

PHILIPPINES-EITI SCOPING STUDY ON LOCAL REVENUE STREAMS AND SUBNATIONAL IMPLEMENTATION



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Prepared for the PH-EITI Multi-Stakeholder Group

By

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ACKNOWLEDGMENT

LIST OF ACRONYMS

ASDMP	Annual Social Development Management Programs
BIR	Bureau of Internal Revenue
BLGF	Bureau of Local Government Finance
BTr	Bureau of Treasury
CEMCRB	Certificate of Environmental Management and Community Relations Record
CLRF	Contingent Liability and Rehabilitation Fund
COA	Commission On Audit
CDP	Community Development Plan
CRO	Community Relations Office
CSR	Corporate Social Responsibility
DBM	Department of Budget and Management
DILG	Department of Interior and Local Government
DOE	Department of Energy
DOF	Department of Finance
DENR	Department of Environment and Natural Resources
DRC	Democratic Republic of Congo
e-SRE	Electronic Statement of Revenues and Expenditures
ERDB	Energy Resources Development Bureau
ECC	Environmental Compliance Certificate
EMB	Environmental Management Bureau
EMF	Environmental Monitoring Fund
EGF	Environmental Guarantee Fund
EWP	Environmental Work Program
EPEP	Environmental Protection and Enhancement Program
ETF	Environmental Trust Fund
EITI	Extractive Industries Transparency Initiative
FMV	Fair Market Value
FMRDP	Final Mine Rehabilitation and Decommissioning Plan
FTAA	Financial Technical Assistance Agreements
FPIC	Free and Prior Informed Consent
GR	Gross Receipts
IEC	Information Education and Communication
IP	Indigenous Peoples
IRA	Internal Revenue Allotment
KII	Key Informant Interview
LGC	Local Government Code
LGU	Local Government Unit
LTC	Local Tax Code
MOA	Memorandum of Agreement
MEPEO	Mine Environmental Protection and Enhancement Office
MRF	Mine Rehabilitation Fund
MSG	Multi-Stakeholder Group
MMT	Multi-partite Monitoring Team
MGB	Mines and Geosciences Bureau
MWT	Mine Waste and Tailings
NCIP	National Commission on Indigenous Peoples
NGA	National Government Agency

NIRC	National Internal Revenue Code
PSSMA	Peoples' Small-Scale Mining Area
RPT	Real Property Tax
RIAT	Regional Investigation and Assessment Team
RCF	Rehabilitation Cash Fund
SEF	Special Education Fund
SC	Service Contract
SDMP	Social Development Management Programs
TWG	Technical Working Group
WP&B	Work Program and Budget

EXECUTIVE SUMMARY

As a candidate country to the Extractive Industries Transparency Initiative (EITI), the Philippines, through the Philippine EITI MSG, commissioned this report to analyse the revenue streams and the institutional arrangements at the local government unit (LGU) level and to assess the viability of a subnational EITI implementation in the country in accordance with EITI standards. This scoping study covers 63 LGUs hosting 38 mining and 11 oil and gas companies. This report is mostly based on 2012 data furnished by the LGUs, national government agencies (NGA) and companies to the study team, including information derived from key informant interviews, focus group discussions and consultations to the study team.

In the Philippines, revenue streams of LGUs from the extractive industry consist of (a) indirect payments or subnational transfers from the NGAs and (b) direct payments of companies to LGUs. Direct payments from mining companies comprise the taxes, licenses and regulatory fees imposed by the local government units. Oil and gas companies pay only licenses and regulatory fees, as the law exempts them from local taxes. LGUs impose and collect direct payments based on local tax ordinances, as authorized by the Local Government Code (LGC), the Philippine Mining Act and other statutes or by the general taxing powers of LGUs. LGUs receive indirect payments or subnational transfers from the NGAs as mandated by the Constitution, the LGC and the Philippine Mining Act.

Direct payments based on statutes include business tax, real property tax, public utility charges, toll fees, community tax, fixed tax for delivery, professional tax, and occupation tax. Direct payments based on local taxing powers vary per LGU and include mayor's permit, regulatory/administrative fees, tax on mining operations, environmental enhancement fees, soil depletion tax, hazard mitigation, municipal mining clearance fee, transport fees, and miscellaneous regulatory fees. Indirect payments or subnational transfers consist of the LGU share in the national wealth or 40% of the 2% of the gross output of mining companies, the share in the royalty income from mineral reservations or 40% of the 90% of the 5% of the gross output, 40% of the 60% of the government share in oil and gas production, and the internal revenue allotment or share in all national taxes collected by national government, that is not disaggregated to show which portion comes from the extractive industry.

In general, LGUs, with their established institutional arrangements and record-keeping, are able to collect direct payments from companies on time, unless there are protests or issues raised; while LGUs receive from the NGAs their share in national wealth and royalty income late. With respect to these subnational transfers, LGUs report that they do not know if these receipts are correct amounts, based on law and on correct computation of figures. LGU share on national wealth are not disaggregated, whether they come from mining, forestry, or fishery charges. More importantly, releases are up to three years late, with 15 LGUs reporting that they have not received their 2012 share in national wealth, up to the present. These releases are thus not timely for LGU planning and budgeting purposes. LGUs also disclose that they have to provide collection data to DBM and have to follow-up release of their shares, even when the law provides for automatic releases.

Host and neighboring communities within LGUs hosting extractive operations receive the benefits of social expenditures of companies mandated by law. However, the impacts of these social expenditures need to be monitored and evaluated. LGUs play a minimal role not only in monitoring its implementation, but also in developing the plans for these social payments, that are mostly not coordinated nor aligned with the local development plans of host LGUs.

To further promote transparency and accountability, a subnational implementation of EITI, anchored on the existing national arrangements, is viable at the LGU level. Given the Philippines context, EITI may be

implemented at the LGU level not only in keeping with the EITI standards; but also even beyond such EITI standards and guidance, to extend, using a phased approach, to the reporting of LGU expenditures of payments from extractive industry, monitoring impacts of social expenditures and even impacts on health and environment.

PRELIMINARIES

Background to the Scoping Study

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

EITI implementation has two core components:

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

The Philippines submitted its application for EITI candidature to the EITI International Board and was admitted as a candidate country on May 22, 2013. This was formally announced to the international community at the EITI Global Conference on 23-24 May 2013 in Sydney, Australia.

At the Board meeting held during the Conference week, the new EITI Standard was approved. The 2013 Standard introduced substantive changes to EITI reporting requirements and encourages more relevant, reliable and usable information, and better linkage to wider reforms in implementing countries. Material payments at the local level and subnational transfers are among the information that should be included in the EITI report.

Recognizing the importance of understanding and evaluating the viability of EITI implementation at the local level where extractive operations are actually taking place, the Philippines-EITI Multi-Stakeholder Group (MSG) sees the need for the conduct of a study on the revenue streams at the local level and of the development of a framework for subnational EITI implementation in the country, including an assessment of the viability of subnational implementation in accordance with the EITI standard.

Objectives of the Scoping Study

The new EITI standard includes subnational payments and subnational transfers among the information that the MSG should consider for inclusion in the EITI report. In the Philippines, this information assumes particular relevance considering the provisions in the Local Government Code on the local government units' share in revenues from natural resources. In the same way that the national implementation of EITI aims to promote revenue transparency at the national level, subnational EITI has the same objective: to ensure that local constituents have access to relevant information on industry payments. However, EITI implementation at the local level may prove to be challenging given the different contexts of each local government unit. In view of this, it is important to examine the various considerations for subnational EITI implementation by focusing on local revenue streams and by developing a framework for subnational implementation that would guide the MSG in determining the viability of such implementation.

Coverage and Methodology of the Scoping Study

Upon the request of the MSG, the Government of Canada, through the Department of Foreign Affairs, Trade and Development, commissioned this scoping study. The study discusses the considerations for subnational EITI implementation, develops a framework for subnational implementation and recommends viability of such implementation to guide the MSG. The report on the scoping study covers the following:

1. Identification of local revenue streams
2. Discussion on the materiality of local payments
3. Discussion on the functions of existing local monitoring teams, how to strengthen their capacity, and how their roles relate to EITI
4. Overview of how Social Development Management Plan and other social expenditures are implemented and monitored at the local level
5. A specific template for EITI reporting at the subnational level
6. Regulations and laws for subnational payments and transfers
7. Distribution process and explanation of institutional arrangements along the distribution chain
8. Description of the collection process at the local level including intermediary beneficiaries and how much they receive
9. Commentary on the timeliness of subnational transfers
10. Local units that should be included in subnational implementation
11. Framework for subnational implementation in the Philippines in accordance with the EITI standard
12. Recommendations on the viability of subnational implementation including potential challenges and solutions
13. Discussion on subnational implementation in other countries
14. Costs of subnational implementation
15. A descriptive overview of small scale mining - legal and regulatory framework, payments and recommendations regarding its inclusion in future EITI reports

The consultant for the scoping study, together with two other independent consultants and team members (Scoping Study Team), conducted desk reviews of statutes, regulations, ordinances, reports and plans to look at the legal and regulatory framework, legal basis and rates of local direct and indirect payments, institutional arrangements and processes for local collection and transfers between national and local governments, social expenditures and environment-related trust funds and their monitoring. The Scoping Study Team also employed survey questionnaires, key informant interviews, focus group discussions and consultations primarily with key representatives of local government units, excluding barangays, hosting oil, gas and mining companies covered by the 2014 EITI Report. These are the treasurers, assessors, accountants and environment officers of provincial, city or municipal governments, and when available, barangay representatives, and representatives of mining companies. While it would have been ideal to include the barangay in the scoping study, the study limits itself only up to the level of the municipal government, as determined by the MSG. The Scoping Study Team also conducted meetings with relevant national government agencies as well as made use of reports, summary and other data furnished by these agencies to the study team.

The Scoping Study Team relied mostly on the 2012 data collected and provided by local government units, national government agencies and mining companies as well as those collected by the Independent Administrator for the 2014 Philippine EITI Report to examine actual receipts and practices in terms of collection, transfer, and monitoring. Despite diligent efforts at data collection, the Scoping Study Team

was constrained by the incompleteness of the data supplied, even by national government agencies that are by law repositories of these data. The field data collection for the scoping study was coordinated through the Philippine EITI Secretariat, with funding support from the World Bank.

PART A: REGULATORY FRAMEWORK, SUBNATIONAL REVENUES, ARRANGEMENTS AND PROCESSES

Chapter 1. Overview

1.1 The National Government and the Local Government Units

The national government of the Philippines, namely the Executive Branch, Legislative Branch and Judiciary have fundamental powers, namely executive, legislative and judicial powers, respectively, granted by the 1987 Philippine Constitution. The Executive Branch exercises its powers through attached agencies.

The territorial and political subdivisions of the Philippines are the provinces, cities, municipalities, and barangays, also known as Local Government Units (LGUs). Pursuant to its legislative powers, Congress may also delegate to LGUs the so-called executive and legislative powers, including the power to tax.¹ The delegation of said powers is based on the principle of devolution and decentralization of government.²

LGUs enjoy local autonomy,³ even as the President of the Philippines exercises general supervision over them⁴ to ensure that their acts are within the scope of their prescribed powers and functions.⁵ Being mere political subdivisions, LGUs are part and parcel of the State operating and under representation by the national government.

¹ The Philippine Constitution of 1987, Art. X, Sec. 5.

² The Local Government Code of 1991. Sec. 3. *Operative Principles of Decentralization.* - The formulation and implementation of policies and measures on local autonomy shall be guided by the following operative principles:

- (a) There shall be an effective allocation among the different local government units of their respective powers, functions, responsibilities, and resources;
- (b) There shall be established in every local government unit an accountable, efficient, and dynamic organizational structure and operating mechanism that will meet the priority needs and service requirements of its communities;
- (c) Subject to civil service law, rules and regulations, local officials and employees paid wholly or mainly from local funds shall be appointed or removed, according to merit and fitness, by the appropriate appointing authority;
- (d) The vesting of duty, responsibility, and accountability in local government units shall be accompanied with provision for reasonably adequate resources to discharge their powers and effectively carry out their functions: hence, they shall have the power to create and broaden their own sources of revenue and the right to a just share in national taxes and an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas;
- (e) Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions;
- (f) Local government units may group themselves, consolidate or coordinate their efforts, services, and resources commonly beneficial to them;
- (g) The capabilities of local government units, especially the municipalities and barangays, shall be enhanced by providing them with opportunities to participate actively in the implementation of national programs and projects;
- (h) There shall be a continuing mechanism to enhance local autonomy not only by legislative enabling acts but also by administrative and organizational reforms;
- (i) Local government units shall share with the national government the responsibility in the management and maintenance of ecological balance within their territorial jurisdiction, subject to the provisions of this Code and national policies;
- (j) Effective mechanisms for ensuring the accountability of local government units to their respective constituents shall be strengthened in order to upgrade continually the quality of local leadership;
- (k) The realization of local autonomy shall be facilitated through improved coordination of national government policies and programs an extension of adequate technical and material assistance to less developed and deserving local government units;
- (l) The participation of the private sector in local governance, particularly in the delivery of basic services, shall be encouraged to ensure the viability of local autonomy as an alternative strategy for sustainable development; and
- (m) The national government shall ensure that decentralization contributes to the continuing improvement of the performance of local government units and the quality of community life

³ The Philippine Constitution of 1987, Art. X, Sec. 2.

⁴ *Id.*, Art. X, Sec. 4

⁵ The Local Government Code of 1991, Sec.25. National Supervision over Local Government Units. -

(a) Consistent with the basic policy on local autonomy, the President shall exercise general supervision over local government units to ensure that their acts are within the scope of their prescribed powers and functions.

The President shall exercise supervisory authority directly over provinces, highly urbanized cities, and independent component cities; through the province with respect to component cities and municipalities; and through the city and municipality with respect to barangays.

(b) National agencies and offices with project implementation functions shall coordinate with one another and with the local government units concerned in the discharge of these functions. They shall ensure the participation of local government units both in the planning and implementation of said national projects.

(c) The President may, upon request of the local government unit concerned, direct the appropriate national agency to provide financial, technical, or other

LGUs play an important role in subnational EITI implementation as they host the mining sites, oil and gas fields and principal offices of extractive industries. They are directly impacted by extractive industry operations. For this reason, the Local Government Code (LGC)⁶ compels agencies of the National Government to conduct prior and periodic consultations with LGUs on any programs and projects that have effects on the environment and ecological balance of communities, which projects includes the extraction of natural resources.⁷

1.1.1 Political Subdivisions and Classification of LGUs

Of these territorial and political subdivisions, the *barangay* is the smallest unit of government. A municipality or a city is composed of several *barangays*, while a province can be composed of municipalities and cities. The province, cities and municipalities are mandated to ensure that the acts of their component units are within their powers and functions.⁸

Highly urbanized cities and independent component cities are independent of the province.⁹ Highly urbanized cities are those with a minimum population of 200,000, as certified by the National Statistics Office, and with the latest annual income of at least P50,000,000.00, as certified by the city treasurer.¹⁰ Independent component cities do not necessarily meet the above requirements of highly urbanized cities but their charters prohibit their residents from voting for provincial elective officials.¹¹ Consequently, highly urbanized cities and independent component cities are outside the supervision of the province.

The LGC devolves to the LGUs functions and powers on basic services in infrastructure, health and social, environmental management, agriculture and fisheries, tourism, and other regulatory functions. To meet the budgetary requirements of these devolved functions, the LGUs receive Internal Revenue Allotment from the national government and share in national wealth from excise taxes and royalty payments by mining and portion in the net profits of oil and gas companies as host of said extractive operations. Apart from these shares from the national wealth and from national tax collection, LGUs are expected to generate their own income and revenues in accordance with their local taxing and public corporate powers.

⁶ The Local Government Code of 1991

⁷ Id., Sec. 2. Declaration of Policy. -

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(c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.

RA 7160, Sec. 26. Duty of National Government Agencies in the Maintenance of Ecological Balance. - It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

RA 7160, Sec. 27. Prior Consultations Required. - No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the *sanggunian* concerned is obtained: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

⁸ The 1987 Philippine Constitution, Art. X, Sec. 4.

⁹ The Local Government Code of, Sec. 29.

¹⁰ Id., Sec. 452.

¹¹ Id., Sec. 451.

1.1.2 National Government as the Main Regulator of the Extractive Industry

By virtue of the Regalian Doctrine enshrined in the Constitution,¹² subject to certain jurisprudential limitations, all lands and natural resources belong to the state. By virtue of such ownership, the exploration, development, and utilization of natural resources are under the state’s full control and supervision. In the case of extractive industries involving exploration and development of mineral and petroleum deposits, it is the State through the national government that exercises control and supervision over such activities and regulates them at the same time.¹³ The LGUs’ devolved functions in environmental management excludes the regulation of large-scale mining and oil and gas extraction. The following national agencies manage and regulate extractive industries:

Table A.1.1 Summary of General Regulatory Functions of Agencies

Agency	General Regulatory Function	Legal Basis
Department of Environment and Natural Resources (DENR) - Environmental Management Bureau (EMB)	for Environmental Impact Study and for the issuance of Environmental Compliance Certificate	PD 1586, Sec. 3; EO 192 sec. 5
DENR - Mines and Geosciences Bureau (MGB)	for administration and disposition of mineral lands, recommendation of granting mineral agreements, and monitoring of compliance with the terms and conditions of the minerals agreements	R.A. 7942, Secs. 8 and 9
National Commission on Indigenous Peoples (NCIP)	for identifying ancestral lands and providing mechanism and facilitation in acquiring Free and Prior Informed Consent from Indigenous Peoples	R.A. 8371, Sec. 38, 53, and 59
Department of Energy (DOE)	for supervision and control all plans, programs, projects, and activities of the Government relative to energy exploration, development, utilization, distribution, and conservation including approval, granting and regulating all Petroleum Service contracts	RA 7638, Secs. 4 and 5
DOE - Energy Resources Development Bureau (ERDB)	for assistance in implementing and monitoring programs and plans relative to the exploration, development, and extraction of local energy resources	RA 7638, Sec. 12

1.1.3 The Role of LGUs in Regulating the Extractive Industry

¹² The Philippine Constitution of 1987, Art. XII, Sec. 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. xxx

¹³ Id. Art. XII, Sec. 2. xxx The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. xxx

xxx xxx

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

While the national government is the permitting and regulatory authorities of the extractive industry, LGUs nonetheless play an important role in large-scale mining operation and oil and gas extraction within their territorial jurisdiction. Based on the LGC's general welfare clause¹⁴ and requirement on prior consultation,¹⁵ no project or program that would have environmental impact may be implemented in its territory without consulting the affected LGUs, non-government organizations, and other concerned sectors. After consultation, project proponents such as oil, gas, and mining companies need to get the approval from the *sanggunian* (local legislative body) concerned.¹⁶ Project proponents are also required to comply with local tax ordinances including the requirements for a mayor's permit or business permit before they can start their operations, among others.

