices of violation and imposing sanctions there to improve compliance.

2.2 Institutional Arrangements

The Province of South Cotabato takes the lead in regulating and providing support to small-scale mining in the province. The DENR-MGB Regional Office No. XII provides the technical assistance to the provincial government. Both the Municipal Government of T'boli and the Barangays of Kematu and Desawo actively assist in the regulation and monitoring of small-scale mining in their areas. This working arrangement is facilitated by the close coordination between the provincial government, the regional office, the municipal government down to the barangay level.

The PMRB of South Cotabato was created in 1991 following the composition mandated by law. The PMRB meets regularly every 2nd week of the month, presided by the DENR MGB Regional Director. On account of political courtesy, as is common in local governance, the DENR MGB Regional Director cedes the chairmanship to the Provincial Governor when the local chief executive is in attendance. The PMRB meetings are funded by the provincial government, including funds for honorarium of P200/meeting for the PMRB members. Under the Revenue Code, the PMRB is authorized to create a Secretariat. (Sec. 70) In practice, the PEMO serves as the secretariat of the PMRB arranging for meeting schedules, preparing the minutes of the meeting, and keeping records related to small-scale mining.

The PEMO, created in March 2007, is composed of 40 employees, including 27 permanent staff and about 4-5 staff dedicated to small-scale metallic mining regulation and monitoring. At the DENR MGB Regional Office 12 level, there are 2-3 staff assigned

to work on small-scale metallic mining concerns. Previously, MGB has a division specifically tasked on small-scale mining concerns.

In a 2013 Resolution, the PMRB created a Multi-Partite Monitoring Team (MMT) for quarry and small-scale mining operations. The MMT is responsible for monitoring the small-scale mining tunnels in the province. Currently, there are three PEMO personnel, who are on Job Orders or non-permanent employees, based in the sites. In case of incidents or reported violations, a composite team from the DENR MGB, the PEMO, the MENRO and the Barangay conducts the investigation for the consideration of the PMRB.

E.O. No. 10, s. 2004 of the Provincial Governor orders the creation of the Provincial Anti-Banlas Intelligence and Investigation Task Force composed of representatives from the Department of Interiors and Local Government, National Bureau of Investigation, Philippine National Police, AFP Intelligence Service Unit (ISAFP) and the DENR-Environmental Management Bureau, with PEMO as the Secretariat. In 2012, the Provincial Governor issued E.O. No. 10, creating the Anti-Illegal Mining Intelligence and Investigation Task Force composed of various enforcement agencies. The Task Force is mandated to investigate, monitor, raid, apprehend and conduct crack-downs on key people involved in illegal mining within the province. In 2013, E.O. No. 2, s. 2013 of the Provincial Governor further directed the Provincial PNP and the Task Force to strengthen efforts against illegal mining and establish checkpoints and outpost within identified hydraulic (banlas) mining areas.

According to the PEMO, for 2014, the Province allocated an MOOE for small-scale mining activities of P150,000; while for 2015, a supplemental budget for P300,000 was appropriated, P125,000 of which was devoted for jewelry making for value-adding to the small-scale mining activities of the operators. This targeted out of school youth and the wives of miners, as a way to increase income.

2.3 Monitoring

The Province of South Cotabato, together with the DENR MGB Regional Office, has gone a long way in curbing illegal small-scale mining activities in the area. Previously, in its Resolution No. 1, s. 2007, the PMRB ordered the stoppage of all small-scale mining operations within the province without the corresponding small-scale mining permits and contracts; and accordingly exercised political will and took action. At that time, small-scale miners who operated without permits were also reported to have violated safety regulations by using blow torches in heating and melting the gold amalgam.. After a series of dialogues with the small-scale miners and deliberations by the PMRB, it resolved to issue small-scale mining permits and contracts to these illegal miners, subject to their qualification and submission

³⁸ ECC Reference No. 12 07 07-12-070 120, 6 August 2007 for Project Location in Sitio Tunnel, Brgy. Kematu, T'boli.

³⁹ ECC Reference No. R12-1206-0113, 11 June 2012 for Project Location in Brgy. Kematu, T'boli.

before 7 November 2007 of the required application⁴⁰. (PMRB Resolution No. 2, s. 2007). The legalization of these miners, and the continuing support and assistance of the provincial government in facilitating the formalization of small-scale miners, have largely eradicated the prevalence of illegal small-scale mining activities in South Cotabato.

At present, there are several mechanisms in place to ensure the regular monitoring of small-scale mining operations. Apart from the MMT that regular monitors operations and conducts raid on illegal operations, there are monitoring schemes set up by the barangay up to the provincial level. In Barangay Kematu, for instance, the barangay has a regular checkpoint at the entrance of the barangay regularly manned by staff who checkstaff who checks delivery receipts of transported ores. Small-scale miners may only transport their ores during the scheduled period of 6am – 5pm only set by PEMO. Along the highway in T'boli, the municipal government together with the provincial government has a manned checkpoint that inspects the documentation of the trucks hauling the ores. The policy of no permit, no transport is being implemented in T'boli. The province also ensures the compliance of the contractors with their submission of production reports. It also installed cameras in strategic mining exit points to ensure 24-hour surveillance and monitoring.(Galing Pook Award Program Brief of the Province of South Cotabato) These monitoring mechanisms are very evident in T'boli, South Cotabato.

Despite these efforts of the local governments to strictly implement laws and regulations and monitor violations, and with the support of the DENR MGB Regional Office, , there are still occasional illegal small-scale mining activities in the province. These are in Sitio Campo Kilot, Brgy. Pulabato, Danlas, Tablu and other areas in Tampakan and other areas in T'boli.⁴¹ According to the PEMO, a partial inventory previously conducted in March 2014 showed that there were about 64 unregistered operators, both in Barangays Desawo and Kematu in Tiboli. In February 2015, it was also reported that illegal small-scale mining activities were still rampant in Sitio Traanlatang, Barangay Kematu, T'boli, which led to an inspection and investigation and the corresponding issuance of a Cease and Desist Order by the DENR MGB Regional Director to be implemented by the Philippine National Police.(Cease and Desist Order dated 12 February 2015). On June 18, 2015, a raid was also conducted in Brgy. Mongokayo that led to the apprehension and filing of a case by the MGB/PMRB against the Barangay Captain. Another raid was also conducted in Bgry. Lamhaku that resulted in the seizure of equipment and gears and the destruction of a tunnel that was being illegally mined. Earlier in 2014, successive raids were

also conducted in Brgy. Lakunon where initial illegal mining was stopped and the community was warned against the ban on illegal small-scale mining activities. The raiding team emphasized the importance of the area as part of an important watershed and protected area of the Allah Valley Landscape, which is managed by the Allah Valley Landscape Development Alliance. The monitoring and enforcement efforts in South Cotabato remain consistent, to date, and continuously reducing illegal small-scale mining the past years.

2.4 Minahang Bayanihan Program

A novel and notable program of the provincial government in support of the small-scale mining industry is the *Minahang Bayanihan Program*. It was aimed to address issues and concerns on small-scale mining by integrating convergence and good governance. The program was recognized this year with a *Galing Pook Award*, a national annual recognition conferred to 10 LGUs with outstanding local governance programs.

According to the Province, the key components of the program are the formulation and implementation of policies to facilitate inclusive growth, development of mining systems to safeguard life, health and the environment and establishment of guidelines to ensure effective revenue generation. All these were carried out with legitimate consultation and active stakeholder participation.

Among the initiatives of this program is a Small-Scale Mining Identification (ID) System as a pre-requisite to the issuance of any small-scale mining contract. The ID system registers and requires an ID card for all persons employed in small-scale mining. All workers are required to undergo the scheduled orientation and trainings on mining safety or basic first aid and safety, disaster risk reduction/climate change adaptation, environmental management including solid waste management, health and sanitation conducted by the PEMO, the Provincial Disaster Risk Management Office and the Integrated Provincial Health Office. This program of the Provincial Governor is mandated under E.O. No. 37, s. of 2013. The Province claims that this identification system has addressed the problem of child labor in mining operations. The executive issuance also mandated the upgrading of the small-scale mining permitting system via a computerized system to improve permitting and monitoring.

Currently, there are at least 1,700 identified mine workers who have been issued ID cards by the Provincial Government since the start of the program in 2013. There are 3 types of mine workers, namely the “*abantero*” and “*atrasero*”, who are both directly indirectly involved in the extraction of ores inside the

tunnels; and the “*packers*” or those who carry the unprocessed ores to landing port and who usually work as free lancers and are not associated with a single operation. These are also maintenance and safety inspector per tunnel and safety inspectors for each association. Of these type of workers, the ID System covers the “*abantero*” or the “*atrasero*” only. The provincial government estimates that 80% of “*abanteros*” are from Davao while 90% of “*atrasero*” are indigenous peoples; while 100% of the packers are indigenous peoples, who manually haul the unprocessed ores in Brgy. Kematu while their counterparts in Bgry. Desawo use horses in hauling these ores. The Provincial Government continues to step up its efforts to place the estimated 3,000 miners under its Minahang Bayanihan Program.

3. Contractual Agreements

Upon the recommendation of the PMRB endorsing an application for the approval of the Provinical Governor, a Small-Scale Mining Contract is executed between the Small-Scale Mining Contractor and the Provincial Government of South Cotabato, through the Provincial Governor. The contract, which covers areas presently occupied and actively mined or declared as a People’s Small-Scale Mining Area or Minahang Bayan, is for a period of 2 years, renewable for like periods, subject to verification of the PMRB and upon compliance by the contractors of RA 7076, its regulation and any ordinance of the province.

The contract provides for the following key obligations of the contractor:

- a) undertake mining activities in accordance with a Mining Plan approved by the Provincial Governor/ PMRB;
- b) abide by the mine safety rules and regulations, particularly DAO No. 97-30, s. 1997
- c) pay all taxes, royalties or government production share;
- d) comply with regulations on environmental protection and conservation, particularly on tree-cutting, mineral processing and pollution control;
- e) file with the PMRB a detailed monthly production financial report under oath
- f) assume responsibility for the safety of their mine workers
- g) allow access to the Provincial Government or the PMRB to inspect contract area and examine records for monitoring compliance
- h) police small-scale mining contract area from any illegal mining operations
- i) recognize and respect the rights, customs and traditions of indigenous cultural communities over their ancestral lands and allocate royalty payment of not less than 1% of the value of the gross output of the minerals sold

- j) assist in the development of host and neighboring communities in accordance with its Social Development and Management Program (SDMP) approved by the Provincial Governor; and
- k) rehabilitate or remediate areas affected by small-scale mining operations even after the contract has expired. (Sec. 5.1)

The following rights of the contractor are likewise stipulated in the contract: to conduct small-scale mining operations in accordance with the terms and conditions of the contract, to possess the contract area, subject to surface and easement rights, and to enjoy easement rights and use of timber, water and other natural resources, subject to pertinent laws and regulations and rights of third parties. (Sec.5.2)

The contract also provides as ground for rescission or termination of the contract the failure of the contractor to comply with any of the requirements and regulations, to pay taxes, fees or royalties and other charges, the abandonment of the mining site; and the ejectment from the Minahang Bayan by the government for national interest and security reasons. (Sec. 6.1)

4. Revenue Streams and Payments for 2013 and 2014

4.1 Revenue Streams and Collection of the Province of South Cotabato

As shown in Part 2, the Province of South Cotabato imposes the following taxes and fees as provided in their Revenue Code (Sec. 65, Art. IV):

Figure 43. South Cotabato’s Taxes, Fees, Charges on Small- -Scale Metallic Mining

| South Cotabato’s Taxes, Fees and Charges Imposed on Small-Scale Metallic Mining | |
|---|-----------------------------|
| Taxes, Fees, Charges | Rate (PhP) |
| Mineral Tax | 1,000.00/m.t. |
| A. Small-Scale Mining Permit | |
| Mining Permit Fee | 3,000.00; valid for 2 years |
| Filing Fee | 20.00/ha |
| Processing Fee | 20.00/ha |
| Verification Fee | 3,600.00 |
| Project Fee | 100.00 |
| B. Processors Permit | |
| Processors Permit Fee | 6,000.00 |
| Filing Fee | 3,600.00 |

⁴⁰ As required under PD 1899, RA 7076 and Provincial Ordinance No. 7, s. 2003, as amended.
⁴¹ DENR MGB Inventory of Small-Scale Mining, Quarrying and Sand and Gravel Operating within South Cotabato for CY 2015.

South Cotabato's Taxes, Fees and Charges Imposed on Small-Scale Metallic Mining

| | |
|---------------------------|---|
| PD 1856 Fee | 20.00 |
| C. Ore Transport Permit | |
| Ore Transport Permit Fee | 500.00; valid for 15 days |
| Filing Fee | 5,000.00 |
| Delivery Receipt | 75.00/stub |
| Surcharge on Late Payment | 25% of the Amount Due |
| Interest on Unpaid Tax | 2%/month not to exceed 72% of tax due or 36 months interest |

For 2013 and 2014, the Province of South Cotabato collected the total amounts of P760,000.00 and P1,065,685.00, respectively. According to the Provincial Treasurer, these are broken down as follows:

Figure 44. South Cotabato's Total Collection from Small-Scale Metallic Mining in 2013 and 2014

South Cotabato's Total Collection from Small-Scale Metallic Mining in 2013 and 2014

| Types of Payments | 2013 Collection (PhP) | 2014 Collection (PhP) |
|-------------------|-----------------------|-----------------------|
| Mineral Tax | 624,480.00 | 612,885.00 |
| Permit Fee | 110,000.00 | 118,000.00 |
| Verification Fee | 25,520.00 | 334,800.00 |
| TOTAL | 760,000.00 | 1,065,685.00 |

The Revenue Code provides for a 30%-30%-40% sharing scheme among the province, municipality and barangay, respectively for the distribution of the proceeds of the mineral tax. (Sec. 67) Moving forward with the planned EITI country reporting, the Province of South Cotabato says it may not be worth reporting, as in fact the income they get from quarry is significantly higher than from small-scale metallic mining.

4.2 Revenue Streams and Collection of the Municipality of T'boli

As shown in Part 2, the Municipality of T'boli collects tax on mining operations, as provided in its Local Revenue Code of 2003. It is as an annual tax at the rate of two percent (2%) based on the gross receipts for the preceding year of mining operations. (T'boli Revenue Code, Sec. 19) The tax is due within the first twenty (20) days of January or may be paid in quarterly installments within the first twenty (20) days of January, April, July, and October of each year. (Sec. 22) Additionally, the Municipality also imposes a Mayor's Permit Fee on Contractors and Dealers for those operating a ball mill or processing plant and those engaged in gold-buying, respectively, and on those engaged in tunnel operations who are considered as producers based on a graduated rate depending on either asset size or number of workers of business, whichever will yield a higher fee, or a rate of 10% of the annual tax due but not less than the prescribed minimum. (T'boli Revenue Code, RA 7160) This fee is payable within the first 20 days of January of each year. A summary of the fees and rate follows:

Figure 45. Municipality of T'boli's Taxes, Fees and Charges on Small-Scale Metallic Mining

Municipality of T'boli's Taxes, Fees and Charges Imposed on Small-Scale

| Taxes, Fees & Charges | Rate |
|--|--|
| Tax on Mining Operations | 2% of Gross Receipts of Preceding Year |
| Mayor's Permit Fee as: | Graduated Rate based on Asset Size or Number of Workers of Business |
| Contractor: Ball Mill & Processing Plant | range of P150-P1,500 P150-cottage; P500-small; P1000-medium; P1,500-large |
| Dealer: Gold Buying | Range of P200-P1000 P200-cottage; P400-small; P800-medium; P1000-large |
| Producer: Tunnel | Range of P150-P2,500 P150-P250-cottage; P750-small; P1,500-medium; P2,500-large |

The T'boli MENRO also shares that small-scale operators are also charged with a minimal fee for garbage collection and certification fee of P25 for the issuance of a MENRO clearance that is a requisite for a small-scale mining contract.

