Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

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SIXTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 984

Introduced by **HON. TEDDY BRAWNER BAGUILAT, HON. CARLOS M. PADILLA, HON. ARLENE 'KAKA' J. BAG-AO, HON. ELEANDRO JESUS F. MADRONA, HON. WALDEN F. BELLO, HON. IBARRA M. GUTIERREZ III, HON. RUFUS B. RODRIGUEZ, and HON. MAXIMO B. RODRIGUEZ, JR.**

EXPLANATORY NOTE

The Philippines is endowed with vast natural resources, including minerals, which form part of our nation's wealth and patrimony. Such wealth should serve the national economy for the benefit of the people and be shared equitably. The regulated and rational use, development and exploitation of minerals are consistent with sustainable development principles and geared towards genuine industrialization and development of agriculture.

The country's mining industry was supposed to have significantly contributed to national development. Instead, it created a massive social divide and detrimental environmental impacts.

The present mining law (Republic Act 7942) has clearly failed to address such impacts and even failed to enhance national growth in a way that effectively safeguards the environment and protects the rights of affected communities. The industry under the present framework of the law is essentially extractive which has resulted to the continuing depletion of the country's nonrenewable resources, without giving back an equitable share of benefits.

In the last three years alone, at least four major disasters related to mining occurred irreparably damaged various ecosystems.

In June 2012, fish kill in Lake Bito, a rich fishing ground in Leyte, was traced to mine wastes from Nicua Mining Corp. which was then operating in another village in MacArthur, Leyte. The bureau suspended Nicua operations following the fish kill.

On August 1, 2012 Philex Gold and Copper Mine in Padcal, Benguet leaked spilling waste into the nearby Balog creek, which flows into the Agno River and the San Roque dam. On November 25, 2012, Citinickel Mines and Development Corporation was issued a notice of violation by the

Department of Environment and Natural Resources after silt-laden water spilled from its silt pond No. 2 at its Toronto Mining Area in Barangay San Isidro, Narra, in Palawan. On February 13, 2013, Semirara Coal Mine's section of a wall in Panian, Caluya, Antique collapsed killing a number of people while others are missing. This is not to count the previous major mining disasters starting with the notorious Marcopper tragedy that left the government still begging for remunerations.

Mining sites likewise continue to invite conflict, violence and human rights violations: families massacred, objecting community leaders killed or intimidated, sacred grounds bulldozed, process of Free Prior and Informed Consent (FPIC) of indigenous peoples undermined or vitiated, houses illegally demolished, communities forcibly resettled.

Timuay Lucenio Manda of Bayog, Zamboanga del Sur survived an ambush that killed his son in September 2012.

In October 2012, Juvy Capion and her children Jordan and John were killed when their hut was strafed with gunfire while they slept in their hut in Kiblawan, Davao del Sur. Another daughter, 4-year old Vicky, was wounded and managed to escape. This killing happened during a military manhunt for Daguil Capion, Juvy's husband and one of the B'laan leaders who resisted the encroachment of a mining company into their ancestral domains.

On December 7, 2012 Cheryl Ananayo, a member of the Didipio Earthsavers' Multipurpose Association (DESAMA), and her cousin-in-law Randy Nabayay, were shot and killed while headed to Didipio town. On the same day, Rolando Quijano, a farmer and active member of the Alliance of Farmers Union in Zamboanga Del Sur (AFUZS) was shot to death at around 12:00 noon at Purok 4, Ocapan, San Miguel in the province of Zamboanga Del Sur.

On January 29, 2013 Kitari Capion, the brother of Daguil, was also killed, along with two companions, at Barangay Bong Mal in Davao del Sur. The killing was allegedly led by a Captain of the Philippine Army.

All these are either key leaders or are related to leaders organizing the opposition against mining projects adversely affecting their communities.

The mining industry also failed to contribute significantly to the Philippine economy. According to the Mines and Geosciences Bureau in 2012, mining contributed a measly 0.7% to our Gross Domestic Product (GDP) and employed an insignificant 0.7% of the total labor force. In the first quarter of 2013, when the Philippine GDP recorded an impressive 7.8% growth, the mining industry contracted.

Indeed the industry and its governing law failed to ensure the constitutionally guaranteed rights of the people to a balanced and healthful ecology, to social justice in all phases of national development, to a self-reliant and independent economy effectively controlled by Filipinos, and other important rights.

If mining is to be pursued, the current mining policy framework should be overhauled in such a way that social and environmental safeguards are clearly established to meet the needs of our people now and in the future. Priorities should be towards sustainable development and food security, where the

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This bill is therefore proposed to take the place of the current mining law. It is the product of years of consultation with mining-affected indigenous peoples, communities and stakeholders, as well as experts, whose invaluable thoughts need to be considered in crafting a law that is truly responsive to the aspirations and welfare of the Filipino people. The bill posits that it is impossible and unwise to separate mining from issues of resource use, water, food security, environment, human rights, indigenous people's rights and rights-based economic development.

This bill seeks to guarantee that the exploration, development and utilization of mineral resources will primarily benefit the Filipino people; prioritizes sustainable livelihood choices for communities; gives utmost importance to food security and livable conditions for the people; ensures that the gains from the mining industry would be maximized while preventing or mitigating its adverse effects; recognizes that the issue of environment and sustainable development is local and thus prioritizes local participation in decisions surrounding mining; ensures the protection of human rights of communities and individuals; and imposes harsh penalties for the violation of its provisions.

The immediate passage of this bill is therefore earnestly sought.

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AN ACT
TO REGULATE THE RATIONAL EXPLORATION, DEVELOPMENT AND UTILIZATION OF MINERAL RESOURCES, AND TO ENSURE THE EQUITABLE SHARING OF BENEFITS FOR THE STATE, INDIGENOUS PEOPLES AND LOCAL COMMUNITIES, AND FOR OTHER PURPOSES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

CHAPTER I
DECLARATION OF POLICIES

Section 1. Short Title. This Act shall be known as the "Philippine Mineral Resources Act of 2012".

Section 2. Declaration of Policy. It is hereby declared the policy of the State to:

a) Maintain peace and order, protect life, liberty and property and promote the general welfare;

b) Advance the medium- and long-term needs of the Philippines;

c) Encourage the advancement of the industry's technology with emphasis on existing indigenous knowledge, research and development;

d) Protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature;

e) Value the dignity of every human person and guarantees full respect for human rights;

f) Promote social justice in all phases of national development;

g) Recognize and promote the rights of indigenous cultural communities within the framework of national unity and development and protect the right to self-determination of the indigenous and Moro peoples;

h) Protect and promote the right to health of the people and instill health consciousness among them;

i) Pursue an independent foreign policy. In its relations with other states the paramount consideration shall be national sovereignty, territorial integrity, national interest, and the right to self-determination;

j) Develop a self-reliant and independent national economy effectively controlled by Filipinos;

k) Ensure the autonomy of local governments;

l) Give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good;

m) Encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation; and

n) Adopt and accept the generally accepted principles as embodied in the International Covenant on Civil and Political Rights, International Covenant on Economic, Social, Cultural Rights, UN Declaration on the Rights of Indigenous Peoples, UN Convention on Biodiversity and other international accords on human rights, labor rights, the rights of women and children, and the protection and preservation of the environment, of which the State is a party.

Section 3. Mining is vital to nation building and the economic advancement of our people. The mineral industry plays an essential role in establishing a progressive, independent and self reliant economy.

The State shall formulate a National Industrialization Program pursuant to the principles of agricultural modernization, development of industrial and manufacturing industries, and rational, sustainable, and equitable development of the national economy. Pursuant to the foregoing, the State shall implement a Mineral Management Plan that provides the framework for the utilization and management of the country's mineral resources, which will address the needs of the domestic economy and upholds the rights of industry workers, indigenous peoples and local communities.

Section 4. The judicious stewardship of our mineral resources, as well as its exploration, development and utilization shall comply with the following principles:

a) The current export-orientation of mining is hereby reversed and a domestic needs-based development of the industry shall be pursued by the State as a step towards achieving genuine economic development;

b) The mining industry shall be geared towards national industrialization and shall be built for the production of raw materials such as base metals, basic chemicals and petrochemicals needed by the basic, medium and heavy industries to produce as much consumer, intermediate and capital goods with the country's stock of finite mineral and non-mineral industrial raw materials and in the process provide jobs to the country's vast human resources;

c) The community shall actively participate in the stewardship of mineral resources. Community-based initiatives shall be encouraged and supported;

d) The State and its members shall develop its human resources and encourage the evolution of its own appropriate technologies. The State shall provide the appropriate support and protection to Filipino corporations to further develop and increase their participation in the industry. All mining industry investments shall be mutually-beneficial and help achieve the specific target and goals of the National Industrialization Program. To come up with the large capital requirement for mining, the State must use local sources such as but not limited to the granting of incentives and financial aid to local private sector investors, re-channeling of government budget allocations for foreign debt payments and military expenditures, and the proceeds from the government shares of the Malampaya Natural Gas Project;

e) The State shall allow, in exceptional cases, foreign corporations to invest in the mineral industry. Based on the National Industrialization Program and the country's capability and capacity, the government must identify the mineral areas where

foreigners can help and invest subject to rigorous screening and strict regulations as provided in this Act and related laws. The participation of foreign companies in the critical stages of minerals extraction and processing shall be in accordance with a mandatory program or agreement for technology transfer and equity shares that do not exceed 40 percent of the full capital requirements;

Provided, that capital accumulation and reinvestment within the country shall be primarily encouraged over profit repatriation by the foreign companies and that foreign mining corporations, their principals, local firms and conduits that have a bad track record in the Philippines are banned from investing in the country;

f) In land and water use, the production of sufficient food free from pollution towards food security shall always be the priority;

g) Long-term mining development shall be programmed by the State in accordance with the country's availability of resources, capability and well being of the people, technological capacity and people's acceptability. The right of Muslim Filipinos and indigenous peoples to self-determination and ancestral domain shall be recognized and their collective property rights are guaranteed by this Act;

h) Job security, adequate wages, benefits, and safe working conditions for mine workers shall be ensured in state and privately owned mining corporations. Their right to organize and form their own associations, to collective bargaining and to strike shall be upheld. The state will strictly prohibit forced and child labor in the industry;

i) Small-scale mining operations shall be supported and regulated by the state. The state will encourage the formation of cooperatives among small-scale miners and provide financial and technical support to develop the labor-intensive and upgrade the backward technologies into a more efficient and less environmentally destructive mining process. Whenever small- scale mining are stopped, alternative and sustainable livelihood shall be provided to the small-scale miners.

j) Mining operations shall not in any way create or exacerbate conflicts. In no instance shall the Armed Forces of the Philippines (AFP), the Philippine National Police (PNP) and private security and paramilitary groups be used to coerce or force the entry and protection of mining operations;

k) Mining industry research and development shall focus on harnessing more economically- efficient and less environmentally-destructive methods. The

advanced technologies from other countries that are proven to be appropriate locally shall be adopted in the industry;

l) All mining operations shall be strictly regulated to ensure the domestic processing of mineral ores up to the secondary and tertiary stages of industrial production to develop our own basic and medium industries. Recycling programs and substitution in the use of minerals shall be incorporated in the overall plan of mining development to reduce mine waste and pollution, and mining rehabilitation techniques. Indigenous technologies that are relevant and appropriate, particularly with respect to the domestic processing of minerals shall be promoted, harnessed, expanded and upgraded;

m) The State and its members shall share in the burden of satisfying the need for mineral resources primarily through reusing and recycling existing mineral products. Ecologically-sound practices at all stages of mining shall be promoted. Mining technologies such as open-pit mining and submarine mine tailing disposal methods that are banned abroad and/or proven inappropriate in countries like the Philippines must all be banned. Environmental standards shall be set to ensure the protection and efficient utilization of the country's mineral resource base. Ecological considerations in mining development shall be given due emphasis and attention to substantially eliminate destructive effects that certain mining industrial processes might have on the people's health and the environment. Monitoring mechanisms with strong participation from the local communities will be instituted;

n) Mining in environmentally-critical areas such as small island ecosystems, primary forests and watersheds shall be banned. Dumping of mine wastes and tailings to rivers, lakes and seas are prohibited; The integrity of the environment shall not be compromised; and

o) Areas affected by mining shall be rehabilitated, including abandoned mines. Violators shall be strictly punished and made to pay heavy compensation to the State and the affected communities;

Section 5.The exploration, development and utilization of natural resources must comply with the principles of intergenerational responsibility.

