

# **Towards Sustainable Mining**

Preventing Child and Forced Labor Protocol

## **TSM VERIFICATION PROTOCOL**

A Tool for preventing the use of child and forced labor as defined by International Labor Organization (ILO) Conventions 29, 138 and 182 addressing Forced Labor, Minimum Age and the Worst Forms of Child Labor, respectively, and pertinent Philippine labor laws.

### Purpose

The purpose of the verification protocol is to provide guidance to the member companies on verification requirements regarding the prevention of child labor and forced labor. The verification protocol sets out the general approach taken to verifying that processes are in place to ensure that neither child nor forced labor as defined by ILO conventions and pertinent Philippine labor laws are occurring at TSM participating facilities.

As with any assessment of a management system, professional judgment is required in assessing the degree of implementation of a system indicator and the quality of management processes and intervention. Application of this protocol will therefore require a level of expertise in auditing and systems assessment and knowledge of and experience in the practice of labor practices, including relevant regulatory regimes and requirements. This protocol provides an indicator of the verification approach to ensuring child and forced labor are not used and must be used in conjunction with the TSM Verification Service Provider Terms of Reference. It is not, of itself, a guarantee of the effectiveness of labor practices.

### TSM commitment against child and forced labor

As part of the TSM Guiding Principles, COMP members commit to *respecting the rights of our workers and not engaging in practices of forced or child labor, as defined in ILO Conventions 29, 138 and 182 and pertinent Philippine labor laws.*

## **Key Components of ILO 29 on Forced Labor**

### [ILO 29, Forced Labor Convention](#)

This convention defines forced labor as *all work or services which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.* The convention recognizes a number of exceptions including military service, normal civic obligations, court ordered work due to a conviction and work extracted in cases of emergency. Article 4 of ILO 29 specifically prohibits the use of forced labor for the benefit of private individuals, companies or associations. The remaining articles address the use of forced labor by governments.

## **Key Components of ILO 138 and 182 on Child Labor**

### [ILO 138, Minimum Age Convention](#)

This convention establishes minimum age requirements for child labor. The convention sets the minimum age of employment at 15 years of age and further establishes 18 years of age as the minimum age for

work that, by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons. The types of work that are deemed to jeopardize the health, safety or morals of young persons are specified in national laws or regulations or by competent authorities. There are exceptions contained in ILO 138 that allow for workers under the age of 15 in some circumstances but such exceptions are not applicable to mining. These ILO conventions also specify mitigation measures to be taken where child labor is already taking place, including:

- Removing children from the worst forms of child labor and providing for their rehabilitation and social integration
- Providing access to free basic education and wherever possible and appropriate, vocational training

### [ILO 182, Worst forms of child labor](#)

This convention identifies four specific types of child labor that are deemed to be the ‘worst forms’ and requires that measures be taken to prevent the engagement of children in these forms of labor. Two of the four specified types of the worst forms of child labor are relevant in the mining context:

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict
- work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

As with Child Labor, ILO 182 relies on national laws and regulations to determine what constitutes work that is likely to harm the health, safety and morals of children.

### [Verification of commitment](#)

As forced labor and child labor are accepted as issues to be avoided and eliminated within member companies and their supply chains rather than managed for continuous improvement as most of the other issues addressed through TSM are, nor is it appropriate to address these issues through the creation of a TSM protocol focusing on management systems. In this case, the approach is to focus on ensuring that the commitment to not use child or forced labor, articulated in the TSM Guiding Principles, is being adhered to and that such adherence can be demonstrated publicly.

To accomplish this, TSM Verification Service Providers (VSP) are instructed to incorporate the questions listed in the child and forced labor sections below into any TSM verifications they conduct for COMP members.

## **1-A. PREVENTING FORCED LABOR**

### Requirement

1. Member, its suppliers, contractors, and implementers of SDMPs and other community-initiated programs, projects and activities (PPA) (“SDMP partners”) have policies in place to ensure that forced labor is not used in its facility/ies.
2. Where there is high risk of forced labor, processes are in place to monitor member’s, its suppliers’, contractors’, and SDMP partners compliance with their policies against forced labor.