For 2013 and 2014, the Municipality of T'boli collected the following total revenues from small-scale metallic mining and other related-operations namely from owner/operators of (a) ball mill, (b) processing plant, both of whom are considered as contractors; (c) persons engaged in gold buying, who are considered as dealers and (d) on the extraction of minerals from tunnel:

Figure 46. Municipality of T'boli 2013 and 2014 Collection from Small-Scale Metallic Mining

Municipality of T'boli 2013 and 2014 Collection from Small-Scale Metallic Mining

| Taxes and Fees | 2013 Collection (PhP) | 2014 Collection (PhP) |
|--------------------------|-----------------------|-----------------------|
| Mayor's Permit Fees | 157,432.00 | 145,740.00 |
| Tax on Mining Operations | 704,156.79 | 710,411.67 |
| Delinquency | 90,201.63 | 1,877.44 |
| Surcharges | 20,089.19 | 1,897.44 |
| Interest | 2,668.59 | 273.52 |
| Total Collection | 954,459.01 | 860,200.07 |

Meanwhile, the DENR-MGB Regional Office XII reports no income received from small-scale mining operations.

4.3 Processes on Payments, Collection, Distribution and Expenditures

To collect the payments due, the Province of South Cotabato, the PEMO, issues to the small-scale miners the order of payment of the taxes and fees. The PEMO makes its billing at the Provincial Capitol and also twice a week at its satellite office at the Minahang Bayanihan Center in T'boli to make it easier and convenient for the small-scale miners. Payment is made with the Treasurer's Office, who also has a staff at the satellite office in T'boli. After collection, the income from the mineral tax is automatically distributed and credited to the Municipality and the Barangay. The funds are recorded as part of the general funds spent for the general programs of the LGU. According to the Province of South Cotabato, it has in place mechanisms for the reporting and recording of these collections.

4.4 Sale of Gold

As discussed in Part I, all gold produced by small-scale miners in any mineral area shall be sold to the Central Bank now Bangko Sentral ng Pilipinas (BSP), or its duly authorized representative, at the prevailing international gold buying prices, regardless of volume or weight. The BSP has a Gold Buying Station in its Regional Office in Davao City in Mindanao. T'boli small-scale miners share that they sell their gold to buyers from T'boli who in turn sell the gold to BSP's Gold Buying Station in Davao. According to the miners, they sell the gold at prices, depending on the actual gold assay percentage. For 2012 and 2013, they were generally able to sell them at P1,200/gram, while the price went down to P950/gram at present.

4.5 Financial Arrangements among Small-Scale Miners

Most small-scale mining operations in T'boli are carried out by individuals who are members of associations and who are funded by financiers. Individual miners carry out the required environmental and community development through a consolidated program administered by their association and rely on financiers for their operational expenses.

After production, a quota system to distribute the income is followed. The Maguan Clan in T'boli uses the following distribution of a quota of 180 bags of ores: (a) 10 bags for surface owners; (b) 10 bags for the IPs as IP royalty; (c) 5 bags for the association; (d) 1 bag for the tribal of elders; (e) 1 bag of for the barangay that is received by the barangay captain, thereafter collated and sold and the proceeds are used to finance barangay operations; (f) 5 bags for the permit owners; (g) 60 bags for the abantero, who receives the highest share; and (h) the remaining bags for the financier, where operating expenses are deducted. The sharing scheme is flexible depending on the production.

On the average, small-scale miners, particularly the abantero, can earn around Php200,000-Php400,000 per year and the atrasero at least P36,000.00 a year, while financiers can earn Php2,000,00 gross income for a year, or at least P1,300,000 net income, if the gold produced is high grade. The daily income of the "packers" is pegged at Php7/bag that they carry from the tunnel to a landing port. A packer can carry ten bags per trip at a maximum of fifteen trips per day, if production is high.

While only a few have Social Security Services coverage, almost 80% of the small-scale miners have Philippine Health coverage. This health insurance coverage is largely attributable to the Pangtawid Pamilya Program, a poverty alleviation program of the national government.

5. Concerns and Challenges in Regulating Small-Scale Metallic Mining

An outstanding issue in South Cotabato, while being continuously addressed, is still the use of mercury in the extraction and processing of gold. Both government representatives and small-scale miners admit that its use is slowly being reduced and eradicated, even while the supply of mercury remains available and accessible. The Provincial Government has already advised all operators on strict implementation on the total ban of mercury by 2016.

Non-government organization Ban Toxics have on-going projects to assist small-scale miners in eradicating the use of mercury and other harmful chemicals, particularly on introducing and training them on alternative technology and processes. Almost 80% of the small-scale miners in T'boli have already been trained on new technologies that do not use mercury. They have become more aware of the risks of mercury on account of the trainings conducted by the Province and Ban Toxics. A few said that while they appreciate the training theoretically, they feel that the dangers are not as serious as they are made out. They argue that the use of the toxic chemical have been going for more than twenty-six years, but they do not feel the effects of it on their health nor on the environment. Small-scale miners share that using mercury is cheap and allows for a mere 1-hour of processing the ores, where other methods will require more than a week of processing. Some also shared that while the training also introduced them to the Benguet technology of processing gold without the use of mercury, the technology was not suitable for them because of the difference in production output and the availability of flowing water in T'boli, compared to Benguet.⁴² Operators and processors, however, are concerned that their processing plants, particularly their rod mills and ball mills, are already contaminated with mercury; and these would thus require their replacement, for which they expressed the need for government assistance and support. Small-scale miners claim that with such government support, it may be possible to shift away from the use of mercury.

Apart from this health and safety issue on the use of mercury, the Province of South Cotabato and MGB Regional Office 12 do not find any legal and regulatory constraints with RA 7076. They say that this is primarily because the Small-Scale Mining Ordinance of South Cotabato is principally based on the law itself and is being implemented by them. The legal issue they foresee however is the Revised IRR of RA 7076 that they both find problematic.

They raised issues on Revised IRR's withdrawing from the LGU the authority to collect fees and transferring such power to the MGB and on the increased fees imposed on small-scale mining operators. As discussed in Part I, the Revised IRR requires the payment of the application fee for a small-scale mining license of Php1,000 (Sec 7) and an application fee for a small-scale mining contract of Php20,000 to the MGB Regional Office. (Sec. 10) If the MGB collects the payment, and the monitoring is still left with the Province and the Municipality, then why should the LGUs continue to monitor small-scale mining operations? Under the Revised IRR, the MGB or the national government receives the revenues, but the Province is still left with the burden. With respect to the fees, the Province observes that one key factor leading to unregistered mining operations is the high costs of getting the permit. The current costs can range from P40,000 to P70,000, starting from the fees imposed by the barangay up to the province, the fees to be paid to tribal landowners or surface owners, taxes to be paid and the fees for the environmental clearance certificates. (This situation will be exacerbated even more by the imposition and increase in the registration fees such as P1,000 for a license and P20,000 for a contract imposed by the Revised IRR, potentially fueling even more unregistered operations.

The Province of South Cotabato, through the Office of the Governor, has publicly aired in media their opposition to the Revised IRR, and as of writing of this report, intends to file its Position Paper with the MGB. At present though, with the smooth working relationship between the Province and MGB Region 12 and the effective regulation and monitoring of small-scale mining operations in the province, there is a non-written agreement between them to maintain the status quo.

PART 4

ANALYSIS OF GAPS IN EXISTING SMALL-SCALE METALLIC MINING LAWS AND REGULATIONS AND DATA GAPS FOR PLANNED 2016 EITI REPORTING

A. GAPS IN EXISTING LAWS AND REGULATIONS AND IN IMPLEMENTATION

1. Co-Existence of 2 Laws

a) No Repeal of PD 1899 but Abandoned by Executive Action

PD 1899 subsists and has not been repealed. Congress intended it to stay, when it enacted RA 7076. The Supreme Court has confirmed the co-existence of the 2 laws. But, a presidential issuance, EO 79, directs that RA 7076 shall govern small-scale mining only. DENR-MGB as well as the local government units are following this order. Congress must either repeal PD 1899 or the President must re-align his directives with the statutes.

As shown in Part I, when RA 7076 was passed, Congress contemplated on three levels of mining. These are by large-scale mining companies, by small-scale mining corporations and partnerships for commercial purpose and by people's small-scale mining. Accordingly, the law treats these three levels of operations differently. Based on the language and intent of PD 1899 and RA 7076, these two different laws were meant to govern 2 types of small-scale metallic mining. For people's small-scale mining, RA 7076 carves out an access to subsistence small-scale miners. This includes opening areas that are not actively mined although found within areas covered by existing mining claims for their operations.

When Congress legislated people's small-scale mining, it did so within the context of a program to support it - the People's Small-Scale Mining Program. It includes declaring and setting aside these areas and providing technical and financial assistance, up to revenue generation for the government. This is to realize the policy objective of generating more

employment in the rural areas and of providing an equitable distribution of national wealth. In this sense, RA 7076 may even be argued to be a social legislation law intended to provide equitable access to the subsistence miners, where none was previously existing.

However, it appears that even after RA 7076 was passed, its provisions were not fully implemented. Except in South Cotabato and in the three or four other provinces where Minahang Bayans were declared, small-scale mining appeared to have been pursued primarily under PD 1899. To date, the People's Small-Scale Mining Program is not operationalized nationwide. Laws and regulations pertaining to small-scale mining were implemented mainly for regulatory purposes. Without the facilitative role of the DENR Secretary and the DENR as mandated by RA 7076, small-scale mining continued to proliferate illegally.

EO 79 now directs that all small-scale mining shall be pursued under RA 7076 and only within Minahang Bayan. It thus lumps together the two types of small-scale mining operations, erasing any distinction between them.

b) A Mandated People's Small-Scale Mining Program but without Congressional Budget

Under RA 7076, support to the people's small-scale miners was legislated via a comprehensive People's Small-Scale Mining Program. But, there was no specific budget allocated for such program then and up to now. In 2013 and 2014, the budget allocated for small-scale mining in the DENR MGB Central and Regional Offices was minimal, at about P150,000 to P250,000 per office. This was mainly meant to fund activities to assist the P/CMRB. DENR itself has no allocation to finance the activities needed to operationalize the key features of the program, particularly on providing technical assistance, facilitating financial and credit access, supporting

⁴² Focus Group Discussion

ancillary livelihood projects, among others. In terms of human resources, DENR MGB Central Office has currently 6 staff while DENR MGB Regional Offices have only 2-4 staff handling small-scale mining concerns. Without Congressional allocation of the budget and sufficient resources allocated, the program remains a text in the law. Congress must allocate funds for the implementation of the program and DENR must prioritize its implementation nationwide. These are required to ensure that a people's small-scale mining is placed within the ambit of the law, with government taking on a comprehensive and facilitative approach vis-à-vis the sector.

Outside of RA 7076's people's small-scale mining, any other small-scale mining pursued under PD 1899 may not need such comprehensive support and facilitative approach from government. Given the size of the permit area of up to 81 hectares and the nature of such commercial small-scale mining operations, then small-scale mining permittees are not in need of such assistance from the government.

c) A Mandated Duty to Identify Minahang Bayan and Determining Areas as a Starting Point under RA 7076

The DENR Secretary needs to determine areas for Minahang Bayan, including mining areas covered by existing mining claims that are active and non-active nationwide. This is a critical starting point of RA 7076. Since most mineralized areas in the country are already covered by existing claims, the DENR Secretary must determine which of these mineralized areas are not considered as active mining areas. These areas may be then be declared and set aside by the P/CMRB as Minahang Bayan in the respective provinces. This will operationalize the text and intent of the law to carve out access to people's small-scale miners, especially in areas they have actually occupied and mined before August 1987.

This responsibility of the DENR Secretary, however, is obscured in the text of the law. Such duty needs to be gleaned and deduced from the definition of active mining areas and areas that may be declared as Minahang Bayan. As shown in Part I, this is further obscured by the implementing regulations that grant discretion to the claimowners by requiring their consent to the declaration of the Minahang Bayan. The law does not provide such discretion. Otherwise, a claimowner can easily defeat the purpose of the law, by withholding such consent. This, even when such claimowner has been holding on to these vast tracts of land without any making investment. In Benguet, small-scale miners identify this problem of securing the claimowner's consent as a factor leading to the proliferation of illegal operations.

2. Revenues, Collection and Disbursement Streams

The law and regulations appear not to be too definite in fixing some of the revenues due the government and its revenue flows. As shown in Part II, the amount or rate of government production share is not defined by law or past regulation. Accordingly, this revenue has not been collected. The revised regulations of RA 7076 now grant the discretion to the P/CMRB to determine the share of government in a small-scale mining contract. (Sec. 4 (r)). License fees and application fees that were previously collected by local government units are now payable to the MGB Regional Offices. But, the revised regulations are silent whether the MGB Regional Offices shall remit these to the Department of Finance for distribution between the national and local governments as part of their share in the national wealth or to be utilized by the P/CMRB. RA 7076 also mandates the creation of a People's Small-Scale Mining Fund, but there are no rules operationalizing the collection, distribution and release of these funds to the various P/CMRB. Neither has the DENR-MGB nor the BIR set up mechanisms to implement this provision of the law. Accordingly, the P/CMRBs have not accessed nor used these funds for the purposes set out by law.

A potential double payment or collection of fees from small-scale mining operations must also be resolved. Under the revised regulations of RA 7076, the DENR MGB Regional Offices will collect license and applications fees. Previously, Provinces and independent Cities collected these fees based on their ordinances. Since local government units are authorized to raise revenues and collect fees pursuant to local ordinances, local government units can theoretically continue with such collection. These collections must be clarified and harmonized all over the country, preferably at the level of the DENR Secretary, the DILG Secretary and all Governors and Mayors. This is to ensure a nation-wide approach, and not leave the resolution of this concern at the regional level that may result to varying approaches.

