

PHILIPPINES: UNDERMINING WORKERS' RIGHTS

LABOUR RIGHTS ABUSES IN
NICKEL SUPPLY CHAINS

AMNESTY
INTERNATIONAL



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GLOSSARY

WORD	DESCRIPTION
CCCMC	China Chamber of Commerce of Metals Minerals and & Chemicals Importers & Exporters
CESCR	Committee on Economic, Social and Cultural Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
DOLE	Department of Labor and Employment
MGB	Mines and Geosciences Bureau
MPSA	Mineral Production Sharing Agreement
PAG-IBIG	Home Development Mutual Fund
PHILHEALTH	Philippines national health insurance programme
SSS	Social Security System
UN GUIDING PRINCIPLES	UN Guiding Principles on Business and Human Rights

EXECUTIVE SUMMARY

The Philippines is one of the world's largest producers of nickel ore and is the leading supplier of nickel ore to China, where it is used in the production of stainless steel and in other industrial applications. Many of the operating nickel mines in the Philippines are located in Caraga region, including on Dinagat Island.

China is a key export destination for nickel mined on Dinagat Island. There is considerable Chinese investment in some of the nickel mines on Dinagat Island. Chinese investment in the nickel mining sector in the Philippines, including on Dinagat Island, has the potential to have a positive influence on human rights, including the rights of workers. Chinese companies engaged in overseas mining investment and cooperation are expected to follow guidelines for social responsibility developed by the China Chamber of Commerce of Metals Minerals and & Chemicals Importers & Exporters (CCCMC), an industry organization affiliated with China's Ministry of Commerce. CCCMC has recognized the importance of due diligence, including in relation to supply chains and human rights, in two sets of guidelines intended to bring the corporate behaviour of Chinese mining companies in line with international standards: the Guidelines for Social Responsibility in Outbound Mining Investments and Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains. By operating in accordance with these two sets of guidelines, Chinese companies can seek to avoid causing or contributing to adverse human rights impacts through their own activities and should be able to positively influence the practices of other companies in their supply chains. This has the potential to improve labour practices in Chinese-Filipino nickel supply chains.

This report focuses on rights at work in nickel mine sites in Dinagat Islands, a province in the Caraga region of the Philippines. It examines labour practices in the nickel mining sector and is focused particularly on wages, including whether wages meet minimum wage requirements, are paid in full and on time and include payment of compulsory employee benefits, such as health insurance. The report also examines what barriers workers face in trying to access and receive remedy for abuses of their rights at work – which for many of the workers Amnesty International spoke with, would mean simply receiving the wages and benefits owed to them. Amnesty International's research raises serious concerns about rights at work for workers in the nickel mining sector on Dinagat Island in the Philippines.

Amnesty International visited Dinagat Islands province three times between 2019 and 2021 and interviewed more than 100 people, the majority of whom are mine workers. Amnesty International also interviewed government officials – including officials from the Department of Labor and Employment and from the provincial government – as well as other expert stakeholders.

Amnesty International's research raises serious concerns about the labour practices of mining companies on Dinagat Island and the labour-hire companies through which they employ their workforces. There is strong evidence to suggest there are labour-hire companies on Dinagat Island abusing workers' rights in the nickel mining sector. The research has revealed numerous examples

of workers being hired without contracts, delayed payment of wages and non-payment of compulsory employee benefits (including social security and health insurance) – all of which constitute violations of Philippines labour laws and international human rights standards. One in four workers Amnesty International interviewed said that they did not have a written contract with the mining company or labour-hire company they were employed by, and one in five workers Amnesty International interviewed also alleged that their compulsory employee benefits were not properly paid, or not paid at all, by the mining company or labour-hire company they were employed by.

In interviews with Amnesty International, expert stakeholders noted what they believe to be a lack of resources, capacity and will on the part of government institutions tasked with protecting labour rights in the Philippines more broadly. The relative geographical isolation of Dinagat Island, and its distance from government centres, also presents challenges that make it harder for those government agencies not present on Dinagat Island – or with a small presence – to inspect mining and labour-hire companies, monitor workplace conditions and arrangements, and ensure compliance with labour standards. Further, fragmented mandates and unclear delineation of responsibilities, as well as poor communication and coordination between key government agencies, is a significant impediment to enforcement of labour standards in the mining sector. The situation is further compounded by the failure of the Philippines government to ensure that workers' access to effective remedy is easy and without barriers.

While Amnesty International is particularly concerned about the practices of the labour-hire companies through which mining company workforces are employed – a practice that is common in the mining sector in the Philippines – there are also clear implications for the mining companies themselves, which are linked to any abuse of workers' rights through their business relationships with labour-hire companies. Amnesty International's investigation suggests that workers employed through labour-hire companies to work at nickel mine sites on Dinagat Island face abuses of their human rights across the sector. These abuses are well known risk factors in the Philippines and in the mining sector, and are therefore obvious and predictable. The mining companies know, or should know, that there is therefore a risk of labour abuses linked to their operations through their business relationships with the labour-hire companies.

Yet Amnesty International has found no evidence that mining companies on Dinagat Island are conducting adequate or any due diligence on their subcontracting arrangements with labour-hire companies. Without such due diligence, they cannot identify and address these issues in relation to the labour-hire companies they use to employ their workforce. Indeed, some workers told Amnesty International that they have informed the mining companies of their concerns and experiences, and yet no action has been taken. In failing to conduct human rights due diligence, identify possible labour rights abuses and breaches of Philippines labour law, and take action to address them, the mining companies are contributing to abuses. They are therefore failing to meet their responsibility to respect human rights.

Our research has also found that workers face numerous barriers to accessing and receiving remedy for abuse of their rights at work. These barriers include:

- Practical barriers, including costs and long distances workers would need to travel to present their cases;
- Long delays in cases being heard by relevant authorities and in receiving remedy; and
- Power asymmetry, for example workers fear losing their job if they make a complaint.

There is an urgent need for these barriers to be addressed.

KEY RECOMMENDATIONS

To all labour-hire companies active in the mining sector in Dinagat Islands province:

- Urgently modify working policies and practices to ensure compliance with the Labor Code of the Philippines and related orders, rules and regulations, and international human rights and labour standards.
- Offer written contracts to all workers that they employ.
- Make retroactive arrangements for the payment of wages, and for the payment of compulsory employee benefits, where these have not been paid in full.

To all mining companies operating in Dinagat Islands province:

- Establish and implement an ongoing human rights due diligence process to identify, prevent, mitigate and account for how they address their potential and actual adverse human rights impacts throughout their mining operations including in their use of labour-hire companies.
- Establish and implement a process that workers can access in order to raise concerns about their rights at work and through which these concerns can be addressed effectively and fairly.
- Investigate potential labour rights abuses involving the labour-hire companies through which their workforce is employed and remediate, in cooperation with those labour-hire companies, the harms suffered by workers who have been working at their mine sites.
- Not use labour-hire companies that are not registered with the Department of Labor and Employment, or that have been found to have abused workers' rights including with regards to the underpayment of wages, delayed payment of wages, non-payment of mandatory benefits and engaging workers without a written employment contract.

To all companies involved in Filipino-Chinese nickel supply chains:

- Identify and manage risks in their supply chains, including by conducting human rights due diligence on their suppliers and responding to identified risks, to ensure all companies in their supply chains respect human rights consistent with the Guidelines for Social Responsibility in Outbound Mining Investments developed by the CCCMC and the UN Guiding Principles on Business and Human Rights.
- Take remedial action, in cooperation with other relevant actors, if human rights abuses have occurred at any point in a supply chain or business relationship.

To the Chinese Chamber of Metals Minerals & Chemicals Importers and Exporters (CCCMC):

- Require Chinese companies in nickel supply chains to put in place processes for conducting supply chain due diligence following the process set out in the Guidelines for Social Responsibility in Outbound Mining Investments and the OECD Due Diligence Guidance for Responsible Business Conduct.

To the Philippines national government:

- Strengthen government institutions with responsibility for enforcing labour standards in the mining sector (including the Department of Labor and Employment) so they are better resourced and have greater capacity to monitor and inspect mining activities, ensure the fair and timely resolution of worker disputes with their employers, and more effectively collaborate and coordinate with other parts of government.
- Harmonize relevant legislation, and related orders, rules and regulations to clarify and strengthen the mandates of government institutions with responsibility for enforcing labour standards in

the mining sector and to ensure all relevant legislation is consistent with the UN Committee on Economic, Social and Cultural Rights' General Comment No. 23 on the right to just and favourable conditions of work.

To the Department of Labor and Employment:

- Invest resources and build institutional capacity to ensure that only registered contractors, and contractors which are otherwise compliant the Labor Code of the Philippines, are used by mining companies.
- Invest resources and build institutional capacity to ensure the regular inspection of mine sites, including where labour-hire companies are used to employ mine site workforces, to determine compliance with the Labor Code of the Philippines.

To the National Labor Relations Commission:

- Establish a satellite office, or other permanent presence, on Dinagat Island to adjudicate labour and management disputes.

To the provincial government of Dinagat Islands, unions, workers, mining companies and labour-hire companies:

- Engage in dialogue on the policy issues raised in the report. This dialogue could occur through the Caraga Mining Industry Tripartite Council or through some other multi-stakeholder or tripartite forum.



A village located close to a mine site in Surigao del Norte province. © Amnesty International

METHODOLOGY

This report focuses on rights at work in nickel mine sites in Dinagat Islands province, Caraga region, the Philippines. It examines labour practices in the nickel mining sector, including the practices of mining companies operating on Dinagat Island and the labour-hire companies through which they employ their workforces.

In conducting the research for this report, Amnesty International has:

- Visited Dinagat Island three times in February 2019, July 2019 and January-March 2021.
- Conducted more than 50 interviews and three focus group discussions in January, February and March 2021. The interviews and focus group discussions involved more than 100 people in total, the majority of whom are male and workers (both past and present) at nickel mines on Dinagat Island. Interviews and focus group discussions were conducted in 15 barangays (the smallest administrative unit in the Philippines) in five municipalities on Dinagat Island.
- Collected and analysed documentary materials, including worker payslips and official documents related to allegations of labour rights abuse.
- Interviewed officials from the Mines and Geosciences Bureau (MGB), the Department of Labor and Employment (DOLE) and representatives of the provincial government of Dinagat Islands province, including the Governor Arlene "Kaka" J. Bag-ao.
- Written to DOLE and MGB seeking further information and providing each with an opportunity to respond to summary findings. At the time of publication only MGB had provided a response.¹
- Interviewed other stakeholders, including representatives of the School of Labor and Industrial Relations (SOLAIR), University of the Philippines; representatives of local civil society organization Bantay Kita; and representatives from other organizations with knowledge of issues relevant to our research.
- Reviewed Philippines labour law and mining law.
- Reviewed publicly available information (where such information exists) on nickel mining companies operating on Dinagat Island.
- Written to the nickel mining companies operating on Dinagat Island providing each with an opportunity to respond to summary findings and requests for information, including about their human rights due diligence processes, in advance of publication. At the time of publication, only one company, Cagdianao Mining Corporation,² had provided a response.