CHAPTER II. SCOPE AND GENERAL PRINCIPLES

Section 6. **Scope**. This Act shall govern the ownership, management and governance of both metallic and non-metallic ore minerals onshore and offshore, as well as quarry resources, sand and gravel, guano, and gemstones, and the conservation, exploration, development, utilization, processing and transportation thereof. The ownership, management and governance of petroleum, natural gas and coal shall be governed by special laws. Offshore mining shall also be governed by special laws.

This Act shall cover onshore and offshore, large-scale and small-scale mining operations in the country, including mining projects in ancestral domains in accordance to the existing national and international policies on our indigenous peoples.

Section 7. Ore minerals form part of the country's irreplaceable and non-renewable natural wealth and capital. The conservation of our mineral wealth is a paramount public interest and mineral resources shall be utilized only in a rational manner for national and local development as specified by law and the National Industrialization Program and the Mineral Management Plan. The economic benefits derived from mining shall be equitably distributed by, among others, prioritizing development for local communities and all other stakeholders directly affected by mining operations.

Section 8. The State shall have primary role, responsibility and concern in the management, conservation, utilization, and development of the mining industry and shall ensure the peoples participation in policy making and implementation of the same at all levels of government. The management of mineral resources shall be a shared concern and responsibility among the national government, corporations, all levels of local government, and the communities affected by the exploration, development, and utilization of mineral resources.

Section 9. The State shall accord support to communities dependent on small-scale mining whose operations shall strictly adhere to the provisions of this law.

Section 10. Subject to their right to self-determination, indigenous cultural communities/indigenous peoples (ICCs/IPs) own and have the responsibility to manage the mineral resources in their respective ancestral domains, free from external manipulation, interference, force threat, intimidation, coercion and other analogous acts. The State shall support indigenous cultural communities in developing capacities to effectively exercise their right and responsibility.

Section 11. Mining shall be limited in scale in accordance with this Act.

Section 12. Mineral resources development, utilization and processing shall be reserved for Filipino citizens and for Filipino corporations. Exploration shall be undertaken directly by the State for the benefit of the nation.

Section 13. Remining and recycling of mineral resources shall be prioritized over the opening of new mines to maximize and recover the remaining minerals resources from the rejects or wastes of previous mines and mining operations.

Section 14. The State shall prioritize the rehabilitation of the abandoned mines in the country. The State shall ensure the fullest compliance of all government and corporate entities in and on the closure of mines, the rehabilitation/restoration of the immediate environs or each mining project/activity in the country as provided by law.

Section 15. The State shall encourage and support Filipino private corporations and mining cooperatives to participate and invest in the mining industry on mutually-beneficial grounds that will push forward the National Industrialization Program in both small-scale and large-scale projects.

Section 16. Mineral resource extraction shall be allowed based on the Philippine Government's National Industrial Plan. The sharing of profits from mining activities, including the anticipated environmental and social costs on the affected local communities of each mining project, should far outweigh ecological and social benefits and costs from other land uses. The anticipated cost of environmental and social impacts on the affected local communities, which shall at all times be prevented and/or mitigated through the allocation of sufficient funds for this purpose. In mining projects with foreign participation, a just return of investment scheme for the foreign entrants into the industry shall be prescribed by law.

Section 17. The State shall prioritize the development of mineral resources needed for national development and the creation of domestic processing capacity for industrial metals, the integration of agricultural modernization and other labor-intensive downstream industries. Mine planning shall be conducted to meet this principle. <u>The National Industial Plan shall</u> support national development based on the principles of sustainable development and modernization of its economic base. This framework will define minerals to be extracted, volume to be extracted and when to be extracted. This shall be matched with the approved mining areas as identified by the Councils. These matched areas are eligible for mining operations.

CHAPTER III. DEFINITION OF TERMS

Section 18. **Definition of terms**. As used in and for the purposes of this Act, the following terms, whether used in singular or in plural form, shall mean:

a. **Abandonment** – the act of the contractor leaving a mine without rehabilitatating the affected areas or completing such rehabilitation despite the legal obligation to do the same;

b. **Acid mine drainage** – the dissolution, mobilization and transportation of toxic metals from rocks resulting from the chemical reaction of the acid-generating minerals in rock and waste materials having high permeability to both air and rainfall and other water inflows when land is opened up for mining and initiates the chemical reaction, resulting to a perpetual machine of acid generation;

c. **Ancestral domains** – all areas generally belonging to indigenous cultural communities/indigenous peoples (ICCs/IPs) comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, areas of worship , bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally and historically had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators

d. **Ancestral lands** – lands occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government development aggression projects and other voluntary dealings entered into by government and private individuals/corporations including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots;

e. **Beneficiation** – a process wherein a large fraction of the waste material is removed from the mineral ore;

f. **Buffer Zones** – identified areas outside the boundaries of and immediately adjacent to designated protected areas designated by law that need special development control in order to avoid or minimize harm to the protected area;

g. **Bureau** – the Mines and Geosciences Bureau under the Department of Environment and Natural Resources;

h. **Carrying capacity** – the capacity of natural and human environments to accommodate and absorb change without experiencing conditions of ecological instability and attendant degradation;

i. **Certificate of Ancestral Domains Title (CADT)** – title formally recognizing the rights of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with law;

j. **Certificate of Ancestral Lands Title (CALT)** – a title formally recognizing the rights of ICCs/IPs over their ancestral lands;

k. **Closure of mines** – permanent cessation of operations at a mine or mine processing site after completion of the decommissioning process;

l. **Consensus** – the decision communally reached after appropriate participatory consultation and discussion, free from any external manipulation, interference and coercion, and other analogous cases and obtained after fully disclosing the intent and scope, including the positive and negative impacts of the activity, in a language and process understandable to the community or group.

m. **Consent** – the voluntary assent of the landowner or those who have been in open, continuous, exclusive and notorious possession of the land for more than ten (10) years in good faith, or thirty (30) years in bad faith, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope, including the positive and negative impacts of the activity, in a language and process understandable to the said landowner or occupant;

n. **Contract area** – the area delineated as specifically provided by a mineral agreement for the development or utilization of mineral resources found therein;

o. **Critical watershed** – refers to a drainage area of a river system, lake or water reservoir supporting existing and proposed hydroelectric power, domestic water supply,

geothermal power and irrigation works, which needs immediate rehabilitation and protection to minimize soil erosion, improve water yield and prevent possible flooding. The term shall also include areas which are traditional human settlements, land-uses, or sea-uses which are representative of a culture/cultures, or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change;

p. **Critical habitats** – place or environment where species or subspecies naturally occur or has naturally established its population that are crucial to the survival of a species and essential for its conservation;

q. **Cultural sites** – those that bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared or, directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance

r. **Customary laws** – body of written and/or unwritten rules, usages, customs and practices traditionally recognized, accepted and observed by respective ICCs/IPs and local communities;

s. **Decommissioning** – the activity or process that begins after cessation of prospecting activities or mineral production (including metallurgical plant production). It involves, among others, the removal of unwanted infrastructure, making excavations and waste repositories safe and stable and surface rehabilitation with a view to negate or minimize any adverse environmental impacts remaining after cessation of mineral production. It includes the after-care or maintenance that may be needed.

t. **Downstream industries** – are mining activities that cover minerals processing, refining, manufacturing of intermediate and capital goods and marketing of such;

u. **Ecological profile or eco-profile** – geographic-based instruments for planners and decision-makers which present an evaluation of the environmental quality and carrying capacity of an area and measures the specific interactions that will be affected by any and all mining operations;

v. **Exploration** – covers the methods of searching or prospecting for mineral resources by non-invasive means for the purpose of determining the existence, extent, quantity and quality thereof, which may include but not limited to seismic, gravity, magnetic, electromeganetic, radar, induced polarization, radio-wave and electrogeochemical;

w. **Extraction** – ore-removal activities that take place at the mine site itself;

x. **Free, prior and informed consent (FPIC)** – the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference, coercion, and other analogous acts and obtained after fully disclosing the intent and scope, including the positive and negative impacts, of all the activities, in a language and process understandable and acceptable to the community;

y. **Indigenous peoples/Indigenous cultural communities (IP/ICC)** – refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains. They are peoples who have a spiritual relationship with the land;

z. **Indigenous political structure** – refers to organizational and cultural leadership systems, institutions, relationships, patterns and processes for decision-making and participation, identified by ICCs/IPs such as, but not limited to, Council of Elders, Council of Timuays, Bodong Holders, and any other tribunal or body of similar nature;

aa. **Joint venture agreement** – an agreement wherein the government and a qualified person organize a joint-venture company, with both parties having equity shares, to develop and manage mineral resources. Aside from earnings on the equity, the Government shall be entitled to a share in the output computed at a certain percentage mutually agreed upon by and beneficial to both parties.

bb. **Key biodiversity areas** – are sites of global biodiversity conservation significance. They are defined by standardized criteria and thresholds to guide conservation interventions such as the establishment of protected areas;

cc. **Large-scale mining** – mining in areas with more than twenty (20) hectares, using mechanized tools and equipment, requiring considerable capital and having large-scale

environmental, social, cultural and economic impacts with regard to resource use and/or consumption.

dd. **Mineral agreement** – a contract entered into by the government, in behalf of the State, and a private Filipino person, granting such person/s the privilege to mine a specific contract area;

ee. **Mineral resource** – any concentration of minerals/rocks with potential economic value;

ff. **Mineral processing** – the milling, beneficiation or upgrading of ores or minerals and rocks or by similar means to convert the same into marketable products;

gg. **Minerals** – all naturally occurring inorganic substance in solid, gas, liquid, or any intermediate state excluding energy materials such as coal, petroleum, natural gas, radioactive materials, and geothermal energy;

hh. **Mine development** – preparing the mine site for production by shaft sinking or pit excavation building of access roads, and constructing of surface facilities;

ii. **Mine wastes and tailings** –rock materials from surface or underground mining and milling operations with little or no economic value to the generator of the same;

jj. **Mining activity** – any or all of the following activities: exploration, extraction, utilization, processing, transportation and other activities conducted for the same.