With respect to small-scale mining, the Department of Environment and Natural Resources - Mines and Geosciences Bureau (DENR-MGB), through the Provincial or City Mining and Regulatory Board (P/CMRB) as its implementing arm, regulates its operation. The LGU sits as a one of the members of the P/CMRB, which board is under the control and supervision of the DENR Secretary.¹⁷ The P/CMRB's functions include declaring lands as peoples' small-scale mining area, awarding contracts, settling claims and disputes in the mining area, and formulating and implementing rules and regulation on small-scale mining.¹⁸

Quarrying in public or private land for building and construction materials such as marble, basalt, clay, and other similar materials requires permit from the Provincial Governor or City Mayor of highly urbanized cities and independent component cities. Prior to the issuance of such permit, an application must be lodged with the P/CMRB.¹⁹

1.1.4 The Government's Power to Tax and Raise Revenues

The legislative power of congress includes the power to raise revenue and provide spending for the government. In the case of extractive industries, Congress can impose revenue, taxing and collection measures and at the same time delegate these powers to LGUs through legislation.

Under the 1987 Constitution, LGUs have the power to create their own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the LGUs concerned.³⁷ LGUs' power to tax under the Constitution is given flesh in the LGC that explicitly grants LGUs the power to create their own sources of revenue and to levy taxes, fees, and charges consistent with the basic policy of local autonomy.³⁸ LGUs are authorized to impose taxes and fees on business, real property, and other privileges and activities of extractive companies through local ordinances.

The Philippine Mining Act also authorizes LGUs to impose occupation fees on companies operating in onshore mining areas within the LGU's jurisdiction. Beyond those specifically provided for under national statutes and subject to the limitations of their authority³⁹, LGUs may also enact taxing ordinances that

¹⁴Id., Sec. 16.

¹⁵ See footnote 10.

¹⁶ Id.

¹⁷ The Peoples' Small-scale Mining Act of 1991, Sec. 24.

¹⁸ Id.

¹⁹ The Philippine Mining Act of 1995, Sec. 43.

³⁷ The Philippine 1987 Constitution, Art. X, Sec. 5

³⁸ The Local Government Code of 1991, Sec. 129

³⁹ The Local Government Code of 1991, Sec. 186. Power To Levy Other Taxes, Fees or Charges. - Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as

impose certain taxes and fees such as environmental enhancement, soil depletion and hazard mitigation, among many other regulatory fees and taxes, as shall be detailed below.

1.1.5 National Government's Collection of Mining and Petroleum Taxes and Other Fees

The following national government agencies, are involved in the collection of mining taxes and other fees, computation of LGUs' share in the national wealth, and the release of funds:

Table A.1.2 Summary of Agency General Mandates on Collection of Taxes and Fees

Agency	General Collection/Transfer Function	Legal Basis
Department of Finance - Bureau of Internal Revenue (BIR)	for assessment and collection of excise taxes, income taxes, royalty, and other fees	R.A. 8424, Sec. 2
Department of Energy (DOE)	for collection of income tax and government share in oil and gas production	R.A. 7638, Sec. 24
DENR- MGB	for collection of royalty income from mineral reservations and deposit of social expenditure funds and environment-related trust funds	DENR Admin. Order 2010-21, 28 June 2010, Sec. 13
Department of Finance - Bureau of Treasury (BTr)	for custody of collected taxes	E.O. No. 449, 17 October 1997, Sec. 1.
Department of Budget Management	for budget preparation and release of funds to LGUs as share in the national wealth	EO No. 25., 25 April 1936; DoF-DBM-DILG-DENR Joint Circular No. 2009-1, 31 March 2009, 3.5
Department of Finance – Bureau of Local Government Finance (BLGF)	for submission and consolidation of statement of receipts and expenditures	E.O. 127, 30 July 1987

1.2 Fiscal Arrangements of Local Government Units

1.2.1. In General

LGUs have two main sources of income from the extractive industries: transfers from national government and local taxation. The transfers, i.e., share in the national wealth, and IRA are allocated by the BIR or MGB or DOE, as applicable and then released by the DBM to the LGUs. Local revenues, on the other hand, are collected by the treasurer's office of the concerned locality. Some revenues, such as real property tax, go through an assessment by the assessor's office to determine the amount of taxes payable to the LGU before these are collected by the treasurer's office.

These incomes are in turn allocated for various expenditure items to provide services for the LGUs' constituents and to operationalize the local development plan which is crafted by local development councils in the barangay, municipality or city, and province and approved by the *sanggunian*. Citizen's participation is institutionalized in setting economic and social development through the local development councils, which have non-government organization (NGO) representations.⁴⁰

amended, or other applicable laws: Provided, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: Provided, further, That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose.

⁴⁰ The Local Government Code of 1991, Sec. 106.

To allocate these resources, the LGU go through the process of budget preparation, authorization, and execution.

1.2.1. Budgeting and Expenditure

Budget preparation consists of four major activities by the heads of local departments and offices, local finance committee, and the local chief executive.

The local treasurer, on or before July 15th of each year, submits to the local chief executive the following statements:⁴¹

1. Actual income and expenditures during the immediately preceding year;
2. Actual income and expenditures of the first two quarters of the current fiscal year; and,
3. Estimated income and expenditures for the last two quarters of the current fiscal year.

The local finance committee,⁴² composed of the local planning and development officer, the local budget officer and the local treasurer, convenes to deliberate and submit to the local chief executive the following:⁴³

1. Estimated income for the ensuing year;
2. Recommendations on tax and revenue measures or borrowing to support the budget;
3. Recommendations on the level of annual expenditures and the ceilings of spending for economic, social, and general services based on approved local development plan; and
4. Recommendations on the amount to be allocated for capital outlay under each development activity or infrastructure project.

The LGU's department heads prepare and submit their respective budget proposals for the ensuing year to the local chief executive.⁴⁴ The local chief executive then prepares the executive budget for the ensuing year and submits it to the *sanggunian* for approval not later than October 16th of the current year.⁴⁵

Upon receipt of the executive budget, the *sanggunian* studies and deliberates on the proposed budget, and before the end of the current year, it must enact, through an appropriations ordinance, the annual budget of the LGU for the ensuing fiscal.⁴⁶ If it fails to pass the ordinance then the appropriations ordinance of the preceding year is deemed reenacted until the appropriation ordinance for the current year is passed.⁴⁷

The appropriations ordinance passed by the *sanggunian* is subject to review depending on the nature of the LGU. The *sangguniang panlalawigan* (provincial council) reviews the appropriations ordinance of component cities and municipalities to determine that the budgets prepared and approved by these LGUs

⁴¹ Id., Sec.315.

⁴² Id., Sec. 316.

⁴³ Id.

⁴⁴ Id., Sec.317.

⁴⁵ Id. Sec. 318.

⁴⁶ Id., Sec. 319.

⁴⁷ Id., Sec. 323

are within the scope of their powers.⁴⁸ As to the appropriation ordinance of provinces, highly urbanized cities, independent component cities, and municipalities within Metro Manila, these are reviewed by the DBM.⁴⁹

After the budget is approved by the *sanggunian*, it may already be used for programs, projects, activities identified in the approved budget. Disbursements go through the following process: The budget officer certifies the existence of funds, the local accountant obligates such funds, and the local treasurer certifies the availability of funds. Vouchers and payrolls are certified and approved by the department that has administrative control of such fund.⁵⁰ All disbursements, except for recurring administrative expenses, such as payrolls, light, water, etc., require the local chief executive's approval through an allotment.⁵¹

1.2.3. Budget Accountability

The Commission on Audit's New Government Accounting System (NGAS) provides guidelines for LGUs in accounting for all incomes and disbursements.⁵² It simplifies government accounting that conforms to international accounting standards and requires LGUs to generate periodic financial statements for better monitoring of performance. The COA examine and audits revenue, receipts and expenditures of LGUs and publish the audit reports on their website.

1.2.4. Financial Reporting and Disclosures

The Philippines has a policy of "full public disclosure of all its transactions involving public interest."⁵³ Hence, the LGC⁵⁴ directs local treasurers, accountants, budget officers and other accountable officers to post a summary of income and expenditures during the preceding year. This must be posted in at least 3 publicly accessible and conspicuous places in the LGU⁵⁵ within 30 days from the end of each fiscal year.

The General Appropriations Act of 2012 requires LGUs to maintain a transparency seal to be posted on their websites. The transparency seal includes the following information:⁵⁶

1. Annual reports for the last three years;
2. Approved budgets and corresponding targets;
3. Major programs and projects;
4. Program and projects beneficiaries;
5. Status of implementation and assessment reports; and
6. Annual procurement plan.

The DOF's Bureau of Local Government Finance (BLGF)⁵⁷ requires the LGUs to submit annual budget and e-Statement of Revenues and Expenditures (eSRE). Reporting is required every 20th day after the end of

⁴⁸ Id., Sec. 327.

⁴⁹ Id., Sec. 326.

⁵⁰ Id., Sec. 344.

⁵¹ Id., Sec. 344.

⁵² COA Circular No. 2001-005, 1 January 2002.

⁵³ The Philippine Constitution of 1987, Art. II, Sec.28.

⁵⁴ The Local Government Code of 1991, Sec. 352.

⁵⁵ Id.

⁵⁶ General Appropriations Act of FY2012, Sec. 93.

⁵⁷ KII with BLGF Officers, 15 August 2014.

the quarter. The report includes the LGUs' quarterly income, share in the national wealth, and IRA, among others.

1.3 National Government's Bottom-Up Budgeting or Grassroots Participatory Budgeting Approach

In 2012, starting with the 2013 General Appropriations Act, the National Government, through the Aquino Administration, introduced a Bottom-Up Budgeting, (BUB),⁵⁸ later on renamed as Grassroots Participatory Budgeting,⁵⁹ that was complemented by an expanded engagement of civil society and people's group in the budget process. This is in line with the government's goal to reduce poverty and achieve the United Nations Millennium Development Goals and the Philippine Development Plans. The DBM Secretary refers to this as a "break-through" where "budget preparations will be guided by needs identified at the grassroots level, so that the 2013 budget will most decidedly be a people-centric budget, aimed not just at the proper allocation of resources, but also at the substantial reduction of poverty."⁶⁰

This mandates the preparation of budget proposals of government agencies, taking into consideration the needs of poor cities and municipalities as identified in the LGUs' respective Local Poverty Reduction Action Plans. These plans contain programs and projects collectively drawn through a participatory process by the LGU with the civil society organization and other stakeholders. From these plans, the identified priority poverty reduction projects by the focus and eligible LGUs through the BuB process are funded by the national budget.

Regulations set eligibility criteria and standards for both LGUs and projects that may qualify for funding. Regulations also provide for a quarterly monitoring of these projects at the LGU level by a Local Poverty Reduction Action Team led by the Local Chief Executive of the LGU, composed of an equal number of government and non-government representatives, and reporting to a counterpart team at the regional level led by the DILG Regional Director.⁶¹ This Grassroots Budgeting Process is also being integrated and harmonized into the processes of the local development planning, and with other government poverty reduction programs Kapit Bisig Laban sa Kahirapan, a Comprehensive and Integrated Delivery of Social Services and the National Community Driven Development Program⁶²

Chapter 2.0 Revenue Streams of Local Government Units

2.1 Sources of Subnational Revenues

LGUs receive both indirect and direct payments from oil, gas and mining companies. Indirect payments or transfers between national and LGUs are mandated by the Constitution, which provides for the equitable share of LGUs in the proceeds the national government receives from extractive industries. Direct payments are authorized by the Constitution and statutes, primarily by the LGC, and implemented through local tax ordinances or codes enacted by local legislative bodies. Additionally, in the exercise of local autonomy and decentralization, some LGUs impose, via a tax ordinance, additional fees and charges

⁵⁸ DBM-DILG-DSWD-NAPC Joint Memorandum Circular (JMC) No. 1, Series of 2012 dated March 8, 2012.

⁵⁹ DBM-DILG-DSWD-NAPC Joint Memorandum Circular (JMC) No. 4, Series of 2013 dated November 26, 2013.

⁶⁰ DBM, January 19, 2012.

⁶¹ DBM-DILG-DSWD-NAPC Joint Memorandum Circular (JMC) No. 4, Series of 2013 dated November 26, 2013. DBM National Budget Memorandum No. 121, dated March 18, 2014.

⁶² DBM-DILG-DSWD-NAPC Joint Memorandum Circular (JMC) No. 4, Series of 2013 dated November 26, 2013.

on mining operations, delivery and transport fees, environmental enhancement, soil depletion and hazard mitigation, among many other regulatory fees and taxes.

Table A.2.1. Local Revenue Streams in General – Main Sources of Subnational Revenues

Local Revenue: Sources	Mode of Acquisition	Legal Basis
Internal	Indirect Payments: Transfers made to LGUs by National Government	1987 Philippine Constitution, Art. X, Sec. 6,7; RA 7160, Sec. 284, 285, 289, 290
External	Direct Payments: Collections made by LGUs through its revenue raising power	1987 Philippine Constitution, Art. X, Sec. 5; RA 7160, Sec. 129, 186, 134, 142, 151, 152, 153

2.2 Indirect Payment to LGUs

Indirect payments to LGUs or payment transfers from national government to LGUs are the LGUs’ share in the IRA and their share in the national wealth within their territory.

2.2.1. LGUs’ Share in the National Wealth: Excise Tax, Royalty Income, Share from Oil and Gas Production

LGUs also benefit from the proceeds of this national wealth, as provided for under the Constitution.⁶⁹ The LGC operationalizes the constitutional mandate by providing the formula for computing the LGUs’ share in the national wealth which is either of the two that will produce a higher share for the LGUS : (a) 1% of the gross sales or receipts of the preceding calendar year or (b) 40% of BIR’s gross collections from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, including interests, or fines, and from its share in any co-production, joint venture or production sharing agreement within their territorial jurisdiction.⁷⁰ As between the two formulas, the BIR currently uses the 40% formula as it yields a higher value for the share of LGUs.

LGUs receive their shares in the national wealth in mining which is 40%⁷¹ of the excise tax and royalty fees. The excise tax is computed at 2% based on the actual market value of the annual gross output at the time of removal,⁷² while the royalty from mineral reservations is 5% of the 90% of the market value of the gross output of the minerals and mineral products extracted or produced.⁷³ In the case of oil and gas, LGUs receive a share of 40%⁷⁴ from the 60% total government share from the net revenues of service contractors in oil and gas production collected by the DOE. The Government’s share of 60% in oil and gas production includes the 30% income tax as provided in several oil and gas service contracts including DOE’s current model contract.⁷⁵ However, the law is not categorically explicit on the formula on income tax assumptions by the government.⁷⁶

⁶⁹ 1987 Philippine Constitution, Art. X, Sec. 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits. local governments.

⁷⁰ Id., Art. X, Sec. 6. Local government units shall have a just share, as determined by law, in the national taxes, which shall be automatically released to them.

⁷¹ The Local Government Code of 1991, Sec. 290.

⁷² Id.

⁷³ Id., Sec. 289 & 290.

⁷⁴ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 13.

⁷⁵ Local Government Code, Sec. 290.

⁷⁶ PECR 5 DOE Model Petroleum Service Contract

⁷⁷ Oil Exploration and Development Act of 1972 on imposition of income tax, Sec. 19-25

The share of the LGUs in the national wealth is further distributed among the province, municipality, city, and barangay.⁷⁷ The percentage of allocation among the LGUs depends on whether the natural resources are located in a locality belonging to the same local units; in two or more provinces, cities or municipalities, or barangays; or in a highly urbanized or independent component city. In cases where the natural resources are located within a locality belonging to the same local units, the distribution is done in the following manner:

- (1) Province - Twenty percent (20%);
- (2) Component City/Municipality - Forty-five percent (45%); and
- (3) Barangay - Thirty-five percent (35%)⁸⁶

Where the natural resources are located in two or more provinces, cities or municipalities, or barangays, their respective shares will be computed based on:

- (1) Population - Seventy percent (70%); and
- (2) Land area - Thirty percent (30%)⁸⁷

If these were located in a highly urbanized or independent component city, the distribution would be as follows:

- (1) City - Sixty-five percent (65%); and
- (2) Barangay - Thirty-five percent (35%)⁸⁸

In this case, where the natural resources are located in such two or more cities, the distribution of shares is based on the formula on population and land area as specified above.

In the case where a government agency or a government-owned or controlled corporation are directly engaged in the utilization and development of the national wealth, the LGU share is either 1% of the gross sales of the preceding calendar year or 40% of the mining taxes, royalties and such other fees and charges the government agency or government owned and controlled corporation would have paid if it were not otherwise exempt, whichever produce a higher percentage share for the LGU.⁸⁹

These shares are released automatically, with no further action needed, to the concerned provincial, city, municipal or barangay treasurer, on a quarterly basis within five days after the end of each quarter.⁹⁰ Where the entity utilizing and developing minerals is a government agency or government-owned or controlled corporation, the share must be remitted to the treasurer concerned within five days after the end of each quarter.⁹¹

LGUs must appropriate these shares for financing their local development and livelihood projects.⁹² In the case of energy resources such as hydrothermal, geothermal and other sources of energy, at least 80% of

⁷⁷ The Local Government Code of 1991, Sec. 292.

⁸⁶ Id., Sec. 292.

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Id., Sec. 291.

⁹⁰ Id., Sec. 286.

⁹¹ Id., Sec. 293.