1. Letter from Mines and Geosciences Bureau (MGB) to the Deputy Regional Director of Amnesty International, 30 July 2021 (on file with Amnesty International).

2. Letter from Cagdianao Mining Corporation to the Deputy Regional Director of Amnesty International, 23 July 2021 (on file with Amnesty International).

- Written to some of the labour-hire companies used by mining companies on Dinagat Island providing each with an opportunity to respond to summary findings and requests for information. It should be noted that not all of the labour-hire companies have publicly available contact details. At the time of publication, none of the companies Amnesty International wrote to had provided a response.

In order to protect the identities (and in some cases security) of workers, government officials and other stakeholders interviewed by Amnesty International, names and other potentially identifying information has not been revealed or referenced in this report unless the interviewee granted Amnesty International permission to publish such information.

1. INTRODUCTION



© ←
Seaweed Farmers, Gibusong
Island, Dinagat Islands
province.
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The Philippines is one of the world's largest producers of nickel ore.³ It is also the world's leading supplier of nickel ore to China, where it is used in the production of stainless steel and in other industrial applications.⁴ Approximately 90% of all nickel mined in the Philippines is exported to China, with the remainder exported to Japan.⁵

Approximately half of the operating nickel mines in the Philippines are located in the Caraga region.⁶ This region includes the provinces of Dinagat Islands (which is the focus of this report), Surigao del Norte and Surigao del Sur.

The Mining Act of the Philippines requires that the holder of a mineral production sharing agreement (MPSA) – the agreement where the government grants a company the exclusive rights to mine (that is, to extract mineral resources) in a specified area – have at least 60% Filipino ownership.⁷ Exemptions

3. The Philippines and Indonesia have both vied for the position of the world's top nickel producer in recent years.

4. Reuters, "Philippines nickel miners see 2020 back on track after virus hit H1 sales", 14 August 2021, [reuters.com/article/health-coronavirus-philippines-nickel/philippine-nickel-miners-see-2020-back-on-track-after-virus-hit-h1-sales-idUKL4N2FG1J2](https://www.reuters.com/article/health-coronavirus-philippines-nickel/philippine-nickel-miners-see-2020-back-on-track-after-virus-hit-h1-sales-idUKL4N2FG1J2)

5. Philippines Nickel Industry Association, "Nickel output drops in 2020", 12 February 2021, philippinenickel.org/news-and-updates/pnia-in-the-news/nickel-output-drops-in-2020/

6. Department of Environment and Natural Resources, MGB, "Caraga Region Mineral Profile", mgb13.ph/wp-content/uploads/2020/06/Caraga-Region-Mineral-Profile-2019-Infographics.pdf; MGB, "Minerals Industry at a Glance", 22 June 2020, mgb.gov.ph/images/Mineral_Statistics/mining_facts_and_figures_updated_22_June_2020_final.pdf (accessed on 7 June 2021).

7. Philippines, Mining Act, R.A 7942, 1995, section 3.

to this can be granted through a financial or technical assistance agreement which allows for 100% foreign owned companies to hold rights to mine.

China is a key export destination for nickel mined on Dinagat Island.⁸ There is also considerable Chinese investment in some of the nickel mines on Dinagat Island. The ownership of the companies with existing rights to mine on Dinagat Island is summarized in the following table.

COMPANY	MINERAL PRODUCTION SHARING AGREEMENT NUMBER	COMPANY OWNERSHIP
Sinosteel Phils. H.Y. Mining Corp	MPSA No. 002-90-X	Sinosteel Philippines is part of the Sinosteel Corporation, a Chinese state-owned enterprise ⁹
Cagdianao Mining Corporation	MPSA No. 078-97-XIII	100% Filipino ¹⁰
Oriental Vision Mining Philippines Corporation	MPSA No. 242-2007-XIII	61% Filipino owned and 39% Chinese owned ¹¹
Libjo Mining Corporation	MPSA No. 233-2007-XIII	60% Filipino owned and 40% Chinese owned ¹²
Century Peak Corporation	MPSA No. 283-2009-XIII	100% Filipino ¹³

Given that the Philippines is the world's leading supplier of nickel ore to China and that there is considerable Chinese investment in some of the nickel mines on Dinagat Island, it is worth reflecting on the potential influence Chinese companies could have on the nickel mining sector on Dinagat Island, as well as in the Philippines more generally.

It must be emphasized that Amnesty International's research focused on labour practices in the nickel mining sector on Dinagat Island, rather than on any one particular mine site. Second, this report's findings point to the existence of systemic labour rights abuses in the nickel mining sector on Dinagat Island rather than any one mining company, or the labour-hire company it uses to employ its workforce, being "better" or "worse" than any other company. Finally, in interviews with Amnesty International, workers told of concerns regarding the labour practices of mining companies (and the labour-hire companies they use to employ their workforces) currently operating on Dinagat Island, as well as companies that had been operating in the past but that no longer have a current MPSA.

8. MGB, "Caraga Regional Office Metallic Minerals Resource Data on Sales CY 2019", mgb13.ph/wp-content/uploads/2020/05/R13-MetallicMineralSales2019.pdf (accessed on 7 June 2021).

9. Sinosteel Group Corporation Limited, en.sinosteel.com (accessed on 7 June 2021).

10. MGB, "Cagdianao Mining Corporation Quick Facts", mgb13.ph/wp-content/uploads/2020/06/Libjo-Mining-Corporation-Quickfacts-2019-Infographics.pdf (accessed on 21 June 2021).

11. MGB, "Oriental Vision Mining Philippines Corporation Quick Facts", mgb13.ph/wp-content/uploads/2020/06/Oriental-Vision-Mining-Philippines-Corporation-Quickfacts-2019-Infographics.pdf (accessed on 7 June 2021).

12. MGB, "Libjo Mining Philippines Corporation Quick Facts", mgb13.ph/wp-content/uploads/2020/06/Libjo-Mining-Corporation-Quickfacts-2019-Infographics.pdf (accessed on 7 June 2021).

13. MGB, "Century Peak Corporation (Parcel II) Quick Facts", mgb13.ph/wp-content/uploads/2020/06/Libjo-Mining-Corporation-Quickfacts-2019-Infographics.pdf (accessed on 21 June 2021).

Chinese investment in the nickel mining sector in the Philippines, and on Dinagat Island, has the potential to have a positive influence on human rights, including the rights of workers. Chinese companies engaged in overseas mining investment and cooperation are expected to follow guidelines for social responsibility developed by the China Chamber of Commerce of Metals Minerals and & Chemicals Importers & Exporters (CCC MC), an industry organization affiliated with the Chinese Ministry of Commerce. The CCC MC has recognized the importance of due diligence, including in relation to supply chains and human rights, in two sets of guidelines intended to bring the corporate behaviour of Chinese mining companies in line with international standards: the Guidelines for Social Responsibility in Outbound Mining Investments¹⁴ and Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains.¹⁵

The Guidelines for Social Responsibility, which apply to all mineral exploration, extraction, processing and investment cooperation projects in which Chinese companies have invested, require companies to respect human rights (including the rights of workers) including by developing and implementing a policy commitment to respect human rights, developing a human rights due diligence process and developing a mechanism to provide effective remedy for people adversely affected by the company's operations.¹⁶ The due diligence guidelines provide guidance to Chinese companies that are extracting or using mineral resources and are engaged in mineral supply chains to identify, prevent and mitigate their risks of contributing to conflict, serious human rights abuses and risks of serious misconduct, as well as to observe the UN Guiding Principles on Business and Human Rights (UN Guiding Principles; see below) during the entire life-cycle of the mining project.¹⁷

By operating in accordance with these two guidelines, Chinese companies can seek to avoid causing or contributing to adverse human rights impacts through their own activities and should be able to positively influence the practices of other companies in their supply chains. This has the potential to improve labour practices in Chinese-Filipino nickel supply chains.

Dinagat Islands province, and parts of the neighbouring provinces of Surigao del Norte and Surigao del Sur, was declared a mineral reservation area in 1939 because of the presence of nationally significant mineral resources.¹⁸ Much of Dinagat Island is covered by MPSAs.¹⁹

Data from MGB – which is a bureau in the Department of Environment and Natural Resources that has responsibility for the management of mineral resources in the Philippines – put the value of mining in Caraga region, where Dinagat Islands province is located, at PHP 17.74 billion (US\$350 million) in 2018, or 16.8% of the estimated gross regional domestic product.²⁰ An estimated 2,300 people were employed by the mining sector in Dinagat Islands province in 2019,²¹ which is 1.8% of the province's population of 127,000.²² Nationally, approximately 0.5% of employment in “major industry groups”

14. China Chamber of Commerce of Metals Minerals and & Chemicals Importers & Exporters (CCC MC), *Guidelines for Social Responsibility in Outbound Mining Investments*, cccmc.org.cn/docs/2017-08/20170804141709355235.pdf

15. CCC MC, *Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains*, cccmc.org.cn/docs/2016-05/20160503161408153738.pdf.

16. CCC MC, *Guidelines for Social Responsibility in Outbound Mining Investments* (previously cited), p. 10.

17. CCC MC, *Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains* (previously cited), p. 8.

18. Philippines, Proclamation No. 391, s 1939 establishing a mineral land reservation all mineral deposits and mineral lands in the islands north of the island on Mindanao, in the province of Surigao

19. MGB, “Mining tenements control map”, mgbr13.ph/MGB-R13DataFiles/MMD/Tenements/2018/February2018.pdf (accessed on 7 June 2021).

20. MGB, “Caraga Region Mineral Profile” (previously cited).

21. MGB, “Province of Dinagat Island Mineral Profile”, www.mgbr13.ph/wp-content/uploads/2020/06/Province-of-Dinagat-Islands-Mineral-Profile-2019-Infographics.pdf (accessed 28 June 2021).