3. Functions of LGUs and DENR-MGB

Since 1991 up to the present, regulations keep on changing the specific roles of the DENR and the local government units. This creates confusion and even apprehension among local government units on the perceived reduction of their devolved powers. Under the law, the DENR-Secretary is primarily responsible for implementing a People's Small-Scale Mining Program (Sec. 4, RA 7076). The Provinces as well as Cities are responsible for enforcing small-scale mining laws, pursuant to national policies and subject

to the supervision, control and review of the DENR. (Sec. 17.3, RA 7160) The DENR-MGB is responsible for recommending policies, regulations and programs concern mining, developing and promulgating standards and operating procedures, and assisting in the implementation and monitoring of programs concerning mining in general. (Sec. 15, EO 192) Over the years, regulations grappled with the details in implementing these laws. The revised regulations once again direct new details in discharging these roles.

As already mentioned, application fees as well as license fees must now be paid to the MGB Regional Offices. It does not however specify whether the application must likewise be filed with the same office, instead of the Office of the Governor. The MGB Regional Director as Chairperson of the P/CMRB now makes the award of the SSMC. The Governor or Mayor is now relegated back to the status of a member, and no longer a Co-Chairperson. With respect to the payments collected by MGB Regional Offices, it is not clear whether they shall be retained by the P/CMRB or remitted to the Department of Finance. If the provinces and cities are responsible for enforcing small-scale mining laws, and are thus charged with compliance monitoring and enforcement, then they should also have been given the authority to collect these regulatory fees.

4. Environmental and Health Safeguards

The new safeguards imposed for the environment, health and safety are commendable reforms, considering the urgent human, health and environmental risks involved in small-scale mining. EO 79 and the Revised Implementing Rules require more stringent, albeit ambitious, measures to protect life, health and the environment. However, these require major paradigm and operational shifts, technical assistance on the ground and broad-based multi-stakeholder support to realize them. A phased approach under EO 79 and the Revised Implementing Rules, coupled with concrete government support through the allocation of financial and technical resources throughout the country, would have facilitated this shift from the harmful practices to safe and responsible ways in mining in a more realistic and attainable way, instead of reforms requiring immediate major changes via mere regulation. The revised regulation directs an environmental impact assessment for an entire area proposed to be declared as a Minahang Bayan. As discussed in Part III, this burden is imposed on the proponent. If they are unable to secure the required ECC within 12 months from the receipt of the clearance from the DENR Secretary, then the P/CMRB will deny the petition. This is too

burdensome, if not unrealistic, given the time, costs and the limited interest of a proponent who may be applying for one small-scale mining contract covering the maximum allowable area of 5 hectares only. The revised regulation also immediately bans hydraulicking and compressor mining, without providing for any alternative technology or assistance to facilitate the transition of the small-scale miners to safer methods. Similarly, the revised regulation immediately bans the use of mercury, without providing for any alternative technology or support to aid in the phase-out. DENR-EMB itself recognizes the challenge of reducing and eventually eliminating mercury in small-scale mining and realistically provided for a gradual phase-out of use of the harmful substance by 2020. Even Congress when it passed RA 7076 recognizes the challenge of doing away with the use of mercury, cyanide or any other poisonous substance and did not legislate an outright ban. Regulations provided that their use must be handled in accordance with the directives of the DENR Regional Office. (Sec. 14.4, IRR-RA 7076) These laudable regulatory reforms under EO 79 and the Revised Implementing Rules must be revisited and supported with the necessary resources to implement and operationalize them on the ground.

B. Existing Data and Gaps to be Addressed to Comply with EITI Requirements

Based on the foregoing, the Philippines EITI Multi-Stakeholder Group (MSG) will need to take into account the status of existing data and gaps that need to be addressed, should it decide to include revenues and other data on small-scale metallic mining in the Philippine EITI Country Report. The key consideration is the prevalence of unregistered small-scale metallic mining that is bereft of any records or reporting of revenues. The other considerations are the minimal revenues currently collected from registered operations, the lack of any organized database that consolidates and centralizes data from each province and region, the poor response of some government agencies to request for information despite existing laws and policies, and finally, the data collection required at the level of hundred of individual miners and mining cooperatives that any proposed EITI reporting will entail.

1. Prevalence of Unregistered Small-Scale Metallic Mining

As shown above, the bulk of small-scale metallic mining operates outside the law, and is left unreported and unmonitored by government agencies. The question then begs itself, how can the unreported be reported? While a few LGUs and MGB Regional Offices are aware or even monitor unregistered small-scale metallic mining, they are wont to collect payments from these operations. Imposing and collecting taxes and fees from the unregistered small-scale miners may signify the LGU's official tolerance, if not acceptance and legitimization, of such mining in violation of the law.

Since 2012, with the passage of E.O. 79, the President mandated the DENR-MGB to step up its efforts to promote the implementation of the law. However, to date, progress has been slow. For instance, E.O. 79 mandated the creation and convening of PMRBs all over the country within 6 months from the order's effectivity. Despite the passage of almost three years, only 4 PMRBs appears to have been additionally constituted as a result of such directive. Similarly, since 2012, there has been no declaration of any Minahang Bayan, to date. The implementation of the law appears to become even more elusive with the Revised IRR of RA 7076 that makes compliance more exacting and burdensome, including the requirement of an Environmental Compliance Certificate for the entire Minahang Bayan. It may thus be a while before all small-scale metallic mining operations are registered and abide by the laws and regulations. In the meantime, reporting revenues and other related data from small-scale metallic mining may prove challenging.

2. Minimal Collection of Government Share in Revenues from SSM at Current Levels

a) Based on LGU collection

As shown above, the revenues received from small-scale metallic mining is minimal and almost insignificant. On one hand, this is mainly because most operations are unregistered and thus without any collection of revenues. On the other, payments collected from registered small-scale miners are limited to business permits, filing and processing fees. These only range from P24,000 to a little over P1 Million, in the case of the Municipality of Itogon, which has the highest number of small-scale mining in the Province of Benguet and in the case of the Province of South Cotabato, which has the highest number of registered small-scale mining operations in the country. Compared to revenues from quarrying of sand and gravel, the revenues from small-scale metallic mining is very low, according to South Cotabato. With the Revised IRR of RA 7076, the collection of LGUs will still go down, as licensing fees and application fees are now payable to the MGB Regional Offices.

It is only occasionally, such as in the Municipality of Itogon, that LGUs collect taxes based on gross production value that tends to increase the level of collection, depending on production. Hence, for 2011-2014, Itogon records tax payments due at a total of P14,386,301.98. This is unique to Itogon, as it is calculating its collection based on recorded production output of P1,359,499,993.28 made and furnished by Benguet Corporation, a large-scale mining corporation that have sub-contracted the gold recovery to the small-scale miners. Ordinarily, there would be no readily available record of production from small-scale miners, as this reporting requirement is not fully complied with by registered miners. Even then, Itogon still has to flex its muscle to collect fully from the small-scale miners. There is still no guarantee of a full collection of the revenues due. There is also a question on whether such gross production and the corresponding tax be assessed and collected from the small-scale miners as sub-contractors or the large-scale mining company as the principal of such small-scale miners.

b) Based on BIR collection, based on reported volume of production to P/CMRB

Payments received by national government from small-scale mining are also minimal. Again, this is largely because most small-scale metallic mining are unregistered, and therefore, do not report any income and do not pay the corresponding taxes and fees. For the registered small-scale mining, the tax payments to the BIR may also be insignificant as seen in the example of the BIR Revenue District Office in Benguet. Apart from the small value of collection, the

determination of the tax payments due will need to be deduced based on the P/CMRB reported volume of production by small-scale metallic miners as well as LGU records of collection. As already mentioned, compliance with the reporting requirement is still very low. Thus, if no reports are submitted to the P/CMRB, there is no basis for BIR to assess and collect taxes, in case of there is no voluntary payment of taxes.

c) Based on BSP purchase of gold

Revenue collection may be coursed through BSP as it purchases gold from small-scale miners. However, most small-scale miners sell their gold to traders or the black market for the convenience and the immediate payment of the value of their production. In turn, the sale of gold to BSP has dropped to 98% after BSP was constituted as a collection agent of the BIR. This not only reduces the revenue collection of national government, but also raises the important issue of where the gold extracted in the country are now sold and distributed.

Also, at present, BSP does not verify if the gold sold to it comes from small-scale mining. Theoretically, BSP's purchase of gold may not necessarily all come from small-scale mining. DENR-MGB and BSP will need to work together to set up simple, practical and effective measures to trace the gold sold to BSP from small-scale mining activities.

3. Inadequate Database on Small-Scale Mining and Uncoordinated Record-Keeping/Sharing of Information between MGB-Central Office and Regional Office and Regional Office and LGU and its Offices

a) On registered or legal small-scale metallic mining operations

With respect to the registered small-scale metallic mining, the DENR-MGB's database regarding the regulation of their operations in the country is inadequate. Small-scale mining contracts are issued by the P/CMRBs in the different provinces headed by the MGB Regional Director. Thus, data are disparate across provinces and regions, within LGUs and within MGB Central and Regional Offices. There is also no uniformity on the record keeping of small-scale mining data, and is usually dependent on who provides secretariat support to the P/CMRB, which could either be the MGB regional Office or the LGU. There is likewise no institutional mechanism in place for data access and data sharing among the LGU, DENR-MGB Central or Regional Offices, unless specifically requested by any of them. Under the Revised IRR of RA 7076, the MGB Regional Offices are now directed to perform most of the work. However, it may still take time for the record-handling and record-keeping to be

put in place in the MGB Regional Offices, especially if there is no increase in staffing and budget allocation for small-scale metallic relation work by the regional offices.

Also, the study showed that there are still some government agencies that do not provide information, contrary to the Constitutional provision on access to information, the policy on transparency and accountability and he laws requiring government response within fifteen days from request.

Based on the data collection for this scoping study, there is difficulty in directly obtaining data from some MGB Regional Offices, notwithstanding the Constitutionally enshrined right to access to information, the Anti-Red Tape Act and the Code of Conduct for Government Officials mandating a 15-day period of response from government agencies and officials. Constant and persistent follow-up was still required to ensure access to the information requested, including official reminders from the MGB Director as well as the MGB-Mineral Economics, Information and Publications Division.

There is also no uniformity on the record keeping of small-scale mining data, and is usually dependent on who provides secretariat support to the P/CMRB. In some regions, it is the MGB Regional Offices that keep the record; while in some as in CAR and South Cotabato, the LGUs keep most of the records on small-scale metallic mining operations, as part of the LGUs devolved functions over small-scale mining. Under the Revised IRR of RA 7076, the MGB Regional Offices are now directed to perform most of the work. However, it may still take time for the record-handling and record-keeping to be put in place in the MGB Regional Offices, especially if there is no increase in staffing and budget allocation for small-scale metallic-related work by the regional offices.

In line with its devolved functions over small-scale mining, LGUs keep its own records on small-scale metallic mining. However, there are no institutional mechanisms in place for data-access and data sharing among the LGU, DENR-MGB Central or Regional Offices, unless specifically requested by any of them. These records are the PMRB-related matters such as the minutes, resolutions, notices of meetings, application documents, registration records of miners, payments made, if any. The data-recording may now be altered when the Revised IRR is implemented, with registration of miners and payment of fees now lodged with the MGB Regional Offices.

Based on the experience in collecting data for this study, it is similarly challenging to directly obtain data from some local government units. PH-EITI's official requests for information were met with a low level of response. The DILG-BLGF that directly supervises LGU treasurers needed to facilitate the responses from the provinces, through the City/Provincial Treasurer's Office. Even then, most of the City/Provincial Treasurers submitted their response merely

for compliance purposes indicating no information, without apparently conferring with their counterparts from the LGU-Provincial Environment and Natural Resources Offices for the needed information. This reflects the lack or poor coordination between the offices and divisions within the LGU itself. Camarines Norte, for example, through its Provincial Treasurer, originally indicated that there is no small-scale metallic mining in the province (LGU Survey Response), despite the fact that Camarines Norte is reported for the prevalence of illegal small-scale metallic mining and the employment of minors in the operations. (Human Rights Watch Report, September 2015) After some follow-through, the province provided data on small-scale mining in their jurisdiction.

b) On unregistered or illegal small-scale metallic mining operations

With respect to the unregistered small-scale mining, the MGB and the LGUs alike have very limited data on them. Except for a few inventories on them mostly made in compliance with a directive of the MGB Director in 2013-2014, government agencies do not keep track or keep records on this operations. Most data shared for the scoping study team were estimates or anecdotal. Given the reality that most small-scale mining in the country operate outside of

the law, MGB and the LGUs must still endeavor to collect information on them for baseline purposes in order to inform policy- and decision-making and to evaluate effectiveness of regulations and programs, among others.

4. Data Collection Required for EITI Reporting at the Level of Individuals and Cooperatives

Given the nature of small-scale metallic mining carried out either by individual miners or cooperatives, data collection and reconciliation for any planned EITI reporting would have to be done at the level of the individual miner or cooperative for each province. This may entail a large number of sources of data and varied and distant locations for data collection and reconciliation. The number can range from 7-100 individual miners and cooperatives for each province, in at least thirty provinces. Data collection would also have to be done with each individual miner and cooperatives, who do not hold places of office or business in urban centers, but would have to be tracked and located in their various and mostly remote residences and/or actual areas of operations. All these data collection and reconciliation may not be justified, especially in light of the minimal revenues received from small-scale metallic mining.

PART 5

SOME RECOMMENDATIONS TO ADDRESS GAPS IN LAWS AND THEIR IMPLEMENTATION AND FOR THE PROPOSED EITI REPORTING ON SMALL-SCALE METALLIC MINING

A. Recommendations to Address Gaps in Laws and their Implementation

During the past three years, executive measures were taken to introduce reforms in the mining industry in general. Insofar as small-scale metallic mining is considered, these reforms are still not responsive to ensure that small-scale metallic mining operations are brought within the ambit of the law. Government still needs to address existing gaps in the laws and regulations and their implementation. We recommend a few actions as follows:

1. Clarifying Gaps in the Laws and Regulations

a) Types of Small-Scale Metallic Mining: Commercial and Subsistence/Peoples

PD 1899 must either be repealed or the distinctions between the types of mining activities under PD 1899 and RA 7076 must be respected and observed. As shown above, two laws on small-scale metallic mining continue to exist together, even if EO 79 directed that small-scale mining should be pursued only under RA 7076. Congress intended PD 1899 to govern small-scale mining for commercial purposes and RA 7076 to govern small-scale mining by the people or by subsistence miners. The executive and legislative branches of government, through possibly the Executive and Legislative Advisory Council, need to clarify these types of small-scale metallic mining operations and decide whether there are distinctions between these activities. Accordingly, it must either recommend the repeal of PD 1899 and maintain RA 7076 as the sole law to govern small-scale mining, as EO 79 directs, or clarify further the co-existence of these two laws and provide more definitive and clearer guidelines on their implementation.

b) Functions of National Government Agencies and Local Government Units

The role of DENR as the lead implementer of the People's Small-Scale Mining Program, as the recommendatory body for policies, regulations and programs pertaining to small-scale mining must be harmonized with the devolved function of the local government units in the enforcement of small-scale mining laws. The details on how these will be operationalized from determining areas available as Minahang Bayan, the leadership of the P/CMRB in permitting and the attendant roles of the MGB Regional Director and of the local chief executive, the imposition and collection of small-scale mining fees, the clarification of the government share in the production, compliance monitoring and enforcement as well as the financing for these activities must be clarified between the DENR MGB and the local government units, from the level of DENR Secretary to the DILG Secretary and the local chief executives.

c) Revenue Streams and Flows from Collection to Expenditure

The Philippines have high mineral gold reserves and there is a high gold production from small-scale mining, as may be seen from the sale of gold to BSP prior to 2012 and as may be seen from the report from the federation. There is thus revenue due to the government as owner of these minerals following the Regalian Doctrine. There is, however, very minimal collection due to the proliferation of illegal operations. This basic issue must be addressed before government, both national and local can collect the proper revenues.