## 1-B. PREVENTING CHILD LABOR

### Requirement

1. Member, its suppliers, contractors, and SDMP partners have policies and processes in place to ensure that no child under 18 engages in work which, by nature or circumstance, would likely jeopardize the health, safety or morals of young persons.
2. Member, its suppliers, contractors, and SDMP partners have policies and processes in place to ensure that employment of children under 18 are in compliance with pertinent legal requirements.

### ASSESSMENT CRITERIA

RATING	CRITERIA	DOCUMENTARY PROOF
PASS	<p>Existing processes and policies on child and forced labor are fully compliant with the requirements of pertinent ILOs and local labor laws</p> <p>Internal audit was conducted to confirm implementation of and compliance with processes and policies on child and forced labor</p>	<ul style="list-style-type: none"> <li>• From member, each of its suppliers, contractors and SDMP partners, written policy against child and forced labor providing internal audit procedures for checking compliance</li> <li>• Procedures for checking suppliers' and contractors' compliance, contained in a service contract or SDMP PPA proposal or a separate written policy with conformity of the suppliers, contractors and SDMP partners, which must include submission of Certificate of Registration as Job Contractor</li> <li>• Documentation of conduct of compliance audit/checking procedures</li> <li>• From member and each of its contractors, Certification from the National Labor Relations Commission of no pending case involving child or forced labor</li> <li>• From SDMP partners, Certificate of Training and other supporting documents (e.g. Memoranda of Agreements) from Department of Social Welfare and Development, Department of Labor and Employment, and/or Department of Education</li> </ul>

		<ul style="list-style-type: none"> <li>• Certificate of Registration as Job Contractor of each of member's contractors</li> <li>• Proof of compliance of legal requirements for employment/engagement of children under 18, such as working child permits, certificate of registration of apprenticeship program, memoranda of agreement for on-the-job training of senior high school and college students, etc.</li> <li>• As <b>optional</b> supporting documents, third-party confirmation of compliance with processes and policies on child and forced labor, such as Certificate of Compliance on General Labor Standards and Child Labor-Free Establishment Certificate</li> </ul>
FAIL	Failure to meet the above criteria	

#### Verification Instructions on Forced Labor

Through interview and review of documentation, determine that:
<ol style="list-style-type: none"> <li>1. Member, its suppliers, contractors, and SDMP partners have written policies prohibiting forced labor in its facility/ies.</li> <li>2. Member regularly reviews its facility/ies', its suppliers', contractors', and SDMP partners' compliance with this policies.</li> <li>3. Member, its suppliers and contractors have Certification from the National Labor Relations Commission that it has no pending case involving use of forced labor.</li> </ol>

#### Verification Instructions on Child Labor

Through interview and review of documentation, determine that:
<ol style="list-style-type: none"> <li>1. Member, its suppliers, contractors, and SDMP partners have written policies prohibiting children below 15 years old to be employed in its facility/ies.</li> <li>2. Member, its suppliers, contractors, and SDMP partners have written policies in place to ensure that no child under 18 are engaged in work which is by nature or circumstance likely to jeopardize the health, safety or morals of young persons?</li> <li>3. Member regularly reviews its, its suppliers', contractors', and SDMP partners' compliance with these policies.</li> <li>4. In cases when the Member, its suppliers, contractors, or SDMP partners employ or engage the services of children below 18, there is documentation showing compliance with pertinent legal requirements.</li> </ol>

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| 5. Member and its contractors have Certification from the National Labor Relations Commission that it has no pending case involving use of child labor. |
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## APPENDIX 1: FREQUENTLY ASKED QUESTIONS

### **1. How does TSM define Forced Labor?**

TSM uses the definition contained in ILO Convention 29, *Forced Labor Convention*, which defines forced labor as *all work or services which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*. The convention recognizes a number of exceptions including military service, normal civic obligations, court ordered work due to a conviction and work extracted in cases of emergency. Article 4 of ILO 29 specifically prohibits the use of forced labor for the benefit of private individuals, companies or associations. The remaining articles address the use of forced labor by governments

### **2. What are examples of the types of processes used to prevent the use of forced labor?**

Some of the more common processes for preventing the use of forced labor include are those that:

- Prevent the unreasonable restrictions of freedom of movement of employees in the work place or in on-site housing,
- Avoid retaining of original copies of employee personal documentation, such as identity papers,
- Prohibit requiring any form of deposit, recruitment fee, or equipment advance from employees either directly or through recruitment agencies, or
- Avoid practices that prevent employees from terminating their employment after reasonable notice or as established by labor laws, subject to valid contractual restrictions and limitations in relation to availment of company-sponsored trainings, non-compete and confidentiality agreements, etc.