22. Philippines Statistics Authority, “Highlights of the Philippine Population 2015 Census of Population”, 19 May 2016, psa.gov.ph/content/highlights-philippine-population-2015-census-population

(which includes agriculture, industry and services) is in the mining and quarry sector,²³ suggesting employment in mining in Dinagat Islands province is higher than the national average. Despite their rich mineral wealth, however, Dinagat Islands, Surigao del Norte and other provinces in the region are some of the poorest in the Philippines,²⁴ with 36% of families in Dinagat Islands province having an income below the poverty line.²⁵ Despite its abundant mineral resources, Caraga region as a whole, and Dinagat Islands province in particular, is poor.



Map of the Philippines. © HueMan1 - Own work, CC BY-SA 4.0, <https://commons.wikimedia.org/w/index.php?curid=79244307>



Map of Dinagat Islands province. © PhilAtlas

23. Philippines Statistics Authority, "Employed Persons by Major Industry Group, Philippines: 2016 - July 2018", psa.gov.ph/sites/default/files/attachments/cls/Tab5_11.pdf (accessed 7 June 2021).

24. Philippines Statistics Authority, "Updated 2015 and 2018 Full Year Official Poverty Statistics, Table 1. Updated Annual Per Capita Poverty Threshold, Poverty Incidence and Magnitude of Poor Families with Measures of Precision", 4 June 2020, psa.gov.ph/content/updated-2015-and-2018-full-year-official-poverty-statistics (accessed 7 June 2021).

25. Philippines Statistics Authority, "Special Release: 2018 First Semester Poverty Statistics of Caraga", September 2019, rssocaraga.psa.gov.ph/sites/default/files/Special%20Release%202019-026_PovStat%20%201st%20Sem2019.pdf (accessed 7 June 2021).

2. LABOUR RIGHTS ABUSES



Mining Barges on the sea in Surigao del Norte in the Philippines.
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2.1 ALLEGATIONS OF ABUSE OF RIGHTS AT WORK

Workers Amnesty International spoke with made numerous allegations concerning labour rights abuses in the mining sector in Dinagat Islands province. These include allegations of hiring of workers without a contract, delayed payment of wages and non-payment of compulsory employee benefits. These benefits include payments to SSS (the Social Security System), PAG-IBIG (the Home Development Mutual Fund) and PhilHealth (the Philippines national health insurance programme).

The majority of these allegations relate directly to the practices of contractors or subcontractors,²⁶ which are known locally as “manpower” or “labour-hire” companies. It is common practice in the Philippines – including on Dinagat Island – for mining companies to employ their workforces through labour-hire companies.²⁷ The regulation of contractors and subcontractors is governed by a set of implementing rules developed and enforced by DOLE (see “Philippines Labour Laws”, below).²⁸ Under

26. Relevant DOLE implementing rules use both terms interchangeably.

27. See Miraluna S. Tacadao, *A descriptive study on safety and working conditions in selected large-scale surface mines in the Philippines*, 2018, which notes that that in some mining firms the number of workers employed by contractors is nearly half or even more than the number of permanent staff.

28. Department of Labor and Employment (DOLE), Order No. 174, Rules implementing articles 106 to 109 of the Labor Code, as amended, 2017, ro6.dole.gov.ph/fndr/mis/files/DO%20174-17%20Rules%20Implementing%20%20%20Articles%20106%20to%20109%20of%20the%20Labor%20Code.%20As%20Amended.pdf

such arrangements, a “principal” (which for the purposes of this report are the mining companies) seeks the services of a “contractor” to provide services for a specific job. The contractor then employs workers to complete that job (under the implementing rules, workers are the employees of the contractor not the principal). The implementing rules require the signing of a service agreement between the principal and contractor.²⁹ One company operating on Dinagat Island, Cagdianao Mining Corporation, told Amnesty International that it requires through its agreements with contractors that contractors comply with relevant laws such as those that protect workers’ rights and prohibit the engagement of minors.³⁰

The implementing rules do prohibit so-called “labor-only contracting”. Labour-only contracting refers to an arrangement where a contractor recruits, supplies or places workers to perform a job or work for a principal, and the contractor does not have substantial capital or tools, equipment, machinery etc or does not exercise the right to control the performance of the work of the worker.³¹ The implementing rules also make clear that in cases where a contractor is engaged in labour-only contracting the principal is then deemed to be the direct employer of the contractors’ employees.³² Amnesty International’s research did not find evidence of use of labour-only contracting in the mining sector on Dinagat Island.

The majority of workers Amnesty International spoke with have been employed through a contractor. This includes the employment of so-called “seasonal” (or “casual”) workers whose labour is needed during the mining season only, but not during those times of the year when mining operations halt because of poor weather. The employment of mine workers on Dinagat Island is often on a seasonal basis, typically less than six months at a time.

Amnesty International’s research did not reveal a significant number of allegations of payment of wages at rates below minimum wages – only three workers told Amnesty International they are, or have been, paid below the minimum wage. This is consistent with others’ research findings that there is a high level of compliance with minimum wage rules in the mining sector in the Philippines.³³

However, Amnesty International’s research – which included a review of worker payslips – did reveal that just over one in three workers interviewed received the minimum wage only. This is consistent with data collected by other organizations that suggests employment in the mining sector can be low-paid for many workers. For example, data from the Philippines Statistics Authority shows that “miners, shotfirers and blasters, mining plant and processing plant operators and unskilled workers” received an average monthly wage that is much less than other workers in other industries.³⁴ Further, research undertaken by others suggests that workers engaged through subcontractors – which is common practice in the mining sector on Dinagat Island – tend to receive lower wages than those who are employed directly by the mining companies.³⁵

The payment of minimum wages only is not unlawful. However, the Committee on Economic, Social and Cultural Rights, the expert UN body responsible for monitoring states’ compliance with the

29. DOLE, Order No. 174 (previously cited), section 11.

30. Letter from Cagdianao Mining Corporation to the Deputy Regional Director of Amnesty International, 23 July 2021 (on file with Amnesty International).

31. DOLE, Order No. 174 (previously cited), sections 3 and 5.

32. DOLE, Order No. 174 (previously cited), section 7.

33. See, for example, Institute for Labor Studies, Skill and compensation survey for metallic mining industry, 2016, ils.dole.gov.ph/skills-and-compensation-survey-for-metallic-mining-industry/, p. 39.

34. Philippines Statistics Authority, “Wage statistics, Average Monthly Wage Rates of Time-Rate Workers on Full Time Basis in Selected Industries and Occupations”, psa.gov.ph/philippine-industry-yls/table/Wage%20Statistics (accessed 30 June 2021).

35. M. Tacadao, *A descriptive study on safety and working conditions in selected large-scale surface mines in the Philippines* (previously cited), p. 21.

provisions of the International Covenant on Economic, Social and Cultural Rights, has made clear that, for workers on precarious contracts, supplements to the wage may be necessary to mitigate the lack of job security.³⁶ No such supplements are required by Philippines labour law. Many of the workers Amnesty International spoke with are on short term contracts, and those receiving the minimum wage only are not receiving a wage supplement.



PHILIPPINES LABOUR LAWS

The Labor Code of the Philippines governs employment practices and labour relations in the Philippines. Among other things it:

- Determines conditions of employment, including in relation to hours of work and the right to a weekly rest period;³⁷
- Authorizes Regional Tripartite Wages and Productivity Boards to determine minimum wages³⁸ (these boards are comprised of regional directors from DOLE, the National Economic Development Authority and Department of Trade and Industry, as well as worker and employer representatives). The current minimum daily wage rate for non-agricultural workers in Caraga region is PHP 320 (US\$7);³⁹
- Prescribes how wages are to be paid, including that wages must be paid in full and regularly;⁴⁰ and
- Establishes an employee compensation and insurance fund to which employers are required to pay contributions on behalf of their employees.⁴¹

Employers are required to deduct monthly contributions to SSS, PAG-IBIG and PhilHealth from employees' wages.⁴² Employers must deduct these monthly contributions based on the prescribed rate and remit to SSS, PAG-IBIG and PhilHealth on behalf of their employees.

The Labor Code of the Philippines allows for the employment of people on a regular (that is, permanent), casual or probationary basis, the latter which should not exceed six months.⁴³ Conditions of employment as articulated in the Philippines Labor Code applies to all employment types. Employment must be regular unless work performed is fixed for a specific project, or is seasonal in nature and employment is for the duration of the season (which as noted above is common in the mining sector on Dinagat Island). Seasonal employees are considered regular employees if they have provided one year of service, even if that service is broken because of the seasonal nature of the work they provide.

36. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 23: The right to Just and Favourable Conditions of Work (Art. 7), 27 April 2016, UN Doc. E/C.12/GC/23, para. 10.

37. Philippines, Labor Code, P.D. 442, 1974, Book Three, Title I (as amended).

38. Philippines, Labor Code, P.D. 442, 1974, Book Three, Title II, Chapter II (as amended).

39. National Wages and Productivity Board, DOLE, "Region XIII (Caraga region) Daily minimum wage rates" nwpc.dole.gov.ph/regionandwages/region-xiii-caraga/ (accessed 18 June 2021).

40. Philippines, Labor Code, P.D. 442, 1974, Book Three, Title II, Chapters III and IV (as amended).

41. Philippines, Labor Code, P.D. 442, 1974, Book Four, Title II, Chapter IV (as amended).

42. Philippines, Social Security Act, R.A. 11199, 2018; Philippines, Universal Health Care Act, R.A. 11223, 2018; Philippines, Home Development Fund Law, R.A. 9679, 2009.