kk. **Mining area** – a portion of the contract area which has been identified by the contractor wherein actual mining operations are conducted;

ll. **Mining operations** – either all or any of the mining activities involving exploration, feasibility, development, utilization, and processing;

mm. **National industrialization** – in the mining industry, this shall denote the primacy of mineral production, processing and distribution for the primary benefit of the domestic economy. This includes creating favorable conditions for Filipino entrepreneurs to engage in mining through various state-private agreements that shall ensure that mining shall help spur more domestic investments, increase agricultural production and produce both consumer and producer goods and manufactures;

nn. **National park** – an area of the public domain essentially natural wilderness, scenic, or historic in character which has been withdrawn from settlement, occupancy, or any form of exploitation except in conformity with an approved management plan and set aside exclusively to conserve the area or preserve the scenery, the natural and historic

objects, wild animals, and plants therein mainly for the purpose of biodiversity conservation and/or human enjoyment.

oo. **Native title** – pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest;

pp. **Natural forest** – forests composed of indigenous trees, not planted by man, whose structure, functions, and dynamics have been largely the result of natural succession processes

qq. **Natural parks** – is a relatively large area not materially altered by human activity where extractive resource uses are not allowed. These parks are maintained to protect outstanding natural and scenic areas of national or international significance for scientific, educational and recreational use;

rr. **Open-pit mining** – Extracting metal ores and minerals that lie near the surface by removing the overlying material and breaking and loading the ore. Also known as open-cast mining and open-cut mining;

ss. **Ore** – a material that contains minerals in such quantities that it can be mined and worked commercially to extract that mineral. The mineral is usually contained in chemical combination with some other element in addition to various impurities;

tt. **Pollution control and infrastructure devices** – infrastructure, machinery, equipment and/or improvements used for impounding, treating, or neutralizing, precipitating, filtering, conveying and cleansing mine industrial waste and tailings as well as eliminating or reducing hazardous effects of solid particles, chemicals, liquids or other harmful by-products and gases emitted from any facility utilized in mining operations for their disposal;

uu. **Private land** – any land belonging to any private person which includes alienable and disposable land being claimed by a holder, claimant, or occupant who has already acquired a vested right thereto under the law, although the corresponding certificate or evidence of title or patent has not been actually issued;

vv. **Processing** – includes all treatment an ore receives after its extraction and beneficiation, which involves changes in the chemical nature of the mined minerals;

ww. **Progressive rehabilitation** – rehabilitation which involves the staged treatment of disturbed areas during exploration, construction/development and mining operations

xx. **Protected areas** – identified portions of land and water set aside by reason of their unique physical and biological significance, managed to enhance biological diversity and protected against destructive human exploitation;

yy. **Protected landscapes, seascapes, marine sanctuaries** – areas of national significance which are characterized by the harmonious interaction of man and the environs while providing opportunities for public enjoyment through recreation and tourism within the bounds of the normal lifestyle and economic activity of these areas

zz. **Quarry resources** – any common rock or other mineral substances as the Director of the Mines and Geosciences may declare to be quarry resources such as, but not limited to, andesite, basalt, conglomerate, coral sand, diatomaceous earth, diorite, decorative stones, gabbro, granite, limestone, marble, marl, red burning clay for potteries and bricks, rhyolite, rock phosphate, sandstone, serpentine, shale, tuff, volcanic cinders, and volcanic glass, *Provided*, That such quarry resources do not contain metals or metallic constituents and /or other valuable minerals in economically workable quantities; *Provided further*, That non-metallic minerals such as kaolin, feldspar, bull quartz, quartz or silica, sand and pebbles, bentonite, talc, asbestos, barite, gypsum, bauxite, magnesite, dolomite, mica, precious and semi-precious stones, and other non-metallic minerals that may later be discovered and which the Director declares the same to be of economically workable quantities, shall not be classified under the category of quarry resources;

aaa. **Quarrying** – process of extracting, removing and disposing quarry resources found on or underneath the surface of private or public land.

bbb. **Regional Director** – the regional director of any mines regional office;

ccc. **Regional Office** – any of the mines regional offices;

ddd. **Recycling** – shall refer to the treating of used or waste materials through a process of making them suitable for beneficial use and for other purposes, and includes any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity, and which may be used as raw materials for the production of other goods or services: *Provided*, That the collection, segregation and re-use of previously used packaging material shall be deemed recycling under the Act.

eee. **Rehabilitation** – the process by which the land will be returned to a form and productivity in conformity with a prior land use plan including a stable ecological state that does not contribute substantially to environmental deterioration and is consistent with surrounding aesthetic values;

fff. **Remediation** – removal of pollution or contaminants from environmental media for the general protection of the area and the people.

ggg. **Remining** – maximizing and recovering the remaining minerals from the rejects or wastes of previous mines and mining operations;

hhh. **Restoration** – where the intent is to recreate an ecosystem as close as possible to the original which existed at the site, with most of the structure and productivity matching that of the original ecosystem, and most of the original biodiversity: in time ecological processes and functions will match those of the original forest;

iii. **Self-determination** - refers to the right of a people to determine its own political destiny as defined by existing Philippine laws. The right to self-determination has includes the right of ICCs/IPs to choose their form of government within existing national borders to achieve a greater degree of autonomy to help preserve their culture, ancestral domain, and way of life;

jjj. **Small-scale mining** – mining activities which rely heavily on manual labor using simple implements and methods and do not use explosives or any heavy mining equipment, primarily engaged in for sustainable living. Impacts from small-scale mining shall not be large-scale, otherwise, the mining activity shall be defined as large-scale mining;

kkk. **Small-scale mining permit** – permit issued for small-scale mining

lll. **Strategic minerals** – minerals needed for national industrialization, including rural development

mmm. **Tailings Disposal System or Tailings Placement** – the method wherein the waste from mining operations are dumped, placed, or disposed.

nnn. **Traditional small-scale mining** – small-scale mining using traditional means and without the use of chemical or mechanized extraction and separation means, methods, implements, and/or equipment;

ooo. Watershed continuum – shall refer to an area consisting of the watershed and its divide including its connection from the headwaters to the reef or a land area drained by a stream or a fixed body of water and with tributaries having a common outlet for surface runoff. It is the system by which the mining-affected communities shall be determined following the drainage of a stream or fixed body of water with tributaries having a common outlet for surface runoff;

ppp. **Wildlife** – undomesticated forms and varieties of flora and fauna.

CHAPTER IV. OWNERSHIP AND GOVERNANCE

Section 19. **Authority of the Bureau.** The Mines and Geosciences Bureau shall be a scientific research institution under the Department of Environment and Natural Resources (DENR) primarily conducting and developing research of mineral resources and mining technologies and training of local communities, local government units and indigenous peoples. It shall also regulate the operations of persons involved in mining activities. It shall also work with the Multi-Sectoral Mineral Council in the monitoring of mining activities.

Section 20. **Regional offices.** The Bureau shall have as many regional offices in the country as may be established by the Secretary, upon the recommendation of the Director.

Section 21. **Bureau as repository of information.** The Bureau shall be the central repository of information regarding mineral lands, resources, permits, studies and other information relevant to the operation of a mine, including the necessary requirements which a contractor is obliged to submit. All other governmental offices and other bodies created under this Act shall copy furnish the Bureau of all other information related to mining.

Section 22. **Recording system**. There shall be established a national and regional filing and recording system. A mineral resource database system shall be set up in the Bureau which shall include, among others, a mineral rights management system.

Section 23. **Publication.** The Bureau shall publish at least annually a mineral gazette of nationwide circulation containing among others, a current list of mineral rights, their locations specified in the appropriate map, mining rules and regulations, other official acts affecting mining, and other information relevant to mineral resources development. A system of publication fund shall be included in the regular budget of the Bureau.

Section 24. **Bureau to conduct exploration activities**. Exploration of mineral resources shall be exclusively and directly undertaken by the State through the Bureau. In no case shall this function be delegated or contracted out to private corporations or persons.

Section 25. **Non-invasive exploration**. Exploration activities shall only be non-invasive such as seismic, gravity, magnetic, electromagnetic, radar, induced polarization, radio-wave and electro-geochemical.

Section 26. **Consent**. The Bureau shall not enter into any private lands for the purposes of exploration activities without the written consent of the land owner, possessor and/or occupant; or the FPIC of the ICC/IP and payment of just compensation for the use of property. Neither shall the Bureau enter into any part of the ancestral domains/lands of ICCs/IPs without their free and prior informed consent. Further, the Bureau shall not enter into any distributed land under the Comprehensive Agrarian Reform Program within in the 10 years prohibited period of the said program.

Section 27. **Ownership of ICCs/IPs.** The mineral resources within ancestral domains/ancestral lands are the collective private property of the indigenous cultural communities/indigenous peoples (ICCs/IPs) as provided by law. The management of such mineral resources shall build on the indigenous knowledge systems and practices of the ICCs/IPs.

Section 28. **Free, prior and informed consent**. No mining activity shall be conducted within the ancestral domains/lands of ICCs/IPs without their free, prior and informed consent (FPIC), in addition to the conditions set for under the succeeding sections of this Act.

Section 29. **When ancestral domain is not formally recognized.** When ancestral domain is not covered by a Certificate of Ancestral Domain Title/Certificate of Ancestral Land Title (CADT/CALT), or is covered by a different title issued in favor of members of the ICCs/IPs, mineral resources shall nevertheless be managed by the ICCs/IPs concerned when it can be presumed that the area is part of ancestral domain. An area is presumed to be part of ancestral domain by virtue of historic rights and self-delineation by the ICCs/IPs.

Section 30. **When ICCs/IPs displaced from ancestral domain, and when ancestral domain is already covered by other titles emanating from the state other than CADT/CALT.** Native title over ancestral domain subsists notwithstanding the fact that the ICCs/IPs who hold such native title have been displaced therefrom or that such ancestral domains have been occupied by other persons or corporations under another claim of title emanating from the State. In such cases, ICCs/IPs shall continue to own such mineral resources.

Section 31. **Questions on the validity of FPIC.** In instances that there are questions on the legality or validity of the issued free prior and informed consent, mining operations shall

not be allowed to be conducted in the ancestral domains or lands of the ICCs/IPs without the final resolution of such question on the legality or validity of the FPIC.

Section 32. **Ownership of the State.** The mineral resources found outside ancestral domains/lands shall be owned by the State. The State shall ensure that the management of mineral resources shall be primarily for the benefit of the local communities in whose territory the same shall be found. Any minerals extracted shall be solely used for local industries consistent with the Minerals Management Plan. The State may directly undertake development, utilization and processing of mineral resources or it may enter into mineral agreements with eligible parties pursuant to the provisions of this Act.

Section 33. **Inventory of mineral resources.** The Bureau shall identify and provide an inventory of the available mineral resources, including the mine tailings and wastes within the country. It shall submit to the DENR a report which shall contain the following information:

a) the classification of minerals;

b) the quality and grade of the ore;

c) the potential mine life;

d) the geological description of the area;

e) the economic viability of mine tailings;

f) whether the area is a key biodiversity area or if it is a critical habitat;

g) and all other relevant information necessary for potential mineral investments.

The process for mineral exploration and/or approval for a mining permit shall not commence without the said inventory.

Section 34. **Identification of strategic minerals.** The Bureau shall conduct researches and studies prior to any mining operations to identify strategic mineral resources. Only mineral resources that shall be needed for local industries, agricultural modernization and rural development shall be opened to mining subject to the implementing rules and regulations of this Act.