Likewise, there should be synergy between DENR-MGB and the Bangko Sentral ng Pilipinas as well as the BIR to ensure that all gold produced from small-scale mining are sold to BSP.

2. Adopting a Facilitative Role First, Before a Regulatory Role

There are more than enough laws and regulations governing small-scale metallic mining. Despite this, most operations are still carried out under the law. It is important for government to take on a facilitative approach to implement the laws and regulations and promote voluntary compliance with the laws.

a) Appropriation and Implementation of a People's Small-Scale Mining Program

To achieve the policy of the law, Congress must appropriate and DENR must implement the People's Small-Scale Mining Program. The objective is developing, protecting and rationalizing viable small-scale mining activities with aims to generate more employment opportunities and provide an equitable sharing of the nation's wealth and natural resources. The People's Small-Scale Mining Program is designed to achieve an orderly, systematic and rational scheme for the small-scale development and utilization of mineral resources in certain mineral areas in order to address the social, economic, technical, and environmental problems connected with small-scale mining activities. This meant to provide a holistic program in support of the people's small-scale miners from the technical to the financial aspects, including the generation of revenues for the government. By implementing this program, government then takes on a more facilitative role to achieve the objectives of the laws, rather than as a mere regulatory agency policing the ranks of small-scale miners.

b) Participatory Approach to Governance and Compliance Monitoring

The Province of South Cotabato has pioneered this approach to governing small-scale mining in their areas. After taking on a facilitative approach to ensure that the operations of small-scale miners are legalized, then the PMRB adopted a participatory approach working with all sectors in the province – from the different national government agencies, to the non-government organizations to the associations and small-scale miners themselves. This model may be followed by all P/CMRBs across the country to promote better governance and compliance monitoring of small-scale mining operations.

As government facilitates the implementation of the spirit and text of the law, then these can lead to better voluntary compliance with the laws and regulations, stronger self-monitoring by miners and by associations and thereafter stronger enforcement of the laws.

B. Recommendations for Compliance with EITI Reporting Requirements

To address these data gaps for the proposed EITI reporting of small-scale mining revenues, the MSG may consider using its mandate in promoting transparency and accountability in the extractive industries to go back to the basic implementation of small-scale mining laws to enable it to include revenue streams in the future in the country's report to EITI. This is to bridge the implementation of the law to achieve its objectives, including the equitable distribution of national wealth and the consequent increase in revenue collection of the national government. In turn, this would enable the MSG to include material revenue streams in the country's future report to EITI.

In the meantime, the MSG may already include the contextual data on small-scale metallic mining to provide a complete picture on the mining industry in the Philippines. To facilitate EITI reporting of small-scale mining revenues in the future, the MSG may consider strengthening the P/CMRBs in the different provinces, not only to ensure the promotion, development and regulation of small-scale mining to generate more employment opportunities and provide for an equitable sharing of wealth, but also to serve as a central repository of small-scale mining data in the province, with established record-keeping and data-sharing systems and mechanism in place. Finally, the MSG may also encourage the formation of federations and associations and/or strengthen existing ones to support of small-scale mining pursued in accordance with the law and its policies and also to act as potential conduits or clearing houses for the reconciliation of data from individual small-scale miners and cooperatives.

1. Improving Compliance with the Laws Prior to Inclusion of Revenues Streams from Small-Scale Metallic Mining in EITI Reporting

Pursuant to EITI's objective of promoting transparency and accountability in the extractive industries, the MSG may wield its authority and influence to ensure that small-scale mining laws are implemented in accordance with its stated policies and objectives, i.e. to promote the development of small mineral deposits and develop, protect and rationalize viable small-scale mining activities with aims to generate more employment opportunities and to provide an equitable sharing of the nation's wealth and natural resources. Despite the passage of time, small-scale metallic mining largely remains an informal sector outside the radar of government agencies. Some of the specific actions that need to be done are as follows:

- a) Clarify the levels and types of mining ventures allowed in the country via Congressional action, particularly small-scale mining for commercial purposes under PD 1899 and people's small-scale mining for subsistence that carves out access in

non-active mining areas covered by existing and valid mining claims under RA 7076.

- b) Implement the People's Small-Scale Mining Program to carry out the policies of RA 7076 of generating more employment opportunities and providing an equitable sharing of the national wealth, with the corresponding Congressional appropriation for its implementation and the prioritization by the DENR as a major program by setting aside areas for small-scale mining to be accessed by Filipino individuals and cooperatives, by recognizing prior existing rights and productivity, by providing technical and financial assistance and other social services to small-scale miners, and by generating other livelihood opportunities, and only then, should DENR and the LGUs police the ranks of small-scale miners to encourage growth and productivity and to collect the appropriate government share and revenues from small-scale mining;
- c) Revisit some of the requirements and procedures under the Revised Implementing Rules of RA 7076, and align with the policies of the law and to ensure that compliance of the law is facilitated and not hindered, or to provide mechanisms for its implementation such as the requirement of an ECC for the entire Minahang Bayan within 12 months considering the interest and liability of the proponent, the cost, the sufficiency of the period given, and compliance expected of all SSMC operators but chargeable to the proponent of the Minahang Bayan and ECC, among others;
- d) Promote the full implementation of RA 7076 by all concerned agencies based on clear mandates and roles, including the coordination and delineation of functions between the MGB Regional Offices and the LGUs and addressing the challenges in complying with the law such as the permitting/contracting requirements, direct access to credit and government financial institutions in lieu of financiers, sale of gold to BSP, safe and environment-friendly mining technologies, among others.

2. Inclusion of SSM Contextual Data to Provide a Comprehensive Picture on the Mining Industry

Nonetheless, even now, the MSG may already consider including in the Philippine EITI Country Report the contextual information on small-scale mining, considering that the Philippines has rich reserves of gold and other metallic minerals. Even if small-scale mining largely belongs to the informal sector, the MSG that has already initiated this scoping study on the sector may choose to include the contextual information on small-scale mining to provide a more comprehensive picture of the mining industry in the country. This is particularly so considering that the gold extraction and production based on the BSP sale of gold presumed to come from their operations is higher than that reported by large-scale mining companies prior to the collection of excise and creditable withholding taxes at the BSP level starting in 2012. Its inclusion in the EITI reporting will also

provide the impetus for both the government and private sectors to focus their attention on the industry and address the challenges they face head-on. Otherwise, small-scale mining that still mainly forms part of the informal sector will continue to be swept under the rug and without empirical data to guide the needed reforms for the sector.

3. Strengthening the P/CMRB and the Federations and Associations to Facilitate Future EITI Reporting

In preparation for the planned reporting of revenue streams from small-scale mining, the MSG may consider strengthening and building the capacities of P/CMRBs. As the multi-stakeholder body in charge of the regulating small-scale mining in the different provinces, they play a critical role in ensuring the promotion, development and regulation of small-scale mining to generate more employment opportunities and provide for an equitable sharing of wealth. Likewise, as they regulate small-scale mining operations from the licensing to the award to the monitoring, they can serve as the official local repositories of small-scale mining data in the provinces and cities. The MSG can facilitate the development of a knowledge-management system that may be utilized by P/CMRBs across the country, to include record-keeping, data access and data-sharing mechanisms between and among MGB Regional Offices, Central Offices and the LGUS. This will facilitate later on the collection of information on the revenues from small-scale mining. Alongside the strengthening of P/CMRBs, the MSG may also encourage the formation of associations and federations and/or strengthen existing ones to support of small-scale mining carried out in accordance with the law and its policies. These associations and federations can in turn serve as conduits or clearing houses for the reconciliation of data from individual small-scale miners and cooperatives in the future.

As government reforms the small-scale mining sector and successfully places them within the ambit of the laws and regulations that they recognize and accept as needed and beneficial, the extraction and production may now be monitored and the correct taxes and fees may be collected. The MSG, after facilitating the basic implementation of the law, may then consider including the revenues that may potentially be higher and will already be recorded for EITI reporting. Until the reforms are in place and the data gaps addressed, that Philippine EITI can help catalyze in the next 1-3 years, it does not yet make sense to include SSM revenues in the EITI reporting, as these would be very minimal.

In the meantime, since the sector remains largely informal, with very minimal revenue collection, the MSG may consider including a contextual information only and subsequent updates on small-scale mining for EITI reporting in the immediate years. After the reforms and the formalization of the sector are achieved, that will bring about increase in revenue collection, with Philippines EITI serving as a catalyst, only then may the MSG consider reporting the revenues from the sector.

Alternatively, instead of setting the materiality based on the amounts of the revenues, the Philippines EITI MSG may consider the significance of the revenues for host communities, and decide to include the revenues from small-scale metallic mining, regardless of the amount of payments. Either way, it is an important immediate intervention for the Philippines EITI, using its mandate on transparency and accountability on the extractive industries to strengthen P/CMRBs as well as facilitate

the creation and organization of small-scale mining federations and associations across the country in order to improve record-keeping and data-sharing not only for purposes of country-reporting for EITI, but also for evaluation of the effectiveness of policies and programs and for adaptive policy formulation and management in the small-scale metallic mining sector.



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Annex 1. List of Participants to Key Informant Interviews and Focus Group Discussions

| Agency/ Office | Name | Designation | Email Address | Telephone Number |
|-------------------------|--------------------------|---|---|----------------------------|
| MGB-CO | Romualdo Aguiluz | Chief, Economics, Information and Publications Division | omeaguilos@yahoo.com.ph | 09064934138 |
| MGB-CO | Esteban C. Martin | Chief, Mining Technology Division | | |
| MGB-CO | Marjorie Martinez | Economics, Information and Publications Division | eco@mgb.gov.ph | |
| EMB | Michael P. Matias | OIC, Chief, EIAM Division | | 09178965745 |
| MGB-CAR | Fay W. Apil | OIC-RD | fayapil@yahoo.com | 09285049377 |
| MGB-CAR | Amy N. Ramos | Sr. SRS/OIC Info Officer | amyang2004@yahoo.com | 3042530 |
| MGB-CAR | Falizardo Gacad, Jr. | Chief, MSESDD | fagacadjr@yahoo.com | 09332140041 |
| MGB-CAR | Elizabeth Daisa | Sr. EMS | kalugsa58@yahoo.com | 09985313269 |
| MGB-CAR | Vivian T. Romero | Economist II | veeromero@yahoo.com | 09285522991 |
| MGB-CAR | Roland B. Aquino | Engineer IV | roland_11108@yahoo.com | 09183166808 |
| PG-Benguet | Nestor B. Fongwan | Governor | | |
| PG-Benguet | Julius T. Kollin | SEMS/PG-ENRO | julio.kollin@yahoo.com | 09995276241 |
| PG-Benguet | Joseph Cervantes | Engineer III/PG-ENRO | joemcer64@yahoo.com.ph | 09209688085 |
| MG-Itogon | Victorio Palangdan | Mayor | | 074-3052898 |
| MG-Itogon | Adriano R. Carantes, Jr. | Vice-Mayor | | 09128616284 |
| MG-Itogon | Benigno B. Apidos | MENRO-Designate | | 09183830991 |
| MG-Itogon | Angela C. Carino | Municipal Treasurer | accitogon@gmail.com treasuryitogon@yahoo.com | 09177940079 074-4230818 |
| MG-Itogon | Rock H. Carino | OIC-SB Secretary | | 09178658649 |
| MG-Itogon | Jacqueline Tongalag | LLSE II/SB | | 09282176152 |
| MG-Itogon | Anna Liza G. Camti | LRCO/MTO | lizacamti@yahoo.com | 09985585112 |
| MG-Itogon | Lison C. Latawan | Exec. Asst/OM | | 09206486330 |
| Brgy. Virac, Itogon | Roselle L. Sabado | Barangay Kagawad | | 09129298185 |
| Brgy. Virac | Victoria L. Acay | Barangay Secretary | | 09293705623 |
| MGB-RO XII | Maimona Mamao | Sr. EMS | mam_lali@yahoo.com | 09164395389 |
| MGB-RO XII | Mary Ann C. Tenorio | MCE II | tnr_mrynn@yahoo.com | 09989719235 |
| MGB-RO XII | Marilyn D. Dicierto | Economist II | mdicierto@yahoo.com.ph | 09169409597 |
| MGB-RO XII | Benedict C. Ekwey | Engineer III | ekwey_benedict@yahoo.com | 09472728868 |
| PG-South Cota-bato (SC) | Alfredo C. Dumanig | ICO-Provincial Treasurer | alfdum03@yahoo.co.uk | 09398776601 |
| PG-SC | Nencita B. Acain | Sup. EMS/PEMO | nency_acain509@yahoo.com.ph | 09303765103 |

Annex 1. List of Participants to Key Informant Interviews and Focus Group Discussions

| Agency/ Office | Name | Designation | Email Address | Telephone Number |
|--|----------------------|---|-----------------------------|---------------------|
| PG-SC | Ramona J. Gumban | CPA 1/PEMO | ramonjgumban@yahoo.com | 09151142990 |
| PG-SC | Lourdes S. Jumilla | Senior EMS/HRDD | | 092993454079 |
| PG-SC | Higenio S. Dao-Ang | Staff/PEMO | daus_30ph@yahoo.com | 09309442196 |
| PG-SC | Rudy Librado | Staff/PEMO | | 09391970794 |
| PG-SC | Merchell Yaeso | PA/PEMO | merchyaeso@yahoo.com | 09078859598 |
| MG-T'boli | Rocky D. Dunda | Mun. Mining Inspector/ MENRO | | 09174571999 |
| MG-T'boli | Ritchie L. Calvo | MTO | ritchiecalvo@yahoo.com | 09328730037 |
| Brgy. Kematu, T'boli, SC | Mansueto L. Delapena | Brgy. Captain | | |
| Brgy. Kematu | Mudin K. Ngato | Brgy. Kagawad | | 09067483497 |
| Brgy. Kematu | Benny L. Dela Pena | Brgy. Kagawad | | |
| Brgy. Kematu | Diego M. Oping | Brgy. Kagawad | | 09067900189 |
| Brgy. Kematu | Edwin P. Adigue | Brgy. Kagawad | | 09056011503 |
| Brgy. Kematu | Ermun S. Lumbay | Brgy. Kagawad | | 09051924667 |
| Brgy. Kematu | Winna Buan | Sitio Kagawad | | |
| Brgy. Kematu | Emelie Buragay | Sitio Kagawad | | |
| Brgy. Kematu | Minde D. Causing | Sitio Leader | | |
| Brgy. Kematu | Edmund Lumbay | Sitio Leader | | |
| Brgy. Kematu | Edmund S. Ugal | IPMR | | 09496403245 |
| Benguet Federation of Small-Scale Miners, Inc. | Lomino N. Kaniteng | President, Federation/ PMRB Representative for SSM | | 09988651874 |
| Small-Scale Association of South Cota-bato | Josephine J. Balonga | President, Federation/ PMRB Representative for SSM | Josephine.balonga@yahoo.com | 09265030320 |
| SSU II6A ARE | Rizalde Perez | Chairman | | 09359852406 |
| MCSSMAI | Juaning Maguan | President | | 0926343377 |
| MCSSMAI | Jolietta M. Lalup | Secretary | | 09265833612 |
| MCSSMAI | Idol Maguan | Member | | 09351944541 |
| F/TCSSMAI | Kasoy B. Fagalas | Chairman | | |
| F/TCSSMAI | Ernesto F. Ditok | Secretary | | 09061945086 |
| Brgy. Kematu | Robert Maguan | L.O. | | |
| Brgy. Kematu | Danilo Kuhok | L.O. | | |
| Brgy. Kematu | Arnold Lagarto | L.O. | | |