43. Philippines, Labor Code, P.D. 442, 1974, Book Six, Title I (as amended).

The Labor Code also establishes that, in situations where an employer (referred to as the principal in the relevant implementing rules) engages employees through a contractor or subcontractor, there exists solidary liability (that is, the employer is liable along with the contractor or subcontractor) for any violation of the Labor Code, including with regards to the payment of wages.⁴⁴

Further, the rules implementing the relevant articles of the Labor Code related to use of contractors or subcontractors clarify that employees of a contractor or subcontractor are entitled to security of tenure and all rights and privileges provided for in the Labor Code (that is, the same rights and privileges as workers employed directly by an employer).⁴⁵ This includes the rights to safe and healthy working conditions; to labour standards, including for rest days, overtime and holiday pay; to retirement benefits; to social security and welfare benefits; and to self-organize, collectively bargain and strike.⁴⁶ A written employment contract between the contractor or subcontractor and its employees is required and must be provided on or before the first day of employment.⁴⁷

All contractors must be registered with DOLE through one of its regional offices, and a central registry of contractors must be maintained by the Bureau of Working Conditions.⁴⁸ The implementing rules also authorize the regional director of DOLE to cancel the registration of a contractor if, among other things, the contractor has violated the rights of its employees.⁴⁹ Further, regional directors are authorized to conduct routine inspections of establishments using contractors to determine violations of the Labor Code and related orders, rules and regulations.⁵⁰

One in four workers Amnesty International interviewed said that they did not have a written contract with the mining company or labour-hire company they were employed by. This is a clear breach of the Labor Code and the relevant implementing rules, which require a written employment contract between the contractor or subcontractor and its employees. One worker told Amnesty International: “At first, there was a contract. But now that I’m regular seasonal [worker], none. If there’s an operation, I work straight away”.⁵¹

Other workers told Amnesty International they had been working for the same company for many years but had never been asked to sign a contract,⁵² while others said they were only asked to sign a contract near the end of their employment period.⁵³ Another worker told Amnesty International that they were asked to sign a new contract every three months but that “workers don’t know what is written in it as they make us sign it as a matter of urgency.”⁵⁴ Another worker told Amnesty International: “[I] just

44. Philippines, Labor Code, P.D. 442, 1974, Book Three, Title II, Chapter III (as amended).

45. DOLE, Order No. 174 (previously cited), Section 10.

46. DOLE, Order No. 174 (previously cited), Section 10.

47. DOLE, Order No. 174 (previously cited), Section 11.

48. DOLE, Order No. 174 (previously cited), Section 14.

49. DOLE, Order No. 174 (previously cited), Section 23.

50. DOLE, Order No. 174 (previously cited), Section 29.

51. Interview in person with a worker (name withheld for security reasons), January 2021, Basilisa municipality.

52. In-person focus group discussion, March 2021, Loreto municipality.

53. In-person focus group discussion, March 2021, Libjo municipality.

54. Interview in person with a worker (name withheld for security reasons), March 2021, Loreto municipality.

have verbal agreements. The problem is if you mess up, you're fired right away because you did not sign any contract."⁵⁵

The Committee on Economic, Social and Cultural Rights has noted with concern that workers on precarious contracts are at risk of such arbitrariness.⁵⁶ Further, the Committee has stated that excessive use of short-term and fixed term contracts that negatively affect job security and social security benefits is not consistent with the right to just and favourable conditions of work.⁵⁷

Workers also allege delayed payment of their wages on some occasions. One group of workers told Amnesty International that their "wages are constantly delayed for three months".⁵⁸ One worker described a particularly insidious example of how workers are even forced to borrow money using the wages they are owed as collateral: "With [the labour-hire company] it takes a long time for us to get paid. That's why we 'sell' them our wages, on which they put a 10% interest. We just went with it because we badly needed the money."⁵⁹

One in five workers Amnesty interviewed also alleged, having checked with the relevant scheme, that their SSS, PAG-IBIG, and/or PhilHealth benefits were not properly paid, or paid at all, by the mining company or labour-hire company they were employed by, which is in breach of the Labor Code. For example, one worker told Amnesty International that he received only 53 of the 84 monthly SSS payments he was owed during the seven years he worked for a particular company.⁶⁰ Another worker said that he received 12 months of SSS payments only, even though he had worked for four years through one of the labour-hire companies on Dinagat Island.⁶¹ One worker told Amnesty International that he did not receive any SSS, PAG-IBIG or PhilHealth benefits "because we're merely labourers".⁶² Another worker said that his employer's failure to make benefit payments was because workers like him "are just subcontracted for the work"⁶³ – which is in fact contrary to Filipino law. Another said: "[The labour-hire company] promised that they would handle the SSS, PhilHealth and PAG-IBIG, but they never made remittance deductions. We kept complaining... but come payday, there are no remittance deductions – none. We get our wages as is."⁶⁴

The testimony of workers is supported by what Amnesty International was told by government representatives, who confirmed that non-payment of compulsory benefits is a particular problem associated with labour-hire companies active in the mining sector.⁶⁵

Amnesty International has seen official documentation that also raises serious concerns about labour practices in the mining sector on Dinagat Island. Amnesty International is aware of at least two formal complaints made against Palhi Nickel Contracting Services, a labour-hire company used by Oriental Vision Mining Philippines Corporation during at least some of the period between 2015 and 2018. In one, complainants wrote to the regional director of MGB alleging delayed payment of wages, non-payment of increased minimum wages and discrepancies in the payment of SSS, PAG-IBIG and other

55. Interview in person with a worker (name withheld for security reasons), January 2021, Tubajon municipality.

56. CESCR, General Comment 23 (previously cited) para. 10.

57. CESCR, General Comment 23 (previously cited), para. 47.

58. In-person focus group discussion, March 2021, Tubajon municipality.

59. Interview in person with a worker (name withheld for security reasons), January 2021, Tubajon municipality.

60. In-person focus group discussion, March 2021, Tubajon municipality.

61. In-person focus group discussion, March 2021, Tubajon municipality.

62. Interview in person with a worker (name withheld for security reasons), January 2021, Tubajon municipality.

63. Interview in person with a worker (name withheld for security reasons), January 2021, Tubajon municipality.

64. Interview in person with a worker (name withheld for security reasons), January 2021, Loreto municipality.

65. Interview in person with DOLE representative (name withheld on request), February 2021, San Jose.

payments due.⁶⁶ A subsequent investigation by MGB recommended that Norweah Metals and Minerals Company (which holds the relevant MPSA for which Oriental Vision Mining Philippines Corporation is designated as the operator of the associated mine site) should “assure the welfare of its employees by monitoring mainly on the regular remittances, contributions and taxes for efficient and transparent records”.⁶⁷ MGB also recommended that DOLE conduct an on-site detailed validation and investigation regarding this complaint.

In another case, a complaint was filed with the National Labor Relations Commission by a separate group of workers against Palhi Nickel Contracting Services for illegal dismissal and non-payment of separation pay (a payment employers must pay their employees in the event of redundancy, retrenchment or the closure or cessation of business operations).⁶⁸ Following mandatory conciliation and mediation, Palhi Nickel Contracting Services agreed to settle the case and pay the four workers a total of Php 43,000 (US\$855).⁶⁹ However, in November 2018 the workers testified that the payment was never received from Palhi Nickel Contracting Services. The National Labor Relations Commission subsequently issued a writ of execution against Palhi Nickel Contracting Services.⁷⁰ It is not clear from the documentation that Amnesty International has seen whether or not these workers were employed by Palhi Nickel Contracting Services to undertake work for Oriental Vision Mining Philippines Corporation or for another company on Dinagat Island or elsewhere in Caraga region.

Amnesty International is also aware of another case involving 48 workers employed by Ultimate Shield Security Agency to provide security to Cagdianao Mining Corporation (which operates a mine site on Dinagat Island on behalf of East Coast Mineral Resources Co., Inc.).⁷¹ In this case, workers were not paid overtime and holiday pay between 2012 and 2017. Following the intervention of DOLE, pay owed was finally paid by Cagdianao Mining Corporation in 2019 in recognition that it was liable for unpaid wages.⁷² Cagdianao Mining Corporation has told Amnesty International that since 2017 it has not renewed its contract with Ultimate Shield Security Agency.⁷³

The cases cited above substantiate the testimony collected by Amnesty International from workers that wages and benefits are not always paid properly or on time in the mining sector on Dinagat Island.

2.2 IMPLICATIONS FOR WORKERS AND THEIR FAMILIES OF ABUSES OF RIGHTS AT WORK

The allegations described in the preceding section can have significant, negative implications for workers and their families. When wages are minimum wages only or not paid in a timely manner, it can undermine the ability of workers and their families to enjoy social security, health care, education and an adequate standard of living, including food, water and sanitation and housing. Data produced

66. Copy of letter from complainants to the regional director of the MGB, 27 September 2018, Surigao city (on file with Amnesty International).

67. MGB, “Evaluation report re: complaint against manpower service contractor of Oriental Vision Mining Philippines Corporation (OVMP)”, 8 October 2018 (on file with Amnesty International).

68. Philippines, Labor Code, P.D. 442, 1974, Book Six, Title I (as amended).

69. National Labor Relations Commission, Regional Arbitration Branch No XIII, Decision based on compromise agreement, 24 August 2018 (on file with Amnesty International).

70. National Labor Relations Commission, Regional Arbitration Branch No XIII, Writ of execution, 29 January 2019 (on file with Amnesty International).

71. DOLE Caraga Regional Office, “48 Security Guards Finally Received Back Pay from Cagdianao Mining Corporation (CMC)”, 4 October 2019, caraga.dole.gov.ph/default.php?retsamlakygee=803&resource=e3b803fa99a440fefee4d18e57cc6642

72. DOLE Caraga Regional Office, “48 Security Guards Finally Received Back Pay” (previously cited).

73. Letter from Cagdianao Mining Corporation to the Deputy Regional Director of Amnesty International, 23 July 2021 (on file with Amnesty International).

by the International Labour Organization suggests that a minimum wage earner in the Philippines may not be able to lift his or her household out of poverty.⁷⁴ Workers are also at risk of becoming indebted to informal lenders – needing to borrow money to cover their living expenses while waiting to be paid – with the associated issues this carries, including with regards to high borrowing costs. As has been noted above, workers Amnesty International spoke with have cited a case of being indebted to the labour-hire agency they are employed by.

The non-payment of compulsory benefits on behalf of workers also has potentially significant implications. Workers may not be able access the benefits they would otherwise be entitled to, such as low interest home loans through the PAG-IBIG fund's Affordable Housing Program, or payments in the event of sickness, injury or retirement through the SSS system, as eligibility to benefit from these is based in part on a minimum number of contributions having being made.⁷⁵ Similarly, Amnesty International was told by some workers that they had not been able to access PhilHealth benefits when they needed to because their PhilHealth contributions were found to be incomplete.⁷⁶

2.3 BARRIERS TO ACCESSING AND RECEIVING REMEDY FOR LABOUR RIGHTS ABUSE

Mine workers on Dinagat Island face numerous barriers to accessing and receiving remedy for any abuse of their rights at work, including those discussed in the following sections.