When looking for evidence of presence of these types of processes, it is important to look at the level of risk that forced labor will be an issue in the jurisdiction in which the verification is taking place. In some jurisdictions forced labor is a much more common issue than in others and requires more rigorous processes than in jurisdictions in which forced labor is not a risk.

### **3. How does TSM define Child Labor?**

TSM uses the definition contained in ILO Convention 138, *Minimum Age Convention*. This convention establishes minimum age requirements for child labor. The convention sets the minimum age of employment at 15 years of age and further establishes 18 years of age as the minimum age for work that, by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons. The types of work that are deemed to jeopardize the health, safety or morals of young persons are specified in national laws or regulations or by competent authorities. There are exceptions contained in ILO 138 that allow for workers under the age of 15 in some circumstances but such exceptions are not applicable to mining.

TSM also incorporates ILO Convention 182, *Worst Forms of Child Labor*, which identifies four specific types of child labor that are deemed to be the 'worst forms' and requires that measures be taken to prevent the engagement of children in these forms of labor. Two of the four specified types of the worst forms of child labor are relevant in the mining context:

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;
- work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

As with ILO 138, ILO 182 relies on national laws and regulations to determine what constitutes work that is likely to harm the health, safety and morals of children.

**4. Are any other mining related standards deemed to be equivalent to TSM with respect to child and forced labor?**

Yes, companies that have had their child and forced labor prevention processes audited or verified under either the IFC Performance Standards or the Responsible Jewelry Council are deemed to have demonstrated that they have processes in place for the purposes of this verification protocol. The Initiative for Responsible Mining Assurance (IRMA) standards on child and forced labor are also deemed equivalent to the TSM requirements, however, a formal determination of equivalency cannot be made until the assurance process for IRMA has been finalized.

**5. Are there useful guidance documents related to preventing child and forced labor?**

With respect to implementing processes to prevent child labor, there are two useful guidance documents:

1. UNICEF Child Labor Resource Guide  
[https://www.unicef.org/csr/css/Child\\_labour\\_resource\\_Guide\\_UK\\_NatCom.pdf](https://www.unicef.org/csr/css/Child_labour_resource_Guide_UK_NatCom.pdf)
2. UNICEF Child Rights and Mining Tool  
[https://www.unicef.org/csr/files/FINAL\\_Child\\_Rights\\_and\\_Mining\\_Toolkit\\_060217](https://www.unicef.org/csr/files/FINAL_Child_Rights_and_Mining_Toolkit_060217)
3. ILO Child Labor Guidance Tool for Business - How to do Business with Respect for Children's Right to be Free from Child Labor:  
[http://www.ilo.org/ipec/Informationresources/WCMS\\_IPEC\\_PUB\\_27555/lang-en/index.htm](http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_27555/lang-en/index.htm)

With respect to implementing processes to prevent forced labor, the ILO has produced a useful guidance document:

1. ILO Combating Forced Labor – A Handbook for Employers & Business:  
[http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_101171.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_101171.pdf)

**6. How do the ILO Conventions on Forced Labor align with Philippine labor laws?**

Consistent with ILO Convention 29, Republic Act No. 10364 or The Expanded Anti-Trafficking in Persons Act of 2012, which amended Republic Act No. 9208 or the Anti-Trafficking in Persons Act of 2003, penalizes the following acts:

- Trafficking in persons, which includes the act of recruiting, transporting, transferring, harboring, obtaining, maintaining, offering, hiring, providing or receiving a person by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for purposes of

forced labor, slavery, debt bondage and involuntary servitude, including a scheme, plan, or pattern intended to cause the person either: (1) to believe that if the person did not perform such labor or services, he or she or another person would suffer serious harm or physical restraint; or (2) to abuse or threaten the use of law or the legal processes.