Section 35. **Demarcation of mineral areas.** The Bureau shall demarcate the boundaries of all areas identified as containing commercial quantities of mineral resources on the ground.

Section 36. **Baseline information on watershed continuums.** The baseline information on all watersheds in the country shall be required and made available to the public, online as much as possible. No mining permit shall be issued without this baseline information.

Section 37. **Affected local community and local government unit.** For the purposes of this Act, the affected local community and the affected local government unit are defined in relation to the watershed continuum which is potentially negatively impacted by mining operation in the demarcated area. The local communities and the local government units therefore are those who are dependent on the watershed eco-system and its resources.

Section 38. **Establishment of Multi-Sectoral Mineral Council.** A Multi-Sectoral Mineral Council shall be established for the purposes of this Act. There shall be as many Multi-Sectoral Mineral Councils are there are watershed continuums with demarcated mineral areas.

Section 39. **Powers of the Council.** The Council shall have the following powers, among others:

a) To determine whether or not mining operations shall be allowed;

b) To deliberate on proposals for mineral agreements;

c) To approve the proposal for mineral agreements;

d) To monitor the conduct of mining operations;

e) To establish its internal rules of procedure which are not contradictory to this Act;

Section 40. **Composition of the Multi-Sectoral Mineral Council.** The Multi-Sectoral Mineral Council shall be composed of representatives from the Bureau, one representative from each of the affected provincial governments/independent component cities/highly urbanized cities, representatives from peoples/community/sectoral/non-governmental organizations as many as the representatives of local government units, and the affected ICCs/IPs within the watershed continuum. The Bureau shall be the convenor of the Council.

No mining operations shall be allowed without the Council having been properly convened.

Section 41. **Areas open to mining.** The Council shall have the power to determine whether or not the land where mineral resources are found shall be opened to mining. Areas may only be opened to mining upon the unanimous vote of all the members of the Council pursuant to the guidelines provided by this Act. In determining whether or not such area shall be opened, the following shall be required:

a) Report of the Bureau on the conducted exploration;

b) Existence of downstream industries for the mineral resources;

c) Potential environmental impacts;

d) Potential cultural impacts;

e) Conflict and risk assessment;

f) Potential health impacts;

g) Potential economic benefits of the development and utilization of the minerals;

h) Carrying capacity and the ecological profile of the area;

i) Existing and alternative land uses of the area;

j) Local government land use plan.

No mining application shall be allowed unless an environmental economic audit or resource valuation of the proposed mining area has been conducted or prepared applying acceptable valuation standards. This audit or resource valuation shall be conducted in coordination with multisectoral group of experts and community stakeholders. It shall include determination of the expected economic returns and the potential negative impacts from mining on the enjoyment and exercise of human rights, cultural rights, and on peace and security. A detailed study must mention the flora, fauna and environment present in the mining claim and the impact of mining operations on the environment, the possible environmental degradation and the attendant loss of subsistence resources cause. There must be mention of existence of sacred areas or areas otherwise of cultural significance and address the impacts of resource exploitation on indigenous peoples and local communities.

This information shall be accessible to the public at all times.

Provided however, That in no case shall the Council open the following areas to mining:

a) Areas declared by Local Government Units as No-Mining Zones as specified by local ordinances, and other issuances;

b) Densely populated areas, especially residential areas;

c) Head waters of watershed areas;

d) Areas with potential for acid mine drainage;

e) Critical watersheds;

f) Critical habitats;

g) Climate disaster-prone areas;

h) Geohazard areas;

i) Small island ecosystems;

j) Cultural sites, which may include, but not limited to, sacred sites and burial grounds;

k) Traditional swidden farms and hunting grounds;

l) Lands covered by the Comprehensive Agrarian Reform Law or Republic Act No. 6657, as amended;

m) Prime agricultural lands, irrigable and irrigated lands as defined by Republic Act No. 9700;

n) Cultural property enumerated under the National Cultural Heritage Act of 2009 or Republic act No. 10066;

o) Community sites;

p) Key biodiversity areas;

q) High conflict areas;

r) The Province of Palawan pursuant to Republic Act No. 7611 and other areas covered by local ordinances;

s) In military and other government reservations, except upon prior written clearance by the government agency concerned;

t) 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;

u) In areas expressly prohibited by law or ordinances;

v) 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

w) Old growth, natural or primary forests, watershed forest reserves, wilderness area, mangrove forests, mossy forests, national parks, protection forests, provincial/municipal forests, parks, greenbelts, game refuge and bird sanctuaries and their respective buffer zones prohibited under the National Integrated Protected Area System (NIPAS) under Republic Act No. 7586, Department Administrative Order No. 25, series of 1992 and other laws and ordinances and those expressly prohibited by other laws.

The determination whether or not the same are absolutely closed to mining shall not only be limited to the existence of a law or ordinance declaring it as protected areas, but also to the actual use of said area.

Section 42. **Manner of voting by the Council for opening an area to mining**. Sections 26 and 27 of the Local Government Code on consultation and consent shall be strictly adhered to. Local government units at all levels shall conduct mandatory public hearings with the affected local communities, to be carried out within their respective territories and presenting those enumerated under Section 41.

After the inventory of the existing minerals, the formulation of a mine plan, and the existence of the baseline information of the particular watershed area, the Bureau shall convene the Council.

The Council shall thereafter convene their respective constituents to determine whether or not their respective territories shall be opened for mining.

Local government units, ICCs/IPs, NGOs and peoples organizations, shall ensure that the Bureau shall comprehensively explain the goals and objectives of the project or program, its negative and positive impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof. Thereafter, the approval of the respective sanggunians of the affected local government units shall be required in accordance to the sentiment of the peoples of the local government unit as a result of the consultations conducted.

Provided, That the affected local government unit representatives shall meet and shall relay the decision of their respective constituents to the provincial government/independent

component cities/highly urbanized cities. The provincial/component city/highly urbanized city government representative shall sit in the Council and shall carry the result of the vote of all the affected local government units within the province resulting from the process provided in the preceding paragraph of this Section. There must be a unanimous vote among the local government units for the purpose of opening a particular area for mining. Failure to reach a unanimous vote for opening shall mean that the area is closed to mining. All the proceedings shall at all times be recorded.

Provided moreover, That in case there are affected indigenous cultural communities/indigenous peoples within the watershed continuum, they shall also bring the community's vote to the Council after undergoing their own processes in accordance with their respective indigenous political structure, free from any external manipulation, interference, coercion and other analogous acts, and obtained after fully disclosing the intent and scope, including the positive and negative impacts of the activity, in a language and process understandable and acceptable to them.

Provided finally, That any member of the community may file a protest with the Council during this period of consultations and deliberations for the Council's consideration.

Section 43. **Violation of Section 52.** Local government officials who are administratively found to violate the preceding section and Section 52 of this Act vis-à-vis the pertinent sections of the Local Government Code shall be removed from office and perpetually disqualified from holding any elective or appointive position in government, its divisions, subsidiaries and any government owned and controlled corporations.

Section 44. **Pool of consultants.** There shall be a pool of independent consultants that may assist the local government units, local communities or ICCs/IPs with regard to the technical aspects of mining.

Section 45. **Publication, posting and radio announcement requirements**. The decision of the Council shall be published by the Bureau in the local newspaper in the local language, shall be announced on the local radio programs for not less than six (6) weeks and notices shall be distributed widely in communities. The notice containing relevant information shall likewise be posted in conspicuous places for the information of the general public and shall be announced during the local market day.

CHAPTER V. MINERAL AGREEMENTS

Section 46. **Modes of mineral agreement.** A mineral agreement may only take the following forms as herein defined;

a) Mineral production sharing agreement – is an agreement where the Government grants to the contractor the exclusive right to conduct mining operations within a contract area and shares in the gross output. The contractor shall provide the financing, technology, management and personnel necessary for the implementation of this agreement;

b) Co-production agreement – is an agreement between the Government and the contractor wherein the Government shall provide inputs to the mining operations other than the mineral resource; and

c) Joint venture agreement – is an agreement where a joint-venture company is organized by the Government and the contractor with both parties having equity shares. Aside from earnings in equity, the Government shall be entitled to a share in the gross output.

In no case shall Financial or Technical Assistance Agreements, or any other similar agreements, contracts, and/or executive issuances granting license or permission to explore, develop and/or utilize mineral resources be awarded to foreign entities or persons.

Section 47. **Eligibility.** Only Filipino citizens or corporations sixty percent (60%) of whose equity is owned or controlled by such citizens shall be allowed to conduct development, utilization and processing of mineral resources within the country.

Section 48. **Identification of mining projects.** With the unanimous vote of the Council to open areas for mining operations, the Bureau shall prepare the necessary information sheets on the said area for potential investments. The Bureau shall call for proposals to develop the mining area based on the Mineral Management Plan.

Section 49. **Pre-screening of mining proposals.** Mining proposals shall be pre-screened by the Bureau according to the National Industrialization and Mineral Management Plan upon the submission of interested parties of the following:

a) demonstration of financial capability;

b) proven social and environmental track record, including those of its officers and directors;

c) clear corporate structure and ownership;

d) proof of physical office and operations of the proponent within the Philippines;

e) identification of potential investors;

f) mining project feasibility;

g) mining operation work plan;

h) proposed operation, mitigation and prevention methods and/or equipment;

i) capacity to process minerals;

j) intent to develop downstream industries;

k) intent to contribute to local community development.

l) Submission of the Environmental and Social Impact Assessment and Mitigation Plan

The Council shall fix the minimum capitalization that any bidder must satisfy based on its determination of the expected economic returns and the potential negative impacts from mining, upon reference to an independent study proposing such minimum capitalization.

Section 50. Environmental and Social Impact Assessment and Mitigation Plan. The contractor shall submit an Environmental and Social Impact Assessment and Mitigation Plan (ESIAMP) containing the means, methods, processes and schedule by which the contractor shall conduct its operations and mitigate negative environmental and social impacts. Social impact shall include possible impacts on the enjoyment and exercise of human rights, cultural rights. The ESIAMP shall include plans relative to mining operations; the rehabilitation, regeneration and restoration of mineral areas; slope stabilization of mined out and tailings covered areas; aquaculture, watershed development and water conservation; the relocation and return of displaced population; and provisions for alternative livelihood and socioeconomic development.

The ESIAMP shall also contain a Social Development Plan which shall likewise contain the plans of the proponent for the development of the community through the establishment of infrastructures and programs that shall be sustainable even after the closure of the mine.Section

51. **Pre-qualification.** The Bureau shall thereafter identify the top three (3) proposals and shall recommend the same to the Council for deliberation.

Section 52. **Deliberation of the proposals***.* After the Bureau's transmittal of its recommendations to the Council together with all the submitted documents for the pre-

qualification, the Council shall initiate the deliberation process of the pre-qualified proposals.

Immediately thereafter, Sections 26 and 27 of the Local Government Code on consultation and consent shall be strictly adhered to. Local government units at all levels shall conduct mandatory public hearings with the affected local communities, to be carried out within their respective territories and presenting those enumerated under Section 43. Local government units, ICCs/IPs, NGOs and peoples organizations, shall ensure that the mining applicant shall comprehensively explain the goals and objectives of the project or program, its negative and positive impact upon the people and the community in terms of social, cultural and environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof. Thereafter, the approval of the respective Sanggunians of the affected local government units shall be required in accordance to the sentiment of the peoples of the local government unit as a result of the consultations conducted.