Annex 1. List of Participants to Key Informant Interviews and Focus Group Discussions

| Agency/ Office | Name | Designation | Email Address | Telephone Number |
|-------------------|---------------------------|-------------------------------|-----------------------------|---------------------|
| Brgy. Kematu | Maritis Taman | President | | |
| Brgy. Kematu | Jing T. Uhat | | | |
| Brgy. Kematu | Noralyn A. Friales | Parent Leader | | |
| Brgy. Kematu | Desman Aman | | | |
| Brgy. Kematu | Moises Lumbay | | | |
| Brgy. Kematu | Cherlyn Kato | President | | |
| Brgy. Kematu, | Esther Daquil | President | | |
| NCIP RO 1 | Jane T. Lando | TMSD Chief | ncip-ro1@yahoo.com | 0927-243-8889 |
| NCIP RO 1 | Luis M. Andres | Engineer II | | |
| NCIP RO 2 | RM Daquioag | RD | | |
| NCIP RO 2 | Mr. Garcia | TMSD Chief | | |
| NCIP RO 2 | Roger G. Dela Rosa | Focal Person - FBI/FPIC | roger.delarosa1@yahoo.com | 078-844-7593 |
| NCIP RO 3 | Alih M. Ulang | DMO II | alihulang280@yahoo.com | 045-961-5956 |
| NCIP RO 4 | Sandy Padilla | Engineer II | sandypads@ahoo.com.ph | 02-439-1557 |
| NCIP RO 5 | Evelyn L. Jacob | OIC-Regional Director | evelyn.jacob1231@yahoo.com | 054-299-2752 |
| NCIP RO 6-8 | Darrel Honorario | TMSD Chief | elesio_18@yahoo.com | 033-329-4482 |
| NCIP RO 9 | Henrico L. Gumibao | TMSD Chief | | |
| NCIP RO 11 | Augustus D. Basa | CDO III/Focal Person- FPIC | | 082-2982442 |
| NCIP RO 12 | Joey I. Bogay | OIC-RD | region12ncip@gmail.com | 083-520-0813 |
| NCIP RO 13 | Ordenio P. Receo, Jr. | OIC TMSD | oreo96@yahoo.com | |
| NCIP CAR | Zenaida H. David | Commissioner | | 0917-532-8332 |
| NCIP CAR | Ronalvin F. Mabli | TMSD | tmsdncipcar@gmail.com | |
| UPD COE | Ma. Antonia Tanchuling | Faculty | mntanchuling@upd.edu.ph | |
| BanToxics | Evelyn Cubelo | Program Coordinator | eve@bantoxics.org | 09178926863 |
| Dinagat Island | Zacarias N. Valez | PG-ENRO | penro.lgu.dinagat@gmail.com | 0950-1790626 |
| Agusan del Sur | Ronulfo Paler | PG-ENRO | | 0939-1637683 |

Annex 2. List of MGB Regional Offices that Submitted Survey Responses

| MGB Regional Office | Name of Respondent | Designation | Email Address | Telephone Number | Remarks on Survey Response |
|---------------------------|---------------------------|---|---|---|----------------------------------|
| CAR | Fay W. Apil | OIC, Office of the Regional Director | car_mgb@yahoo.com | 074-4426392 | Incomplete |
| 1 | Carlos A. Tayag | OIC, Regional Director | | 072-2422777 09194595284 | Incomplete |
| 2 | Engr. Mario A. Ancheta | OIC, Regional Director | | 02-7045561 | Complete |
| 3 | Reynaldo C. Cruz | OIC, Mining Mgt. Department | rey_ccruz@yahoo.com | 9636387 09394772971 | Complete |
| 4-A | | | | | |
| 4-B | | | | | Reported no SSMM |
| 5 | Not Indicated | Not Indicated | mgb5@gmail.com | | |
| 6 | Leo Van V. Juguan | Regional Director | mgb6iloilo@yahoo.com | 033-3362815, 033-5088029 | Incomplete |
| 7 | | | | | |
| 8 | Dante A. Operario | Engineer III/ Concurrent Information Officer | daoperario@gmail.com | 053-3238011 09173217554 | Incomplete |
| 9 | Romeo Sta. Cruz | Engineer IV | rstacruz96@yahoo.com.ph | 062-9922194 09158700842 | Complete |
| 10 | Rex S. Monsanto | OIC, Regional Director | denrmgb10@yahoo.com ; rex_mons04@yahoo.com | 088-8561331 09162194756 | Mostly no data |
| 11 | | | | | Data from Roadshow |
| 12 | Not Indicated | Not Indicated | mgb_xii@yahoo.com | 083-2286131 | Incomplete |
| 13 | Daniel S. Belderol | OIC-Mine Management Division | danroldebel@yahoo.com | 086-8265256 09399320340 09177130171 | Incomplete |

Annex 2.A List of National Government Agencies and Response to Request for Information

| Agency | Name of Responding Officer | Remarks |
|----------------------------|---|---|
| BIR RDO 9 | Mr. Julius Arellano | Completely Answered |
| BIR RDO 18 | Atty. Diosdado Macapagal, Regional Director | Completely Answered |
| BIR Central Office | N.A. | No Information Shared, as of Writing, Despite PH-EITI Secretariat Follow-Up |
| BSP Central Office | N.A. | No Information Shared, as of Writing, Despite PH-EITI Secretariat Follow-Up |
| EMB Regional Office No. 12 | Regional Director Ma. Socorro C. Lanto | Completely Answered |
| EMB Regional Office CAR | N.A. | No Information Shared, as of Writing, Despite PH-EITI Secretariat Follow-Up |
| EMB Central Office | N.A. | No Response to Further Request for Information, after KII |

Annex 3. LGUs in Regions with Gold,Silver, or Chromite Reserves with Survey Responses

| Province | Name | Designation | Email Address | Telephone Number | Remarks on Survey Response |
|--------------------|---------------------|--------------------------|----------------------------|----------------------------|----------------------------|
| Region 3 | | | | | |
| Bulacan | Antonio A. Cacdac | OIC NRM Division | tonycacdac@yahoo.com | 044-7918164 09985790644 | Mostly no data |
| Zambales | Liberty P. Hilario | OIC-ENRO | | | Incomplete |
| Region 4-B | | | | | |
| Marinduque | Rodrigo E. Opis | Provincial Assessor | lancer_1981@yahoo.com.ph | 042-3322638 09177900366 | Mostly no data |
| Occidental Mindoro | Ruben P. Soledad | ENRO | enro_occmin@yahoo.com | | Mostly no data |
| Oriental Mindoro | Paz P. Fortunato | Provincial Treasurer | pto_ormindoro@yahoo.com.ph | 043-2881764 09209611211 | Mostly no data |
| Palawan | Elino P. Mondragon | Provincial Treasurer | | | Mostly no data |
| Region 5 | | | | | |
| Albay | Pedro E. Ibasco | Provincial Treasurer | Ptoalbay@yahoo.com | 052-480 6234 | Mostly no data |
| Camarines Norte | Leopoldo P. Badiola | PENRO | pgpenro-camnorte@yahoo.com | 09175012431 | Incomplete |
| Camarines Sur | Bernardo A. Prila | OIC-Provincial Treasurer | camsurpp@yahoo.com | 4756116 09985112991 | Mostly no data |
| Catanduanes | Julieta M. Tasarra | Provincial Treasurer | | | Mostly no data |
| Sorsogon | Emerlinda P. Briopo | AO IV | | | Mostly no data |

Annex 3. LGUs in Regions with Gold,Silver, or Chromite Reserves with Survey Responses

| Province | Name | Designation | Email Address | Telephone Number | Remarks on Survey Response |
|--------------------|----------------------------------|------------------------------|--|--|----------------------------|
| Region 6 | | | | | |
| Negros Occidental | Atty. Wilfredo Ramon M. Penalosa | PEMO | pemo_cei@yahoo.com pemo@negros.gov.ph | 034-4322922 09173001583 | Incomplete |
| Region 8 | | | | | |
| Leyte | Joel R. Balano | OIC ENRO | joel@leyte.org.ph | 09178473517 | Mostly no data |
| | | | | | |
| Bukidnon | Efren Montesino | ICO-Provincial Treasurer | ptobukidnonsre@gmail.com | 088-8132474 09177027769 | Incomplete |
| Camiguin Province | Nida O. Salon | Provincial Treasurer | nidasalon@gmail.com | 09267067954 | Mostly no data |
| Misamis Occidental | Elma B. Gula | Provincial Treasurer | applephi@yahoo.com | 088-5311017 0917225024 | Mostly no data |
| Misamis Oriental | Josito Nick C. Tilos | OIC ENRO | | 72 68 94 | Mostly no data |
| Region 11 | | | | | |
| Davao del Norte | Romulo D. Tagalo, MM MPP | PG Asst. Dept Head/OIC PENRO | romulod_tagalo@yahoo.com | 084-6559483 09177102827 | Mostly no data |
| Davao del Sur | Dulcosima D. Padillo | ENRO | | 082-5531057 | Mostly no data |
| Region 12 | | | | | |
| South Cotabato | Alfredo C. Dumanig | ICO-Provincial Treasurer | voodum03@yahoo.co.uk | 083-2283881 09989704046 | Complete |
| North Cotabato | Manolito S. Filipinas | Provincial Treasurer | litofilipinas@yahoo.com | 064-5218080 local 1231 ; 09485607847 | Mostly no data |
| Region 13 | | | | | |
| Agusan del Norte | Ms. Adela G. Antiga | CDO II/OIC-Division Chief | adelle_antiga@yahoo.com | 085-3425847 09162467716 | Complete |
| Agusan del Sur | Alvin G. Elorde | Provincial Treasurer | | | Incomplete |
| Surigao del Sur | For. Edgar S. Valentin | Provincial ENRO | penro-igusds@yahoo.com | 09196141980 | Complete |
| Dinagat Island | Zacarias | PG-ENRO | penro.lgu.dinagat@gmail.com | | Mostly no data |
| Region CAR | | | | | |
| Abra | Marcelina C. Gavanés | Provincial Treasurer | mcgavanés@yahoo.com | 074 752 8114 | Mostly no data |
| Apayao | | | | | Incomplete |

| Province | Name | Designation | Email Address | Telephone Number | Remarks on Survey Response |
|--------------|---------------------|--------------------------|----------------------|-------------------------|----------------------------|
| Benguet | Joseph M. Cervantes | Engr III | enrossm@yahoo.com | 309-2433 09209688085 | Complete |
| Ifugao | Steawart B. Baccay | ICO-Provincial Treasurer | pto_ifugao@yahoo.com | 09168569588 | Mostly no data |
| Kalinga | Ines B. Ocampo | Provincial Treasurer | | | Mostly no data |
| Mt. Province | Cawed A. Gamonnac | Provincial Treasurer | gamon_1955@yahoo.com | | Mostly no data |

| Province | Name | Designation | Email Address | Telephone Number | Remarks on Survey Response |
|-------------------|------------------------------|--|-----------------------------|-----------------------------|----------------------------|
| Region 1 | | | | | |
| Ilocos Sur | Raymond Sinay | OIC-ENRM Officer | rsinay1966@gmail.com | 09178141612 | Incomplete |
| Region 2 | | | | | |
| Batanes | Ceasar Roldan A. Esdicul | Senior Env'ttal Mgmt Specialist/OIC-ENRO | bataneswakay23@yahoo.com.ph | 09999976125 | Mostly no data |
| Isabela | For. Geronimo Cabaccan, Jr.. | ENR Officer | enroisabela@yahoo.com | 078-323-0449 09176244233 | Mostly no data |
| Nueva Vizcaya | | | ptonvizcaya@gmail.com | 078-9320544 | Mostly no data |
| Region 4-A | | | | | |
| Batangas | Luis A. Awitan | PGDN/PG-ENRO | | 043-7232468 | Mostly no data |
| Laguna | Mary Grace L. Geronimo | Assistant Department Head | pg_enrolaguna@yahoo.com.ph | 09998855986 | Mostly no data |
| Quezon (Agdangan) | Vivian L. Lacuesta | BPLO | | 09294402889 | Mostly no data |
| Region 7 | | | | | |
| Cebu | Jeppbech Coca | Staff | jeppbech.coca@yahoo.com | 2537047 09420316614 | Incomplete |
| Negros Oriental | Engr. Ruperto M. Badon Jr. | Engr II/ENRO | rprrbadon@yahoo.com | 2255563 09369679567 | Incomplete |
| Siquijor | Susan S. Tagab | Env'tal Mgt. Specialist | susan.tagab@yahoo.com | 035-4809907 09269637453 | Mostly no data |

Republic of the Philippines
Office of the Provincial Governor
Province of Benguet

SMALL SCALE MINING PERMIT No.:
SSMP 02-2012

PERMITTEE:

ADDRESS:
DATE ISSUED:

Gambang, Bakun, Benguet
June 18, 2012

A Small Scale Mining Permit to extract naturally occurring rocks or minerals authorized under P.D. 1899 and RA 7079 from the permit area situated at Barangay Gambang, Municipality of Bakun, Province of Benguet, Island of Luzon, Republic of the Philippines is hereby granted to Goldstar Pocket Miners Association This Small Scale Mining Permit No. SSMP 02-2012 is at all times subject to the terms and conditions herein stated, to wit:

1. The small scale mining activities must at all times be confined particularly within the metes and bounds to wit:

Beginning from point marked "1" on the plan having a Latitude of 16° 45' 05.383" and Longitude of 120° 45' 53.681" being S 63° 30' W, 1660.09 meters from triangulation Station Gambang, Bakun, Benguet thence;

S 70° 37' E: 151.85 meters to point "2" thence
N 51° 50' E: 211.92 meters to point "3" thence
S 8° 50' E: 196.98 meters to point "4" thence
S 10° 22' E: 206.11 meters to point "5" thence
S 26° 49' W: 227.73 meters to point "6" thence
N 54° 48' W: 197.76 meters to point "7" thence
N 17° 15' W: 401.12 meters to point "1" which is the point of beginning containing an area of 13.690 hectares.