2.3.1 PRACTICAL BARRIERS

Workers on Dinagat Island face numerous practical barriers if they want to formally pursue a complaint. Formal complaint processes include the National Labor Relations Commission, which has the power to hear and decide on labour disputes, including in relation to unfair labour practices and the terms and conditions of employment (which includes in relation to wages).⁷⁷ The Bureau of Labor Relations and Labor Relations Divisions in regional DOLE offices also have authority to act on disputes involving labour and management.⁷⁸ As noted above, MGB may also undertake its own investigations, although a referral to DOLE is a likely outcome of any such investigation. (MGB told Amnesty International that it had not received any formal complaints from workers in 2019, 2020 or to date in 2021.)⁷⁹ Cases first brought to the National Labor Relations Commission may be appealed to the Court of Appeals or the Supreme Court.

Distance is one practical barrier. For example, DOLE's regional office is in Butuan City (though it does have a satellite office on Dinagat Island), as is the National Labor Relations Commission's regional office. Butuan City is a two-hour ferry ride and two-hour bus ride from San Jose, the capital of Dinagat Islands province. (Similarly, there is no SSS or PAG-IBIG office on Dinagat Island, making it difficult for workers to check that contributions have been made by their employers on their behalf).

74. International Labour Organization (ILO), *Decent work country diagnostics: Philippines 2017*, October 2017, ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_588875.pdf

75. See, for example, Republic of the Philippines Social Security System, "Sickness Benefit", sss.gov.ph/sss/appmanager/viewArticle.jsp?page=sickness (accessed on 7 June 2021) and Pag-IBIG Fund, "Pag-IBIG Housing Loan", pagibigfund.gov.ph/Availmentofnewloan.html#-1v (accessed on 7 June 2021).

76. Interview in person with a worker (name withheld for security reasons), January 2021, Tubajon municipality.

77. Philippines, Labor Code, P.D. 442, 1974, Book Five, Title II, Chapter I.

78. Philippines, Labor Code, P.D. 442, 1974, Book Four, Title III.

79. Letter from MGB to the Deputy Regional Director of Amnesty International, 30 July 2021 (on file with Amnesty International).

Complainants also need to cover their own expenses, including lawyer's fees in situations where complainants choose to engage the services of a lawyer.⁸⁰ Such costs are prohibitive, especially for those workers being paid on or just above the minimum wage. While there is a Public Attorney's Office, which is tasked with providing free legal services to eligible people (that is, for people whose family income is below a designated level), including with regards to labour cases,⁸¹ in 2020, its attorneys had on average almost 3,000 clients each.⁸² Further, in Caraga region the Public Attorney's Office employed just 52 attorneys in 2020.⁸³ The office is under-resourced,⁸⁴ potentially depriving workers of the free legal advice they need to pursue a formal complaint.

2.3.2 LONG DELAYS IN RECEIVING REMEDY

Workers told Amnesty International of the often very long time it has taken for their complaints to be resolved, if at all, despite the existence of specific time frames within which formal complaints must be resolved. This includes, for example, DOLE's "Single Entry Approach" process or the process at the National Labor Relations Commission, both of which require cases to be settled within 30 days.

Amnesty International heard of a case involving underpayment of wages that took eight years to resolve.⁸⁵ Another worker Amnesty International interviewed described a 2.5 year wait for resolution of his complaint.⁸⁶ Further, Amnesty International was told by workers that often no information is provided to workers on the status of their complaints, leaving workers anxious and frustrated.⁸⁷

It is therefore unsurprising that Amnesty International was told many workers choose not to pursue complaints, end up withdrawing them or give up before their complaints are heard or resolved. For many workers, the complaints-making processes can be one of "false hopes"⁸⁸ and "false promises".⁸⁹ "We didn't pursue our complaint [submitted in 2013] as we have not heard of any feedback about it," one worker told Amnesty International. "We all eventually got tired and bitter over it."⁹⁰

Notwithstanding some of the practical barriers described above, or the long delays in workers receiving remedy, a number of workers did highlight the important role that DOLE has played in helping resolve some workers' complaints. Amnesty International did hear that DOLE had, on at least two occasions that the workers Amnesty International interviewed were aware of, helped resolve worker complaints.⁹¹ One worker told Amnesty International "without DOLE involvement, workers would not have received back pay that was owed to them".⁹² Further and as noted above, Amnesty International is aware of investigations made by MGB following the receipt of complaints from workers.

80. Interview in person with workers (names withheld for security reasons), March 2021, Loreto municipality.

81. Public Attorney's Office, "Persons Qualified for Legal Assistance", pao.gov.ph/page.php?id=28 (accessed 18 July 2021).

82. Public Attorney's Office, "Accomplishment Report of the Public Attorney's Office for the Year 2020", 14 January 2021, [pao.gov.ph/UserFiles/Public_Atorney's_Office/file/2020%20PAO%20Accomplishment%20Report%20\(Narrative\).pdf](http://pao.gov.ph/UserFiles/Public_Atorney's_Office/file/2020%20PAO%20Accomplishment%20Report%20(Narrative).pdf)

83. Public Attorney's Office, "Accomplishment Report of the Public Attorney's Office for the Year 2020", (previously cited).

84. United States Department of State, Bureau of Democracy, Human Rights and Labor, "Philippines 2018 Human Rights Report", [justice.gov/eoir/page/file/1145101/download](https://www.eoir.gov/eoir/page/file/1145101/download)

85. Interview in person with a worker (name withheld for security reasons), January 2021, Loreto.

86. Interview in person with a worker (name withheld for security reasons), March 2021, Loreto.

87. See, for example, interview in person with a worker (name withheld for security reasons), January 2021, Tubajon.

88. Interview in person with a worker (name withheld for security reasons), January 2021, Tubajon.

89. Interview in person with a worker (name withheld for security reasons), January 2021, Tubajon.

90. Interview in person with a worker (name withheld for security reasons), January 2021, Tubajon.

91. Interview in person with a worker (name withheld for security reasons), January 2021, Tubajon, and interview in person with a worker (name withheld for security reasons), January 2021, Loreto.

92. Interview in person with a worker (name withheld for security reasons), January 2021, Loreto.

2.3.3 POWER ASYMMETRY

There is a clear asymmetry of power between workers, on one side, and the mining and labour-hire companies, on the other. One worker told Amnesty International that workers do not pursue complaints because “the mining companies are rich and we’re just ordinary people.”⁹³ Other workers told of their complaints being ignored by the mining company (“We kept complaining but they never acted on it”),⁹⁴ or being referred by the mining company to the labour-hire company (“Go talk to the agency,” some workers were told) where “nothing happens to our complaint”.⁹⁵

However, some workers had more positive experiences. Amnesty International heard accounts from some workers about complaints having been quickly resolved, particularly those such as underpayment of overtime.⁹⁶ These positive experiences, however, were not common among the testimony collected by Amnesty International.

Fear of retribution is a factor cited by workers in choosing not to pursue a formal complaint. One worker told Amnesty International: “The mining company has said, ‘If you file a complaint, you won’t be able to return to work.’ That’s their policy. Once you complain, none of your descendants will be able to get a job.”⁹⁷ Another worker said: “If workers make complaints, they are terminated right away.”⁹⁸

One worker told Amnesty International that he and three colleagues who had complained about the incorrect payment of compulsory benefits were “dismissed and not allowed to return to work”.⁹⁹ Another worker expressed concern that her husband’s job might be affected if she were to file a formal complaint about her treatment working for the same company.¹⁰⁰ In cases where workers do not have a signed contract with a labour-hire company, which as noted above is common, then workers are at potentially greater risk of having their employment terminated and have no protection against such arbitrariness.

Numerous workers, and other stakeholders, also told Amnesty International about cases of labour-hire companies used by mining companies on Dinagat Island being owned by local political figures. Where workers do have concerns about their rights at work, making formal complaints can therefore be “difficult because it’s a lot of trouble, especially [when] the [former] mayor is involved [as the owner of the labour-hire company]”.¹⁰¹ Others say they simply do not make complaints “to avoid trouble”.¹⁰² As one government representative noted: “The owners of the mining companies are ‘big shots’”¹⁰³ – meaning they can potentially exercise undue influence on the handling of complaints made by workers. Concern was expressed that direct links between the labour-hire companies and local political figures, where they exist, potentially present an obstacle to the pursuit of remedy in individual cases. As one government representative told Amnesty International: “A lot of the violations [of workers’ rights] are made by the politicians who are businessmen.”¹⁰⁴

93. Interview in person with a worker (name withheld for security reasons), January 2021, Tubajon.

94. Interview in person with a worker (name withheld for security reasons), March 2021, Loreto.

95. Interview in person with a worker (name withheld for security reasons), January 2021, Tubajon.

96. See, for example, interview in person with worker (name withheld for security reasons), January 2021, Basilisa, and interview in person with worker (name withheld for security reasons), January 21021 Loreto.

97. Interview in person with a worker (name withheld for security reasons), March 2021, Loreto.

98. Interview in person with a worker (name withheld for security reasons), January 2021, San Jose.

99. In-person focus group discussion, March 2021, Tubajon.

100. Interview in person with a worker (name withheld for security reasons), March 2021, Loreto.

101. Interview in person with a worker (name withheld for security reasons), January 2021, Tubajon.

102. Interview in person with a worker (name withheld for security reasons), January 2021, Tubajon.

103. Interview in person with a DOLE representative (name withheld on request), February 2021, San Jose.

104. Interview in person with a DOLE representative (name withheld on request), March 2021, San Jose.

The practical barriers, long delays in receiving remedy and power asymmetry described above for workers in the mining sector on Dinagat Island are consistent with the findings of research conducted by other organizations in the Philippines. For example, the Institute of Labor Studies found that many factors delay the conclusion of cases that come before quasi-judicial agencies (principally the National Labor Relations Commission) or the courts across the Philippines, including “lack of adequate legal aid, court and other fees, location of courthouses and quasi-judicial agencies, resort to remedial and procedural manoeuvring and corruption”.¹⁰⁵

2.4 POOR ENFORCEMENT OF PHILIPPINES LABOUR LAW

The contracting-out of labour is a key underlying cause of labour rights abuses in the mining sector in the Philippines. Many of the stakeholders that Amnesty International spoke with pointed out such employment tended to be less secure and lower paid when arranged through labour-hire companies.¹⁰⁶ This accords with testimony collected by Amnesty International, with one group of workers saying: “When we worked for the mining company the company’s processes were decent and our wages were up to date but when [we moved to a contractor] our wages were no longer accurate and delayed for months.”¹⁰⁷

Amnesty International was also told that some of the labour-hire companies used by the mining companies are not registered in accordance with provisions of DOLE’s Order No. 174 on use of contractors and subcontractors,¹⁰⁸ which is contrary to Philippines labour law. One company, Cagdianao Mining Corporation, told Amnesty International that it requires the submission of certificates of registration as evidence that the contractors it uses are eligible to be engaged as contractors.¹⁰⁹

Even though the Labor Code establishes solidary liability between the principle and its contractor – meaning they are both liable for any violations of the Labor Code – some stakeholders believe the use of labour-hire companies allows mining companies to (or try to) circumvent labour laws, a problem they observed as being common across the Philippines.¹¹⁰ Further, some of the experts Amnesty International spoke with noted that mining companies in the Philippines often push responsibility for respect of workers’ rights onto the labour-hire companies¹¹¹ – as noted above, workers have been told to “talk to the agency” when they raise concerns about a labour-hire company with the mining company. This is contrary to the principle of solidary liability as well as to mining companies’ responsibility to respect human rights under the UN Guiding Principles. Further, the corporate responsibility to respect human rights applies fully and equally to all businesses, regardless of their size and capacity. Even if some of the labour-hire companies operating on Dinagat Island are small, this does not absolve them of their responsibility to respect human rights.