Provided, That the affected local government unit representatives shall meet and shall relay the decision of their respective constituents to the provincial government/independent component cities/highly urbanized cities through the submission of the minutes of meeting declaring their decision with signatures from the constituent. The provincial/component city/highly urbanized city government representative shall sit in the Council and shall carry the result of the vote of all the affected local government units within the province/independent component city/highly urbanized city resulting from the process provided in the preceding paragraph of this Section.

In determining which proposal is acceptable to the people, a majority vote of the local government units within the province/independent component city/highly urbanized city shall be required.

The affected ICCs/IPs shall also deliberate on the proposals in accordance with their own systems and processes free from any external manipulation, interference, coercion and other analogous acts, and obtained after fully disclosing the intent and scope, including the positive and negative impacts of the activity, in a language and process understandable and acceptable to them.

After the respective processes are complied with, the Council shall then meet and decide which proposal, if any, is most acceptable and consistent with their own socio-economic, environmental and cultural programs and shall notify the Bureau of the chosen proposal.

Section 53. **Posting and publication requirement**. After notice, the Bureau shall notify the proponent of the accepted proposal and cause the publication and posting of the accepted proposal.

Provided, That any member of the community may contest the decision of the Council within six (6) weeks upon the posting and publication of notice of the acceptance of the proposal in the manner provided in Section 42. No mining operations shall be allowed to be conducted pending any action questioning the legality or validity of the proposal.

Section 54. **Issuance of the permit**. After the six (6) weeks from the date of the posting and publication, if no contest is filed, the Bureau shall issue a permit in accordance with the decision of the Council on the winning proposal.

Section 55. **Environmental and Social Impact Compliance Certificate**. The mining proponent shall be issued an Environmental and Social Impact Compliance Certificate by the Bureau with the approval of the Council.

Provided, no amendments to the conditions of the Certificate shall be allowed, unless such proposed amendment shall work for the benefit of the communities, and in which case, the Council and the Bureau shall be notified of any amendments to the ESIAMP and that the former should give their consent to the same, after the proponent explaining in detail the reason for such amendment and the possible impacts and consequences of these amendments.

Provided further, That any violation of the ESIAMP shall cause the cancellation of the Certificate.

Section 56. **Maximum areas for mineral agreements.** The maximum area under mineral agreements that a person can hold at any one time shall be determined by the Council, *Provided,* That the contract area per agreement shall not exceed five hundred (500) hectares, *Provided further*, That no person shall be awarded in excess of the total contract area of seven hundred-fifty (750) hectares in any given watershed area. For the purposes of this Act, the prohibition on the maximum area shall also include corporations that shall have common directors or significant shareholders.

Section 57. **Term of mineral agreement.** The term of the mineral agreement shall be equivalent to the mine life plus an additional five (5) years for the rehabilitation of the mining area. *Provided*, That in no case shall a Mineral Agreement have a term beyond fifteen (15) years, *Provided further,* That the contractor shall already include rehabilitation/remediation of the mining area within the ten-year term.

In no case shall a Mineral Agreement be extended without just cause to be determined by the Council, *Provided*, That the extension shall not cause the term of the agreement to exceed the fifteen (15) year term mentioned in the preceding section. *Provided further*, That for the purposes of this act, just cause shall mean acts or events resulting from war, force majeure or those beyond the control of the mining proponent not attributable to the same.

Provided finally, That in no case shall mineral agreements be renewed after the expiration of the fifteen-year period.

Section 58. **Prohibition on open-pit mining method and submarine tailings disposal**. Open-pit mining method for the extraction of mineral ores and the submarine tailings disposal method shall be prohibited.

Section 59. **Failure to initiate mining operations.** Failure to commence the development stage of the mining operations in accordance with the work program within two (2) years from the award of the mineral agreement shall cause the cancellation of the mineral agreement. The contractor thereafter forfeits the value of the improvements made upon the land. The contractor and other corporations who are also run by the same directors and officers are thereafter banned from bidding to conduct mining operations for ten (10) years after failure to commence the development stage of the mining operations in accordance with the work program.

Section 6o. **Mandatory consultations in each mining phase.** Mandatory consultations with affected communities shall be undertaken in each phase of mining operation: exploration, extraction, processing, and mine closure to ensure that the peoples shall be informed of the proposed plans and methods that are proposed to be conducted.

Section 61. **FPIC of ICCs/IPs on each stage of mining operation.** The free and prior informed consent of the ICCs/IPs shall be required at each and every stage of the mining operations. Free and prior informed consent shall be secured in accordance with the laws, practices and processes of the concerned ICCs/IPs. The violation of any of the conditions imposed by the ICCs/IPs on the contractor shall cause the cancellation of the mineral agreement. Included in this process is the explanation of the rights of ICCs/IPs of ownership and self-determination.

Section 62. **Consent of private landowners.** No person shall be allowed entry into private lands without the written consent of the landowners, possessors or lawful occupants of the land and/or the FPIC of the ICC/IP.

Section 63. **Expropriation.** Expropriation proceedings shall be filed with the regular courts to determine whether the taking of private property for mining purposes shall meet a public purpose and to determine just compensation.

Section 64. **Multi-partite monitoring.** The Council shall form a multi-partite monitoring team to monitor compliance by the contractor of the terms and conditions of the mineral agreement. It may conduct ocular inspections of the contract area at any time of the day and night. It shall also inspect all the books of contractors and refer the same to independent auditors. The Multi-partite monitoring team and/or the Bureau may confiscate surety, performance and guaranty bonds posted through an order to be promulgated by the Director. The Council, the Director or the local government authorities may deputize, when necessary, any member or unit of the Philippine National Police, barangay, duly registered nongovernment organization (NGO) or any qualified person to police any and all mining activities.

Section 65. **Withdrawal from the mineral agreement**. The contractor may withdraw from the mineral agreement at any time for justifiable cause with one (1) month's notice to the Bureau, the Council and/or the ICCs/IPs, and other government agencies as may be provided by law. The Council, in cooperation with other concerned government agencies, shall issue a clearance for withdrawal upon certifying that the contractor has complied with all its legal obligations, including the appropriate measures for mine closure and rehabilitation. Funds and bonds which have been put up by the contractor in accordance with this Act shall be forfeited.

Section 66. **Non-transferability of mineral agreements**. In no case shall mining rights under this Act be transferrable. The contractor shall also immediately notify the Council and the Bureau of any substantial change in the ownership and/or control of the corporation. Violation of this provision shall cause the cancellation of the agreement and forfeiture of assets and equipment of the contractor in favor of the State.

Section 67. **Access to information.** All contractors for mineral permits and agreements shall provide information to affected indigenous peoples, local communities, and local governments. The following information, among others, shall be required:

a) full disclosure of methods and processes of mining

b) full disclosure of environmental and social risks

c) full disclosure of ownership structure

d) full disclosure of financial sources

All information and documents related to proposals, mineral agreements, permits and mining operations shall not be considered confidential.

Refusal to grant access to this information shall be cause for the disqualification of prospective proponents or cancellation of mineral agreements and permits.

The Bureau, being the repository of all relevant information under this Act is mandated to grant access to the public of any information in its custody. Refusal or unnecessary delay by the officers of the Bureau to give information shall be punishable by a fine of fifty thousand pesos (Php 50,000.00) for every instance of refusal or unnecessary delay.

Information requested by indigents or marginalized sectors shall be given to them for free.

CHAPTER VI. SMALL-SCALE MINING

Section 68. **Applicability of RA 7076.** Small-scale mining shall continue to be governed by the provisions of Republic Act No. 7076 or the People's Small-Scale Mining Act of 1991, *Provided*, That the Provincial/City Mining Regulatory Board shall be composed of the Governor or City Mayor, as chairperson, as the case may be, a representative from the DENR as co-chairperson, one (1) small scale mining representative, one (1) big-scale mining representative, one representative from a nongovernment organization who shall come from an environmental group, one representative from a people's organization (PO) coming from the marginalized sector, and at least one (1) representative from the indigenous communities, whenever applicable, as members. The representatives from the private sector, nongovernment organization and indigenous communities shall be selected by their respective organizations and/or communities, and appointed by the PMRB or CMRB.

Provided further, That the conduct of small-scale mining shall also comply with the prohibitions and regulations established herein for large-scale mining. Only qualified individuals and cooperatives may apply for a small-scale mining permit.

Section 69. **Maximum term of small-scale mining permits**. The term for small-scale mining permits shall be three (3) years, extendable to a maximum of fifteen (15) years.

Section 70. **Traditional small-scale mining within ancestral domains**. The Council shall conduct regular monitoring activities within its jurisdiction to determine if the provisions

of relevant laws are complied with in traditional small-scale mining by ICCs/IPs within their respective ancestral domains.

Section 71. **FPIC in small-scale mining**. Small-scale mining activities within any ancestral domain by any person shall also require the free, prior informed consent of ICCs/IPs.

Section 72. **Requirement for an Environmental and Social Impact Compliance Certificate.** Small-scale mining shall likewise require an Environmental and Social Impact Compliance Certificate. All small scale mining applicants or proponents must show proof of compliance with the terms and conditions of its Environmental and Social Impact Compliance Certificate (ESICC) prior to the issuance of a small scale mining permit. Failure to submit this requirement will result in the non-issuance of the SSMP.

Section 73. **Environmental measures in small-scale mining.** The State shall immediately address the environmental and health hazards and problems in small-scale mining, including the use of hazardous chemicals, such as mercury, cyanide and other chemicals, in the amalgamation of gold by small-scale miners.

Section 74. **Prohibition on the use of mercury.** Mercury use in small-scale mining shall be prohibited. The Bureau shall research, develop and actively promote appropriate technologies in small-scale mining including labor-intensive methods, environmental protection and physical techniques of gold extraction among small-scale miners.

Section 75. **Multisectoral monitoring team.** A multisectoral monitoring team shall be organized to monitor the SSMP permittee's compliance with the terms and conditions of its SSMP and ECC. The MMT shall conduct ocular inspections of the SSMP area at any time of the day and night and shall have visitorial powers.

Section 76. **Alternative livelihood support.** The state shall support the improvement of the livelihood of small-scale-miners by extending the services for access to other more viable and sustainable forms of livelihood, and, if the same is not possible, the following support services:

a) access to minerals markets and to financing;

b) facilitating partnership with mining companies or contractors by, among others, requiring mining companies to buy tailings from small-scale mining operations for further processing or recycling;

c) facilitating partnership among small-scale mining cooperatives; and

d) other incentives to attract informal small-scale miners to formalize their status.

Section 77. **Buying stations.** The Bangko Sentral ng Pilipinas shall ensure that buying stations acquire gold from small-scale traders at prevailing international gold market prices and the prevailing exchange rate set by the BSP Treasury Department on a daily basis.

CHAPTER VII. QUARRY RESOURCES

Section 78. **Quarry resources within ancestral domains.** Gathering of quarry resources, sand and gravel, guano and other organic fertilizer materials, and gemstones within ancestral domains shall likewise be subject to the free prior informed consent of ICCs/IPs. ICCs/IPs and the government shall be entitled to at least ten per cent (10%) of royalties depending on whether the resources are found inside or outside ancestral domains. Permits shall be limited to a maximum term of five (5) years, renewable for like periods but not exceeding a total term of twenty five (25) years, and a maximum area of five (5) hectares.