2. That this permit is for a period of two (2) years from June 18, 2012 to June 17, 2014, renewable for like periods, provided that the application for renewal shall be filed a month before the expiry date hereof.

3. This permit shall be for the exclusive use of the permittee and shall not be transferred without the written approval of the Provincial Governor as the case maybe.

4. This permit maybe suspended or revoke at any time by the Provincial Governor, as the case maybe, when in their opinion, public interest, welfare and peace and

17. Safe mining and extraction procedures should be in accordance with the Administrative Order No. 97-30 known as the Small Scale Mine Safety Rules and Regulations;

18. The Association should compensate all damages to public or private properties attributed to the small scale mining operations.

FOR THE REPUBLIC OF THE PHILIPPINES
Grantor

NESTOR B. FONGWAN
Provincial Governor

I, Ms. Nenita Taguda representing the Goldstar Pocket Miners Association hereby accepts the terms and conditions of this Small Scale Mining Permit.

SIGNED IN THE PRESENCE OF:

order and other conditions so require or demand or upon failure of the permittee to comply with other terms and conditions stated in the permit or for ecological reasons without obligations on the part of the government;

5. The permittee shall within twelve (12) months from the date of issuance of this permit, place the area in actual production and failure to place the area in actual production within the period aforesaid without justification shall cause the automatic cancellation of the permit;

6. The permittee shall submit to the Provincial Government a quarterly production report within thirty (30) days after the end of each quarter;

7. The statement made in the application and those made later in support thereof shall be considered as conditions and essential parts of the Permit and any misrepresentation contained herein, shall be a cause for the suspension or cancellation of the Permit;

8. The Penal provisions of P.D. 463, as amended, with the emphasis on "theft of minerals" are deemed included and adopted;

9. The permittee shall pay the appropriate taxes and fees due to the Provincial Government;

10. In the event that this permit encompasses prior valid and subsisting mining claims, said permit shall be considered automatically cancelled. However, if it involves partial conflict, the area in conflict with prior valid and subsisting mining claims shall be automatically excluded from the area;

11. The permittee shall police the permit area against forest fires, illegal cutting of trees, illegal mining and processing;

12. The permittee shall also establish a nursery and conduct tree planting activity within the permit area once a year;

13. In case the permittee is in need of timber for underground operations, he shall secure said timber from legal source;

14. The permittee shall see to it that the effluents shall conform with the standards set forth under DAO 35 (water Quality Standard for Effluents) and DAO 26 of P.D. 6069 (Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990);

15. The permittee shall be held responsible for the safety of the miner/workers in the area. If there is a need for safety, health and environment (SHE) monitoring, the permittee shall request concerned agencies in the conduct of such. The permittee shall also be responsible for any damages resulting from his mining operation;

16. Monthly monitoring by the Technical Working of the Provincial Mining Regulatory Board of Benguet shall be conducted in coordination with concerned agencies;

ACKNOWLEDGEMENT

Republic of the Philippines.....
Province of Benguet.....
Municipality of La Trinidad.....

SUBSCRIBED AND SWORN to before me, Nestor B. Fongwan with Community Tax Certificate No. 33128851 issued on 01-02-2012 at La Trinidad, Benguet in his capacity as Provincial Governor of Benguet Province and Ms. Nenita Taguda with Community Tax Certificate No. _____ issued on _____ at _____, known to me to be the same person who executed the foregoing document, and acknowledged to me that the same is his free voluntary act and deed, as permittee and for four (4) pages, including this acknowledgement page is a Small Scale Mining Permit to extract metallic bearing materials at Gambang, Bakun, Benguet.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this _____ day of _____, 2012 at La Trinidad, Benguet.

NOTARY PUBLIC
ATTY. CAROLINE R. VALLA
PTR No. 28923-1-2-11-11-11
RFP No. 8161-1-1-11-11-11
Roll No. 8071, 1-1-11-11

Doc. No. 245
Page No. 154
Book No. 67
Series of 2012

Republic of the Philippines
Office of the Provincial Governor
Province of Benguet

TEMPORARY SMALL SCALE MINING CONTRACT
No.: SSMC 009-2014

CONTRACTOR: _____
ADDRESS: Virac, Itogon, Benguet
DATE AWARDED: October 24, 2014

Pursuant to RA 7076, and Section 14 of DAO No. 2012-07, IRR of EO 79, this Temporary Small-Scale Mining Contract is hereby awarded to Jose Carlo M. Milan Small Scale Mining Group with office address at Virac, Itogon, Benguet as per Resolution No. 30, Series of 2014 by the Provincial Mining Regulatory Board (PMRB).

This CONTRACT is for a period of six (6) months from October 24, 2014 to April 23, 2015, renewable for like periods, or upon the discretion of the Board in accordance to existing laws.

The Contractor, through this award shall have the right to mine, extract and dispose mineral ores for commercial purposes under the following conditions:

1. Undertake mining activities in accordance with a mining plan duly approved by the Board.
2. Abide by the Small-Scale Mining Safety Rules and Regulations and allow access for authorized inspection teams of the Board to undertake periodic monitoring.
3. Submit to the Board the required agreement/consent/waiver of the holder of mining rights, owners of ancestral domain/land, where the small-scale mining activities are located.
4. Pay all taxes and fees, and others as maybe provided by law.
5. Comply with pertinent laws, policies, rules and regulations on environmental protection and conservation (e.g. tree cutting, pollution control, mineral processing, use of toxic chemicals).
6. File under oath at the end of each quarter a detailed production and financial report to the Board.
7. Assume responsibility of the registration with the Board of all its members as miners, and ensure their safety at all times while working in the mines.

8. Agree to the establishment of common, safe and efficient custom mills to process minerals or ore-bearing materials and tailings storage facilities which shall be limited within the contract area upon approval of the Board.

9. Undertake mining activities only within the mates and bounds of the area approved by the Board for the Contractor as described hereunder.

(Site plan and technical description of the area applied for, including the mining plan, both approved by the Board, shall form part of the Temporary Small-Scale Mining Contract.)

10. That the Contractor during the pendency of this CONTRACT, must endeavor to pursue his application for the declaration as Minahang Bayan.

11. This CONTRACT is non-transferable, and;

12. This Temporary Small-Scale Mining Contract awarded to the Contractor maybe suspended/rescinded/canceled for violations of any of the herein stipulated conditions, upon due notice and hearing by the Board.

IN WITNESS WHEREOF, the parties to this TEMPORARY SMALL-SCALE MINING CONTRACT hereby affix their signatures:

FOR THE REPUBLIC OF THE PHILIPPINES
Grantor

NESTOR B. FONGWAN
Provincial Governor

I hereby accept the terms and conditions of this TEMPORARY SMALL-SCALE MINING CONTRACT as stated above.

Signed in the presence of:

ACKNOWLEDGEMENT

Republic of the Philippines
Province of Benguet
BAGUIO CITY

SUBSCRIBED AND SWORN to before me, Nestor B. Fongwan with Community Tax Certificate No. 13421551 issued on 01-03-2014 at La Trinidad, Benguet in his capacity as Provincial Governor of Benguet Province and Mr. Jose Carlo M. Milan exhibiting to me his residence certificate no. 2972132 issued at Virac, Benguet Benguet on 24-10-2014 known to me to be the same person who executed the foregoing document, and acknowledged to me that the same is her free voluntary act and deed, as permittee and for three (3) pages, including this acknowledgement page is a permit to extract metallic bearing materials at Virac, Itogon, Benguet.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 24 day of October, 2014 at BAGUIO CITY

NOTARY PUBLIC

Doc. No.: 297
Page No.: 28
Book No.: 29
Series of: 2014

SMALL-SCALE MINING CONTRACT
NO.: 14-046

This SMALL-SCALE MINING CONTRACT is made and entered into in Koronadal City, South Cotabato, Philippines, this 4th day of MARCH 2014 by and between:

THE REPUBLIC OF THE PHILIPPINES, herein referred to as the PROVINCIAL GOVERNMENT OF SOUTH COTABATO, represented in this act by the Provincial Governor of South Cotabato, with offices at the Provincial Capitol Compound, Alunan Avenue, Koronadal City, South Cotabato.

and

ESTHER P. DAQUIL, owner of 345 L-W TUNNEL herein referred to as the SMALL-SCALE MINING CONTRACTOR, with area located within the area of 21 hectares declared as Small Scale Mining site at SITIO TUNNEL, KEMATU, TSOI, SOUTH COTABATO

WITNESSETH:

WHEREAS, the 1987 Constitution of the Republic of the Philippines provides in Article XII, Section 2 thereof that all lands of the public domain, waters, minerals, coal, petroleum and other natural resources are owned by the State and that their exploration, development and utilization shall be under the full control and supervision of the State;

WHEREAS, Section 9 of Republic Act No. 7076, otherwise known as "People's Small Scale Mining Act of 1991" provides, among others, that a people's small-scale mining contract may be awarded by the Provincial Mining Regulatory Board to small-scale miners who have voluntarily organized and have duly registered with the appropriate government agency as an individual miner or cooperative;

WHEREAS, DENR Administrative Order No. 37, Series of 1992 Amended (Guidelines for the Transfer and Implementation of DENR Functions Devolved to the Local Government Units) provides that the small-scale mining permits prescribed under the provisions of PD 1899 and RA 7076 shall be issued by the Provincial Governor upon area clearance from the concerned DENR regional office and upon recommendation by the Provincial Mining Regulatory Board.

NOW, THEREFORE, for and in consideration of the foregoing premises, the mutual covenants, terms and conditions hereinafter set forth, it is hereby stipulated and agreed as follows:

SECTION I
SCOPE

- 1.1. This Contract is a Small-Scale Mining Contract entered into pursuant to the provisions of R.A. No. 7076, its implementing rules and regulations and Provincial Ordinance No. 07, Series of 2003.
- 1.2. The Small-Scale Mining Contractor shall undertake and execute, for and on behalf of the Provincial Government of South Cotabato, sustainable small-scale mining operations in accordance with the provisions of this Contract, and is hereby constituted and appointed, for the purpose of this Contract, as the exclusive entity to conduct small-scale mining operations in the Contract Area and in no case shall the contract be subcontracted, assigned or otherwise transferred to a second party.

SECTION II
TERM OF CONTRACT

- 2.1. This contract shall be renewable on or before January 31, 2016 subject to verification by the Board as long as the small-scale mining contractor complies with the provisions set forth in RA 7076 and its implementing rules and regulations and pertinent Ordinance passed by the Sangguniang Panlalawigan of South Cotabato, and confers upon the contractor the right to mine, extract and dispose of mineral ores for commercial purposes over the area covered thereby.

SECTION III
CONTRACT AREA

- 3.1. Size, Shape, and Location of Contract Area - This Agreement covers within the area of 21 hectares declared as Small Scale Mining site at SITIO TUNNEL, BARANGAY KEMATU, TSOI, SOUTH COTABATO and bounded by the following technical description:
6° 11'45" to 6° 12'00" North Latitude and 124° 51'15" to 124° 51'30" East Longitude

SECTION IV
FISCAL REGIME

- 4.1. The Small-Scale Mining Contractor shall pay to the Government the following:
 - a. Income Tax as provided in the National Internal Revenue Code (R.A. 8424);
 - b. Special Import Tax (if applicable);
 - c. Tariff Duties (if applicable);
 - d. Value Added Tax as provided in E.O. 273;
 - e. Real Property Tax (if applicable);
 - f. Excise Tax;
 - g. Others fees and taxes as determined by the Provincial Government.

SECTION V
RIGHTS AND OBLIGATIONS OF THE PARTIES

- 5.1. Obligations of the Small-Scale Mining Contractor:
 - a. To undertake mining activities only in accordance with a mining plan duly approved by the Provincial Governor/Board.
 - b. To abide by the Small-Scale Mine Safety Rules and Regulations per DENR Administrative Order No. 97-30, Series of 1997 and other rules and regulations which may be promulgated by the DENR Secretary;
 - c. To pay all taxes, royalties or government production share as are now or may hereafter be provided by laws.
 - d. To comply with pertinent rules and regulations on environmental protection and conservation, particularly those on tree-cutting, mineral processing and pollution control.
 - e. To file under oath at the end of each month a detailed production financial report to the Board.
 - f. To assume responsibility for the safety of persons working in the mines.
 - g. To allow access to the authorized personnel of the Provincial Government or the PMRB during reasonable hours in inspecting the Contract Area and examining pertinent records for purposes of monitoring compliance with the terms of this Contract;
- 5.2. Rights of the Small-Scale Mining Contractor:
 - a. To conduct Small-Scale Mining Operations within the confines of its Contract Area in accordance with the terms and conditions hereof and without interfering with the rights of other Contractors/Lessee/Operators/ Permittees/Permit Holders;
 - b. Possession of the Contract Area, with full right of ingress and egress and the right to occupy the same, subject to surface and easement rights;
 - c. To enjoy easement rights and use of timber, water and other natural resources in the Contract Area subject to pertinent laws, rules and regulations and the rights of third parties;
- 5.3. Obligations of the Provincial Government:
 - a. To ensure that the Small-Scale Mining Contractor has the Government's full cooperation in the exercise of the rights granted to it under this Agreement; and
 - b. To use its best efforts to ensure the timely issuance of necessary permits and similar authorizing documents for use of the surface of the Contract Area;

Annex 7. List of Registered SSM Contractors in Benguet, as of August 2015

| Name of Permit Holder or Contract Holder (Company, Cooperative or Individual) | Type of Metallic Mineral (Gold, Silver, Chromite, etc.) | Municipality Located | Barangay Located | Date Issued | Contract Duration/ Period Validity | Permit or Contract No. |
|---|---|----------------------|------------------|--------------|------------------------------------|------------------------|
| Goldstar Pocket Miners Association (GPMA) | Gold and other associated minerals | Bakun | Gambang | Aug 14, 2014 | Aug 14, 2014 to Feb 13, 2015 | SSMC 006-2014 |
| Billy Ayadi | Gold and other associated minerals | Itogon | Ampucao | Oct 24, 2014 | Oct 24, 2014 to Apr 23, 2015 | SSMC 007-2014 |
| William-Butch Small Scale Mining Ass'n (WBSSMA) | Gold and other associated minerals | | Ampucao | Apr 29, 2014 | Apr 29, 2014 to Oct 28, 2014 | SSMC 004-2014 |
| Jose Carlo Milan | Gold and other associated minerals | | Ampucao | Oct 24, 2014 | Oct 24, 2014 to Apr 23, 2015 | SSMC 009-2014 |
| Juan Carlo Milan | Gold and other associated minerals | | Ampucao | Oct 24, 2014 | Oct 24, 2014 to Apr 23, 2015 | SSMC 008-2014 |
| Rino Pocket Mining Association | Gold and other associated minerals | | Loacan | | | |
| Yanggold Tocmo Binatangan Pocket Miners Ass'n, Inc. | Gold and other associated minerals | | Tuding | | | |
| Bayudang-Maging Clan Small Scale Pocket Miners Association | Gold and other associated minerals | Mankayan | Taneg | Apr 29, 2014 | Apr 29, 2014 to Oct 28, 2014 | SSMC 002-2014 |
| Jesson Cervantes Group SSM | Gold and other associated minerals | | Taneg | Aug 14, 2014 | Apr 29, 2014 to Oct 28, 2015 | SSMC 005-2014 |
| Lower Suyoc Taneg Pocket Miners Ass'n | Gold and other associated minerals | | Taneg | Apr 29, 2014 | Apr 29, 2014 to Oct 28, 2016 | SSMC 003-2014 |
| Camp Six Explorer's Small Scale Mining Association | Gold and other associated minerals | Tubo | Camp 4 | Apr 29, 2014 | Apr 29, 2014 to Oct 28, 2017 | SSMC 001-2014 |
| Goldstream Pocket Miners Ass'n | Gold and other associated minerals | | Camp 4 | | | |