105. Tecelyn B. Maramag, “A legal analysis on the speedy disposition of labor cases on appeal”, 2017, ils.dole.gov.ph/a-legal-analysis-on-the-speedy-disposition-of-labor-cases-on-appeal/

106. See, for example, interview in person with DOLE government representative (name withheld on request), February 2021, San Jose; interview by video call with other stakeholder (name withheld on request), March 2021, Quezon City; and interview by video call with other stakeholder (name withheld on request), May 2021, Manila.

107. In-person focus group discussion, March 2021, Tubajon.

108. Interview in person with DOLE representative (name withheld on request), February 2021, San Jose.

109. Letter from Cagdianao Mining Corporation to the Deputy Regional Director of Amnesty International, 23 July 2021 (on file with Amnesty International).

110. Interview by video call with other stakeholder (name withheld on request), March 2021, Quezon City.

111. Interview by video call with other stakeholder (name withheld on request), March 2021, Quezon City.



INTERNATIONAL HUMAN RIGHTS STANDARDS

The Philippines is a party to most of the core human rights treaties,¹¹² including the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights and other treaties that include specific provisions related to rights at work.¹¹³

Article 6 of the ICESCR guarantees the right of all persons to work, which the Committee on Economic, Social and Cultural Rights, the body of independent experts established under the ICESCR to monitor states' compliance with their obligations under that treaty, has interpreted to mean "decent work". Decent work is work that respects the fundamental rights of the person, as well as the rights of workers in terms of conditions of work, safety and remuneration, and that provides an income that allows workers to support themselves and their families.¹¹⁴

Article 7 of the ICESCR guarantees the right of all persons to the enjoyment of just and favourable conditions of work, which includes:

- Remuneration that provides all workers with fair wages and equal remuneration for work of equal value, without discrimination;
- Remuneration that provides all workers with a decent living for themselves and their families;
- Safe and healthy working conditions;
- Equal opportunity for everyone to be promoted in their employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; and
- Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

The Committee on Economic, Social and Cultural Rights has elaborated on the right to just and favourable conditions at work, including that for the clear majority of workers fair wages should be above the minimum wage and that wages should be paid in a regular, timely fashion and in full.¹¹⁵ Further, remuneration goes beyond just a wage or salary to include additional allowances, such as contributions to health insurance or food and accommodation allowances.¹¹⁶ In ratifying the ICESCR, the Philippines has accepted the obligation to guarantee these rights.

Rights to and at work are also guaranteed under a range of conventions adopted by the International Labour Organization (ILO) that set out detailed standards, including in relation to freedom of association and protection of the right to organize, equal remuneration,

112. UN High Commissioner for Human Rights, "Status of Ratification, Interactive Dashboard", indicators.ohchr.org (accessed on 7 June 2021).

113. These include the Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination Against Women, International Convention on the Elimination of All Forms of Racial Discrimination and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

114. CESCR, General Comment 18: The Right to Work (Art. 6), 24 November 2005, UN Doc. E/C.12/GC/186, para. 7.

115. CESCR, General Comment 23 (previously cited), para. 10. See also Protection of Wages Convention (ILO Convention 95), Articles 4 and 12, which also guarantees the regular payment of wages and, with some exceptions, the payment in full of all wages.

116. CESCR, General Comment 23 (previously cited), para. 9.

discrimination, minimum wage and occupational health and safety, among others. The Philippines is a party to many of these conventions, including all eight “fundamental conventions”, which cover subjects that are considered to be fundamental principles and rights at work.¹¹⁷ This includes prohibitions against forced labour and child labour and support for the freedom of association and the right to collective bargaining – the latter two issues being of particular relevance to rights at work in the mining sector on Dinagat Island and across the Philippines more generally.

In interviews with Amnesty International, expert stakeholders noted what they believe is a lack of resources, capacity and will on the part of government institutions (that is, DOLE and its attached agencies and bureaus, and MGB specifically as it relates to the mining sector) tasked with protecting labour rights in the Philippines more broadly.¹¹⁸ This accords with research by other organizations that have found, for example, that the number of labour compliance officers employed by DOLE’s Bureau of Working Conditions is insufficient for the large size of the workforce in the Philippines, especially in rural areas.¹¹⁹ The relative geographical isolation of Dinagat Island, and distance from government centres, also presents challenges as it makes it harder for those government agencies not present on Dinagat Island – or with a small presence – to conduct inspections, monitor workplace conditions and arrangements, and ensure compliance with labour standards.¹²⁰ As noted above, geographic isolation is also a barrier to workers trying to access remedy.

Further, according to many the stakeholders Amnesty International spoke with, fragmented mandates and unclear delineation of responsibilities, as well as poor communication and coordination between DOLE, MGB and other parts of government, is a significant impediment to enforcement of labour standards in the mining sector.¹²¹ For example, experts pointed to poor notification systems for safety reporting from MGB to DOLE, as well as with regards to contractor accreditation from DOLE to MGB. Information is not always shared with the agency that has a mandate to act. Mine site inspections by MGB, which occur regularly, are not necessarily worker-centric, which presents further challenges to the protection of workers’ rights.¹²² Further, while inspections by MGB do include some focus on the payment of workers’ wages and benefits, MGB told Amnesty International that its evaluation on the level of compliance is based on the “face value of the submitted proof/s of compliance” (that is, payroll summaries and sample payslips) only since enforcement of labour laws are within the jurisdiction of DOLE.¹²³ Many of the experts Amnesty International spoke with pointed to the need to harmonize the policy framework to overcome some of these challenges.¹²⁴

117. ILO, “Ratifications for Philippines”, ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102970 (accessed on 7 June 2021).

118. Interview by video call with Governor Arlene “Kaka” J. Bag-ao, May 2021, San Jose and interview by video call with other stakeholder (name withheld on request), March 2021, Quezon City.

119. United States Department of State, Bureau of Democracy, Human Rights and Labor, “Philippines 2018 Human Rights Report” (previously cited). See also International Labour Office, “Technical Memorandum: Philippines Labour Inspection Audit”, 2009, [ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_240182.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_240182.pdf)

120. Interview by video call with other stakeholder (name withheld on request), May 2021, Manila.

121. Interview by video call with other stakeholder (name withheld on request), March 2021, Quezon City and interview by video call with other stakeholder (name withheld on request), May 2021, Manila.

122. Interview by video call with other stakeholder (name withheld on request), May 2021, Manila.

123. Letter from MGB to the Deputy Regional Director of Amnesty International, 30 July 2021 (on file with Amnesty International).

124. Interview by video call with other stakeholder (name withheld on request), March 2021, Quezon City and interview by video call with other stakeholder (name withheld on request), May 2021, Manila.

The workers interviewed by Amnesty International are aware that agencies, including MGB and Department of Environment and Natural Resources, regularly inspect the mine sites where they work. Further, MGB told Amnesty International that it conducts annual “Tenement, Safety, Health and Safety, Environment and Social Development (TSHE) Monitoring” to check compliance with the terms and conditions of mining permits, including compliance with labour laws, rules and regulations.¹²⁵ However, not one worker mentioned inspections by DOLE. While such inspections may in fact occur, if they do, the lack of visibility of these inspections and seemingly no invitation issued to workers – including those employed through labour-hire companies – to meet with department officials is concerning. DOLE is required to conduct routine inspections of businesses engaging in contracting arrangements (and has the power to question employees) to determine compliance with the Labor Code.¹²⁶ The Committee on Economic, Social and Cultural Rights has previously called on the Philippines government to strengthen the mandate and resources of labour inspectorates to enable them to effectively monitor working conditions in all work settings.¹²⁷

Local government units (i.e., provinces, municipalities and barangays) also have some statutory responsibilities with regards to regulation of mining projects – for example around environmental monitoring – but these responsibilities are very limited and do not extend to monitoring labour standards in the sector.¹²⁸ Many of the stakeholders Amnesty International spoke with would like to see a greater role for local government in the enforcement of labour standards and greater participation in multi-stakeholder dialogue – involving provincial government, unions, workers, mining companies and labour-hire companies – on key labour issues.¹²⁹ Regional Tripartite Industrial Peace Councils or Industry Tripartite Councils (there is a Mining Industry Tripartite Council in Caraga, for example) are possible forums for such dialogue, and one where local governments can play an important role.

The Philippines is a signatory to the Tripartite Consultation (International Labour Standards) Convention (ILO Convention 144) and tripartism in labour relations is official state policy.¹³⁰ Regional Tripartite Industrial Peace Councils or Industry Tripartite Councils are consultative and advisory bodies comprising representatives from government, workers and employers. Among other things they can help identify industries or establishments which are likely to experience labour disputes or that may need to respond to industry-specific concerns.¹³¹ Expert stakeholders Amnesty International interviewed pointed to the need for issues such as the use of contract labour in the mining sector to be raised at a sector-wide level, not just the level of individual workplaces, through industry-based collective bargaining agreements and mechanisms such as tripartite industry councils.¹³²

It must also be emphasized that, despite nominal state promotion of trade unionism,¹³³ the ability of workers in the Philippines to freely associate and collectively bargain (both key factors in ensuring that workers can enjoy their rights at work) is weak. Workers who can collectively organize are better able to exercise their rights and able to engage in dialogue with employers and through tripartite mechanisms, including on issues such as what jobs can be contracted out and which workers should be in the

125. Letter from MGB to the Deputy Regional Director of Amnesty International, 30 July 2021 (on file with Amnesty International).