⁹² Id., Sec. 294.

the LGU share must be applied solely to lower electricity cost in the LGU where the source of energy is located.⁹³

2.2.2 LGUs' Share in the National Internal Revenues: Internal Revenue Allotment (IRA)

LGUs also have a share in the national internal revenue taxes.⁹⁴ This share, however, is not disaggregated to identify specific payments from the extractive industry. The share is 40% of national internal revenue collection of the third fiscal year preceding the current fiscal year.⁹⁵ It is further allocated to the provinces, cities, municipalities, and barangays based on population, land area, on a proportionate sharing.⁹⁶

Similar to the share in the national wealth, IRA shares are automatically released directly to the provincial, city, municipal or barangay treasurer on a quarterly basis within five days after the end of each quarter.⁹⁷ LGUs must appropriate in their annual budget no less than 20% of the IRA for development plans⁹⁸ approved by their local development councils.⁹⁹

Table A.2.2. Local Revenue Streams – Transfers from National Government

Local Revenue: Transfers Made to LGUs by National Government	Applicable to				Legal Basis		Included in the IA/PWC Data Gathering for National Reporting (NR)	
	P	C	M	B	National Statute	Local Tax Code	Yes	No
LGU Share in the National Wealth	x	x	x	x	Const., RA 7160, Sec. 289, 290		x	
Internal Revenue Allotment	x	x	x	x	Const., RA 7160, Sec. 284, 285			x

Legend: P for Province, C for Cities, M for Municipalities and B for Barangays

2.3 Direct Payments to LGUs

Direct payments to LGUs consists of taxes (business taxes, real property taxes) and charges (registration or permit fees, toll fees, special education fund) directly imposed, assessed and collected by LGUs. Another direct payment to LGUS is occupation fees authorized under the Philippine Mining Act.¹⁰⁰ Both kinds of indirect and direct payments are already included in the 2014 Philippine EITI National Reporting Template.

Other direct payments received by LGUs are those that some of them locally imposed, outside of what is already provided for in national laws. These range from tax on mining operations, delivery and transport

⁹³ Id.

⁹⁴ The Philippine Constitution of 1997,, Art. X, Sec. 6. Local government units shall have a just share, as determined by law, in the national taxes, which shall be automatically released to them.

⁹⁵ The Local Government Code of 1991, Sec. 284.

⁹⁶ The Local Government Code of 1991, Sec. 285.

⁹⁷ Id., Sec. 286.

⁹⁸ Id., Sec. 287.

⁹⁹ Id, Sec. 457 (b)(5).

¹⁰⁰The Philippine Mining Act of 1995, Sec. 86.

fees, environmental enhancement, soil depletion and hazard mitigation fees, among many other regulatory fees and charges. LGUs receive payment from oil and gas companies only on regulatory fees that LGUs impose, as oil and gas companies may be exempted from payment of all taxes, except income tax¹⁰¹ and the exemption is provided in the Service Contracts of petroleum contractors.

Other forms of payment received by LGUs are donations, whether monetary or non-monetary, from oil, gas and mining corporations. These can range from payments in kind or services to monetary donations. These in-kind donations and assistance are also included in the Philippine EITI National Reporting Template. Some of these donations are coursed through and documented via contracts between LGUs and the extractive company or simply by way of an acknowledgement receipt by the LGU, via unilateral requests by LGU and even via voluntary offer by the oil, gas or mining company as part of their corporate social responsibility outside of what is mandated by law. Some donations are not covered by receipts issued by LGUs.¹⁰²

Table A.2.3. Local Revenue Streams – Direct Payments from Mining Companies

Local Revenue: Direct Payments Made to LGUs by Mining Companies Provided under National Statutes and Local Tax Codes	Applicable to				Legal Basis			Included in the IA/PWC Data Gathering for 2014 National Reporting (NR)	
	P	C	M	B	National Statute	Rate under National Statute	Local Tax Code	Yes	No
Business Tax		x	x		RA 7160, Sec. 143, Sec.146, Sec. 151	Schedule of Graduated Tax Rate	x	x	
Real Property Tax (RPT) – Basic	x	x	x	x	RA 7160, Sec. 200, 212, 215, 218,	Ceiling on the Assessment Based on a Schedule of Fair Market Value	x	x	
RPT - Special Education Fund	x				RA 7160, Sec. 235	1% of Assessed Value of Property	x	x	
Public Utility Charges [Owned and operated by LGU]	x	x	x		RA 7160, Sec. 154			x	
Toll Fees [Public Road, Pier, Wharf, Waterway, Bridge, Ferry,	x	x	x		RA 7160, Sec. 155	To be fixed by Sanggunian	x	x	

¹⁰¹ The Oil Exploration and Development Act of 1972 Sec. 12(a)

¹⁰² KII with Toledo CTO, 28 May 2014, Cebu City.

Telecommunication System]									
Community Tax		x	x		RA 7160, Sec. 157, 158	P5 + P1/P1000 income; P500 + P2/P500 income for Corporations and not exceeding P10,000	x	x	
Tax on Sand, Gravel and other Quarry Resources	x	x	x	x	RA 7160, Sec. 138; RA 7942 Sec. 44	Not more than 10% of FMV	x		x
Barangay Clearance				x	RA 7160, Sec. 152	Reasonable Fees			x
Fixed Tax for Delivery Trucks	x				RA 7160, Sec. 141	P500	x		x
Professional Tax	x				RA 7160, Sec 139	Not exceeding P300	x		x
Occupation Fees	x	x	x		RA 7942, Sec. 86	P5-P100/ hectare	x	x	
Penalties, Surcharges and Interests	x	x	x		RA 7160, Sec. 169	P25 Surcharge; P2 Interest (maximum rates)	x	x	
Local Revenue: Direct Payments Made to LGUs by Mining Companies Not Provided by National Statutes	P	C	M	B	Specific LGUs Collecting and Receiving Revenue	Rate under Local Tax Code	Included in the IA/PWC Data Gathering for 2014 NR		
							Yes	No	
Mayor's Permit/Business License ¹⁰³		x	x		All	P200 – P60,500	x		
Regulatory/Administrative Fees/Application/Verification Fees/Governor's Permit/Endorsement Fee	x			x	Agusan Del Norte; Cebu; Jose Panganiban; Palawan; Zambales	P500 – P10,000 (mining) P25,000 (oil & gas)	x		
Tax on Mining Operations ¹⁰⁴	x	x	x		Cebu Province; Davao City ; Pasig City; Aroroy; Bataraza; Cagdianao; Carrascal; Dona Remedios Trinidad; Daanbantayan; Guian; Kasibu; Loreto; Rapu-Rapu; Tuba; Tubay	1% - 2.2% of Gross Receipts (GR)	x		

¹⁰³ The Local Government Code of 1991, Sec. 147, Sec. 151, Sec. 153, Sec. 444 (b)(3)(iv), Sec. 455 (b)(3)(iv).

¹⁰⁴ Some local tax codes base their impositions under Sec. 143(h) of the LGC which refers to business tax at rate of 2% maximum of gross receipts on other business not specifically enumerated under said law. However, most local tax codes provide the imposition as independent source of revenue without reference to Sec. 143(h) of the LGC on top of their business tax impositions.

Environmental Enhancement Fees/ Extraction Fees	x				Agusan del Norte, Bulacan, Cebu, Dinagat Island Province, Zambales	P2 – P12 /cu.m.; P25/ metric ton	x	
Soil Depletion Tax					Dinagat Province	1% / GR		
Hazard Mitigation Fee			x		Sta. Cruz	P5 / cu.m.		x
Municipal Mining Clearance Fee			x		Narra; Quezon; Sofronio Espanola	P5/ cu.m		x
Provincial /Municipal Environmental Compliance Certificate + Verification and Inspection Fees/ Certificate of Non-Coverage Fee ¹⁰⁵	x		x		Bulacan; Zambales; Daanbantayan	P600 – P5,000		x
Transport Fees	x				Zambales; Surigao del Norte	P10,000 – P60,000 / shipment		x
Delivery Receipts(including Printing Costs of Delivery Receipts)	x				Bulacan, Zambales	P5/ Delivery Receipt (DR) – P1,000/booklet of DR		x
Miscellaneous Regulatory Fees (Sanitary Inspection Fee, Locational Clearance, Garbage Disposal fee, etc)		x	x		Bataraza, Daanbantayan; Dona Remedios Trinidad; Kasibu	P100 – P1,000 (sanitary fee) P500 – P6,000 (garbage disposal)		x
Donations/Grants/ Other Assistance/ Benefits ¹⁰⁶	x	x	x	x			x	

Table A.2.4. Local Revenue Streams – Direct Payments from Oil & Gas Companies

Local Revenue: Payments Made to LGUs by Oil & Gas Companies ¹⁰⁷	Legal Basis		Included in the IA/PWC Data Gathering for National Reporting	
	National Statute	Local Tax Code	Yes	No
Mayor's/ Business Permit	RA 7160, Sec. 147, Sec. 151, Sec. 153, Sec. 444 (b)(3)(iv), Sec. 455 (b)(3)(iv)	x	x	
Regulatory/Administrative Fees/Application/ Verification Fees		x		x

¹⁰⁵ Based on KII with the Office of the Municipal Treasurer of Dona Remedios Trinidad, together with the Office of the Provincial Treasurer of Bulacan This certificate is reportedly a pre-requisite for the issuance of business permit, which is allegedly provided under the Provincial Tax Code. If fee is collected by the province, then the fee goes to the province completely. If collected by the municipality, municipality has 15% share. Note, that this may be legally infirm if this certificate is in the nature of a Certificate of Non-Coverage under the EIS regulations. A CNC is a statutorily issued by the DENR-EMB under EIA regulations, and mining activities are by classified as Environmentally Critical Projects.

¹⁰⁶ KII with LGUs and Companies.

¹⁰⁷ Payments to LGUs consist only of regulatory fees. Oil and gas companies are exempted from all taxes, except income tax.

Environmental Fees		x	x	
Provincial Environmental Compliance Certificate		x		x
Certificate of Non-Coverage Fee		x		x
Miscellaneous Regulatory Fees (Sanitary Inspection Fee, Locational Clearance, Garbage Disposal fee, etc)		x		x
Oil Exploration/ Drilling Regulatory Fee		x		x
Donations/Grants/ Assistance/Benefits Other				x

2.4 Direct Payments: Local Revenue Streams

2.4.1 Taxes and Fees based on Statutes

a) Real Property Tax

An annual ad valorem tax on real property such as land, building, machinery, and other improvement may only be imposed by province or city or a municipality within the Metropolitan Manila Area¹⁰⁸. All real property, whether taxable or exempt, shall be appraised at the current and fair market value prevailing in the locality where the property is situated.¹⁰⁹ In the case of machineries, the fair market value of a brand-new machinery shall be the acquisition cost and in all other cases, the fair market value shall be determined by dividing the remaining economic life of the machinery by its estimated economic life and multiplied by the replacement or reproduction cost. If the machinery is imported, the acquisition cost includes freight, insurance, bank and other charges, brokerage, arrastre and handling, duties and taxes, plus charges at the present site.¹¹⁰

When any person, natural or juridical, by whom real property is required to be declared under, refuses or fails for any reason to make such declaration within the time prescribed, the provincial, city or municipal assessor will himself declare the property in the name of the owner.¹¹¹ For any unpaid taxes, surcharges and penalties may also be imposed.¹¹²

The uniform rate of basic real property tax applicable to their respective localities as follows: ¹¹³

- (a) In the case of a province, at the rate not exceeding one percent of the assessed value of real property; and
- (b) In the case of a city or a municipality within the Metropolitan Manila Area, at the rate not exceeding two percent of the assessed value of real property.

There is also an additional levy on real property for the Special Education Fund (SEF) of 1% on the assessed value of real property, which is in addition to the basic real property tax. The proceeds exclusively go to the SEF.¹¹⁴

¹⁰⁸ The Local Government Code of 1991. Sec. 232.

¹⁰⁹ Id., Sec. 201.

¹¹⁰ Id., Sec. 224

¹¹¹ Id., Sec. 204

¹¹² Id., Sec. 168. *Surcharges and Penalties on Unpaid Taxes, Fees, or Charges.* - The sanggunian may impose a surcharge not exceeding twenty-five (25%) of the amount of taxes, fees or charges not paid on time and an interest at the rate not exceeding two percent (2%) per month of the unpaid taxes, fees or charges including surcharges, until such amount is fully paid but in no case shall the total thirty-six (36%) months.

¹¹³ Id., Sec. 233

¹¹⁴ Id., Sec. 235

b) Annual Fixed Tax For Every Delivery Truck

This is levied by the province as an annual fixed tax for every truck, van or any vehicle used by manufacturers, producers, wholesalers, dealers or retailers in the delivery or distribution of within the province in any amount not exceeding P500.00.¹¹⁵

c) Tax on Sand, Gravel and Other Quarry Resources

The province may levy and collect not more than 10% of fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth, and other quarry resources, as defined under the National Internal Revenue Code, as amended, extracted from public lands or from the beds of seas, lakes, rivers, streams, creeks, and other public waters within its territorial jurisdiction.¹¹⁶

d) Professional Tax

An annual professional tax on each person engaged in the exercise or practice of his or her profession requiring government examination at any amount, which should not exceed P300.00. Corporations employing a person subject to professional tax must require payment by that person of the tax on his profession before employment and annually thereafter.¹¹⁷

e) Business Tax

Cities and municipalities impose tax on business on large-scale mining companies either as manufacturer, exporter, or contractor. The rates are imposed based on each local tax codes with the cap provided by the Local Government Code¹¹⁸. The rates of business taxes that the city may levy may exceed the maximum rates allowed for the municipality by not more than 50%.¹¹⁹

¹¹⁵ Id., Sec. 141

¹¹⁶ Id.

¹¹⁷ Id., Sec 139

¹¹⁸ Id., Sec. 143. *Tax on Business.* - The municipality may impose taxes on the following businesses:

(a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:

With gross sales or receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum
Less than 10,000.00	165.00
Xxx	
6,000,000.00 or more at a rate not exceeding thirty-seven and a half percent (37½%) of one percent (1%)	

(b) xxx

(c) On exporters, and on manufacturers , millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (½) of the rates prescribed under subsection (a), (b)

(d) xxx

Provided, however, That barangays shall have the exclusive power to levy taxes, as provided under Section 152 hereof, on gross sales or receipts of the preceding calendar year of Fifty thousand pesos (P50,000.00) or less, in the case of cities, and Thirty thousand pesos (P30,000.00) or less, in the case of municipalities.

xxx

(e) On contractors and other independent contractors, in accordance with the following schedule:

With gross sales or receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum
Less than 5,000.00	27.50
xxx	
2,000,000.00 or more at a rate not exceeding fifty percent (50%) of one percent (1%)	

¹¹⁹ Id., Sec. 151

f) Community Tax

Cities or municipalities may levy a community tax.¹²⁰ Every corporation is charged an annual community tax of P500.00 and an annual additional tax, which should not exceed P10,000.00.¹²¹ A community tax certificate is issued to every person or corporation upon payment of the community tax.

g) Public Utility Charges

Local government units may fix the rates for the operation of public utilities owned, operated and maintained by them within their jurisdiction.¹²²

h) Toll Fees or Charges

This is an imposition of toll fees or charges for the use of any public road, pier, or wharf, waterway, bridge, ferry or telecommunication system funded and constructed by the LGU. However, the LGU may discontinue the collection of the tolls, and thereafter the said facility shall be free and open for public use when public safety and welfare so requires.¹²³

i) Barangay Clearance

No city or municipality may issue any license or permit for any business or activity unless a clearance is first obtained from the barangay where such business or activity is located or conducted. For such clearance, the *sangguniang barangay* may impose a reasonable fee. The application for clearance will be acted upon within seven working days from its filing. If the clearance is not issued within the said period, the city or municipality may issue the license or permit.¹²⁴

j) Occupation Fees

The Philippine Mining Act also authorizes the LGUs to impose occupation fees on companies operating in onshore mining areas. The LGUs can collect annual occupation fees from any holder of a mineral agreement, financial or technical assistance agreement or exploration permit on public or private lands¹²⁵ in accordance with a schedule.¹²⁶

k) Surcharges, Penalties and Interests

LGUs, through their local legislative bodies, may impose a surcharge not exceeding 25% of the amount of taxes, fees or charges not paid on time and an interest at the rate not exceeding 2% per month of the unpaid taxes, fees or charges including surcharges, until such amount is fully paid but in no case will the total interest exceed 36 months.¹²⁷ Furthermore, LGUs are allowed to collect interests on any unpaid revenues at the rate not exceeding 2% per month from the date it is due until it is paid, but the total interest on the unpaid amount or a portion thereof should not also exceed 36 months.

¹²⁰ Id., Sec. 156

¹²¹ Id., Sec. 158; Schedule of charges: (1) For every Five thousand pesos (P5,000.00) worth of real property in the Philippines owned by it during the preceding year based on the valuation used for the payment of real property tax under existing laws, found in the assessment rolls of the city or municipality where the real property is situated - Two pesos (P2.00); and (2) For every Five thousand pesos (P5,000.00) of gross receipts or earnings derived by it from its business in the Philippines during the preceding year - Two pesos (P2.00). The dividends received by a corporation from another corporation however shall, for the purpose of the additional tax, be considered as part of the gross receipts or earnings of said corporation.

¹²² Id., Sec. 153

¹²³ Id., Sec. 154

¹²⁴ Id., Sec. 152(c)

¹²⁵ Id., Section 86.

¹²⁶ a. For areas outside Mineral Reservations

1. Exploration Permit - PhP10.00 per hectare or fraction thereof per annum;
2. Mineral Agreements and FTAA's - PhP50.00 per hectare or fraction thereof per annum; and
b. For areas inside Mineral Reservations

1. Exploration Permits, Mineral Agreements and FTAA's - PhP100.00 per hectare or fraction thereof per annum

¹²⁷ Id., Sec. 168

2.4.2 Taxes and Fees under Local Tax Codes

a) Mayor's Permit and Other Regulatory Fees

One of the regulatory licenses and permits issued by the Municipal or City Mayor is commonly known as a mayor's permit or business permit or license to any entity engaging in any activity or doing business within the city or municipality. Such permit or license may be suspended or revoked for any violation of its terms and conditions, pursuant to law or ordinance.¹²⁸

Regulatory fees range from environmental fees, inspection fees, assessment fees, extraction fees, trucking fees, hauling fees, among others. LGUs impose these fees in accordance with their local tax codes or special ordinances, as may be appropriate or suitable to the needs and activities of a licensee in their locality. Other miscellaneous regulatory fees that appear in local tax ordinances of cities and municipalities include sanitary inspection fee, locational clearance fee, and garbage collection fee.

b) Tax on Mining Operations

The tax on mining operations imposed by some cities and municipalities is not specifically provided under the Local Government Code. Some LGUs use as legal basis the LGC provision on business tax on any business not specifically enumerated under Section 143(h) of the LGC:

On any business, not otherwise specified in the preceding paragraphs, which the *sanggunian* concerned may deem proper to tax: Provided, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year. The *sanggunian* concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein.