- Acts that promote trafficking in persons, such as: (1) knowingly benefiting from, financial or otherwise, or making use of, the labor or services of a person held to a condition of involuntary servitude, forced labor, or slavery; and (2) destroying, concealing, removing, confiscating or possessing, or attempting to destroy, conceal, remove, confiscate or possess, any actual or purported passport or other travel, immigration or working permit or document, or any other actual or purported government identification, of any person in order to prevent or restrict, or attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel in order to maintain the labor or services of that person.
- Use, purchase, or engagement of services of trafficked persons.

The Revised Penal Code also criminalizes the following

- Slavery (Article 272), or the act of purchasing, selling, kidnapping, or detaining a human being for the purpose of enslaving him/her.
- Exploitation of child labor (Article 273), or the act of retaining the services of the minor against the minor's will under the pretext of reimbursing oneself of a debt incurred by an ascendant, guardian or person entrusted with the custody of such minor.
- Services rendered under compulsion in payment of debt (Article 274), or the act of compelling one's debtor against his will to work as household servant or farm laborer in order to require or enforce the payment of a debt.

### **7. How do the ILO Conventions on Child Labor align with Philippine labor laws?**

The Philippine Labor Code also sets the minimum age of employment at 15. Three exceptions exist: (1) under Article 139(a) of the Code, when a child under 15 years of age works directly under the sole responsibility of his or her parents or guardian, and the employment does not interfere with the education of the child; (2) under Article 59 of the Code, when a child at least 14 years of age is employed as an apprentice; and (3) under Republic Act No. 7610, as amended by Republic Act Nos. 7658 and 9231, or the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, when a child's employment or participation in public entertainment or information is essential.

The Code similarly prohibits employment of children in hazardous or deleterious undertakings. Consistently, Republic Act No. 7610 mandates that no child shall be engaged in the worst forms of child labor, which includes work which, by its nature or the circumstances in which it is carried out, is hazardous or likely to be harmful to the health, safety or morals of children, such as work:

- Performed underground, underwater or at dangerous heights.
- Involving the use of dangerous machinery, equipment and tools such as power-driven or explosive power-actuated tools.
- Exposing the child to physical danger such as those which requires the manual transport of heavy loads.
- Performed in an unhealthy environment exposing the child to hazardous working conditions, elements, substances, co-agents or processes involving ionizing, radiation, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels, or vibrations.
- Performed under particularly difficult conditions.
- Involving the manufacture or handling of explosives and other pyrotechnic products.

Other relevant Philippine laws on child labor include:



- Articles 272, 273, and 278 of the Revised Penal Code which penalizes slavery, exploitation of child labor, and exploitation of minors, respectively.
- Presidential Decree No. 603, as amended by Presidential Decree No. 1179, or the Child and Youth Welfare Code.
- Republic Act No. 9208 or the Anti-Trafficking in Persons Act of 2003 and Republic Act No. 10364 or the Expanded Anti-Trafficking in Persons Act of 2012.
- Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004.
- Republic Act No. 7323 which sanctions employment during summer and Christmas vacations of “poor but deserving” students.

**8. What is a SDMP PPA?**

These are programs, projects and activities accredited under an approved Social Development and Management Program.

## COPYRIGHTS AND REFERENCES



### Chamber of Mines of the Philippines

*Chamber of Mines of the Philippines is an association advancing the interest of mining, quarrying mineral processing companies for the efficient exploration, development and utilization of minerals in consonance with sound economic, environmental and social policies.*

*The association consists of members coming from exploration, mining, mineral processing and services industries including professional associations. The members are united by a shared commitment to the principles of economic growth, sustainable development and as government's partners in development.*

TSM is a trademark of the Mining Association of Canada.



### Towards Sustainable Mining Vers le développement minier durable

**For more information about the TSM initiative, visit:**

The Mining Association of Canada

[www.mining.ca/tsm](http://www.mining.ca/tsm)

Quebec Mining Association

[www.amq-inc.com](http://www.amq-inc.com)

FinnMin

[www.kaivosvastuu.fi/verkosto/jasenet/statement-of-intent](http://www.kaivosvastuu.fi/verkosto/jasenet/statement-of-intent)

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