126. DOLE, Order No. 174 (previously cited), Section 28.

127. CESCR, Concluding observations: Philippines, 26 October 2016, UN Doc. E/C.12/PHL/CO/5-6, para. 28.

128. Department of Environment and Natural Resources, Administrative Order 2010-21, Revised Implementing Rules and Regulations of R.A. 7942, mgb.gov.ph/images/stories/CDAO-Final.pdf, Section 8; and Executive Order No. 79, s. 2012 Institutionalizing and implementing reforms in the Philippine mining sector providing policies and guidelines to ensure environmental protection and responsible mining in the utilization of mineral resources, officialgazette.gov.ph/2012/07/06/executive-order-no-79-s-2012/

129. Interview by video call with other stakeholder (name withheld on request), May 2021, Manila.

130. Philippines, Labor Code, P.D. 442, 1974, Book Five, Title IX (as amended).

131. DOLE, Bureau of Labor Relations, “Tripartism and social dialogue”, blr.dole.gov.ph/wp-content/uploads/2017/10/tripartismandsocialdialogues.pdf (Accessed 22 June).

132. Interview by video call with other stakeholder (name withheld on request), May 2021, Manila.

133. Philippines, Labor Code, P.D. 442, 1974, Book Five, Title I, Chapter I (as amended).

direct employment of the mining companies, both of which are of high relevance to the mining sector on Dinagat Island. However, according to stakeholders Amnesty International spoke with, unions have limited power and influence in the mining sector in the Philippines.¹³⁴ Violence and intimidation of trade unionists, including the “red-tagging” of unionists and union busting, is another obstacle for the protection of worker rights across the Philippines, including in the mining sector nationally.¹³⁵

2.5 THE CORPORATE RESPONSIBILITY TO RESPECT

The duty of the Philippines to protect people from human rights abuses carried out by corporations – including abuse of rights to and at work – is articulated in the UN Guiding Principles on Business and Human Rights. The UN Guiding Principles require states to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.¹³⁶ This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication. While states are not responsible for human rights abuse by private actors, they may breach their international human rights law obligations where such abuse can be attributed to them or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors’ abuse. The duty of governments to protect rights at work is also required by the ICESCR.¹³⁷

The UN Guiding Principles make clear that businesses have a responsibility to respect human rights. This means businesses “should avoid causing or contributing to adverse human rights impacts through their own activities” and that they must “address adverse human rights impacts with which they are involved”, including by remediating any actual impacts. Companies must also “seek to prevent or mitigate adverse human rights impacts directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”¹³⁸ The corporate responsibility to respect human rights exists regardless of governments’ ability or willingness to meet their own human rights obligations and exists wherever businesses operate. The corporate responsibility to respect human rights is exercised, in part, through human rights due diligence processes.¹³⁹ This means businesses should identify and assess the potential and actual negative human rights impacts of their own activities, or which may be linked to them through their business relationships. Companies must prevent, mitigate and account for how they address any human rights impacts they identify through their due diligence.

The corporate responsibility to respect applies fully and equally to all businesses regardless of their size, sector, ownership or structure.¹⁴⁰ The UN Guiding Principles do recognize, however, that some businesses may have less capacity and fewer formal processes and management structures, and that their human rights policies and practices may therefore take different forms compared with larger companies. The UN Guiding Principles require all businesses, from small- and medium-sized

134. Interview by video call with other stakeholder (name withheld on request), March 2021, Quezon City and interview by voice call with other stakeholder (name withheld on request), May 2021, Quezon City.

135. See, for example, M. Tacadao, *A descriptive study on safety and working conditions in selected large-scale surface mines in the Philippines* (previously cited); UN Human Rights Council, Summary of stakeholders’ submission – the Philippines, 27 February 2017, UN Doc. A/HRC/WG.6/27/PHL/3, para 85; and ILO, *Application of International Labour Standards 2021: Addendum to the 2020 Report of the Committee of Experts on the Application of Conventions and Recommendations*, 2021, ILO Doc. ILC.109/III/Add.(A), [ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_771042.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_771042.pdf), p. 220.

136. UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, 2011, UN Doc. HR/PUB/11/04, [ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf), Principle 1.

137. CESCR, General Comment 23 (previously cited), para. 50.

138. Guiding Principles on Business and Human Rights, Principles 11 and 13.

139. Guiding Principles on Business and Human Rights, Principle 17.

140. Guiding Principles on Business and Human Rights, Principle 14.

enterprises to large multinational enterprises, to exercise human rights due diligence to avoid causing or contributing to adverse human rights impacts and to take steps to mitigate and address any such adverse impact that is directly linked to their operations, including by cooperating in their remediation.¹⁴¹

Human rights due diligence is at the core of the UN Guiding Principles, as well as the OECD Guidelines for Multinational Enterprises.¹⁴² These international standards have been translated into practical due diligence frameworks including the OECD Due Diligence Guidance for Responsible Business Conduct, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, and guidance from the UN Working Group on Business and Human Rights.¹⁴³

Finally, the UN Guiding Principles also emphasize that victims of business-related human rights abuse must be able to access some form of remedy. Governments have an obligation and businesses have a responsibility to provide mechanisms through which grievances can be raised and remedies sought, including judicial processes and company-based mechanisms.¹⁴⁴ Remedy may include apologies, compensation, punitive sanctions such as fines, and guarantees of non-repetition.

2.5.1 LABOUR-HIRE COMPANIES' RESPONSIBILITIES AND FAILINGS

As our research has shown, there is strong evidence to suggest there are labour-hire companies on Dinagat Island abusing workers' rights through delayed payment of wages, non-payment of compulsory employee benefits (namely, SSS, PAG-IBIG and PhilHealth) and the hiring of workers without a contract, which leaves them in situations of precarity and can leave them vulnerable to arbitrary terminations of their contract. There is strong evidence to suggest these companies have breached Philippines labour law and infringed on the human rights of the workers that they directly employ. They are therefore failing to meet their responsibility to respect human rights.

2.5.1 LABOUR-HIRE COMPANIES' RESPONSIBILITIES AND FAILINGS

Amnesty International's investigation suggests that workers employed through labour-hire companies to work at nickel mine sites in Dinagat Island face abuses of their human rights across the sector. These abuses are well known risk factors in the Philippines and in the mining sector and are therefore obvious and predictable. The mining companies know, or should know, therefore that there is a risk of labour abuses linked to their operations through their business relationships with the labour-hire companies. Amnesty International has found no evidence that mining companies on Dinagat Islands are conducting adequate or any human rights due diligence on their subcontracting arrangements with labour-hire companies – such due diligence is an important aspect of the corporate responsibility to respect human rights. (One company, Cagdianao Mining Corporation, did tell Amnesty International that it requires the submission of proof of payment and remittance of salaries and statutory benefits prior to the payment of fees to its contractor.¹⁴⁵ Requesting such proof should form part of any due diligence process). Without such due diligence they cannot identify and address these issues in relation to the labour-hire

141. Working Group on the issue of human rights and transnational corporations and other business enterprises, Report, 24 April 2017, UN Doc. A/HRC/35/32.

142. OECD, OECD Guidelines for Multinational Enterprises, 2011, [oecd.org/corporate/mne/1922428.pdf](https://www.oecd.org/corporate/mne/1922428.pdf)

143. Working Group on Business and Human Rights, "Corporate human rights due diligence – Getting started, emerging practices, tools and resources", 16 October 2018, [ohchr.org/Documents/Issues/Business/Session18/CompanionNote2DiligenceReport.pdf](https://www.ohchr.org/Documents/Issues/Business/Session18/CompanionNote2DiligenceReport.pdf)

144. Guiding Principles on Business and Human Rights, Principles 22 and 25.

145. Letter from Cagdianao Mining Corporation to the Deputy Regional Director of Amnesty International, 23 July 2021 (on file with Amnesty International).

companies they use to employ their workforce. Indeed, some workers told Amnesty International that they have informed the mining companies of their concerns and experiences, and yet no action has been taken. In failing to conduct human rights due diligence, identify possible labour rights abuses and breaches of Philippines labour law, and take action to address them, the mining companies are contributing to abuses. They are therefore failing to meet their responsibility to respect human rights.

3. CONCLUSION

Amnesty International's research raises serious concerns about rights at work for workers in the nickel mining sector in Dinagat Islands province in the Philippines. Their situation is further compounded by the failure of the Philippines state to adequately protect their rights due to the poor enforcement of labour laws, lack of sufficient monitoring of mining and labour-hire companies and failure to ensure that workers' access to effective remedy is easy and without barriers. The research has revealed numerous examples, both past and present, of workers being employed without contracts, the delayed payment of wages and the non-payment of compulsory employee benefits (namely, SSS, PAG-IBIG and PhilHealth) – all of which constitute violations of Philippines labour laws and international human rights standards.

While Amnesty International is particularly concerned about the practices of the labour-hire companies through which mining company workforces are employed, there are also clear implications for the mining companies themselves, which are linked to any abuse of workers' rights through their business relationships with labour-hire companies. Mining companies must, or should, know that there are abuses occurring in the mining sector on Dinagat Island. Wage-related complaints have been formally made to the National Labor Relations Commission, DOLE and MGB (which the mining companies would or should be aware of), workers have raised their concerns directly with the mining companies in many instances, and the broader context of labour rights abuses being common in the Philippines is widely reported on. The mining companies are failing to conduct adequate due diligence to identify, prevent, mitigate and address those abuses that they are linked to and are therefore contributing to such abuse.

The labour-hire companies must stop any abuse of workers' rights and seek to remediate any harm that they may have caused. The mining companies must immediately take action to work with labour-hire companies to remediate any harm that they have been informed of by their workers and work with the labour-hire company to improve their employment practices. Mining companies should also conduct due diligence on their subcontracting business relationships to identify any risks or abuses and address them in cooperation with the labour-hire companies.

Amnesty International's research has also found that workers face numerous barriers to accessing and receiving remedy for abuse of their rights at work, including because of:

- Practical barriers, including costs and long distances workers would need to travel to present their cases;
- Long delays in cases being heard by relevant authorities and in receiving remedy; and
- Power asymmetry, for example workers fear losing their job if they make a complaint.

There is an urgent need for these barriers to be addressed.