In which case, the tax on mining operations imposed by the LGUs may be considered a form of business tax. However, the tax on mining operations in most local tax codes appears to be separately imposed in addition to the business tax. If the LGU already imposes business tax and a tax on mining operations based on Sec. 143(h) of the LGC, then it may already appear to be a double taxation. Otherwise, if the LGU has a different basis for the tax of mining operations, then it appears to be in order.

c) Environmental and Extraction Fees

The environmental effects caused by extraction of minerals or petroleum to local communities is the rationale behind the imposition of this tax by a number of LGUs. The tax base is usually the gross output or value of the removal of minerals from its source. Hence, it carries different names and variations such as Municipal Inspection and Monitoring Clearance Fee, Soil Depletion Tax, and Hazard Mitigation Fee. The rates of impositions vary based on volume (per cubic meter) or weight (per metric ton) of minerals and use gross production output as the tax or fee base.

d) Transport or Hauling Fees

The transport and hauling fees are also assessed by some LGUs for every transport of minerals outside of their local territory. The imposition and tax base is similar to environmental fees. The fee imposed on the minerals is also based on volume, weight or value on a per truck basis.

¹²⁸ Id., Sec. 444 (b)(3)(iv)

e) Donations, Grants and Other Assistance

Both LGUs and extractive companies confirmed the grant of donations and assistance to LGUs in varying amounts. However, most donations and assistance are not documented by the LGUs.

2.5 Direct Payments: Specific Tax Rates under Local Tax Codes (LTC)¹²⁹

The LGUs' taxing authority and revenue raising powers are specifically provided for and limited by the LGC. The LGUs that host several large-scale mining and oil and gas operations have different revenue streams and tax rates based on each of their local ordinances. Below are various tables identifying the different local revenue streams of different LGUs.

Table A.2.5.0 Local Revenue Streams - Province: Specific Rates and Provision under LTC

Province/Local Government Unit	Tax on Mining Operations/ Tax on Minerals		Real Property Tax		RPT - Special Education Fund	
	Tax Rate	LTC Provision	Tax Rate	LTC Provision	Tax Rate	LTC Provision
Benguet			1%/ assessed value	Ord. No. 05-107 Chapter 2, Art 1, Sec. 5	1%/ assessed value	Ord. No. 05-107 Chapter 2, Art 1, Sec. 5
Cebu	2% Tax on the FMV per metric ton of metallic minerals;	Ord. No. 2008-10 Art E, Sec. 126	1%/ assessed value	Ord. No. 2008-10 Art C, Sec. 41	1%/ assessed value	Ord. No. 2008-10 Art C, Sec. 44
Dinagat Island			1%/ assessed value	Chapter II Art. A, Sec. 2A.0	1%/ assessed value	Chapter II, Art. A, Sec. 2A.02
Surigao del Norte			1%/ assessed value	Ord. No. 1-2013, Chapter II, Art. A, Sec. 6	1%/ assessed value	Ord. No. 1-2013, Chapter II, Art. A, Sec. 7
Zambales			1% of assessed value	Ord. No. 93-16, Art. 3, Sec. 6	1% of assessed value	Ord. No. 93-16 Art. 3, Sec. 8

Table A.2.5.1 Local Revenue Streams - Province: Specific Rates and Provision under LTC

Province/Local Government Unit	Sand, Gravel and Quarry Fee		Fixed Fee on Delivery Trucks		Occupation Tax	
	Tax Rate	LTC Provision	Tax Rate	LTC Provision	Tax Rate	LTC Provision
Bulacan	10% of the FMV	Ord. No. C-005, Art. X, Sec. 72				
Cebu	10% of the	Ord. No. 2008-				

¹²⁹ Tax rates were based on the Local Tax Codes or portions thereof and/or relevant local ordinances pertaining to the extractive industry of 8 Provinces, 7 Cities and 21 Municipalities out of the 63 covered LGUs (18 Provinces and 45 Cities/Municipalities), and where indicated, based on information supplied during key informant interviews with the LGUs.

	FMV	10 Art E, Sec. 124				
Dinagat Island	Not more than 10% of the FMV	PTO 05-07 Chapter II, Art. H, Sec. 2H.01	P500/Truck	PTO 05-07 Chapter II, Art. L. Sec. 2L.01	P100/ha./year for reservation area; P10/ha./year on non-reservation area	PTO 05-07 Chapter II Art I, Sec. 21.01
Palawan	Not more than 10% of the FMV at P300/cu.m	Chapter II, Sec. 142	P500/Truck	PTO No. 85-12		
Surigao del Norte					P100/ha. For reservation; P7/ha. For non-reservation area	Ord. No. 1-2013, Chapter VI, Art. E, Sec. 102
Zambales	7%/FMV	Ord. No. 93-16 Art. 3, sec. 33	P50-P500	Ord. No. 93-16 Art. 3, Sec. 44		

Table A.2.5.2 Local Revenue Streams - Province: Specific Rates and Provision under LTC

Province/Local Government Unit	Professional Tax		Environmental/Extraction Fees		Transport Permit/Delivery Receipt (DR)	
	Tax Rate	LTC Provision	Tax Rate	LTC Provision	Tax Rate	LTC Provision
Agusan del Norte			P12/cu.m. extraction fee	Ord. No. 284-2011, Art. VII, Sec. 36		
Bulacan			P500 filing fee; P4,000 Processing fee; P1,000 inspection fee for Provincial ECC; P1000 for CNC	Ord. No. C-005, Sec. 47	P5/DR	Ord. no. C-005, Art. X, Sec. 72; Art XI
Cebu			P25/MT Environmental Enhancement Fee	Ord. No. 2008-10 Art F, Sec. 220		
Dinagat Island	P300	PTO 05-07 Chapter II Art. J,	1% Soil Depletion Tax /	Ord. No. 08-58		

		Sec. 2J.01	Gross Receipts			
Palawan	P300	Chapter VIII, Sec. 135				
Surigao del Norte					P60,000 governor's clearance/shipment; P18,000 verification fee/shipment; P6/m. ton	Ord. No. 1-2013, Chapter VI, Art. C, Sec. 97(c)
Zambales	P200- P300	Ord. No. 93-16 Art. 3, Sec. 8	P3,000 for Prov'l ECC; Governor's Env'tal Permit; Prov'l Env'tal Fee of 2% of FMV P950 + 7%/FMV and not less than P5/cu.m. regulatory fee on mining or P50/ MT (for Nickel)	Ord. No. 2014-01, Sec. 13(B); Sec.15; Sec. 20(10) Ord. No. 93-16 Art. 3, Sec. 52	P10,000 ore quarry transport permit fee P1,000/booklet of DR	Ord. No. 93-16 Art. 3, Sec. 20(13) Ord. No. 93-16 Art. 3, Sec. 20(16)

Table A.2.5.3 Local Revenue Streams - Province: Specific Rates and Provision under LTC

Province/ Local Government Unit	Other Regulatory Fees	
	Tax Rate	LTC Provision
Agusan del Norte	P2,000 Governor's Special permit to Quarry; P2,000 application, processing, verification fee;	Ord. No. 284-2011, Art. VII, Sec. 36
Cebu	P10,000 Governor's permit on mining	Ord. No. 2008-10 Art E, Sec. 158
Dinagat Island	Regulatory fee for extraction of sand, gravel and quarry : P500-1,500	Chapter III, Art. A, Sec 3A.01
Palawan	P25,000 for oil/gas exploration; P180/cu.m. for commercial sand and gravel permit	Ord. No. 1409-14, Sec I; Ord. No. 1426-14, Sec. 1

Table A.2.6.0 Local Revenue Streams - City: Specific Rates and Provision under LTC

City/Local Government Unit	Business Tax		Real Property Tax (Basic)		RPT - Special Education Fund	
	Tax Rate	LTC Provision	Tax Rate	LTC Provision	Tax Rate	LTC Provision
Butuan City	56.25% of 1% of	Ord. No.	2% of	Ord. No.	1% of	Ord. No.

	P6.5M GR or over	894-92 Art. I, Sec. 2I.01(a)	assessed value	894-92 Art. A, Sec. 2A.02	assessed value	894-92 Art. A, Sec. 2A.04
Davao City	41.5% of 1% of P6.5M GR or over	2005 Revenue Code Chapter 2 Art. 10, Sec. 69	1.5% of assessed value	2005 Revenue Code Chapter 2 Art. 1, Sec. 6	1% of assessed value	2005 Revenue Code Chapter 2 Art. 1, Sec. 7
Mandaluyong City	P249,246 + 27.5% of 1% of P50M GR or over	Ord. No 484-2011, Title II, Chapter 7, Article 1, Sec. 32	2% of assessed value	Ord. No 10-2011, Chapter 3, Sec. 10	1% of assessed value	Ord. No 10-2011, Chapter 3, Sec. 11
Pasig City	52.5 % & of 1% of P6.5M GR or over	Ord. No. 25-92, Sec. 19	2% of assessed value	Ord. No. 25-92, Sec. 8	1% of assessed value	Ord. No. 25-92, Sec. 9
Toledo City	2% on mining operation/ gross receipts	Ord. No. 2009-5 Chapter 2, Art. O, Sec. 2O.01	2% of assessed value	Ord. No. 2009-5 Chapter 2, Art. A, Sec. 2A.01	1% of assessed value	Ord. No. 2009-5 Chapter 2, Art. A, Sec. 2A.01

Table A.2.6.1 Local Revenue Streams - City: Specific Rates and Provision under LTC

City/Local Government Unit	Mayor's/ Business Permit		Professional Tax		Community Tax	
	Tax Rate	LTC Provision	Tax Rate	LTC Provision	Tax Rate	LTC Provision
Butuan City	P200 for P1M Capital + P20 for every P50,000 or any fraction	Ord. No. 894-92 Chapter III, Art. A, Sec. 3A.01	P300	Ord. No. 894-92 Chapter II, Art. F Sec. 2F.01	P500 for corporation + P2 per P5,000 earnings; not to exceed P10,000	Ord. No. 894-92 Chapter II, Art. I, Sec. 2I.03
Davao City	P800-P7000	2005 Revenue Code Chapter 3 Art. 1, Sec. 87	P300	2005 Revenue Code Chapter 2 Art. 7, Sec. 52		
Mandaluyong City			P300	Ord. No 484-2011, Title IV, Chapter 8, Sec. 70	P500 for corporation + P2 per P5,000 earnings; not to exceed P10,000	Ord. No 484-2011, Title II, Chapter 7, Article 1,

Pasig City	P900-P4,000 depending on area	Ord. No 43-04, Sec. 70			P500 for corporation + P2 per P5,000 earnings; not to exceed P10,000	Ord. No. 25-92, Sec. 8
San Juan City	75% of 1% with gross sales of P2M for engineering offices rendering service on mining					
Toledo City	P2,000	Ord. No. 2009-5 Chapter 3, Art. A, Sec. 3A.01			P500 for corporation + P2 per P5,000 earnings; not to exceed P10,000	Ord. No. 2009-5 Chapter 6, Sec. 6A.01

Table A.2.6.2 Local Revenue Streams - City: Specific Rates and Provision under LTC

City/Local Government Unit	Sand, Gravel and Quarry Tax		Environmental Fees		Occupation Fees	
	Tax Rate	LTC Provision	Tax Rate	LTC Provision	Tax Rate	LTC Provision
Butuan City	15% maximum/FM V	Ord. No. 894-92 Chapter II, Art. H, Sec. 2H.01				
Davao City	P15/cu. m.	2005 Revenue Code Chapter 2 Art. 6, Sec. 39			P10/ha.	2005 Revenue Code Chapter 3 Art. 9, Sec. 318
Pasig City			P800 inspection fee	Ord. No. 09-03, Sec. 1		
Toledo City			P20,000	Ord. No. 2009-5 Chapter 5, Art. B, Sec. 5B.31-42	P200/ha	Ord. No. 2009-5 Chapter 5, Art. E, Sec. 5E.02
Quezon City			P300 for potentially polluting industries	Ord. No. 1729-05		

			determined by CENRO			
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Table A.2.6.3 Local Revenue Streams - City: Specific Rates and Provision under LTC

City/Local Government Unit	Tax on Mining Operations		Other Regulatory Fees/Taxes	
	Tax Rate	LTC Provision	Tax Rate	LTC Provision
Davao City	1.5% of the gross receipts	2005 Revenue Code Chapter 2 Art. 14, Sec. 80		
Pasig City	1.5% of gross receipts as tax on mining operation	2005 Revenue Code Chapter 2 Art. 14, Sec. 80		

Table A.2.7.0 Local Revenue Streams - Municipality: Specific Rates & Provision under LTC

Municipality/Local Government Unit	Mayor's/ Business Permit		Regulatory Fees		Community Tax	
	Tax Rate	LTC Provision	Tax Rate	LTC Provision	Tax Rate	LTC Provision
Bataraza	P10,000- P20,000	Ord. No. 12-2008 Chapter 3 Art. A, Sec. 3A.01(3)			P500 for corporation + P2 per P5,000 earnings; not to exceed P10,000	Ord. No. 12-2008 Chapter 2 Art. C Sec 2C.02(B)
Cagdianao	P200-2,500	Ord. No 11-057 Chapter 4 Art A4 Sec. 4A4.1			P500 for corporation + P2 per P5,000 earnings; not to exceed P10,000	Ord. No 11-057 Chapter 3 Art A3 Sec. 3A3.03
Daanbantayan	P1,000	Ord. No. 2011-19 Chapter 3 Article 2 Sec. 29			P500 for corporation + P2 per P5,000 earnings; not to exceed P10,000	Ord. No. 2011-19 Chapter 7 Sec. 188
Dona Remedios Trinidad	P200-P2,000	Ord. No 2003-C-01 Chapter 4, Sec. 4A.01			P500 for corporation + P2 per P5,000 earnings; not to exceed P10,000	Ord. No 2003-C-01 Chapter 3, Sec. 3.02
Jose Panganiban	P5,000	Mun. Revenue Code	P2,000 Endorsement fee	Ord. No. 2007-04 Sec. 4		
Kasibu	P30,000- P50,000	2011 Amended Rev. Code, Art. 3B. Sec. 3B.01			P500 for corporation + P2 per P5,000 earnings; not to exceed	2011 Amended Rev. Code, Chapter 6, Sec. 6.03

					P10,000	
Loreto	P500-P25,000	Mun. Tax Code Chapter 4 Art. A, Sec. 4A.01			P500 for corporation + P2 per P5,000 earnings; not to exceed P10,000	Mun. Tax Code Chapter 4 Art. G Sec. 2G.02
MacArthur	P1,050	Mun. Ord. 01-2006	P1,500 Docking Fees	Addendum to Mun. Ord. 01-2006		
Mangkayan	P300-P2,000	Mun. Tax Code Chapter 3, Art. A, Sec. 3A.01			P500 for corporation + P2 per P5,000 earnings; not to exceed P10,000	Mun. Tax Code Chapter 6, Sec. 6.03
Quezon	P200-P1,500	Ord. No. 2006-062 Art. A, Sec. 1				
Rapu-Rapu	P1,500	Ord. No. 2011-01 Chapter III Art. A, Sec. 3A.01			P550 for corporation + P2.20 per P5,000 earnings; not to exceed P10,000	Ord. No. 2011-01 Chapter VI Sec. 6.03
Sofronio Espanola	P200-P6,000	Ord. No. 2014-105 Chapter 4, Sec. 4A.01			P500 for corporation + P2 per P5,000 earnings; not to exceed P10,000	Ord. No. 2014-105 Chapter 3 Sec. 3.03
Tuba	P60,500	Ord. No. 213-2013, Sec. 35(a)(13)			P500 for corporation + P2 per P5,000 earnings; not to exceed P10,000	Ord. No. 213-2013, Sec. 139

Table A.2.7.1 Local Revenue Streams - Municipality: Specific Rates & Provision under LTC

Municipality/ Local Government Unit	Business Tax		Tax on Mining Operations		Public Charges/Toll fees	Utility
	Tax Rate ¹³⁰	LTC Provision	Tax Rate	LTC Provision	Tax Rate	LTC Provision
Aroroy	37.5% of 1% of		1%/GR	Mun. Tax		

¹³⁰ Tax rate is maximum rate for mining companies classified as manufacturers. Maximum rate for mining companies classified as exporters is 50% of the rate for manufacturers. Based on KII with Pasig City, classification of companies is dependent on the licensing office of the LGU based on the information supplied by the company on their SEC or DTI registration.

	6.5M GR or over			Code, Art. E, Sec. 2E.01		
Bataraza	P26,813+ 41.25% of 1% in excess over 6.5M GR	Ord. No. 12-2008, Chapter 2, Art. A, Sec 2A.02	2%/GR	Ord. No. 12-2008 Chapter 2 Art. K Sec. K.02		
Cagdianao	37.5% of 1% of P6.5M GR or over	Ord. No. 11-057 Chapter 2 Art A2, Sec. 2A2.01	1.1%/ GR	Ord. No 11-057 Chapter 2 Art E2, Sec. 2E2.02		
Daanbantayan	41.25% of 1% of P6.5M GR or over	Ord. No. 2011-19 Chapter 2, Art. 1, Sec. 6	2%/ GR	Ord. No. 2011-19 Chapter 3, Art.2, Sec. 19		
Dona Remedios Trinidad	39.37% of 1% of P6.5M GR or over	Ord. No 2003-C-01 Art. A, Sec. 2A.02	2%/ GR	Ord. No 2003-C-01 Art. D, Sec. 2D.02		
Guian			2%/ GR	Ord. No. 21-2007, Sec. 24		
Itogon			2%/GR	2011 Revised Revenue Code Art. 17, Sec. 2		
Jose Panganiban	P14,125+50% of 1% of GR	Mun. Revenue Code				
Kasibu	45% of 1% of 6.5M GR or over	2011 Amended Rev. Code, Sec. 2A.02	2%/ GR	2011 Amended Rev. Code, Art. 2B, Sec. 2B.10	P1,000 for Pier and Ferry; P500 for others	2011 Amended Rev. Code, Art. 5H, Sec. 5H.01
Loreto			2%/ GR	Mun. Tax Code Chapter 4 Art. G, Sec. 2G.02		
MacArthur	P200 for P10M GR or over	Mun. Ord. 01-2006				
Mangkayan	41.25% of 1% of P6.5M GR or over	Mun. Tax Code Chapter 2, Art. A, Sec. 2A.02			P50 Application Fee + P30 unmetered service	Mun. Tax Code Chapter 5, Art. H, Sec.