Annex 7.A List of Approved CADTs in Benguet

| Ancestral Domain | Location | CADT No. | CEB Res. No. | Date approved by the CEB | Area (has) | Beneficiaries | | CADC No./ Process | Remarks |
|------------------|--|-------------------|--------------|--------------------------|-------------|---------------|-------------------------------|-------------------|--|
| | | | | | | No. | Tribe | | |
| Bakun | Bakun, Benguet | CAR-BAK-0702-0001 | 01-2002-AD | 18 July 2002 | 29,444.3449 | 17,218 | Kankanaey & Bago | CAR-CADC-120 | Awarded to ICCs on July 20, 2002. Registered |
| Kibungan | Kibungan Kibungan, Benguet | CAR-KIB-0204-016 | 12-2004-AD | 13 February 2004 | 22,836.8838 | 15,472 | Kankanaey | CAR-CADC-071 | Awarded to ICCs on March 22, 2004 but not yet registered |
| Atok | Atok, Benguet | CAR-ATO-1204-026 | 25-2004-AD | 25-2004-AD 14 Dec. 2004 | 20,017.6498 | 15,634 | Kankanaey & Ibaloy | | Awarded to ICCs on December 28, 2006. Registered on June 7, 2006. |
| Kapangan | Barangays of Balakbak, Belengbelis, Boklaosan, Cayapes, Cuba, Datakan, Gadang, Gasweling, Labueg, Paykek, Poblacion Central, Pudong, Pongayon, Sagubo and Taba-ao, all in the Municipality of Kapangan | CAR-KAP-1106-050 | 8-2006-AD | 14 Nov. 2006 | 17,127.0894 | 15,995 | Kankanaey & Ibaloy | | Transmitted to LRA for re-projection |
| Buguias | Buguias, Benguet | CAR-BUG-0308-065 | 62-2008-AD | 26 March 2008 | 17,155.0000 | 35,510 | Kankanaey & Kalanguya | | CADC-072 conversion. With LRA comments; for segregation of titled properties |
| Kabayan | Kabayan, Benguet | CAR-KAB-0308-064 | 61-2008-AD | 26 March 2008 | 22,880.8600 | 11,837 | Kalanguya, Ibaloy & Kankanaey | | CADC-037 conversion. Transmitted to LRA for re-projection |
| Tublay | Tublay, Benguet | CAR-TUB-0908-081 | 78-2008-AD | 03 Sept. 2008 | 9,934.0955 | 11,065 | Kankanaey & Ibaloy | | Transmitted to LRA for re-projection on 7/20/09 |
| Bokod | Bokod, Benguet | CAR-BOK-0908-080 | | 03 Sept. 2008 | 41,223.3249 | 12,356 | Ibaloy, Karao & Kalanguya | | with LRA comments; for segregation of titled properties) |
| Sablan | Sablan, Benguet | CAR-SAB-1008-082 | 79-2008-AD | 09 October 2008 | 11,585.9780 | 1,513 | baloy | | Transmitted to LRA for re-projection on 7/20/09 |
| La Trinidad | La Trinidad, Benguet | CAR-LAT-1008-085 | 82-2008-AD | 10 October 2008 | 7,313.3416 | 26,842 | Kankanaey, Ibaloy & Kalanguya | | Transmitted to LRA for projection on 2-25-09 |

Annex 7.A List of Approved CADTs in Benguet

| Ancestral Domain | Location | CADT No. | CEB Res. No. | Date approved by the CEB | Area (has) | Beneficiaries | | CADC No./ Process | Remarks |
|------------------|---------------------------|------------------|--------------|--------------------------|-------------|---------------|-------------------|-------------------|--|
| | | | | | | No. | Tribe | | |
| Mankayan | Mankayan, Benguet | CAR-MAN-1208-094 | 91-2008-AD | 17 Dec. 2008 | 13,290.0000 | 24,423 | Kankanaey | | Transmitted to LRA for re-projection; Transmitted to DAR and DENR projection |
| Itogon | Itogon, Benguet | CAR-ITO-0709-121 | | 22 July 2009 | 41,290.3237 | 27,229 | Kankanaey/ Ibaloy | | Map projection to LRA |
| Domolpos | Domolpos, Itogon, Benguet | CAR-ITO-0210-156 | | 11 February 2010 | 7,081.9328 | | Iwak & Kalanguya | CADC 088 | |

Annex 8. List of SSM Contractors in Itogon, based on Province

A. SMALL SCALE MINING ASSOCIATIONS WITH TEMPORARY SMALL SCALE MINING CONTRACTS

| Barangay | Name of Association/ Operator | Name of President | Location | Status of Operation | # of SSM Work Force | # of ADITS | # of Ball/ Rod Mill | Area (Has) | # of CIP/ CIL |
|----------|---|-------------------|-----------------|---|---------------------|------------|---------------------|------------|---------------|
| Ampucao | Billy Ayadi | Billy Ayadi | Ampucao, Itogon | TSSM contract approved by PMRB | 17 | 4 | 1 | 9.903 | 1 |
| Ampucao | William-Butch Small Scale Mining Ass'n (WBSSMA) | Edgar B. Sacpa | Ampucao, Itogon | Application for TSSMC renewal is ready for deliberation | 45 | 2 | 2 | 4.17 | 2 |
| Ampucao | Jose Carlo Milan | Jose Carlo Milan | Ampucao, Itogon | Existing TSSM contract | | | | | |
| Ampucao | Juan Carlo Milan | Juan Carlo Milan | Ampucao, Itogon | Existing TSSM contract | | | | | |
| Loacan | Rino Pocket Mining Association (RPMA) | Morgan Bumacas | Loacan, Itogon | Renewal of application on process | 62 | 2 | 3 | 2.0051 | 2 |
| Tuding | Yanggold Tocmo Binatangan Pocket Miners Ass'n, Inc. | Gina S. Abanga | Tuding, Itogon | Renewal of application on process | 30 | 15 | 8 | 15.4 | 5 |
| | | | | TOTAL | 154 | 23 | 14 | 31.4781 | 10 |

B. SMALL SCALE MINING ASSOCIATIONS WITHOUT PERMITS

| Barangay | Name of Association/ Operator | Location | Status of Operation | No. of SSM Work Force | No. of ADITS | No. of Ball/ Rod Mill | Area (Has) | No. of CIP/ CIL |
|----------|--|-----------------|---------------------|-----------------------|--------------|-----------------------|------------|-----------------|
| Ampucao | Nay-en Taluan Small Scale Miners Ass'n, Inc. (NTSSMAI) | Ampucao, Itogon | w/o SSM permit | 124 | 16 | 16 | | none |
| Ampucao | Ud-udan Calhorr Bayating Camote Miner's Association | Ampucao, Itogon | w/o SSM permit | 275 | 31 | 23 | 12.566 | 5 |
| Ampucao | Purok Singko Private Miners & Gold Panners Ass'n | Ampucao, Itogon | w/o SSM permit | 40 | 16 | 13 | | 12 |

Annex 8. List of SSM Contractors in Itogon, based on Province

| Barangay | Name of Association/ Operator | Location | Status of Operation | No. of SSM Work Force | No. of ADITS | No. of Ball/ Rod Mill | Area (Has) | No. of CIP/ CIL |
|-----------|--|-------------------|---------------------|-----------------------|--------------|-----------------------|------------|-----------------|
| Ampucao | Palonopon Small Scale Mining Ass'n (PSSMA) | Ampucao, Itogon | w/o SSM permit | 52 | 9 | 5 | | 7 |
| Ampucao | Saddle Heartwell Goldcoin Goldhill Livelihood Add'n (SHGGLA) | Ampucao, Itogon | w/o SSM permit | 243 | 30 | 15 | 17.9 | 10 |
| Ampucao | Sais Small Scale Mining Ass'n (SSSMA) | Ampucao, Itogon | w/o SSM permit | 44 | 12 | 6 | 20.00 | 6 |
| Ampucao | Sitio Samuyao Gold Panners Ass'n (SSGPA) | Ampucao, Itogon | w/o SSM permit | 12 | 19 | 9 | | none |
| Ampucao | William-Butch Small Scale Mining Ass'n (WBSSMA) | Ampucao, Itogon | w/ SSM permit | 42 | 2 | 2 | 4.17 | 2 |
| Ampucao | Dontog Manganese Pocket Miners Association | Ampucao, Itogon | w/o SSM permit | 110 | 1 | 12 | 15.99 | 8 |
| Ampucao | Nagawa Small Scale Miners Association | Ampucao, Itogon | w/o SSM permit | 32 | 12 | 8 | | 2 |
| Gumatdang | Pedped Surong Small Scale Miners and Neighborhood Ass'n | Gumatdang, Itogon | w/o SSM permit | 20 | 4 | 3 | 17.53 | none |
| Gumatdang | Dalisay Camote Miners Association (DCMA) | Gumatdang, Itogon | w/o SSM permit | 339 | 33 | 23 | 19.800 | none |
| Loacan | Antamok Loacan Northwall Miners Association (ALNMA) | Loacan, Itogon | w/o SSM permit | 252 | 15 | 37 | 7.0396 | none |
| Loacan | Loacan-Itogon Pocket Miners Association, Inc. | Loacan, Itogon | w/o SSM permit | | | | | |
| Loacan | Luneta Miners Association | Loacan, Itogon | w/o SSM Permit | 697 | 46 | 46 | 16.27 | none |
| Loacan | Baka Rino Tacong Small Scale Mining Association (BARITA) | Loacan, Itogon | w/o SSM permit | | 3 | 5 | | none |
| Loacan | Gerson Tamang | Loacan, Itogon | w/o SSM permit | 14 | 3 | 3 | 3.0948 | none |
| Loacan | Badjengan Ampasit Pocket Miners Association (BAPMA) | Loacan, Itogon | w/o SSM permit | | 13 | 12 | | 2 |

Annex 8. List of SSM Contractors in Itogon, based on Province

| Barangay | Name of Association/ Operator | Location | Status of Operation | No. of SSM Work Force | No. of ADITS | No. of Ball/ Rod Mill | Area (Has) | No. of CIP/ CIL |
|----------|---|-------------------|--|-----------------------|-----------------|--------------------------|-----------------------|--------------------|
| Loacan | Goldfield Saranay Community Miners Association (GSCMA) | Poblacion, Itogon | w/o SSM permit | 145 | 36 | 32 | 16.77 | none |
| Loacan | Cattle Herders Association of Poblacion (CHAP) | Poblacion, Itogon | w/o SSM permit | 57 | 7 | 2 | | none |
| Loacan | Tuding Integraed Rural Assistance for Development (TIRAD) | Tuding, Itogon | w/o SSM permit | 4 | 50 | 20 | | |
| Ucab | Gold Creek Amte Community Association Inc. (GCACAI) | Ucab, Itogon | w/o SSM permit | 112 | 30 | 12 | 5.1143 | 2 |
| Ucab | Southern Ucab Small Scale Miners Association (SUSSMA) | Ucan, Itogon | w/o SSM permit | 230 | 130 | 26 | 11.996 | 20 |
| Ucab | Midas Ducot Community Livelihood Association (MDCLA) | Ucab, Itogon | w/o SSM permit | 83 | 40 | 4 | 10.433 | 8 |
| Ucab | Garrison Small Scale Miner's Association | Ucab, Itogon | w/o SSM permit | 96 | | | 6.2412 | |
| Ucab | Cacaok Small Scale Mining Association | Ucab, Itogon | w/o SSM permit | 36 | 2 | 5 | | 2 |
| Ucab | Ucab Itogon Miners Association | Ucab, Itogon | w/o SSM permit | 79 | 69 | 42 | 7.6987 | 31 |
| Ucab | Lower Gomok Wokers Cooperative (LGWC) | Ucab, Itogon | MOA under negotiation w/ Benguet Corporation | 903 | 89 | 18 | Underground operation | 11 |
| Virac | Acupan Contract Mining Project (ACMP) | Virac, Itogon | MOA under negotiation w/ Benguet Corporation | 404 | BC working area | BC Mill | | BC Plant |
| | Acupan Upper Camp Community Livelihood Ass'n | Virac, Itogon | w/o SSM permit | 1033 | 55 | 60 | 15.713 | 20 |
| | Camp 5 Community Small Scale Mining & Livelihood Ass'n | Virac, Itogon | w/o SSM permit | 348 | 35 | 21 | | 5 |
| | Cadaklan Riverside Association | Virac, Itogon | w/o SSM permit | 82 | | | | |
| | Camp Suerte Livelihood Asociation (CSLA) | Virac, Itogon | w/o SSM permit | 213 | 70 | 15 | 15.161 | 7 |

Annex 8.A List of SSM Contractors in Itogon, based on MGB-CAR

| | List of Small Scale Miners Association |
|----|---|
| 1 | 4J Construction |
| 2 | Abalos Small Scale Mining (ASSM) |
| 3 | ACMP-Contractors Small Mining Association |
| 4 | Acupan Upper Camps Community Livelihood Association (ACUCCLA) |
| 5 | ALS Enterprise Inc. |
| 6 | Antamok Loacan Northwall Miners Association |
| 7 | AUV Mine Developers (ACMP) |
| 8 | Baayan Small Scale Mining Association (BSSMA) |
| 9 | Balbalio Acay Association Inc. (BAAI) |
| 10 | Batuang Pocket Miners Association (BPMA) |
| 11 | Benguet Federation Of Small Scale Miners, Inc. |
| 12 | Bosyong Mining Enterprise |
| 13 | Cacaok Pocket Miners Association |
| 14 | Camado Clan Association (CCA) |
| 15 | Camp 5 Community Small Scale Mining & Livelihood Association |
| 16 | Camp 5 Small Scale Miners Association (CESSMA) |
| 17 | Camp Suerte Livelihood Association |
| 18 | Dalicno Proper Traditional Miners Association |
| 19 | Dalisay Camote Miners Association |
| 20 | Dapong Bubon Small Scale Miners Association |
| 21 | Dontog Manganese Pocket Miners Association |
| 22 | Gold-Creek Amte Community Association (GCACAI) |
| 23 | GTCC Acupan Contract Mining Project Area 7 |
| 24 | Gumatdang Pocket Miners Association |
| 25 | J Group Igorot Tribal Community Association Inc. (JGITCAI) |
| 26 | John Naboye & Company (JNC) |
| 27 | Keystone Community Livelihood Association (KCLA) |
| 28 | Loacan Itogon Pocket Miners Association |
| 29 | Lower Acupan Private Miners Association (LAPMA) |
| 30 | Luneta Miners Association |
| 31 | Macaag Small Scale Mining Group (MSSMG) |
| 32 | Makega Small Scale Mining Association (MSSMAI) |
| 33 | Midas Ducot Community Livelihood Association (MDLCLA) |
| 34 | Natividad Cadingpal Small Scale Miner Operator |
| 35 | Nay-en Small Scale Miners Association |