Section 79. **Quarry Permit.** Any qualified Filipino may apply for a quarry permit on privately- owned lands except ancestral domains and/or public lands for building and construction materials such as marble, basalt, andesite, conglomerate, tuff, adobe, granite, gabbro, serpentine, inset filling materials, clay for ceramic tiles and building bricks, pumice, perlite and other similar materials that are extracted by quarrying from the ground at the provincial/city mining regulatory board. The provincial governor shall grant the permit after the applicant has complied with all the requirements as prescribed by the rules and regulations set forth by this Act. *Provided* that gathering/extraction of sand for its metallic contents such as magnetite from the country's rivers and shorelines shall be require a mineral agreement in lieu of a quarry permit.

The maximum area which a qualified person may hold at any one time shall be limited to a surface area of five hectares (5 has.): *Provided*, That in large-scale quarry operations involving cement raw materials, marble, granite, sand and gravel and construction aggregates, a qualified person and the government may enter into a mineral agreement as defined herein.

A quarry permit shall have a term of five (5) years, renewable for like periods but not to exceed a total term of twenty-five (25) years. No quarry permit shall be issued or granted on any area covered by a mineral agreement.

Section 80. **Quarry Fee and Taxes**. A permittee shall pay a quarry fee as provided for under the implementing rules and regulations. The permittee shall also pay the excise tax as provided by pertinent laws.

Section 81. **Cancellation of Quarry Permit.** A quarry permit may be cancelled by the provincial governor for violations of the provisions of this Act or its implementing rules and regulations or the terms and conditions of said permit: *Provided*, That before the cancellation of such permit, the holder thereof shall be given the opportunity to be heard in an investigation conducted for the purpose.

Section 82. **Commercial Sand and Gravel Permit.** Any qualified person may be granted a permit by the provincial governor to extract and remove sand and gravel or other loose or unconsolidated materials outside ancestral domains which are used in their natural state, without undergoing processing from an area of not more than five hectares (5 has.) and in such quantities as may be specified in the permit.

Section 83. **Industrial Sand and Gravel Permit**. Any qualified person may be granted an industrial sand and gravel permit by the Bureau for the extraction of sand and gravel and other loose or unconsolidated materials outside ancestral domains that necessitate the use of mechanical processing covering an area of not more than five hectares (5 has.) at any one time. The permit shall have a term of five (5) years, renewable for a like period but not to exceed a total term of twenty-five (25) years.

Section 84. **Exclusive Sand and Gravel Permit**. Any qualified person may be granted an exclusive sand and gravel permit by the provincial governor to quarry and utilize sand and gravel or other loose or unconsolidated materials from public lands for his own use, *Provided*, That there will be no commercial disposition thereof.

Section 85. **Government Gratuitous Permit.** Any government entity or instrumentality may be granted a gratuitous permit by the provincial governor to extract sand and gravel, quarry or loose unconsolidated materials outside ancestral domains needed in the construction of building and/or infrastructure for public use or other purposes over an area of not more than two hectares (2 has.) for a period coterminous with said construction.

Section 86. **Private Gratuitous Permit.** Any owner of land may be granted a private gratuitous permit by the provincial governor to extract sand and gravel, quarry or loose unconsolidated materials within his property.

Section 87. **Guano Permit.** Any qualified person may be granted a guano permit by the provincial governor to extract and utilize loose unconsolidated guano and other organic

fertilizer materials in any portion of a municipality where he/she has an established domicile outside ancestral domains. The permit shall be for specific caves and/or for confined sites with locations verified by the Department's field officer in accordance with existing rules and regulations. *Provided*, That extraction does not violate and is consistent with the provisions in the Cave Conservation Act and the Wildlife Act.

Section 88. **Gemstone Gathering Permit.** Any qualified Filipino may be granted a non-exclusive gemstone gathering permit by the provincial governor to gather loose stones useful as gemstones in rivers and other locations outside ancestral domains.

Section 89. **Council recommendation for approval.** All permits under Chapter VII of this Act shall require the recommendation of the Multi-Sectoral Mineral Council prior to approval by the provincial government unit. The absence of a recommendation from the Council prohibits the approval of any permit in this Chapter.

CHAPTER VIII. TRANSPORT, SALE AND PROCESSING OF MINERALS

Section 90. **Ore transport permit.** A permit specifying the origin and quantity of non-processed mineral ores or minerals shall be required for their transport. Transport permits shall be issued by the Bureau. The absence of a permit shall be considered as prima facie evidence of illegal mining and shall be sufficient cause for the confiscation of the ores or minerals being transported, the tools and equipment utilized, and the vehicle containing the same.

Section 91. **Track record.** Only mining companies with demonstrated capacity and good environmental track record in mineral processing shall be allowed to extract minerals. The Council shall encourage contractors to put up processing plants within the community with the end in view of generating employment and developing other downstream industries.

Section 92. **Mineral trading registration.** No person shall engage in the trading of mineral products, either locally or internationally, unless registered with the Department of Trade and Industry and accredited by the Department, with a copy of said registration submitted to the Bureau.

Section 93. **Mineral processing permit.** No person shall engage in the processing of minerals without first securing a minerals processing permit from the Council. Minerals processing permits shall be for a period of five (5) years, renewable for like periods but not to exceed a total term of twenty-five (25) years.

CHAPTER IX. DEVELOPMENT OF COMMUNITIES, SCIENCE AND TECHNOLOGY

Section 94. **Expenditure for community development.** A contractor shall assist in the development of the community, and the promotion of the general welfare of its inhabitants towards sustainable development. Community development projects shall in no way decrease the obligation of the corporation with regard to royalties and fees due to communities or local government units. Community development projects should be consistent with the Comprehensive Land Use Plans (CLUP), Ancestral Domains Sustainable Development and Protection Plan (ADSDPP) and annual investment plans of the local governments, CADT/CALT holders and the like.

Section 95. **Employment of Filipinos and training of members of the local community.** A contractor and/or permittee shall give preference to Filipino citizens in all types of mining employment within the country. Members of the local community shall be trained in all aspects of the mining operations, including remining, recycling, rehabilitation, and the management thereof.

Section 96. **Use of indigenous goods, services and technologies.** A contractor shall give preference to the use of local goods, services, and the scientific and technical resources in all stages of mining operations, where the same are of equivalent quality and are available on equivalent terms as their imported counterparts.

Section 97. **Donation/turn over of facilities**. Prior to the cessation of mining operations occasioned by abandonment or withdrawal of operations, on public lands by the contractor, the latter shall have a period of one (1) year therefrom within which to remove improvements; otherwise all the infrastructure, facilities and equipment shall be turned over or donated tax-free to the proper government authorities, national or local, to ensure that said infrastructure facilities and equipment are continuously maintained and utilized by the host and neighboring communities. A fine of one hundred thousand pesos (P100,000.00) shall be imposed for every day of delay.

CHAPTER X. BENEFIT SHARING, TAXES AND FEES

Section 98. **Taxes and fees.** The contractor shall pay all taxes and fees as required by law, including, but not limited to:

a) contractor's income tax;

b) customs, duties and fees on imported capital equipment;

c) value-added tax on imported goods and services;

d) withholding tax on interest payments on foreign loans;

e) withholding tax on dividends to foreign stockholders;

f) documentary stamps taxes;

g) capital gains tax;

h) excise tax on minerals;

i) local business tax;

j) real property tax;

k) community tax;

l) occupation fees;

m) registration, accreditation, and permit fees;

n) water usage fees.

Section 99. **Government share**. Aside from the taxes and fees referred to in the preceding section, Government shall have at least a share equivalent to ten per cent (10%) of the gross revenues from the development and utilization of mineral resources that are owned by it to be set aside for the general fund of the government.

Section 100. **Indigenous cultural communities' royalty**. In case of mineral operations within ancestral domains, the contractor shall pay at least ten per cent (10%) of the gross revenues as royalty to the ICCs/IPs. Community development programs shall not be considered as royalty payment. The payment of the royalties shall directly be given to the communities in a process that build on the ICCs/IPs' traditional and customary laws.

Provided, That the royalty established in this Act shall be a minimum royalty payment and may still be subject to other conditions to be agreed by the parties, free from any external manipulation, interference, coercion, and other analogous acts, and obtained after fully disclosing the intent and scope, including the positive and negative impacts of the activity, in a language and process understandable and acceptable to them.

Section 101. **Scientific research and development fund.** A Scientific Research and Development Fund shall be set aside to be devoted to research and development of clean mining technologies, improvement of mining processes, mine rehabilitation, mitigating technologies, setting up and maintenance of an independent pool of experts, and operational expenses of the Bureau.

Section 102. **Legal support services fund.** A legal support fund shall be set aside for the use of the communities and local government units for cases that they may file against mining permittees or cases that may be filed against them by mining companies in trying to do their responsibility of protecting the rights of the marginalized groups, the environment and sustainable development in general.

Section 103. **Local Government Unit share.** Local Government Units shall be entitled to a share of the net revenues from mining operations which shall be paid directly to the provincial/independent component city/highly urbanized city treasurer/s for distribution to other local government units. To determine the government share, the following variables shall be considered:

a) Classification of local government;

b) Vulnerability;

c) Human development index.

A percentage of this amount shall be set aside by the respective local government units for Disaster Risk Management. This fund shall likewise benefit ICCs/IPs within the territory of the local government unit.

Provided, That the administrative and operational expenses of the Council shall also be taken from this share.

Section 104. **Mine wastes and tailings fees.** A semi-annual fee to be known as mine wastes and tailings fee is hereby imposed on all operating mining companies in accordance with the implementing rules and regulations. The mine wastes and tailings fee shall accrue to a fund to be used as support funds for monitoring activities of the Council. The Secretary is authorized to increase mine wastes and tailings fees, when public interest so requires.

Section 105. **Incentives**. Incentives that shall be given to the contractors shall only be limited to pollution control or mitigation devices.

Section 106. **Deposit of capital and profits requirement**. As part of their demonstrated financial capacity, all large-scale mining companies/contractors are required to deposit

their capital investment and profits in banks or financial institutions that are owned, managed and operated by the Philippine government.

Section 107. **General rule on profit repatriation.** Contractors with foreign financial assistance shall be allowed to repatriate their profits from mining projects that should not exceed fifty percent (50 %) of the total posted at the end of every fiscal year. Full disclosure of profits is required. The full repatriation of profits shall be allowed one year after the cessation of mining activities and the progressive rehabilitation of a mining area as specified in the mineral agreement of each contractor.

The guidelines for Sections 106 and 107 shall be issued by the Bangko Sentral ng Pilipinas and shall be furnished to the Department, Bureau, Council and all respective contractors in the industry.

CHAPTER XI. SAFETY AND ENVIRONMENTAL PROTECTION

A. Safety

Section 108. **Mines safety.** All contractors and permittees shall strictly comply with all the mines and safety rules and regulations concerning the safe and sanitary upkeep of the mines and mining development. Government personnel involved in the implementation of mines safety, occupational health and environmental rules and regulations shall be covered under Republic Act No. 7305 or the Magna Carta of Public Health Workers.

Section 109. **Mine labor.** No person under sixteen (16) years of age shall be employed in any place of mining operations and no person under eighteen (18) years of age shall be employed in a mine.