						5H.01
Quezon	40% of 1% of P6.5M GR or over	Ord. No. 2006-062 Art. B, Sec. 1				
Rapu-Rapu	55% of 1% at P2M GR	Ord. No. 2011-01 Chapter II Art. A, Sec. 2A.02	2.2%/ GR	Ord. No. 2011-01 Chapter II Art. E, Sec. 2E.02		
Siocon	50% of 1% of P6.5M GR or over	Mun. Tax Ord. Chapter II Art. A, Sec. 2A.01				
Sofronio Espanola	45% of 1% in of P6.5M GR or over	Ord. No. 2014-105 Chapter 3 Sec. 3.03				
Tuba	P31,685.50 + 37.5% of 1% in excess of P6.5M GR	Ord. No. 213-2013, Chapter 2, Art. A, Sec. 7 (a)	2%/ GR	Ord. No. 213-2013, Sec. 17		
Tubay	37.5% of 1% of P6.5M GR or over	Mun. Rev. Code, Chapter 2, Art. A, Sec. 2A.02	2%/GR	Mun. Rev. Code, Chapter 2, Art. E, Sec. 2E.02		

Table A.2.7.2 Local Revenue Streams - Municipality: Specific Rates & Provision under LTC

Municipality/ Local Government Unit	Environmental/ Extraction Fees		Occupation Fees		Miscellaneous Regulatory Fees	
	Tax Rate	LTC Provision	Tax Rate	LTC Provision	Tax Rate	LTC Provision
Bataraza					P100 Sanitary Fee; P500 Garbage Fee	Ord. No. 12-2008 Chapter 3 Art. E Sec. 4E.01; Art. K, Sec. 3K.01
Carrascal	P10/Ton	Ord. No. 5-2006				
Daanbantayan	P300 ECC+ P100 Verification Fee + P200 Environmental Inspection Fee	Ord. No. 2011-19 Chapter 5 Article 4 Sec. 135	P10/ha.	Ord. No. 2011-19 Chapter 6 Article 6 Sec. 179	P100-P500 Sanitary Fee; P1,000-P1,500 Garbage collection	Ord. No. 2011-19 Chapter 6 Article 6 Sec. 140; Sec.169
Dona Remedios Trinidad			P100/ha.	Ord. No 2003-C-01 Art. F, Sec. 6F.02	P100 sanitary inspection P200-P1,000 Garbage collection	Ord. No 2003-C-01 Chapter III Sec. 5D.01; Chapter VI.

						Art. A, Sec. 6A.01
Kasibu			P10/ha.	2011 Amended Rev. Code, Sec. 5F.02	P200-1,000 Sanitary Inspection Fee; P3,600 Garbage Collection Fee	2011 Amended Rev. Code, Sec. 4D.01; Sec. 5C.01
Loreto			P100/ ha.	Mun. Tax Code Chapter 6 Art. G Sec. 6G.02		
Narra	P5/cu.m./ minerals, gravel & sand	Ord. No. 2000-80; Sec. 2 on Municipal Mines and Extraction Clearance (MMEC)				
Quezon	P5/cu. m./ minerals; P2/cu.m./ quarry materials	Ord. 2007-70, Sec. 6 on Mun. Inspection Monitoring Clearance (MIMC)				
Sofronio Espanola	P50/ton Environmental monitoring	Ord. No. 2014-105 Chapter 3 Art. H. Sec. 5H.01; Ord. No. 2014-104 on MIMC				
Sta. Cruz	P100/ hauling from mining as Hazard Mitigation Fee	Ord. No. 12-3574				
Rapu-Rapu			P75/ha.	Ord. No. 2011-01 Chapter V Art. H, Sec. 5H.02		
Tuba			P100/ha.	Ord. No. 213-2013, Sec. 134		

2.6. Other Payments

2.6.1 Royalty Payment to Indigenous Cultural Communities and Indigenous Peoples

Indigenous cultural community (ICC) or indigenous peoples (IP) are entitled to royalty payments from mining operations within ancestral lands. The Philippine Mining Act provides that royalty payment must be paid to ICCs or IPs¹³¹ and regulation specifies that it may not be less than 1% of the gross output and

¹³¹ Philippine Mining Act of 1995, Sec. 17.

expenses for community development may be credited to or charged against this royalty.¹³²

Prior to any mining or extractive operations within ancestral lands, consent from the ICC or IPs concerned must be secured.¹³³ The Indigenous Peoples' Rights Act further provides that such consent must be a free and prior informed consent (FPIC).¹³⁴ Regulation details the procedure in acquiring FPIC. A company intending to extract minerals, oil, and gas in ancestral lands must apply for the issuance of a Certification Precondition¹³⁵ and go through two community assemblies and other activities.¹³⁶ If the ICCs or IPs, through their authorized elders or leaders, gives their permission in writing, the parties then draft a Memorandum of Agreement (MOA). The MOA lays down the details of the benefit sharing, the development projects based on the development priorities of the community, and other terms and conditions.¹³⁷

2.6.2 Compensation to Surface Rights Owners

Holders of mining rights may enter private lands and concession areas. When extractive operations require the use of such private lands or when the operation may cause damage to the property of the surface owner, occupant, or concessionaire, then there must be just compensation for the use or damage to property.¹³⁸

For this purpose, a surface owner, occupant or concessionaire and holders of mining rights enter into a voluntary agreement on entry and use the land for mining purposes.¹³⁹ This agreement will be the basis for compensation for any damage done to the property of the surface owner, occupant, or concessionaire as a consequence of the mining operations or as a result of the construction or installation of infrastructures.¹⁴⁰

Chapter 3. Materiality of Payment for Subnational Implementation

3.1 Determining Materiality Thresholds

EITI requires the disclosure of all material payments to government by oil, gas, and mining companies.¹⁴¹ Payments and revenues are considered material if their omission or misstatement could significantly affect the comprehensiveness of the EITI Report.¹⁴² In establishing materiality definitions and thresholds, the MSG should consider the size of the revenue streams relative to the total revenues.¹⁴³ Some countries have defined materiality in their EITI Reports which definition ranged from setting a threshold amount of payments,¹⁴⁴ of acceptable levels of difference or discrepancy between payments made and received or

¹³² Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 16.

¹³³ Philippine Mining Act of 1995, Sec. 15.

¹³⁴ Indigenous Peoples' Rights Act of 1997, Sec. 58 & 59.

¹³⁵ Revised Guidelines on Free And Prior Informed Consent (FPIC) and Related Processes of 2012, , Sec. 6.

¹³⁶ Id., Sec. 22.

¹³⁷ Id., Sec. 32.

¹³⁸ Philippine Mining Act of 1995, Sec. 76.

¹³⁹ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec.106.

¹⁴⁰ Id., Sec. 107.

¹⁴¹ Extractive Industries Transparency Initiative , EITI Criterion 1 and Requirement 4.

¹⁴² Id., Requirement 4.1.a

¹⁴³ Id.

¹⁴⁴ Burkina Faso, Equatorial Guinea, Ghana, Liberia.

Burkina Faso 2011 Report: Payments that "attained the materiality threshold of 50 million FCFA." Revenue Watch Report Quality Analysis however states that it is not clear if this number refers to company profits, payments to the government, or some other measurement of significance.

<http://data.revenuewatch.org/eiti/indicators/materiality.php> [Caveat: Secondary source was relied upon, as Report accessed was in French.]

materiality of inconsistencies,¹⁴⁵ of excluded payments,¹⁴⁶ or, as vague as, including all flows of payments specific to the extractive sector or have a large impact on state revenue.¹⁴⁷

In the Philippines, for purposes of subnational payment reporting, the materiality threshold should also be anchored on the materiality threshold of the national payments set by the Multi-Stakeholder Group (MSG), which appears to be in terms of inclusion or prioritization of companies with at least Php1 Billion reported total revenue or total assets.¹⁴⁸ Also, the reconciliation variance of 5% may be similarly applied on the payments made by companies, vis-à-vis National Government's collection data and LGU records.¹⁴⁹ Such companies, whose national payments are included for national reporting purposes, must also be considered in reporting the subnational payments to LGUs where they operate, particularly in terms of the LGU share from the national wealth. As discussed below, the 40% share of LGUs from mining and petroleum appear to be substantial as they are based on production output and/or net revenues of oil, gas and mining companies.

3.2 Indirect Payments and Material Companies

In general, subnational payments are relatively smaller in amount compared to national payments. Correlatively, LGUs as mere components or political subdivisions of the national government are significantly smaller in terms of size and direct revenue-generation. Despite their local autonomy and decentralization, LGUs are still largely dependent on their share from IRA and from the national wealth. Nonetheless, the 40% share of the LGUs from the national wealth, appears to be significant, as they are on the total payments that the national government receives as excise tax and royalty payments from

Equatorial Guinea 2010 Report: Payments over \$1Million of the following flows: royalties, shareholder's interest, dividends, corporate income tax, personal income tax and other payments within the threshold, but excluded companies conducting exploration.

<http://data.renewwatch.org/eiti/indicators/materiality.php>; EITI Report, pages 3-4; Accessed at

<http://www.resourcegovernance.org/sites/default/files/Equatorial%20Guinea%202007-2008%20EITI%20Reconciliation%20Report.pdf>

Ghana 2009 Report: Large mining companies that contributed to about 99 % of the total mineral royalties received by the Government.

<http://data.renewwatch.org/eiti/indicators/materiality.php>, EITI Report, pages 25-26; Downloaded from geiti.gov.gh

Liberia 2010 Report: The materiality threshold is MNT 50 million (about \$35,000). <http://data.renewwatch.org/eiti/indicators/materiality.php>, EITI Report at

<http://www.resourcegovernance.org/sites/default/files/LEITI2ndReconciliationFinalReport.pdf>

Mozambique 2011 Report: Companies were required to report if relevant payments amounted to 1,500,000.00MT in 2008.

<http://data.renewwatch.org/eiti/indicators/materiality.php>; EITI Report, pages 3-4; Accessed at

<http://www.resourcegovernance.org/sites/default/files/Mozambique%20EITI%202008%20Reconciliation%20Report.pdf>

Niger 2010 Report: The threshold was set at 13 million FCFA (about \$27,500). Revenue Watch Report Quality Analysis however states that "(T)he materiality threshold, while defined, is not followed. The report includes dozens of companies, some of them with payments of only a few hundred dollars."

<http://data.renewwatch.org/eiti/indicators/materiality.php> [Caveat: Secondary source was relied upon, as Report accessed was in French.]

Tanzania 2011 Report: Payments above TZS 5 million are included. "The MSG determined that the first reconciliation should include the nine largest mining operations and the three gas producing companies (including TPDC). The threshold at which differences between payments and revenue are to be considered immaterial during the reconciliation was set by the MSG at 5 million Tanzanian shillings." EITI Report, page 21; Accessed at

http://eiti.org/files/Final_Reconciliation_Report_Tanzania_2008.pdf; <http://data.renewwatch.org/eiti/indicators/materiality.php>

¹⁴⁵ Republic of Congo and Yemen.

Republic of Congo 2010 Report pertained to the acceptable level of difference between payments made and received, with a threshold of 1% (or 2% for foreign currencies). <http://data.renewwatch.org/eiti/indicators/materiality.php> [Caveat: Secondary source was relied upon, as Report accessed was in French.]

Yemen 2010 Report pertains to the acceptable level of difference between payments made and received, with a threshold of 5%. EITI Report, page 8;

Accessed at <http://www.resourcegovernance.org/sites/default/files/YEITI%20report%20english.pdf>;

<http://data.renewwatch.org/eiti/indicators/materiality.php>

¹⁴⁶ Norway 2011 Report established guidelines that exempted payments based on materiality. "The reporting also excludes payments that are not directly related to upstream petroleum activity or that are not made to the state." EITI Report, pages 11-12; Accessed at

http://www.resourcegovernance.org/sites/default/files/Deloitte_petroleumsrapport_elektronisk_engelsk1109.pdf;

<http://data.renewwatch.org/eiti/indicators/materiality.php>,

¹⁴⁷ Democratic Republic of Congo 2009 Report. All flows that are specific to the extractive sector or have a large impact on state revenue.

<http://data.renewwatch.org/eiti/indicators/materiality.php> [Caveat: Secondary source was relied upon, as Report accessed was in French.]

¹⁴⁸ Draft Minutes of the 15 Multi-Stakeholder Meeting, July 4, 2014 and Annex A (Attached Power Point Presentation of Independent Auditor). Based on the Independent Auditor's recommendation, the presumption is these companies with significant amount of revenue and assets are also the same companies that will generate higher revenue streams.

¹⁴⁹ Draft Minutes of the 15 Multi-Stakeholder Meeting, July 4, 2014 and Annex A (Attached Power Point Presentation of Independent Auditor).

mining companies and the total government share in the net profit from oil and gas or petroleum companies.

Below are tables showing the share of several LGUs in the national wealth from top mining companies (in terms of assets and revenues) and operating petroleum service contracts.

Table A.3.1 2012 Share on the National Wealth of LGUs where Top Mining Companies in terms of Revenues and Assets are operating, Based on DBM Data¹⁵⁰

Company	Province	Share in National Wealth of the Province	City/ Municipality	Share in National Wealth of the City/ Municipality
Carmen Copper Corporation	Cebu	P537,763*	Toledo City	P64,464,823
Carrascal Nickel Corporation	Surigao del Sur	P41,647,149	Carrascal	P93,705,156
Philex Mining Corp.	Benguet	P22,378,568	Itogon**	
			Tuba	P21,012,767
Platinum Metals Group Corporation	Surigao del Norte	P80,353,959	Claver	P141,360,129

*Based on DILG-BLGF data, the Province reported a total of P74,461,596 as receipts from national wealth, which includes forestry and fishery charges that are usually minimal. Similarly, most LGUs reported to the BLGF a higher amount of receipt of share from national wealth.

**Both PH-EITI and DBM do not include Itogon as Entitled to a Share. However, in consultation, Itogon considers itself as host LGU and reported a receipt to DILG-BLGF.

Table A.3.2 2012 Share in National Wealth from Top Oil & Gas Producing Service Contracts

Service Contracts	Province	Share in the National Wealth for Oil and Gas	Total Share in the National Wealth of the Province
Malampaya ¹⁵¹ (SC 38)	Palawan	-	P65,658,229 ¹⁵²
Galoc (SC 14)	Palawan	P39,628,039 ¹⁵³	

Table A.3.2.1 Breakdown of 2012 Share of Palawan in the National Wealth from Petroleum Operating Service Contracts

Service Contract Operators	14 Oilfields in Palawan	Share in the National Wealth ¹⁵⁴ (20% of the 40% LGU share)
The Philodrill Corporation	Nido	P 1,495,456.18
	Matincloc	P 1,442,628.18
	North Matincloc	P 224,424.24
Galoc Production Company	Galoc	P36,465,530.02
Nido Petroleum	Tindalo	-
Total in 2012		P39,628,038.62

*Based on figures from the Department of Energy provided by the Province of Palawan

¹⁵⁰ Data provided by DBM on official request, November 2014.

¹⁵¹ The Province of Palawan has not received any shares pending the decision of the Supreme Court on the dispute on the territorial claims in SC 38.

¹⁵² Data provided by the Provincial Treasurer of Palawan

¹⁵³ Data provided by BLGF on official request. Figures from BLGF are not disaggregated and contain all shares in the national wealth including forestry and fisheries. However, the figures contain significant shares from mining.

¹⁵⁴ The shares of the municipality and barangay have not been released as host municipalities and barangays are not yet determined as production areas are all located offshore.

Despite the variance in the size and revenues of each LGU, such 40% share distributed among the province, city or municipality and *barangay* remains significant. In the case of mining companies, the LGUs' share in the national wealth amounts to 40% of the 2% excise tax based on gross output and 40% of the 90% royalty payments based on gross output from mineral reservations being paid by mining companies and in the case of oil & gas companies, 40% of the 60% total government share in the net profits after deductions of operating expense by the petroleum service contractors and Filipino Participation Incentive Allowance (FPIA), if any.

With respect to IRA, however, it may be challenging to include them for EITI reporting, as these revenues are not disaggregated to show which revenues come from the extractive industry. The IRA represents the whole of the share of the LGU from the national taxes based on a formula fixed by law. Moreover, even if disaggregated, the revenues from mining in the IRA, however, appears to be insignificant. According to data from the Asian Development Bank's Office of Regional Economic Integration, mining's contribution to the annual tax revenue was only 0.9 %. Out of this 0.9 %, 40% goes directly to the LGUs as their share in the national wealth, while the 60% remains in the national coffers lumped with all revenues and then distributed as IRA and appropriations to all LGUs and government entities in the country. Consequently, the mining revenues that goes to the IRA and distributed to all LGUs, whether hosting extractive industries or not, becomes insignificant. Hence, there is no need for the MSG to include the IRA from the extractive industry.

Some LGUs, for their budget and spending for social services, heavily rely on their share from the national wealth as well as from the IRA. It is recommended that the MSG examine the actual figures allocated to each LGU vis-à-vis the total local revenues and budget of the LGU to appreciate the significance as well as the materiality of their share in the national wealth, and if and when already disaggregated, their IRA specifically coming from the oil, gas and mining companies.

3.3 Material Direct Payments

Based on the preliminary data gathered in this scoping study, it appears that in terms of direct payments, payments from regulatory fees and charges appear to be insignificant compared to all the payments to national government. Nonetheless, it will be worthwhile to look at those payments in terms of total collections and revenues by each LGU, as no amount is insignificant for social services for impoverished residents of barangays.