WIDER POLICY CONCERNS AND CONSIDERATIONS

Despite a history of anti-mining rhetoric,¹⁴⁶ in April 2021 President Rodrigo Duterte lifted a nine-year moratorium on the granting of new mining agreements to boost government revenue, provide raw materials for construction and other industries and increase employment opportunities in remote rural areas.¹⁴⁷ The lifting of the ban was welcomed by the mining sector¹⁴⁸ but opposed by many environment and human rights advocates.¹⁴⁹ While some local government units and remote rural communities may welcome the promise of employment from new mining projects, some caution is warranted. As Amnesty International's research on Dinagat Island has found, employment in the mining sector can be low-paid (often being at the minimum wage only) and insecure, and the probability of workers receiving remedy if their rights at work are abused is low. As has been noted above, Caraga region as a whole, and Dinagat Islands province in particular, is poor despite its abundant mineral resources.

The allegations of labour rights abuses documented in this report are not unique to the mining sector only and are common across the Philippines, with wage-related violations such as frequency of payment, underpayment of the minimum wage and non-remittance of compulsory benefits being common violations.¹⁵⁰ However, the massive value of the nation's minerals (estimated at US\$1 trillion, much of this untapped),¹⁵¹ the sector's contribution to export earnings (estimated at close to 6% of the Philippines total exports),¹⁵² and the presence of "politically exposed persons" in the mining sector¹⁵³ makes the sector unique in the Philippines, and it is one that has resisted reform in the past.¹⁵⁴ Further, local government units that may oppose the development of individual mine projects have no authority to stop the granting of mining rights,¹⁵⁵ even when locally developed comprehensive multi-sectoral development plans prioritize other activities for local economic and social development.

Finally, as one expert stakeholder told Amnesty International: "[B]eing overly reliant on mining can be problematic, as governments in mining areas do not invest in thinking about long-term employment prospects in other sectors, and the impact of mining on labour markets, economic diversification and sustainable development."¹⁵⁶ This points to the need for the national

146. See, for example, Rappler, "Duterte to 'confront' Congress on need to 'close mining industry'", 17 September 2018, www.rappler.com/nation/duterte-confront-congress-close-mining-industry; and Reuters, "Philippines' Duterte stops mining on 'devastated' island", 21 January 2021, reuters.com/world/china/philippines-duterte-stops-mining-devastated-southern-island-2021-01-12/

147. Executive Order No 130 Amending Section 4 of Executive Order No 79, S. 2012, Institutionalizing and Implementing Reforms in the Philippines Mining Sector, providing policies and guidelines to ensure environmental protection and responsible mining in the utilization of mineral resources, 2021, officialgazette.gov.ph/downloads/2021/04apr/20210414-EO-130-RRD.pdf

148. Manila Bulletin, "Mining sector cheers over EO 130", 15 April 2021, mb.com.ph/2021/04/15/mining-sector-cheers-over-EO-130

149. See, for example, Philippine Mission for People's Initiatives, "PMPI Statement on issuance of Executive Order, S. 130 2021 Amending the provision on moratorium for mining contracts of Executive Order 79, S. 2021", 16 April 2021 (on file with Amnesty International).

150. ILO, *Decent work country diagnostics: Philippines 2017* (previously cited). See also United States Department of State, Bureau of Democracy, Human Rights and Labor, "Philippines 2018 Human Rights Report" (previously cited).

151. Australian Trade and Investment Commission, "Mining to the Philippines", austrade.gov.au/australian/export/export-markets/countries/philippines/industries/mining (accessed on 7 June 2021).

152. Philippine Extractive Industries Transparency Initiative (PH-EITI), *Synergizing Transparency for Sustainability: The Sixth PH-EITI Report* (FY 2018), pheiiti.dof.gov.ph/download/sixth-ph-eiti-report-fy-2018/?wpdmcl=898

153. PH-EITI, *Synergizing Transparency for Sustainability* (previously cited).

154. See, for example, New York Times, "Philippines rejects environment chief who took on mining interests", 19 August 2019, nytimes.com/2017/05/03/world/asia/gina-lopez-philippines-environment-secretary.html

155. Department of Environment and Natural Resources, Administrative Order 2010-21, Revised Implementing Rules and Regulations of R.A. 7942, mgb.gov.ph/images/stories/CDAO-Final.pdf, Sections 7 and 8

156. Interview by video call with other stakeholder (name withheld on request), March 2021, Quezon City.

government to better balance environmental protection and conservation, national income, local employment and other considerations when assessing individual applications for the granting of mining rights and when developing mining policy. While mining is an important economic contributor to Dinagat Islands province and Caraga region, as well as a source of employment and livelihood for many people, so too are other sectors, particularly agriculture and fishing.¹⁵⁷ Future development of the mining sector on Dinagat Island should therefore not be at the expense of these other sectors and activities or the environment on which they depend. There is a need for multi-stakeholder dialogue on where this balance lies.

157. Interview by video call with Governor Arlene "Kaka" J. Bag-ao, May 2021, San Jose. See also national employment data, which shows that agriculture, fisheries and forestry employs 45 times more people in the Philippines than the mining sector does (at Philippines Statistics Authority, "Statistical Tables", psa.gov.ph/current-labor-statistics/statistical-tables [accessed on 7 June 2021]).

RECOMMENDATIONS

Amnesty International urges all labour-hire companies active in the mining sector in Dinagat Islands province to:

- Urgently modify working policies and practices to ensure compliance with the Labor Code of the Philippines and related orders, rules and regulations, and international human rights and labour standards.
- Offer written contracts to all workers that they employ.
- Make retroactive arrangements for the payment of wages, and for the payment of compulsory employee benefits, where these have not been paid in full.

Amnesty International urges all mining companies operating in Dinagat Islands province to:

- Establish and implement an ongoing human rights due diligence process to identify, prevent, mitigate and account for how they address their potential and actual adverse human rights impacts throughout their mining operations including in their use of labour-hire companies.
- Establish and implement a process that workers can access in order to raise concerns about their rights at work and through which these concerns can be addressed effectively and fairly. Such processes must be designed so that it meets the effectiveness criteria for company-based grievance mechanisms contained in the UN Guiding Principles.
- Investigate potential labour rights abuses involving the labour-hire companies through which their workforce is employed and remediate, in cooperation with those labour-hire companies, the harms suffered by workers who have been working at their mine sites. This includes requiring labour-hire companies to comply with the recommendations above.
- In cases where workers are directly employed, ensure compliance with the Labor Code of the Philippines and related orders, rules and regulations, and international human rights and labour standards. This includes ensuring that all workers have a written employment contract, and wages and compulsory employee benefits have been, and are being, paid in full.
- Not use labour-hire companies that are not registered with the Department of Labor and Employment, or that have been found to have abused workers' rights including with regards to the underpayment of wages, delayed payment of wages, non-payment of mandatory benefits and engaging workers without a written employment contract.

Amnesty International urges all companies involved in Filipino-Chinese nickel supply chains to:

- Immediately take action to work with labour-hire companies, where labour-hire companies are used to employ mining company workforces, to remediate any harm that they have been informed of by their workers and work with these labour-hire companies to improve their employment practices.

- Identify and manage risks in their supply chains, including by conducting human rights due diligence on their suppliers and responding to identified risks, to ensure all companies in their supply chains respect human rights (including the rights of workers) consistent with the Guidelines for Social Responsibility in Outbound Mining Investments developed by the CCCMC and the UN Guiding Principles.
- Publicly disclose their due diligence policies and practices, including processes to identify, prevent, mitigate and account for how they address potential and actual adverse human rights impacts in their supply chains.
- Take remedial action, in cooperation with other relevant actors, if human rights abuses have occurred at any point in a supply chain or business relationship.

Amnesty International urges the Chinese Chamber of Metals Minerals & Chemicals Importers and Exporters (CCCMC) to:

- Require Chinese companies in nickel supply chains to put in place processes for conducting supply chain due diligence following the process set out in the Guidelines for Social Responsibility in Outbound Mining Investments and the OECD Due Diligence Guidance for Responsible Business Conduct and to report publicly on the steps taken by each company to manage and mitigate human rights risks in its business operations.

Amnesty International urges the Philippines national government to:

- Strengthen government institutions with responsibility for enforcing labour standards in the mining sector (including DOLE and MGB) so they are better resourced and have greater capacity to, among other things, monitor and inspect mining activities, ensure the fair and timely resolution of worker disputes with their employers, and more effectively collaborate and coordinate with other parts of government.
- Give local government units a greater role in the enforcement of labour standards.
- Harmonize relevant legislation, and related orders, rules and regulations to clarify and strengthen the mandates of government institutions with responsibility for enforcing labour standards in the mining sector and to ensure all relevant legislation is consistent with the UN Committee on Economic, Social and Cultural Rights' General Comment No. 23 on the right to just and favourable conditions of work.

Amnesty International urges DOLE to:

- Invest resources and build institutional capacity to ensure that only registered contractors, and contractors which are otherwise compliant the Labor Code of the Philippines (including that contractors are not engaged in labour-only contracting), are used by mining companies.
- Invest resources and build institutional capacity to ensure the regular inspection of mine sites, including where labour-hire companies are used to employ mine site workforces, to determine compliance with the Labor Code of the Philippines.

Amnesty International urges the National Labor Relations Commission to:

- Establish a satellite office, or other permanent presence, on Dinagat Island to adjudicate labour and management disputes.

Amnesty International urges the Public Attorney's Office to:

- Employ additional attorneys in its Caraga regional office.

Amnesty International urges the provincial government of Dinagat Islands, unions, workers, mining companies and labour-hire companies to:

- Engage in dialogue on the policy issues raised in the report. This dialogue could occur through the Caraga Mining Industry Tripartite Council or through some other multi-stakeholder or tripartite forum.


Amnesty International encourages the provincial government of Dinagat Islands to:


- Engage in dialogue with communities, workers and other stakeholders, including the national government, on the environmental, social and economic impacts of mining on Dinagat Island and on whether or not mining is the best way to achieve the economic and social development goals of the province.



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PHILIPPINES: UNDERMINING WORKERS' RIGHTS

LABOUR RIGHTS ABUSE IN NICKEL SUPPLY CHAINS

In this report Amnesty International raises serious concerns about rights at work for workers in the nickel mining sector on Dinagat Island in the Philippines. This report outlines numerous examples of workers being employed without contracts, the delayed payment of wages and the non-payment of compulsory employee benefits such as health insurance. While Amnesty International is particularly concerned about the practices of the labour-hire companies through which mining company workforces are employed, there are also clear implications for the mining companies themselves, which are linked to any abuse of workers' rights through their business relationships with labour-hire companies. The situation for workers is further compounded by the failure of the Philippines state to adequately protect their rights due to poor enforcement of labour laws, lack of sufficient monitoring of mining and labour-hire companies and failure to ensure that workers' access to effective remedy is easy and without barriers.