Section 110. **Mine supervision.** All mining and quarrying operations shall have at least one (1) licensed mining engineer for every fifty (50) employees. Such engineer/s shall have at least five (5) years of experience in mining operations, and one (1) registered foreman.

Section 111. **Safety of workers**. All mining companies shall provide safeguards to the health and well-being of workers. The Regional Office of the Department of Labor and Employment shall inspect all mining sites within their areas of jurisdiction to determine the conditions of workers. Denial of entry shall be punishable under this Act. Representatives of labor unions shall also have visitorial rights.

Section 112. **Mine inspection.** The mines regional directors and the Council shall have jurisdiction over the safety inspection of all installations, surface or underground, in mining operations at reasonable hours of day or night and as much as possible in a manner that will not impede or obstruct work in progress of a contractor or permittee. Monitoring reports and recommendations of the Bureau shall be submitted to the Council.

Section 113. **Power to issue orders**. The mines regional director, in consultation with the Environmental Management Bureau, forthwith or within such time as specified in the order, require the contractor to remedy any practice connected with mining, which is not in accordance with safety and anti-pollution laws and regulations. In case of imminent danger to life or property, the Director may summarily suspend the mining operation until the danger is removed, or appropriate measures are taken by the contractor. Unreasonable delay to remove the danger or introduce the necessary improvements by the contractor shall be a cause for the cancellation of the mineral agreement.

Section 114. **Report of accidents.** In case of any incident or accident, causing or creating the danger of loss of life or serious physical injuries, the person in charge of operations shall immediately report the same to the regional office where the operations are situated. Failure to report the same without justifiable reason shall be cause for the imposition of administrative sanctions prescribed in the rules and regulations implementing this Act.

B. Environmental Protection

Section 115. **Environmental Insurance.** Contractors and mineral processing permit holders shall be obliged to execute an insurance contract as an environmental assurance for each and every source of pollution or disaster, relative to the "worst case scenario" costs, following accepted actuarial standards, *Provided*, That in no way shall this provision be construed to remove or reduce the liability of the contractors and/or permit holders to compensate any damage caused by their operations. *Provided further*, That the insurer shall be an accredited international company in good standing.

Prior to the approval of the insurance contract by the DENR, the DENR shall seek and consider the opinion of an independent expert as to the financial credibility of the insurer.

Section 116. **Calamity and Human Rights Protection Fund.** Persons issued a mineral agreement shall deposit five million pesos (Php5,000,000.00) semi-annually in an interest-bearing account a common fund maintained by the national government which shall be used for responding to, or ameliorating the effects of calamities, natural disasters and human rights violations including militarization, displacement, and forcible evacuation in

any part of the country in relation to mining activities. *Provided*, That in no way shall this provision be construed to remove or reduce the liability of the contractors and/or permit holders to compensate any damage caused by their operations.

Section 117. **Performance Bond**. The contractor shall put up a bond in an amount equivalent to fifty per cent (50%) of the projected cost of rehabilitation as validated by independent studies. This amount shall be deposited in an interest-bearing account. The bond shall be forfeited in the event that the contractor shall fail or default in the rehabilitation or remediation of the mining area as included in the work plan of the contractor or abandons the mine at any time of its operations.

Section 118. **Rehabilitation.** Contractors and permittees shall technically and biologically rehabilitate the excavated, mined-out, tailings covered and disturbed areas to the condition of environmental safety, as may be provided in the implementing rules and regulations of this Act. A mine rehabilitation fund shall be created, based on the contractor's approved work program, and shall be deposited as a trust fund in a government depository bank and used for physical and social rehabilitation of areas and communities affected by mining activities and for research on the social, technical and preventive aspects of rehabilitation. Failure to fulfill the above obligation shall mean immediate suspension or closure of the mining activities of the contractor/permittee concerned.

Mining firms are hereby mandated to reforest 100 hectares of land for every one hectare of land they utilize in the course of their mining operations. Mining firms are also mandated to immediately restore and replant areas that they have already finished excavating as they move on to other development sites: Provided, however, that if mining firms cannot do the reforestation in their immediate area they could do the reforestation in other areas provided they comply with 100:1 hectare ratio. Any mining firm found to have violated or have not complied with the foregoing mandatory provisions shall be held liable with the penalty of revocation of their mining permits and payment of a fine of not less than One Million Pesos (P1,000,000).

The owners, officers and management employee of said mining firms shall also be held liable and be subject to imprisonment of not less than one (1) year nor more than three (3) years.

Section 119. **Progressive rehabilitation.** Contractors shall also conduct progressive rehabilitation activities.

Section 120. **Adoption of Precautionary Principle.** When an activity related to mining raises threats of harm to human health or the environment, precautionary measures shall be taken proactively even if some cause and effect relationship are not fully established scientifically. The mining proponent and the Bureau shall also be obliged to disclose whether or not the cause and effect have not yet been scientifically established.

Section 121. **Adoption of Polluter Pays Principle.** Polluters shall pay for the damage they cause to the environment. The amount of damages shall be determined by accredited independent consultants, to be chosen from a list and agreed upon by both the mining proponent and by the Council.

Section 122. **Tailings impoundment.** Tailings impoundments shall be built away from critical watershed drainage areas. Furthermore, it shall be ensured that impoundments will not endanger critical watershed areas or low lying valleys in the event of accidents under abnormal conditions. Tailing impoundments and dams shall meet the international standards for large dams.

Section 123. **Dumping of waste**. Dumping of waste or tailings in any body of water shall be prohibited. Provisions on the Clean Water Act and Clean Air Act shall be strictly implemented.

Section 124. **Use of toxic chemicals and methods.** At all times, mining contractors shall use chemicals or reagents which would result to the least environmental and social destruction. The use of mercury and cyanide for the extraction of gold, silver and other minerals shall be prohibited. The use of blow torching to separate gold from amalgam shall likewise be prohibited.

Section 125. **Preservation of topsoil.** The removed topsoil, or the more productive horizons of the soil shall be preserved for other uses.

Section 126. **Priority use for water**. The National Water Resources Board shall investigate any existing use of water resources in the area whether or not covered by any existing water permit or registration. Upon determination of any existing use, the applicant shall procure the consent of all water users and/or the free prior and informed consent of ICCs/IPs with or without water permits within the same groundwater network or any downstream users of water resources. In all instances, priority shall be given to use of water for domestic, municipal, and agricultural purposes. If potential negative impact on other water users is identified, the water permit shall not be granted. For water resources

within the ancestral domain of indigenous peoples, no water permit shall be granted by the National Water Resources Board without the free and prior informed consent of indigenous peoples.

Section 127. **Recyling of water resources.** Water used in mining operations shall be recycled. Mining contractors shall be required to provide for the methods or equipment for the recycling or reuse of water. Released contaminated water shall be treated accordingly to meet national standards. Released water must at least be equivalent in quality to the baseline water quality.

Section 128. **Water user fee.** A water user fee that reflects the value of water to the country and community shall be imposed by the Council for water used in mining operations. Contractors shall pay the fee to the National Water Resources Board which shall use the same for monitoring and improvement of the affected waterways and systems and the mitigation of negative impacts thereon to ensure that communities shall have access to clean water.

C. Acid Mine Drainage

Section 129. **Prohibition from using acid-generating waste rock to build roads or dams.** To prevent or mitigate acid mine drainage, there shall be a prohibition against using acid-generating waste rock to build roads or dams or other infrastructures. The use of such materials shall only be used after treatment to neutralize the effect of acid mine drainage.

Section 130. **Establishment of a prediction and monitoring system.** The Bureau shall establish a prediction and monitoring system to identify potential acid-producing materials and monitor their production of acid waste.

Section 131. **Avoidance of waterways.** Open pits, waste rock piles and tailings impoundments shall not be built near or on waterways to prevent contact and subsequent acid production and groundwater contamination.

Section 132. **Remining**. Remining shall be prioritized over the opening of new mines to maximize and recover the remaining minerals from the rejects or wastes of previous mines and mining operations, *Provided*, That remining operations shall follow the processes, standards, parameters and guidelines set for mining operations in this Act.

Section 133. **Suits after the termination of contracts or projects.** Recognizing that the effects of mining may be seen or felt, actions relating to the health of affected communities or peoples, environmental degradation and other similar effects may be maintained against

the project proponent and/or persons even after the mineral agreement or mining project has terminated.

CHAPTER XII. RESOLUTION OF CONFLICTS

Section 134. **Panel of arbitrators.** There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must be members of the Philippine Bar in good standing and one a licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation As much as practicable, said members shall come from the different bureaus of the Department in the region. The presiding officer thereof shall be selected by the drawing of lots. His tenure as presiding officer shall be on a yearly basis. The members of the panel shall perform their duties and obligations in hearing and deciding cases until their designation is withdrawn or revoked by the Secretary. Within thirty (30) working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following:

a) Questions involving compliance with the established technical guidelines and standards herein established, or those to be established by the implementing rules and regulations of this Act;

b) Questions involving the compliance with technical procedures herein established, or those to be established by the implementing rules and regulations; and,

c) Other similar instances wherein the technological and technical expertise of the Department shall be needed.

Disputes involving real rights, contractual obligations and the other causes of action that are outside the technological and technical expertise of the Panel of Arbitrators shall be under the jurisdiction of the regular courts or as otherwise provided by other special laws.

Provided, That disputes pending before the Bureau and the Department at the date of the effectivity of this Act shall undergo an immediate review within sixty (60) working days upon the passage of this Act to determine the cause of action. Those which are outside the technical expertise of the Department or Bureau shall be refiled with the appropriate court, without costs to the complainant or petitioner.

Section 135. **Appeal**. The decision or order of the panel of arbitrators may be appealed by the party not satisfied thereto to the Mines Adjudication Board within fifteen (15) days from receipt thereof which must decide the case within thirty (30) days from submission thereof for decision.

Section 136. **Mines Adjudication Board (MAB).** The Mines Adjudication Board shall be composed of three (3) members. The Secretary of the DENR shall be the Chairperson with the Director of the Mines and Geosciences Bureau and the Undersecretary for Operations of the Department as members thereof. The Board shall have the following powers and functions:

a) To promulgate rules and regulations governing the hearing and disposition of cases before it, as well as those pertaining to its internal functions, and such rules and regulations as may be necessary to carry out its functions;

b) To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, statement of accounts, agreements, and other documents as may be material to a just determination of the matter under investigation, and to testify in any investigation or hearing conducted in pursuance of this Act;

c) To conduct hearings on all matters within its jurisdiction, proceed to hear and determine the disputes in the absence of any party thereto who has been summoned or served with notice to appear, conduct its proceedings or any part thereof in public or in private, adjourn its hearings at any time and place, refer technical matters or accounts to an expert and to accept his report as evidence after hearing of the parties upon due notice, direct parties to be joined in or excluded from the proceedings, correct, amend, or waive any error, defect or irregularity, whether in substance or in form, give all such directions as it may deem necessary or expedient in the determination of the dispute before it, and dismiss the mining dispute as part thereof, where it is trivial or where further proceedings by the Board are not necessary or desirable:

d) To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and

e) To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social and economic stability.

In any proceeding before the Board, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Act that shall govern. The Board shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process and social justice. In any proceeding before the Board, the parties may be represented by legal counsel. The findings of fact of the Board shall be conclusive and binding on the parties and its decision or order shall be final and executory.