Annex 8.A List of SSM Contractors in Itogon, based on MGB-CAR

| | List of Small Scale Miners Association |
|----|---|
| 36 | Official Mining Venture |
| 37 | Palonopon Private Miners Association |
| 38 | Pines Green Gold Mining (PGGM) |
| 39 | PSLT Gold Mining Ventures |
| 40 | Pusok Singko Private Miners And Gold Panners Association |
| 41 | Sabkil Small Scale Mining Group |
| 42 | Saddle Heartwell, Goldhill Gold Coin Livelihood Association, Inc. |
| 43 | Saes Small Scale Mining & Livelihood Association |
| 44 | Samoyao Gold Panners Association |
| 45 | Southern Ucab Small Scale Miners Association |
| 46 | Tirad Mining Corporation |
| 47 | Tirad Small Scale Mining Association |
| 48 | Tocmo-Tuding Pocket Miners Association |

Annex 8.B List of Benguet Corporation – Acupan Gold Project Contractors

| | | |
|----|---|------------------------------|
| 1 | 4j Construction | Ma. Theresa Joson |
| 2 | Acupan Upper Camps Community Livelihood Association (ACCUCLA) | James Bongsalo/J. Cayamdas |
| 3 | AMMO | Violeta/Joseph Sibayan |
| 4 | BLDM | Antonio Balbalin Jr. |
| 5 | CCAI | Nestor Camado |
| 6 | Camp 5 Small Scale Miners Association (CESSMAI) | Bernard Elitan |
| 7 | DBPMAI | Delson Codmos |
| 8 | FBK | Balbina Kitan |
| 9 | JMD | Jm Dacyon |
| 10 | JTS | Joseph Sibayan |
| 11 | NDB | Noel Bilibli |
| 12 | NDC | Natividad Cadingpal |
| 13 | OGMV | Bruce Oloson/Brenda Aquiapao |
| 14 | Official Mining Venture (OMV) | Conchita Oficial |
| 15 | PDKACS | Kidkid, Pablo |
| 16 | TBS/PFS | Pedro Sayod |
| 17 | PsIt Gold Mining Ventures (PSLT) | Priscilla Tongalag |
| 18 | RCA | Ricky Acay |
| 19 | RSSMAI | Angelita Tanding |
| 20 | SAPO | Gilbert Sibayan |

| | | |
|----|--|------------------|
| 21 | Sais Small Scale Mining Association (SSSMAI) | Agapito Sagandoy |
| 22 | TMG | Audie Ramos |

Annex 8.B List of Benguet Corporation – Acupan Gold Project Contractors

| Municipality | Barangay | Name of Association | Name of President | Location | Reported Legal Rights |
|--------------|----------|--|----------------------------------|--------------------------|-----------------------|
| Itogon | Ampucao | Purok Tipong Traditional Small Scale Miners Ass’n | Abraham Baguingey 09196305951 | Tipong, Dalicno, Ampucao | Newly organized |
| Itogon | Ampucao | Sabtan Ampucao Livelihood Ass’n Inc. | Brandon Palumos 09292540843 | Ampucao ,Itogon | |
| Itogon | Loacan | Loacan Itogon Pocket Miners Ass’n | Alex Siblag | Loacan, Itogon | Applied for permit |
| Bakun | Gambang | Songyoan Pocket Miners Ass’n | Elpedio Simeon 09127993878 | Gambang Bakun | Applied for permit |
| Itogon | Ampucao | Ud-Udan Calhorr Bayating Camote Miners Ass’n | Dante Bakoy 09297660442 | Ampucao, Itogon | Applied for permit |
| Itogon | Loacan | Antamok Loacan Northwall Miners Ass’n | Lopez Milo 09084562937 | Loacan, Itogon | Applied for permit |
| Mankayan | Suyoc | Bayudang Maging Clan Sspma | | Suyoc, Mankayan | W/ SSM permit |
| Tuba | Camp 4 | Mariano Kilbasen Small Scale Mining Ass’n | Alfredo Kiw-Is 09193632726 | Camp 4, Tuba | Applied for permit |
| Itogon | Ampucao | Saddle Hartwell Goldcoin Goldwill Livelihood Ass’n | Ermundo Milo | Ampucao, Itogon | Applied for permit |
| Bakun | Gambang | Goldstar Pocket Miners Ass’n | Nenita Taguda | Gambang, Bakun | With SSM permit |
| Itogon | Ampucao | Nay-En Taluan Small Scale Miners Assn Inc | Ricardo N. Liwayan | Ampucao, Itogon | |
| Itogon | Ampucao | Purok Singko Private Miners & Gold Panners Association | Estrella Kildo | Ampucao, Itogon | |
| Itogon | Ampucao | Pulonupon Small Scale Mining Ass’n | Gerson Bugnosen | Ampucao, Itogon | |
| Itogon | Ampucao | Sais Small Scale Mining Ass’n | Manny Bongtan | Ampucao, Itogon | |

Annex 8.B List of Benguet Corporation – Acupan Gold Project Contractors

| Municipality | Barangay | Name of Association | Name of President | Location | Reported Legal Rights |
|--------------|-----------|--|------------------------------|------------------------|-----------------------|
| Itogon | Ampucao | Sitio Samuyao Gold Panners Assn | Francis Tolin | Ampucao, Itogon | |
| Itogon | Ampucao | William Butch Ssm Ass'n | Edgar Sacpa | Dalicno, Ampucao | Temporary SSM |
| Itogon | Ampucao | Dontog Manganese Pocket Miners Ass'n | Ninoy Kido | Dalicno, Ampucao | Applied for permit |
| Itogon | Gumatdang | Pedped Surong Ssm Ass'n | Yshmael Camza | Gumatdang, Itogon | |
| Itogon | Gumatdang | Dalisay Camote Miners Ass'n | Melchor Dayag 09086074534 | Gumatdang Itogon | Applied for permit |
| Itogon | Loacan | Rino Pocket Mining Ass'n | Morgan Bumacas | Bakong, Loacan | With SSM |
| Itogon | Loacan | Baka Rino Tacong Ssm Ass'n | Quintino Aquidang | Loacan Itogon | |
| Itogon | Loacan | Luneta Miners Ass'n | John Latongan | Luneta, Loacan, Itogon | Applied for permit |
| Itogon | Loacan | Badjengan Ampasit Pocketminers Ass'n | Antolino Adais | Loacan, Itogon | |
| Itogon | Poblacion | Wongbi Mining Company | Tony Chog-Ap | Poblacion, Itogon, | Processors's permit |
| Itogon | Poblacion | Goldfield Poblacion Pocket Miners Ass'n | Cresencio Bentes 09126419369 | Poblacion, Itogon | Applied for permit |
| Itogon | Poblacion | Cattle Herders Ass'n Of Poblacion | Jacob Carantes | Poblacion, Itogon | |
| Itogon | Tuding | Yanggold Tocmo Mangga Binatangan Ssm Inc. | Gina Abangga 09213307280 | Tufing, Itogon | With SSM permit |
| Itogon | Tuding | Tuding Integrated Rural Assistance For Development | | | |
| Itogon | Ucab | Goldcreek Amti Community Ass' | Conrado Sicdadoyn | Ucab, Itogon | Applied for permit |
| Itogon | Ucab | Southern Ucab Ssminers Ass'n | Peter Eok 09084337638 | Ucab, Itogon | Applied for permit |
| Itogon | Ucab | J-Group Igorot Tribal Community Ass'n | Lomino N. Kaniteng | Ucab, Itogon | |

Annex 8.B List of Benguet Corporation – Acupan Gold Project Contractors

| Municipality | Barangay | Name of Association | Name of President | Location | Reported Legal Rights |
|--------------|--------------|--|----------------------------|----------------------------|-------------------------------------|
| Itogon | Ucab | Midas Ducot Community Livelihood Ass'n | Pedro Otiguey | Midas, Ucab, Itogon | Applied for permit |
| Itogon | Ucab | Wongbi Mining Company | Antonio Chog-Ap | Antamok Area, Ucab, Itogon | Moa w/ Benguet Corp |
| Itogon | Ucab | Cacaok Small Scale Mining Ass'n | Sison Balaoen | Malasin, Ucab, Itogon | |
| Itogon | Ucab | Lower Gumoc Workers Cooperative | Daniel Bolhayon | Ucab, Itogon | Applied for permit |
| Itogon | Ucab | Garrison Small Scale Miners Ass'n | David Dalisay 09464546863 | Garrison, Ucab, Itogon | Applied for permit |
| Itogon | Ucab | Spanish Empire Pocket Miners Ass'n | Tagapong | Ucab, Itogon | Itogon |
| Itogon | Virac | Acupan Contract Mining Project | Noel Bilibli | Virac, Itogon | MOA w/ Benguet Corp (joint venture) |
| Itogon | Virac | Acupan Upper Camp Community Livelihood Ass'n | Joseph Cayamdas | Vira, Itogon | |
| Itogon | Virac | Camp 5 Community Small Scale Mining & Livelihood Ass'n | Julio Mani | Virac, Itogon | |
| Itogon | Virac | Dapong Bubon Ssminers Ass'n | Delson Codmos | Virac, Itogon | |
| Itogon | Virac | Camp Swerte Livelihood Ass'n | Reynaldo Abance | Virac, Itogon | |
| Mankayan | Suyoc, Taneg | Palidan Igorote Indiginous People Ssminers Ass'n | Abundio Diano 09999833501 | Suyoc, Mankayan | Applied for permit |
| Mankayan | Suyoc, Taneg | Lower Suyoc Taneg Pocket Miners Ass'n | Johnny Antonio 09461265553 | Suyoc, Mankayan | With TSSMC temporary SSM contract |
| Mankayan | Paco | Paalaban Gold Panners Ass'n | Polito Domyog | Paco, Mankyan | |
| Mankayan | | Pacad Sanguan Ssm Ass'n | | | |
| Mankayan | | Gubasan-Jacinth Service Coop | | | |

Annex 8.B List of Benguet Corporation – Acupan Gold Project Contractors

| Municipality | Barangay | Name of Association | Name of President | Location | Reported Legal Rights |
|--------------|------------|---|--------------------------------|------------------------|-----------------------------------|
| Mankayan | Suyoc | Extreme Igorot Pocket Miners Ass'n Inc | Pablo Duligay | Suyoc, Mankayan | With TSSMC temporary SSM contract |
| Tuba | Camp 4 | Camp 6 Explorers Small Scale Mining Ass'n | Guillermo Padsoyan 09095450042 | Camp 4 Tuba | W/ SSM permit |
| Tubaly | Ambassador | Km. 21, Small Scale Mining Ass'n | Benato Bagsangi | Ambassador Tublay | |
| | | | | | |
| Tublay | Poblacion | Peyaki Chepdas Small Scale Mining Ass'n | Norma Paday | Poblacion Kabayan | |
| Kabayan | | Abucay-Cottop Small Scale Mining Ass'n | Peter Guinoran | | |
| Bokod | Poblacion | Bolo Small Scae Mining Ass'n | Agosto P. Matso | Bolo, Poblacion, Bokod | Applied for permit |
| | | Emerald Ssm Multi Purpose Coop | Policarpio Abidal | | |
| Tuba | Camp 4 | Goldstream Pocket Miners Ass'n | David Tomilas | Camp 4 Tuba | W/ SSM permit |
| Itogon | Loacan | Abidong Saldine Small Scale Miners Ass'n | | Loacan, Itogon | Applied for permit |
| Tublay | Ambassador | Boted Small Scale Miners Ass'n | | Ambassador Tublay | Applied for permit |
| Itogon | Virac | Camado Clan Ass'n | | Virac, Itogon | Applied for permit |
| Itogon | Ampucao | | | Samuyao Ampucao | W/ tssmc |
| Itogon | Ampucao | | | | Applied for permit |
| Itogon | Ampucao | | | | Applied for permit |
| Itogon | Ampucao | | | | Applied for permit |
| Itogon | Loacan | | | Labilab, Loacan | Applied for permit |
| Itogon | Loacan | | | Tocmo, Sabkil Loacan | |
| Itogon | Loacan | | | Bakong Loacan | |

Annex 8.B List of Benguet Corporation – Acupan Gold Project Contractors

| Municipality | Barangay | Name of Association | Name of President | Location | Reported Legal Rights |
|--------------|----------|--|---------------------------|-----------------------|-----------------------|
| Tuba | Camp 4 | | | | Applied for permit |
| Tublay | Acop | | | | Applied for permit |
| Bakun | Gambang | | | | Applied for permit |
| Atok | Cattubo | | | Quadsil, Cattubo Atok | |
| Mankayan | Taneg | | | | W/ SSM permit |
| Itoon | Ampucao | Nagawa, Ureka Besang Bogayong, Dakap Ass'n | Celia Palubos 09092382242 | | |
| Mankayan | Suyoc | Nayak Small Scale Mining Ass'n | | | Applied for permit |
| Itogon | Ucab | First Gate Community Pocket Miners Ass'n | Jacinto Kimmayong | | |
| Itogon | Ampucao | Saddle Heartwell Goldcoin Goldhill Livelihood Ass'n | | | |
| Tuba | Camp 4 | Sugalan Clan Small Scale Mining Ass'n | Angelita Sugalan | | W/o SSM permit |
| Itogon | Ucab | Otek Pocket Miners Assn | Rolly Gay-Ong | Ucab, Tram | |
| Itogon | Ampucao | Dalicno Proper Traditional Mining Association | Ceasar Carbonel | Ampucao , Itogon, | |
| Itogon | Ampucao | Bayating Upper Camp Community Ass'n. Inc | Kinley Menzi | Ampucao , Itogon, | |
| Itogon | Ampucao | Sta.Fe Ampucao Bet-Ang Tomtombek Ambanao Paoy Nangiteg | Brandon Palubos | Ampucao , Itogon, | |

LIST OF LAWS AND REFERENCES CITED AND CONSULTED

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of Environment and Natural Resources Administrative Order No. 2012-07 or the Implementing Rules and Regulations of Executive Order No. 79

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