Subject to examination of actual figures, local business taxes from mining companies directly paid to LGUs may be considered in determining materiality thresholds for reporting of subnational payments. This will not apply to oil and gas companies undertaking upstream petroleum operations as they are exempted from all taxes, including local taxes, except income tax.¹⁵⁵ Most LGUs collect business taxes based on the gross production output of mining companies. Although the rates vary depending on the local revenue codes and the classification as to the type of business, the rates are based on the gross production output as capped by the Local Government Code. The value remain significant in the case of mining companies with high gross production output. Most LGUs would classify mining companies either as manufacturer or exporter based on their tax codes. As to mining companies classified as manufacturers, the maximum rate

¹⁵⁵ The Oil Exploration and Development Act of 1972, Sec. 12(a)

under the LGC on gross profits over P6M is 37.5% of 1% of the gross revenues, while for those classified as exporters, the rate must not exceed ½ of the tax rate for manufacturers.

Apart from local business taxes, some LGUs impose and collect other taxes, fees and charges from mining companies using the extraction output or value as tax base. These fees based include: The Tax on Mining Operations collected by the Province of Cebu and Municipalities of Aroroy, Bataraza, Cagdianao, Dona Remedios Trinidad, Daanbantayan, Guiuan, Kasibu, Loreto, Rapu-Rapu, and Tuba; Environmental Enhancement Fees under different names, such as Enhancement Fee collected by the Province of Zambales, soil depletion fee collected by the Province of Dinagat Island, Municipal Inspection and Monitoring Clearance by the Municipality of Quezon, Municipal Mines Extraction Clearance by the Municipality of Narra, Hazard Mitigation fee by the Municipality of Sta. Cruz, and Extraction Fee by the Province of Agusan del Norte and Municipality of Carrascal among others. While the tax rate may be numerically minimal, pegged at 1%-2.2 % tax rates or P2 – P12 per cubic meter rate, the revenues received by these LGUs may be substantial and thus significant as the tax base is the extraction output or value of extracted resources. Accordingly, these revenue streams from mining companies with high extraction output may be considered in setting materiality thresholds in reporting subnational payments, subject to examination of actual figures.

In sum, in determining materiality of local revenue streams from direct payments such as local taxes, fees, and charges to LGUs, the MSG may consider whether these payments use production output or value as tax base. If yes, the threshold may be fixed to include mining companies with high production output or high value output, including the top mining companies cited above and all oil & gas companies as there are only a few of them. In terms of taxes, fees, and charges based on fixed rates, a threshold based on the amount may be considered. For all subnational payments, whether direct or indirect, the individuality or totality of the amount of taxes or fee may be considered for materiality vis-à-vis the total collections, revenues, spending and needs of LGU.

Chapter 4. Social Expenditures, Mandatory Environment-Related Funds & their Implementation and Monitoring

4.1 Mining Companies: Social Development Management Programs, Community Development Programs, Programs on Development of Mining Technology and Geosciences and the Program on Information, Education, and Communication

Apart from payments to national government and LGUs, mining companies are also required to spend for the development of its host communities and the promotion of their general welfare, and the development of geoscience and mining technology.¹⁵⁶ These social expenditures are not payments made to government, but are implemented directly by mining companies for the benefit of host community and neighboring community¹⁵⁷ and for the mining industry. They are implemented based on a (a) Social Development Management Program¹⁵⁸ or, at the exploration phase, through a Community Development Program,¹⁵⁹ (b) the Programs on Development of Mining Technology and Geosciences¹⁶⁰ and (c) the

¹⁵⁶ Philippine Mining Act of 1995, Sec.57.

¹⁵⁷ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 134.a, defines host community to refer to the barangay(s) where the mining area is located, and neighboring community refers to the barangay(s) adjacent to the host community.

¹⁵⁸ Philippine Mining Act of 1995, Section 58.a, Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 134, Sec. 136-A,

¹⁵⁹ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 136-A.

¹⁶⁰ Philippine Mining Act of 1995, Section 58 (b); Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec.134.b, Sec. 136-B.

Program on IEC or the promotion of public awareness and education on mining technology and geosciences.¹⁶¹ Credited activities for SDMP implementation are as follows:

Table A.4.1 Credited Activities for Social Expenditures

Credited activities for the development of host and neighboring communities	1. Human resource development and institutional building;
	2. Enterprise development and networking;
	3. Assistance to infrastructure development and support services;
	4. Access to education and educational support programs.
	5. Access to health services, health facilities and health professionals,
	6. Protection and respect of socio-cultural values, use of facilities and services within the mine camp or plant site.
Credited activities for development of mining technology and geosciences	1. Basic and applied research on mining technology, geosciences, and advanced studies related to mining, to be conducted by qualified researchers;
	2. Expenditures for scholars, fellows and trainees, including grants for dissertations, on mining technology and geoscience and related subjects;
	3. Expenditures on equipment and capital outlay as assistance for research and educational institutions.
Credited activities for the promotion of public awareness and education on mining technology and geosciences	1. Establishment, enhancement, and maintenance of information and publicity centers where stakeholders can access information on the performance of a mining project;
	2. Publication of information, education, and communication (IEC) materials on social, environmental, and other issues relative to mineral resources development and responsible mining operations;
	3. Expenditures for continuing public awareness and education campaigns;
	4. Expenditures on equipment and capital outlay as assistance to the institutionalizing public awareness and education on mining technology and geosciences.

4.1.1 SDMP Costs

The extractive company's budget for SDMP must be equivalent to an annual allocation of 1.50% of the company's operating cost¹⁶² This amount is allocated to SDMP activities on a 75% - 10% - 15% ratio for the development of the host and neighboring communities; for the development of mining technology and geosciences; and for the implementation of IEC program, respectively.¹⁶³

Table A.4.2 Allocation for Social Expenditures

SDMP [CDP, if at exploration stage]	ALLOCATION OUT OF TOTAL SDMP COST (1.5% of Operating Costs) [10% of EWP Budget, for CDP]
Development of Host and Neighboring Community	75%
Development of Mining Technology and Geosciences	10%
Information, Education and Communication Program	15%

¹⁶¹ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 134.c, Section 136-B.

¹⁶² Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 134 (d) defines operating cost to mean the specific costs of producing a saleable product on a commercial scale incurred in the calculation of the net income before tax, as confirmed by the Bureau/Regional Office. This includes all costs and expenditures related to mining/extraction and treatment/processing (inclusive of depreciation, depletion and amortization), exploration activities during operation stage, power, maintenance, administration, excise tax, royalties, transport and marketing, and annual progressive/environmental management.

¹⁶³ Id.

In computing the SDMP cost, the expenditures for the mining companies' employees and their families are not included.¹⁶⁴ Neither are these social expenditures creditable as royalty payment for IPs or ICCs.¹⁶⁵ For holders of exploration permits, mineral agreement and Financial and Technical Assistance Agreements (FTAA) at the exploration stage, the CDP must be supported by a fund equivalent to a minimum of 10% of the budget of the approved two-year Exploration Work Program.¹⁶⁶

Any unspent amount or savings, for any given year, allotted for the SDMP implementation will be added to the succeeding year's allotment and may be re-programmed after consultations with host and neighboring communities.¹⁶⁷

4.1.2 Development, Approval, Implementation and Monitoring of SDMP and CDP

SDMP and CDP must be developed in consultation with the host and neighboring communities.¹⁶⁸ In implementing the SDMP, particularly on scholarships given to develop the mining industry and geosciences, concerned provincial and municipal governments must be consulted in the determination of beneficiaries of scholarships and trainings, as well as the subject of researches and training programs.¹⁶⁹

SDMP, together with the Programs on Development of Mining Technology and Geosciences and on IEC, are submitted every five years to the MGB Regional Office for approval.¹⁷⁰ CDP is submitted to the MGB Regional Office for approval, within six months upon registration of the approved Exploration Permit, Mineral Agreement or FTAA.¹⁷¹

Within 30 days from the approval of the SDMP,¹⁷² the mining company enters into a Memorandum of Agreement (MOA) with the host and neighboring communities as represented by concerned barangays or municipality or both. The MOA must be registered in the MGB Regional Office, to ensure the implementation of the various programs, plans and activities.¹⁷³

The mining company is required to furnish each of the LGUs concerned and the host and neighboring communities with a copy of the approved programs within five days after the registration of the approved

¹⁶⁴ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 135,

¹⁶⁵ Id., Sec. 134.

¹⁶⁶ Id., Sec. 136-A.

¹⁶⁷ Id.

¹⁶⁸ Id., Secs.136 & 136-A.

¹⁶⁹ Id.,

¹⁷⁰ Id., Sec. 136-A, 136-B. Sec. 136-B further requires the mining company to submit at least three (3) copies and a complete electronic file of the Programs.

The MGB Regional Office evaluates the Programs as to its form, substance, and completeness, and may require additional documents or information. A technical conference is held among the mining company, the MGB Regional Office and appropriate experts. Upon approval the MGB Regional Office issues a Certificate of Approval; and provides the MGB Central Office a copy of the approved SDMP and Programs on the Development of Mining Technology and Geosciences and on IEC, and the Certificates of Approval, within seven (7) days upon approval. If the Programs require some revisions/additional information, the mining company is required to address the deficiencies within ten (10) days from the date of the technical conference. If it fails to do so, the Programs shall be returned to the proponent for revision/rectification and resubmission.

The succeeding 5-year SDMP and the Programs on Development of Mining Technology and Geosciences and on IEC shall be submitted to the MGB Regional Office not later than thirty (30) days from the completion of the preceding five (5)- year Programs. A copy each of the succeeding approved Programs shall be provided to the LGUs concerned and the host and neighboring communities within five (5) days from its approval.

¹⁷¹ Id. The succeeding CDP are submitted to the Regional Office concerned not later than 30 days from the completion of the preceding CDP. A copy of the CDP is a mandatory requirement for the acceptance of the applications for Exploration Permit renewal, Mineral Agreement – renewal of Exploration Period, FTAA - renewal of the Exploration Period or application for Pre- Feasibility/Feasibility Period. An approved CDP is required prior to commencement of the implementation of the approved Exploration Work Program under the renewed Exploration Permit/ Exploration Period or approved Pre-Feasibility/Feasibility Period.

¹⁷² Under Sec. 136-F, Implementing Rules and Regulation of Philippine Mining Act of 1995, the approved Programs shall be deemed revoked if the mining operation of the company is suspended or stopped for a period of at least two (2) consecutive years.

¹⁷³ Implementing Rules and Regulation of Philippine Mining Act of 1995, Section 136-B.

mining contract or permit or, in the case of exploration work, five days after receipt of the order approving the Declaration of Mining Project Feasibility.¹⁷⁴

Based on the approved programs, the mining company submits annual programs to the MGB Regional Office for approval at least 30 days prior to the start of every calendar year. These programs will be implemented the following year.¹⁷⁵ The MGB has oversight function over the evaluation, approval and implementation of the programs.

In program implementation, the mining company is required to set up a Community Relations Office (CRO) that is primarily tasked to coordinate and facilitate the implementation of the SDMP, and the Programs on Development of Mining Technology and Geosciences and on IEC. The CRO's head, the Community Relations Officer, reports directly to the highest company on-site official.¹⁷⁶ During the exploration stage, the mining company may hire or designate community development professionals or community liaison officer to ensure the effective implementation of the CDP.¹⁷⁷

To determine the level of implementation of these programs, the CRO and representatives of host and neighboring communities conducts monthly internal monitoring of the annual SDMP (ASDMP).¹⁷⁸ The CRO provides the MGB Regional Office with the quarterly and annual accomplishment reports¹⁷⁹ on the implementation of ASDMP, Annual Program on the Development of Mining Technology and Geosciences and Annual Program on IEC.¹⁸⁰

The MGB Regional Office conducts semi-annual monitoring of program implementation and submits its monitoring reports to the MGB as basis for periodic audits.

On the initiative of any of the parties,¹⁸¹ the approved SDMP and Programs on Development of Mining and Mineral Processing Technologies and Geosciences and on IEC may be reviewed or revised during their period of coverage to account for changes in the nature and cost of activities.¹⁸²

Prior to the end of the five-year term of the approved programs, the MGB conducts a performance review to determine and measure the impact of the various programs. The results serve as an integral guide in the preparation of new programs. The SDMP process, which shows the very limited participation of LGUs, is illustrated below.

¹⁷⁴ Id.

¹⁷⁵ Id., The MGB Regional Office then furnishes the MGB the approved Annual Programs within seven (7) days from its approval.

¹⁷⁶ Id., Sec. 136-C.

¹⁷⁷ Id.

¹⁷⁸ Id., Sec. 136-D.

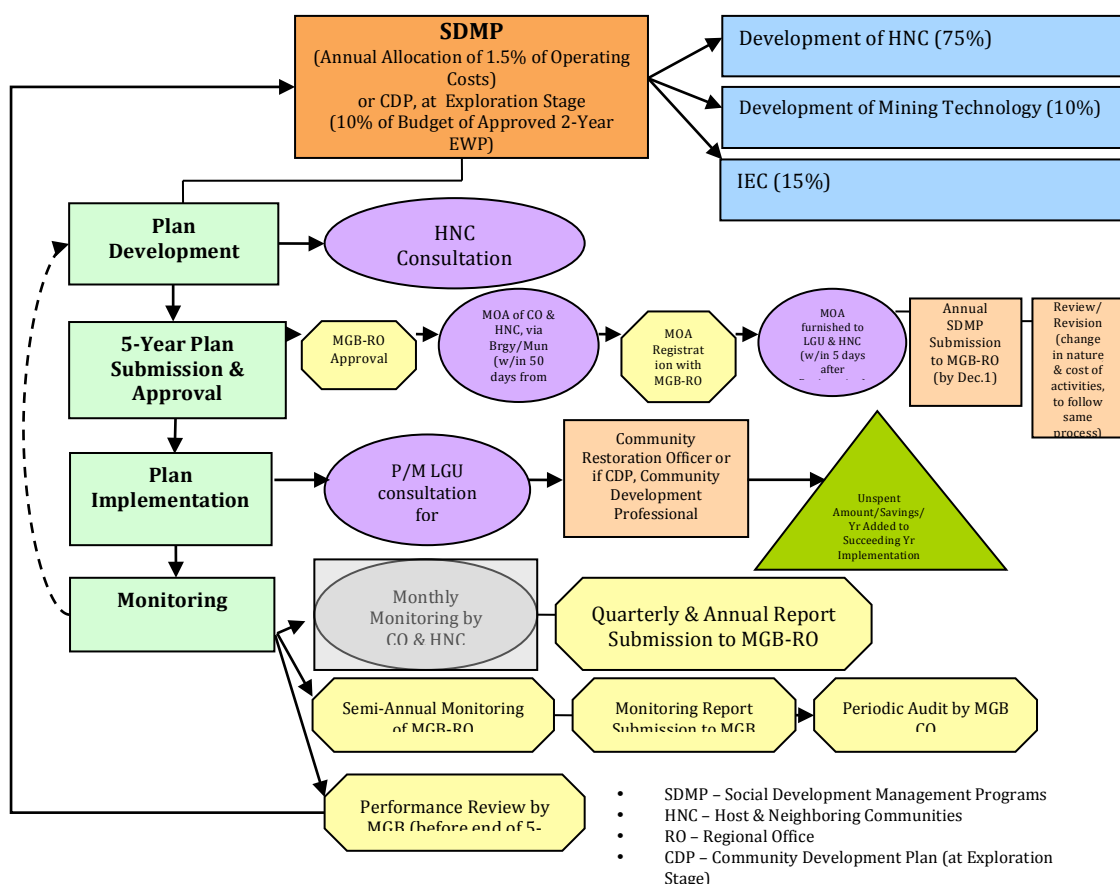
¹⁷⁹ Under Sec. 136-D, mining companies are required to furnish an annual report to the MGB Central Office. For CDPs, an annual status report on their implementation by the mining company must also be to the MGB Regional Office, subject to periodic monitoring/audit.

¹⁸⁰ Id.

¹⁸¹ MGB Central Office, MGB Regional Office, mining company and/or host and neighboring communities

¹⁸² Implementing Rules and Regulation of Philippine Mining Act of 1995, Section 136-E.

Figure A.4.1 SDMP Development, Approval, Implementation and Monitoring



A mining company's failure to implement its approved SDMP and Programs on Development of Mining Technology and Geosciences and on IEC, or to operate without such programs is penalized by a fine not exceeding PhP5,000.00 at the first offense. A succeeding offense is a ground to suspend its mining or milling operations in the mining areas, in addition to a fine not exceeding PhP5,000.00.¹⁸³

SDMP Case Study: Carmen Copper Corporation's 2012 SDMP

Carmen Copper's Annual SDMP in 2012 was allocated the amount equivalent to 1% percent of the Direct Mining and Milling Cost (DMMC) or P35,776,773.35,¹⁸⁴ plus its 2011 ASDMP balance carried over to 2012 in the amount of 41,791,129.76, yielding a grand total of P76,210,967.49. A matrix of the allocation and expenditures is shown below:

Table A.4.3 2012 SDMP of Carmen Copper*

ACTIVITIES	2012 ASDMP (PhP)	2012 FINANCIAL ACCOMPLISHMENT REPORT		
		ALLOCATED (PhP)	EXPENDITURE (PhP)	% OF USE
Livelihood	6,159,570.79	9,485,032.68	3,698,863.71	39%
Infrastructure	18,478,712.38	51,167,218.67	48,566,669.67	95%
Others-SDMP	6,159,570.79	9,177,444.93	11,663,656.30	95%

¹⁸³ Id., Sec.136-F.

¹⁸⁴ Based on Implementing Rules and Regulation of Philippine Mining Act of 1995, SDMP allocation is 1.5% of the operating costs; and not 1% of DMMC.