A petition for review by certiorari and question of law may be filed by the aggrieved party with the Supreme Court within thirty (30) days from receipt of the order or decision of the Board.

CHAPTER XIII. ACCESS TO JUSTICE

Section 137. **Obligation to respect human rights.** Corporations shall respect, protect and promote the human rights of communities affected by mining, including the right to life, liberty and property, freedom of movement, right of public participation and the right to self-determination of indigenous cultural communities.

Section 138. **Violations of human rights.** Extrajudicial killing, torture, involuntary disappearance, forcible displacement of populations, setting up of checkpoints, and imposition of toll fees which impede the freedom of movement within mineral areas, deprivation of food and water sources, vote-buying and bribery for the purpose of securing consent or endorsement for the mining project, and other analogous acts are violations of human rights. Violations of human rights by contractors shall cause the immediate cancellation of mineral agreements. The offending contractor, as well as corporations having the same directors and/or officers as of the offending contractor shall be perpetually disqualified from being granted a mineral agreement. All equipment and assets of the corporation or person shall be confiscated in favor of the government.

Section 139. **Use of paramilitary and military forces.** All mining companies are strictly prohibited from employing paramilitary groups. Use of private and military forces shall result in the automatic cancellation of the mineral agreement and the filing of appropriate civil, criminal and/or administrative charges.

Section 140. **Strategic Legal Action Against Public Participation (SLAPP).** SLAPPs shall be strictly prohibited. SLAPP is any legal action, whether civil, criminal or administrative, filed to harass, vex, exert legal action or stifle legal recourses of community members

complaining against violations of this Act or enforcing the provisions of the Act, or exercising their freedom of assembly or right of public participation. The investigating prosecutor or court shall immediately determine within a period of thirty (30) days from filing thereof whether a legal action is a SLAPP and accordingly dismiss the same.

Section 141. **Indigents' suit.** Indigents shall be exempt from payment of any administrative or court fees, including docket fees for the filing of a case. Lawyers shall be provided by the Public Attorney's Office to pauper litigants in case they could not afford legal services.

Section 142. **Application of the customary laws of ICCs/IPs**. The contractor shall respect the customary laws of the ICCs/IPs and shall submit to the processes of their customary laws, *Provided*, That these laws are not contrary to the provisions of the Constitution.

Section 143. **Strict liability.** Mining corporations are strictly liable for all damages that the mining operations might cause. In case of any actual damage, the burden of proof shall lie with the corporations.

Section 144. **Piercing the corporate veil.** When the separate personality of the corporation from its shareholders is being invoked as defense in order to perpetuate a crime, fraud or other machinations, or evade liability, the separate personality of the corporation shall be set aside. Civil, criminal and administrative actions may thus be filed directly against the members of the Board of Directors, officers and/or individual stockholders.

Section 145. **Citizen suits.** For the purpose of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file appropriate civil, criminal and administrative suits against any of the following:

a) Any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations;

b) Any public officer with respect to orders, rules and regulations inconsistent with this Act;

c) Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its rules and regulations; or abuses the authority in the performance of a duty/ies under this Act or its implementing rules and regulations.

The court shall exempt such action from the payment of filing fees, except fees for actions not capable of pecuniary estimation, and shall likewise, upon prima facie showing of non-

enforcement or violation complained of, exempt the plaintiff from filing an injunction bond for the issuance of a preliminary injunction.

The court shall determine whether or not the complaint is malicious or baseless and shall accordingly dismiss the petition within thirty (30) days upon the filing of the case.

CHAPTER XIV. PENAL PROVISIONS

Section 146. **Grounds for the cancellation of mineral agreements and permits**:

a) Violation of any provision of this Act;

b) Human rights violations perpetrated by the contractor or any agent of the contractor;

c) Non-payment of taxes;

d) Bribery, use of force, intimidation, threat, coercion of public officials and communities;

e) Any act that shall create or contribute to conflicts;

f) Other analogous acts.

Provided, that, violations of environmental provisions shall cause the immediate cancellation of mining permits, and the contractor shall be required to pay for the rehabilitation, restoration or clean up of the impacts of such violations.

Corporations, corporate directors/officers found guilty of the above enumeration may be subjected to a perpetual ban in the mining operations in the Philippines.

Section 147. False statements. Any person who knowingly presents any false application, declaration, or evidence to the Government or publishes or causes to be published any prospectus or other information containing any false statement relating to mines, mining operations or mineral agreements and permits shall, upon conviction, be penalized by a fine of not exceeding One Hundred Thousand pesos (P100,000.00).

Section 148. Illegal exploration. Any person undertaking exploration work without the necessary exploration permit shall, upon conviction, be penalized by a fine of not exceeding Five Million pesos (P5,000,000.00).

Section 149. Panning. Panning shall be considered an act of mining. Any person undertaking panning without the necessary mining permit shall upon conviction, be convicted of illegal panning penalized under section 27 (RA 7076). In addition, such person shall be liable to pay damages made to the environment by reason of such panning. In the case of associations, partnerships, or corporations, the president and each of the directors thereof shall be responsible for the acts committed by such association, corporation, or partnership.

Section 150. Theft of minerals. Any person extracting minerals and disposing the same without a mining agreement, lease, permit, license, or steals minerals or ores or the products thereof from mines or mills or processing plants shall, upon conviction, be imprisoned from six (6) months to six (6) years or pay a fine from One Hundred thousand pesos (P100,000.00) to One Million pesos (P1,000,000.00) or both, at the discretion of the appropriate court. In addition, he shall be liable to pay damages and compensation for the minerals removed, extracted, and disposed of. In the case of associations, partnerships, or corporations, the president and each of the directors thereof shall be responsible for the acts committed by such association, corporation, or partnership.

Section 151. Unauthorized dealing, selling, and/or buying of gold. Any person, partnership or corporation who shall sell, buy or in any manner deal gold from any miner or person without being duly authorized by the Bangko Sentral ng Pilipinas shall be punished as unauthorized dealing and shall be penalized in accordance with the provisions in this Act.

Section 152. **Destruction of mining structures.** Any person who willfully destroys or damages structures in or on the mining area or on the mill sites shall, upon conviction, be imprisoned for a period not to exceed five (5) years and shall, in addition, pay compensation for the damages which may have been caused thereby.

Section 153. **Mines arson.** Any person who willfully sets fire to any mineral stockpile, mine or workings, fittings or a mine, shall be guilty of arson and shall be punished, upon conviction, by the appropriate court in accordance with the provisions of the Revised Penal Code and shall, in addition, pay compensation for the damages caused hereby.

Section 154. Willful damage to a mine. Any person who willfully damages a mine, unlawfully causes water to run into a mine, obstructs any shaft or passage to a mine, renders useless, damages or destroys any machine, appliance, apparatus, rope, chain, tackle, or any other things used in a mine, shall be punished, upon conviction, by the appropriate court, by imprisonment not exceeding a period of five (5) years and shall, in addition, pay compensation for the damages caused thereby.

Section 155. Illegal obstruction to permittees or contractors. Any person who, without justifiable cause, prevents or obstructs the holder of any permit, agreement or lease from undertaking his mining operations shall be punished, upon conviction by the appropriate court, by a fine not exceeding Five thousand pesos (P5,000.00).

Section 156. Vitiation of FPIC. Any person found to have vitiated the consent of the ICCs/IPs through bribery, threat, force, and/or intimidation, or any other similar means, shall suffer the penalty of six (6) years and one (1) day to ten (10) years in prison, and a fine of at least two million pesos (Php 2,000,000.00). If the perpetrator is a government official, the penalty shall be eight (8) years and one (1) day to twelve (12) years imprisonment, and a fine of at least four (4) million pesos (Php 4,000,000.00). He/she shall be perpetually prohibited from assuming public office, and shall be disqualified from receiving other benefits by virtue of his/her position in government.

Section 157. Penalty for human rights violations. Contractors or other persons who have violated the human rights of communities in connection with the mining operations shall be penalized with ten (10) years to fourteen (14) years imprisonment and a fine of at least five million pesos (Php 5,000.000,00) and shall indemnify the victims.

Section 158. Amendment to Section 27 of Republic Act No. 7076 or the Small-scale Mining Act. Violations of the provisions of RA 7076 or of the rules and regulations issued pursuant hereto shall be penalized with imprisonment of six years and 1 day to 12 years. The State shall confiscate and seize equipment, tools and instruments; effect immediate suspension or closure of the mining activities of the permittee concerned, and revoke the permit.

Section 159. Abandonment. Contractors and/or permittees who shall abandon mines shall be perpetually banned or disqualified from conducting mining operations, directly or indirectly. The ban and/or disqualification shall include the officers and directors of corporations that have abandoned mines.

Section 160. Confiscation of equipment and property. The equipment and property of contractors and permit holders violating this Act shall be forfeited in favor of the government.

Section 161. Non-application of the corporate veil. Any person violating the provisions of Commonwealth Act No. 108, or the Anti-Dummy Law of the Philippines as amended, or is found to have used the corporate structure to defeat the provisions of this Act shall suffer the penalty of five million pesos (P5,000,000.00) and perpetual ban in the mining industry.

Section 162. Reinstatement of revoked permits. After notice and hearing, revoked permits that have undergone due process may be reinstated, *Provided*, That it may only be reinstated once.

CHAPTER XV. TRANSITORY PROVISIONS.

Section 163. There shall be a moratorium on all mining activities until all the systems are in place for the proper implementation of the law.

Section 164. All existing mining permits, licenses and agreements are hereby deemed cancelled. Those mine workers and their families that may be displaced during the transition period shall receive livelihood support and job placements to be facilitated by the appropriate agencies of the State.

Section 165. The classification of public lands as mineral reservations pursuant to pre-existing laws shall hereby cease. All such lands shall be closed to mining unless opened thereto in accordance with the provisions of this Act. The President's power to declare mineral reservations shall henceforth cease to exist. A review of the current mineral land classification shall be conducted to determine the best livelihood and economic option for the said area.

Section 166. The members of the panels of arbitrators and the provincial or city mining regulatory boards established under Republic Act No. 7942 shall hold-over their positions until replaced in accordance with provisions of this Act.

CHAPTER XVI. FINAL PROVISIONS

Section 167. Separability clause. The provisions of this Act are hereby declared to be separable and, in the event of any such provisions are declared unconstitutional, the other provisions which are not affected thereby shall remain in force and effect.

Section 168. Repealing clause. Republic Act 7942, Presidential Decree 463, Presidential Decree 512, and other related mining laws are hereby repealed. All provisions in laws, decrees, issuances and other regulations inconsistent with this present law shall be deemed amended or repealed if the inconsistency is irreconcilable.

Section 169. Funds. The amount of One Hundred Billion Pesos (PhP 100,000,000,000.00) is hereby appropriated for the proper functioning of the Bureau, the Council, and other bodies established under this Act of which half of the said amount shall be allotted for the baseline mineral exploration activities of the Bureau.

Section 170. Implementing rules and regulations. The implementing rules and regulations of this Act shall be the product of joint collaboration by the Department, and representatives from the local government units, peoples' organizations, sectoral organizations and non-governmental organizations, and shall be drawn up after appropriate and exhaustive public consultations at all levels nationwide.

Section 171. Effectivity clause. This Act shall take effect within fifteen (15) days following its publication in two national newspapers of general circulation in the Philippines.