IEC	3,421,983.772	6,181,271.21	5,517,958.15	1.27%
Sub-Total	34,219,837.73	76,010,967.49	69,447,147.83	91%
2011 Carry-Over	41,791,129.76			
TOTAL	76,010,967.49	76,010,967.49	69,447,147.83	91%

*Based on ADSMP documents provided by Carmen Copper Corporation

As may be seen above, livelihood activities in direct support to host and neighboring communities are allocated a significantly small amount compared to infrastructure, other SDMP related activities, the bulk of which are donations, or even IEC activities. Company representatives candidly admit that their SMDP activities are more in the nature of dole-outs, rather than a sustainable development of the host and neighboring communities.¹⁸⁵ For 2014, the mining company adopts a problem-based Annual SDMP for a more sustainable and effective program.¹⁸⁶

In Surigao del Norte, the LGU reports that the SDMP for all 8 mining companies are implemented, with targets exceeded at times. Community Working Groups at the barangay level in all mining operations identify the projects. However, the LGU observes that livelihood projects are not so sustainable. SMDP are more of dole-outs, with a lot of money spent for cultural activities and fiestas. Thus, in 2010, the new Governor considered conducting a barangay audit to find out where the funds go. A dialogue with the mining companies was held. The province directed that a percentage of the SDMP be allocated for the provincial projects such funding Training Center, Speech Laboratory, computers for schools, and partial funding for the provincial hospital, which were satisfied by the mining companies.¹⁸⁷

The scoping study team, through the PH-EITI secretariat, requested from MGB data on the 2012 SDMP of mining companies, their allocated annual budget, actual amount spent, and monitoring conducted during the year.¹⁸⁸ However, no data was supplied to the scoping study team, precluding a more complete presentation and analysis of actual practices in social expenditures in the mining industry. On the part of the MGB, this may be indicative of any of the following: a poor database management that do not allow the agency to retrieve their records within weeks or even months; lack of information or support on the part of the regulatory agency; or low priority or support for the EITI processes.

4.2 Oil and Gas Companies' Social Expenditures and Environment-Related Funds

Oil and gas companies are not specifically required to implement SDMP or CDP. Their expenditures for social development programs form part of the conditions of their Environmental Compliance Certificates (ECC), as provided for under the law. The social development programs for host communities required for oil and gas companies or petroleum service contractors are subject to monitoring by the Multi-Partite Monitoring Team (MMT) that is convened pursuant to the ECC conditions. The amount of social expenditures and the MMT budget is based on the discretion of the DOE and included in the Annual Work Program and Budget (WP&B) for the operational expenses submitted by the service contractors to the DOE.

The cost of providing social development programs forms part of the operating expense of petroleum service contractors. All expenditures are deducted from the total gross revenues and costs recovered

¹⁸⁵ KII, June 18-20, 2014, Toledo City, Cebu.

¹⁸⁶ Problem-Based Annual Social Development and Management Program, January-December 2014, Annex D.

¹⁸⁷ KII, September 19, 2014, Surigao del Norte.

¹⁸⁸ Letter Request dated 21 August 2014 of EITI National Coordinator to the MGB Director.

against the government. Based on the concept of state ownership of all natural resources including petroleum and that the DOE being the proponent of oil and gas projects, it appears that the government funds the social expenditures and implemented only by the petroleum service contractors on behalf of the DOE, taking into account only the procedures for deducting operating expenses. As part of operating expense, the cost of providing social development projects are advanced by the companies as providers of financial and technical assistance based on the service contract and as part of the privilege given to foreign players and contractors under an FTAA to exploit Philippine petroleum resources. Being part of operating expenses, the cost of implementing social projects are deductions to the government share and fees of the service contractors comprising the 40% share. Hence, the social expenditure programs are merely financial advances and not funded from out-of-pocket that can be attributed to the oil and gas companies.

The scoping study team, through the PH-EITI secretariat, also requested from the DOE the data on the 2012 social expenditures of oil and companies.¹⁸⁹ However, it appears that the DOE has no available data on the annual social expenditures, programs, monitoring and accomplishment reports on the social expenditures of petroleum service contractors. The DOE did not provide any data and had to request data from the companies¹⁹⁰ and no data was supplied by the DOE to the scoping study team. This may also be indicative of lack in regulatory exercise and oversight, or a poor database management on the part of the regulatory agency. What is clear in the process is that the DOE performs only post-audit review on the expenditures being charged and cost-recovered against the government, and either grants allowance or disallowance based on the submitted WP&B and actual project implementation.

The DENR and DOE has an existing Memorandum of Agreement on Streamlining of EIS Process for Energy Projects particularly for oil and gas exploration and development projects. The agreement includes emphasis on the need for a timely action by the DENR on the ECC applications of energy projects within the specified timeframe and the coordination of the two agencies in the establishment and operationalization of the Environmental Monitoring Fund (EMF) and Environmental Guarantee Fund (EGF) for the projects. Oil and gas companies have to comply with the establishment of the EMF and the EGF as one of the conditions of their ECCs, as provided under DENR Administrative Order 96-37. The DOE has also not provided any data on environmental-related funds.

Case Study: Service Contract 38 - Malampaya Social Performance and Social Investment¹⁹¹

The social development programs of Service Contract 38 (“Malampaya Project”) are implemented by Shell Philippines Exploration B,V. (Shell) as operator of Malampaya through the Malampaya Foundation, Inc. (MFI), Pilipinas Shell Foundation, Inc. (PSFI) and Mindoro Biodiversity Conservation Foundation, Inc. (MBCFI) in the areas of operation of Service Contract 38 namely, Palawan, Oriental Mindoro and Batangas.

PSFI was established in 1982 as the social arm of Shell in the Philippines and implements social investment programs throughout the country designed to help the disadvantaged become more productive and responsible members of society. PSFI has a flagship program called the Kilusan Ligas Malaria in Palawan, the host of the Malampaya offshore gas production platform. The program which began in 1999 is a community-based malaria control program that aims to eliminate malaria in Palawan through early case detection and prompt treatment, vector control, community organization, awareness

¹⁸⁹ Letter Request dated 22 September 2014 of EITI National Coordinator to the DOE Assistant Secretary.

¹⁹⁰ DOE Letter dated 10 October 2014 to Shell Philippines Exploration BV

¹⁹¹ Based on the information provided by Shell Philippines Exploration BV to the PH-EITI Secretariat, November 2014.

campaigns, capacity-building, research, advocacy and networking. According to Shell, mortality in Palawan has decreased by almost 97% and malaria cases by 92% in 2012 through PSFI's efforts in working with the provincial government of Palawan and the Department of Health.

The Service Contract 38 joint venture also established MFI in 2005 to promote, foster and encourage sustainable social, environmental and economic development of communities in areas where the Malampaya Project operates. As the social arm of Service Contract 38, MFI's vision is to be the model and leading foundation in the Philippine upstream energy sector by enabling socio-economic development of communities and environmental protection. MFI implements programs on marine biodiversity conservation, skills training, health insurance, livelihood, sustainable farming, education and community safety.

Malampaya's social investment includes providing support to MBCFI which aims specifically to implement conservation initiatives in Mindoro island, which is recognized as one of the global biodiversity conservation priority areas because of its richness in endemic species, diversity of habitats and degrees of threats.

Table A.4.4: Summary of Malampaya Project's social investment to PSFI, MFI and MBCFI in 2012*:

MFI Programs	Amount (PhP)
Coastal / Marine Biodiversity Conservation	16,312,711
Industrial Vocational Skills Training (Vocational Scholarships)	11,633,475
Lingap sa Kalusugan / Health	10,748,082

Livelihood (Enterprise Building)	2,151,509
Various / Malampaya 10	2,072,900
Integrated Farming Bio-systems Program	2,012,986
Calamity Assistance	2,000,000
Adopt a School (Education)	1,698,749
English / Technical Proficiency for Teachers (Education)	1,115,300
Neighborhood Emergency Services Team / Road Safety (Community Safety)	528,673
TOTAL	50,274,385

PSFI Program	Amount (PhP)
Kilusan Ligtas Malaria	5,500,000

MBCFI Program	Amount (PhP)
Mount Halcon Management Plan	2,500,000
Naujan Lake Management Plan Workshops	
Apo Reef Capacity-Building	
Teachers training and conservation events	

*Based on data provided by Shell

According to Shell, the Malampaya Project was developed with the principles of sustainable development integrated into project design and execution. The project aims to deliver cleaner energy without harm to people and the environment, while at the same time aiming to deliver benefit to the country and to local communities through local employment, local procurement of services and social investment programs. Through this, the Malampaya Project hopes to create a positive presence and legacy in the communities and societies where it operates.

4.3 Mining Companies: Mandatory Environment-Related Funds: Environmental Protection and Enhancement and Rehabilitation Funds

Given the extractive nature of its operations, mining companies are required by law to set aside funds for environmental protection, enhancement and rehabilitation¹⁹⁴ These are not payments to government, nor benefits enjoyed by the host and neighboring community; but are legal obligations of mining companies to protect, enhance and rehabilitate the environment that have been disturbed by mining operations. This is consistent with the Constitution¹⁹⁵ and the policies of the State to protect the environment.¹⁹⁶ Currently, regulation mandates the full enforcement of environmental standards in mining, requiring mining companies immediate remediation measures and summary issuance of suspension orders until danger is removed.¹⁹⁷

As part of the application process for a mineral agreement or permit, a mining company must incorporate in its work program an Environmental Protection and Enhancement Program (EPEP) covering the period of the mineral agreement or permit. The work program must include not only plans relative to mining operations but also to rehabilitation, regeneration, re-vegetation and reforestation of mineralized areas, slope stabilization of mined-out and tailings covered areas, aquaculture, watershed development and water conservation; and socioeconomic development.¹⁹⁸ Mining companies are also required to technically and biologically rehabilitate the excavated, mined-out, tailings covered and disturbed areas to the condition of environmental safety in accordance with a Final Mine Rehabilitation and Decommissioning Plan (FMRDP).¹⁹⁹

For this purpose, a mine rehabilitation fund (MRF) is created, based on the company's approved work program, particularly its EPEP,²⁰⁰ or at the exploration stage, its Environmental Work Program (EWP).²⁰¹ This is deposited as a trust fund in a government depository bank and used for physical and social rehabilitation of areas and communities affected by mining activities. It is also used for research on the social, technical and preventive aspects of rehabilitation. The failure to observe this obligation will result to suspension or closure of mining activities.²⁰²

To show proof of satisfactory environmental management and community relations in its past mineral resource use ventures and as a prerequisite in the approval of a mineral agreement and FTAA,²⁰³ a mining

¹⁹⁴ Philippine Mining Act of 1995, Secs. 69, & 71.

¹⁹⁵ The Philippine 1987 Constitution, Art. II, Sec. 12.

¹⁹⁶ Implementing Rules and Regulation of Philippine Mining Act of 1995, Secs. 166, 167.

Section 166 provides: Consistent with the basic policy of the State to assure the availability, sustainability and equitable distribution of the country's natural resources, the Department adopts the policy that mining activities attendant to permits, agreements and leases shall be managed in a technically, financially, socially, culturally and environmentally responsible manner to promote the general welfare of the country and the sustainable development objectives and responsibilities as provided for in these implementing rules and regulations.

Section 167 further provides for the environmental protection objectives to include the following: (1) Maintenance of sustainable environmental conditions at every stage of the mining operation, to a condition prescribed in the ECC and/or EPEP; (2) Establishment of a functional post-disturbance land use capability, that is functional and proximate to the land use prior to the disturbance of the mine area, unless other more beneficial land uses are predetermined and agreed in partnership with local communities and LGUs; (3) Preservation of downstream freshwater quality; (4) Preservation of sea water quality and natural habitats for marine life; (5) Prevention of air and noise pollution; and (6) Respect for the traditional and/or sustainable management strategies concerning natural resources of ICCs and other communities.

¹⁹⁷ 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, Sec. 2, EO 79 (2012); Rules and Regulations to Implement Executive Order No. 79 Dated 06 July 2012, Sec. 5,.

¹⁹⁸ Philippine Mining Act of 1995, Sec. 69,.

¹⁹⁹ Id.

²⁰⁰ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec.169.

²⁰¹ Id., Sec. 168.

²⁰² Philippine Mining Act of 1995, Sec. 71,.

²⁰³ This is also a prerequisite for the approval of a Quarry or Commercial/ Industrial Sand and Gravel Permit and Mineral Processing Permit.

company must obtain from the MGB Regional Office a Certificate of Environmental Management and Community Relations Record (CEMCRR)²⁰⁴ This is issued upon payment of processing fee and the satisfactory environmental management and community relations record²⁰⁵ from the MGB Regional Office and the Environmental Management Bureau.²⁰⁶

4.3.1 Environmental Work Program and Environmental Protection and Enhancement Program

As discussed above, applicant mining companies are required to submit to the MGB Regional Office an Environmental Protection and Enhancement Program (EPEP), or at the exploration stage, an Environmental Work Program (EWP)²⁰⁷

An EWP²⁰⁸ details the environmental impact control and rehabilitation activities proposed during the exploration period. The plan includes the costs to enable sufficient financial resources to be allocated to meet the environmental and rehabilitation commitments, which costs are the basis for the lodging of the MRF.²⁰⁹ It must also include implementation schedules, system of environmental compliance guarantees, monitoring, reporting and cost provisions.²¹⁰ This is submitted as part of the accompanying document to the application for a mining permit.²¹¹

An EPEP²¹² provides the operational link between the environmental protection and enhancement commitments under the mining laws and regulations as well as those stipulated in the Environmental compliance Certificate (ECC) under P.D. 1586 and the company's plan of mining operation.²¹³ The submission of the EPEP must complement and does not substitute for the requirement for an ECC.²¹⁴ Mining companies must submit an EPEP covering all areas to be affected by mining development, utilization and processing under their contracts. Apart from the environmental impact control and rehabilitation activities proposed during the life-of-mine, the program must allocate financial resources to meet the life-of-mine commitments, implementation schedules, system of environmental compliance guarantees, monitoring, reporting and cost provisions. The amount of the funds to be lodged as MRF is based on the financial requirements of the EPEP.²¹⁵

²⁰⁴ Implementing Rules and Regulation of Philippine Mining Act of 1995, Section 167-A., A Certificate of Exemption (COE) will be issued by the Regional Director concerned, in lieu of the CEMCRR, to an applicant with no past mineral resource use or mining related ventures.

²⁰⁵ Under Section 167-A, the failure on the part of office/s concerned to act on the request for environmental management and community relations record within fifteen (15) working days from the date of receipt of a request, without justifiable reasons, will not prevent the issuance of a CEMCRR by the Regional Office concerned.

²⁰⁶ Id.

²⁰⁷ Id., Sec. 168.

²⁰⁸ MGB Form No. 16-1 or MGB Form No. 16-1A.

²⁰⁹ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 168. The EWP shall provide a description of the expected and considered acceptable impacts and shall set out the environmental protection and enhancement strategies based on best practice in environmental management in mineral exploration. It shall include a statement on post-exploration land use potential for various types of disturbed land and extend to the completion of the commitments in the rehabilitation of the disturbed land in a technically, socially and environmentally competent manner. The program shall be based on acceptable, practical and achievable options and demonstrated practice. Finally, the program shall include implementation schedules, system of environmental compliance guarantees, monitoring, reporting and cost provisions. Where proposed practices are unproven, a research program to prove the impact control and rehabilitation technology shall be required.

²¹⁰ Id.

²¹¹ Philippine Mining Act of 1995, Sec. 69.

²¹² MGB Form No. 16-2

²¹³ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 169. The EPEP provides a description of the expected and considered acceptable impacts and shall set out the life-of-mine environmental protection and enhancement strategies based on best practice in environmental management in mining. It includes a statement on post-mining land use potential for various types of disturbed land (inter alia, pits, waste dumps, tailings-impounding structures and infrastructure sites) and extend to the completion of the commitments in the rehabilitation of the disturbed land in a technically, socially and environmentally competent manner. The program shall be based on practical and achievable options and demonstrated practice. Where proposed practices are unproven, a research program to prove the impact control and rehabilitation technology shall be required.

²¹⁴ Id.

²¹⁵ Id.

The mining company must also allocate for its initial environment-related capital expenditures an amount that approximates 10% of the total project cost or such other amount depending on the environmental or geological condition, nature and scale of operations, and technology employed.²¹⁶

4.3.1.1 EPEP Processing, Approval, Implementation, and Monitoring

For EWP, the applicant mining company is required to furnish the *sangguniang panlalawigan* concerned with the EWP. Six months after the approval of the EWP, the company must also submit to the MGB and its Regional Office a status report on compliance with the EWP within 30 days, and every 6 months thereafter.²¹⁷

For EPEP, the mining company is required to submit them to the MRF Committee,²¹⁸ through the MGB Regional Office for review,²¹⁹ within 30 days upon receipt of the ECC.²²⁰ The MRF Committee then evaluates the EPEP as to its form and substance and may impose additional requirements and documentation.²²¹ After the MRF Committee's preliminary evaluations, the Contingent Liability and Rehabilitation Fund (CLRF) Steering Committee,²²² through the MGB, reviews the EPEP for final evaluation and approval, within 30 days from receipt of the EPEP from the MRF Committee.²²³ After approval, the mining company is required to provide each of the LGUs concerned with a copy of the approved EPEP not later than 30 days prior to the start of mining operation.²²⁴

Any change in the approved environmental protection, enhancement and rehabilitation strategies, which entails a variance of minus 20% of the financial requirements, requires a submission of a revised EPEP by the mining company to the MRF Committee for preliminary evaluation and to the CLRF Steering Committee for final evaluation and approval.²²⁵

To implement the approved EPEP, the mining company is required to submit an Annual EPEP (AEPEP)²²⁶ to the MGB and the Regional Office at least 30 calendar days prior to the beginning of every calendar year. The mining company must allocate for its annual environment-related expense a percentage based on the AEPEP which may approximate a minimum of 3-5% of its direct mining and milling costs depending on the environment/geologic condition, nature and scale of operations and technology employed.²²⁷ The mining company is required to set up and maintain a Mine Environmental Protection and Enhancement Office (MEPEO). The MEPEO sets the level of priorities and marshal the resources needed to implement environmental management programs.²²⁸

The MMT²²⁹ monitors the mining company's compliance with the approved EPEP and AEPEP every quarter or more frequently as may be needed.²³⁰ The MMT prepares and submits the environmental

²¹⁶ Id., Sec. 169. Initial environment- related capital expenditures may include environmental studies and design cost, waste area preparation, tailings/slime containment/disposal system, mine waste disposal system, wastewater/acid mine drainage treatment plants, dust control equipment, air pollution control facilities, drainage system and other environment-related mitigating measures and capital expenditures.

²¹⁷ Id., Sec. 168.

²¹⁸ Id., Secs. 182, 183.

²¹⁹ Id., Sec. 170. A mining company is required to submit at least ten (10) legible copies of the EPEP and a complete electronic file in computer diskettes.

²²⁰ Id., Sec. 169.

²²¹ Id., The MRF Committee is given 30 days from receipt to complete the evaluation and processing of the EPEP. The EPEP of Industrial Sand and Gravel Permit and Quarry Permit holders/applicants are evaluated and approved/disapproved by the MRF Committee in the MGB Regional Office.

²²² Id., Secs. 193 & 194.

²²³ Id., Sec. 170.

²²⁴ Id.

²²⁵ Id.

²²⁶ MGB Form No. 16-3

²²⁷ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 171.

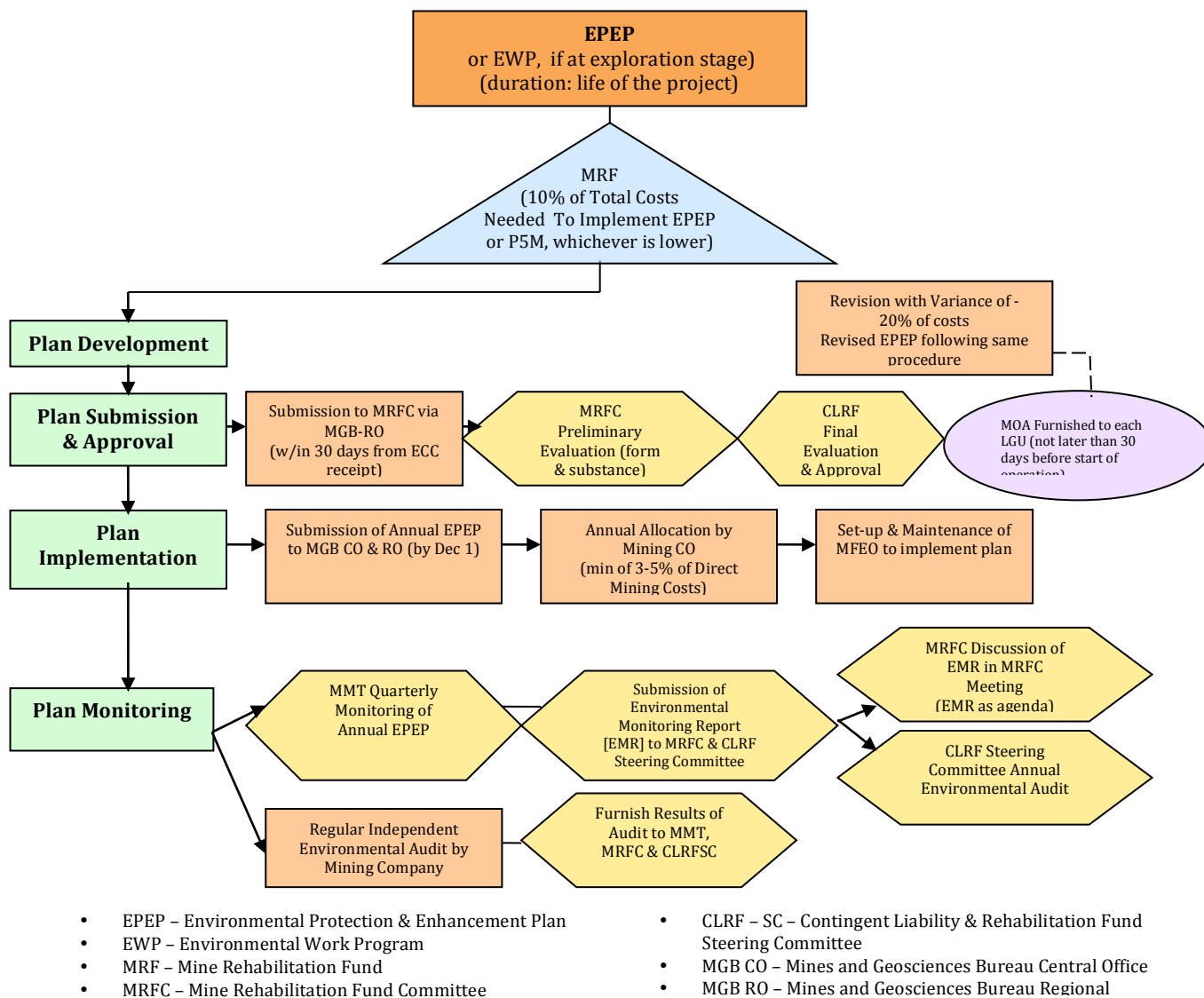
²²⁸ Id., Sec. 17

²²⁹ Id., Se.185.

monitoring reports to the MRF Committee, which forms part of the meeting agenda,²³¹ and to the CLRF Steering Committee. The latter uses the reports as one of the bases for their annual environmental audit.²³² The monitoring expenses of the MMT are chargeable against the Monitoring Trust Fund of the MRF.²³³

The mining company must also regularly conduct an independent environmental audit to identify environmental risks affecting mining operations to serve as a basis for the development of an effective environmental management system. It must furnish the MMT, MRF Committee and CLRF Steering Committee the results of the said audit.²³⁴ The procedure for the EPEP development, approval, implementation and monitoring is illustrated below.

Figure A.4.2 EPEP Development, Approval, Implementation and Monitoring



²³⁰ Id., Sec. 174.

²³¹ Id., Sec. 184.

²³² Id., Sec. 174.

²³³ Id., Sec.174 and 181.

²³⁴ Id.

Table A.4.5 EPEP Financial Requirements

Financial Requirements	Duration	Costs
EPEP Financial Requirements	Life of the Mine	based on Costs indicated in EPEP
Initial EPEP Financial Requirements	Initial Phase	10% of the total capital or project cost [or such other amount depending on the environmental/ geological condition, nature and scale of operations and technology employed]
Annual EPEP Financial Requirements	Yearly	minimum of 3-5% of direct mining and milling costs depending on the environment and geologic condition, nature and scale of operations and technology employed

4.3.2 Contingent Liability and Rehabilitation Fund: MRF – MTF and RCF, MWT, FMRDF

For purposes of implementing the rehabilitation duty of mining companies,²³⁵ the law institutionalizes an environmental guarantee fund mechanism known collectively as the Contingent Liability and Rehabilitation Fund (CLRF).²³⁶ This is to ensure the just and timely compensation for damages and progressive and sustainable rehabilitation for any adverse effect a mining operation may cause.²³⁷ As an environment-related cost meant for environmental protection, enhancement, and rehabilitation on account of the extractive operations of the mining companies, the CLRF is not a payment received by the government nor by host community, but is meant to answer for environmental damages and impacts.

The CLRF consists of the Mine Rehabilitation Fund (MRF), the Mine Waste and Tailing Reserve and the Final Mine Rehabilitation and Decommissioning Fund. The CLRF Steering Committee administers the CLRF.²³⁸ Apart from the foregoing, there is also the Environmental Trust Fund (ETF) established to pay for mining related compensable damages other than those caused by mine waste and mill tailing. It is contained in the MOA entered into by and among the stakeholders. ETF is pegged at a minimum of PHP 50,000.00.

Table A.4.6 Environmental Guarantee Fund Mechanism: Contingent Liability and Rehabilitation Fund

CLRF [Lodged as a Trust Fund with a Government Depository Bank]*	REQUIRED AMOUNT	PURPOSE
Mine Rehabilitation Fund: (a) Monitoring Trust Fund	minimum of P150,000, subject to quarterly replenishment	To pay for monitoring expenses of MMT/MRFC [maintenance and other operating budget for the transportation and travel expenses, cost of laboratory analysis, cost of supplies and materials, cost of communication services, cost of consultancy work]
Mine Rehabilitation Fund: (b) Rehabilitation Cash Fund	10% of the total amount needed to implement the EPEP or PhP5,000,000.00, whichever is lower	To ensure compliance with the approved rehabilitation activities and schedules, based on EPEP/AEPEP

²³⁵ Philippine Mining Act of 1995, Sec. 71. .

²³⁶ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 180.

²³⁷ Id.

²³⁸ Id.. Sec. 193,.

Mine Waste and Tailing Reserve Fund	PhP0.05/MT of mine waste produced and PhP0.10/MT of mill tailings generated	To pay for compensation for damages caused by any mining operations
Environmental Trust Fund	minimum of P50,000	To pay for mining related compensable damages other than those caused by mine waste and mill tailing
Final Mine Rehabilitation and Decommissioning Fund	Annual Cash Provision based on a formula	To pay for the implementation of the FMR/DP

4.3.2.1 Mine Rehabilitation Fund: Monitoring Trust Fund and Rehabilitation Cash Fund

Each mining company must establish and maintain an MRF as environmental deposit to ensure funding for EPEP or AEPEP activities. The MRF is deposited as a Trust Fund in a government depository bank and is used for physical and social rehabilitation of areas and communities affected by mining activities and for research on the social, technical, and preventive aspects of rehabilitation.²³⁹

There are two kinds of MRF: Monitoring Trust Fund (MTF) and the Rehabilitation Cash Fund (RCF). The MTF is deposited by the mining company in a government depository bank²⁴⁰ for the exclusive use in the monitoring program approved by the MRF Committee.

The MTF is in cash and in an amount determined by the MRF Committee, which must not be less than the amount of PhP150,000.00²⁴¹ to cover maintenance and other operating budget for the transportation and travel expenses, cost of laboratory analysis, cost of supplies and materials, cost of communication services, cost of consultancy work and other reasonable expenses incurred by the MMT. Consequently, the mining company must replenish the MTF every quarter. Only authorized representatives of both the MRF Committee and the mining company can disburse the MTF.²⁴²

The RCF, on the other hand, is set up by the mining company to ensure compliance with the approved rehabilitation activities and schedules, including research programs, as defined in the EPEP and AEPEP. The RCF is equivalent to 10% of the total amount needed to implement the EPEP or PhP5,000,000.00, whichever is lower.²⁴³ The RCF is deposited as a Trust Fund in a government depository bank. Withdrawals from the RCF by the mining company is done via a request based on its EPEP or AEPEP,

²³⁹ Id., Sec. 181.

²⁴⁰ Upon deposit, the mining company shall notify the Chair or the Co-Chair of the MRF Committee of its compliance with the deposit requirement through a certification from the bank.

²⁴¹ Under Sec. 181, Implementing Rules and Regulation of Philippine Mining Act of 1995, the DENR Secretary is authorized to increase the said amount when national interest and public welfare so require, upon the recommendation of the MGB Director.

²⁴² Id. See also Section 186, Implementing Rules and Regulation of Philippine Mining Act of 1995, that provides: Withdrawal from the MRF shall be made by the Contractor/Permit Holder only with the written instruction to the bank issued by the MRF Committee authorizing the Contractor/Permit Holder to withdraw the amount from the MRF. The amount to be withdrawn shall be in accordance with the AEPEP and shall be approved by the MRF Committee, copy furnished the CLRF Steering Committee.

Any one of the following shall be authorized to issue the instruction to the bank on behalf of the MRF Committee:

- a. The Chair,
- b. The Co-Chair or
- c. The designated representative of either (a) or (b).

In the event that none of the above-mentioned persons issues the instruction to the bank after the lapse of thirty (30) calendar days from the time the written request for instruction is received by them, the Contractor/Permit Holder shall have the authority to sign the instruction on behalf of the MRF Committee and to withdraw the amount in accordance with the approved AEPEP.

²⁴³ The said amount is required to be deposited in four (4) equal quarterly deposits within fifteen (15) calendar days from the beginning of each quarter of the first year following the approval of the EPEP. In the event of withdrawals from the RCF, the mining company is required to annually replenish the RCF so as to maintain the minimum required amount thereof.

submitted to the MRF Committee for consideration and approval, and copy furnished the CLRF Steering Committee.²⁴⁴

At the end of the mining company's operation and upon written notice to the MRF Committee Chairperson, the RCF, after payment of all outstanding obligations, will be terminated and the remaining amount and interests will be returned to the mining company.

In lieu of the RCF, the Final Mine Rehabilitation and Decommissioning Fund (FMRDF)²⁴⁵ is utilized to fund all decommissioning or rehabilitation activities contained in the approved Final Mine Rehabilitation (FMR) or Decommissioning Plan (DP) for the succeeding years until the objectives of mine closure have been achieved. For 2012, a summary of the MRF, including the environmental trust fund, lodged by the mining companies is found below:²⁴⁶

Table A.4.7 2012 MRF of Mining Companies and Environmental Trust Fund

Mining Companies	Monitoring Trust Fund (PhP)	Rehabilitation Cash Fund (PhP)	Envi'tal Trust Fund (PhP)
Lepanto Consolidated Mining Company	153,673.14	428,299.90 + 4,590,243.42	52,719.03
Philsaga Mining Corporation	150,926.57	2,000,000.00	-
Philex Mining Corporation	176,095.77	5,512,302.47	507,840.12
TVI Resource Development Phil, Inc.	52,649.53	5,201,809.97	106,112.33
Krominco, Inc.	91,025.4	2,271,681.94	-
Rapu-Rapu Minerals, Inc.	44,999.33	5,745,905.51	123,677.43
Marcventures Mining and Development	154,000	5,027,208.43	-
Eramen Minerals, Inc.	151,553.83	5,011,634.58	101,357.05
LNL Archipelago Minerals, Inc.	158,601.16	523,187.37	-
Zambales Diversified Metals Corporation	154,913.9	5,022,457.62	100,000.00
Benguet Nickel Mines, Inc.	161,281.86	5,052,832.32	-
Carmen Copper Corporation	152,425.78	5,053,000.00	50,816.94
Citinickel Mines & Dev't. Corp.	-	-	-
Hinatuan Mining Corporation	176,629.65	5,286,404.02	68,109.03
Taganito Mining Corporation	189,694.58	6,667,403.75	50,589.78
CTP Construction Mining Corporation – Adlay Nickel Project	154,509.23	5,157,977.39	154,509.23
Cagdianao Mining Corporation	152,183.84	5,993,534.58	67,531.42
Shuley Mine Incorporated	-	-	-
Platinum Group Metals Corporation	171,906.41	5,421,689.95	57,344.23
Shenzou Mining Group Corporation	150,390.33	5,006,896	-
CTP Construction and Mining Corporation – Dahican Nickel Project	154,509.23	5,147,832.36	154,509.23
Carrascal Nickel Corporation	154,296.87	5,035,261.33	-
Oriental Synergy Mining Corporation	153,478.12	5,003,847.22	-
SR Metals Incorporated	155,343.07	5,045,082.13	-
Sinosteel Phils. H.Y. Mining Corporation	150,441.23	5,019,350.17	-
Adnama Mining Resources, Inc.	150,000	5,005,171.42	-
Leyte Iron Sand Corporation	-	-	-

²⁴⁴ Id., Sec. 181..

²⁴⁵ Id., Sec. 187-B.

²⁴⁶ Based on the responses of MGB to the PWC EITI Reporting Template on Environmental Funds.

Ore Asia Mining and Dev't Corp.	-	-	-
Filminera Resources Corporation	188,245.95	5,982,358.83	52,829.67
Philippines Gold Processing & Refining Corp.	-	-	-
Johnson Gold Mining Corporation	-	5,982,358.83	-
Apex Mining Company, Inc.	-	-	-
Oceana Gold (Philippines), Inc.	155,587.26	5,844,691.63	10,7136.93
Greenstone Resources Corporation	150,333.73	5,027,564.35	
Cambayas Mining Corporation	100,437.22	1,738,972.58	
Berong Nickel Corporation	106,189.72	5,133,397.79	206,164.39
Mt. Sinai Mining Exploration and Dev't Corp.	-	-	-
Rio Tuba Nickel Mining Project	-	6,188,892.13	-
PMDC/AAM-PHIL Nat. Res. Expl & Dev't Corp.	152,695.20	5,028,757.90	-

Legend: - No Data

4.3.2.2 Final Mine Rehabilitation and Decommissioning Fund (FMRDF)

Mining companies are required to develop an FMRDP.²⁴⁷ They are also required to put up a corresponding FMRDF²⁴⁸ or a trust fund deposited with a government depository bank to be used solely for FMRDP implementation. The mining companies provide annual cash provisions based on a formula²⁴⁹ to the MRF Committee within 60 days from FMRDP's approval date²⁵⁰ and every anniversary date thereafter.²⁵¹ The mining company's failure to establish an MRF and an FMRDF is sufficient ground to suspend or cancel the mining operations.²⁵²

The CLRF Committee approves the withdrawal from the FMRDF, upon recommendation by the MRFC based on the approved work and financial plan. The amounts incurred by the mining company for the rehabilitation and annual environmental and enhancement programs pursuant to its EPEP or AEPEP cannot be reimbursed or credited to the FMRDF.²⁵³

The mining company is required to submit a progress report with details of rehabilitation activities based on FMRDP implementation. The report is submitted to the MRF Committee for evaluation within 30 days from the end of the preceding work and financial plan's term, if applicable. The results of the MRF

²⁴⁷ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 187. The FMR/DP or Mine Closure Plan shall be integrated in the EPEP submitted by Contractors/Permit Holders to the MRF Committee through the Regional Office and to the CLRF Steering Committee through the Bureau. Using risk-based methodologies/approaches, the FMR/DP shall consider all mine closure scenarios and shall contain cost estimates for the implementation of the FMR/DP, taking in consideration expected inflation, technological advances, the unique circumstances faced by the mining operation, among others: *Provided*, That such estimates shall be based on the cost of having the decommissioning and/or rehabilitation works done by third party contractors: *Provided, further*, That the estimates, on a per year basis, shall cover the full extent of work necessary to achieve the objectives of mine closure such as, but shall not be limited to, decommissioning, rehabilitation, maintenance and monitoring and employee and other social costs, including residual care, if necessary, over a ten-year period. The FMR/DP shall be subject to pre-evaluation by the MRF Committee and to final approval by the CLRF Steering Committee. Section 187-A further provides that the submission and approval of a FMR/DP, in lieu of the Abandonment/ Decommissioning Plan under Section 9.4 of Department Administrative Order No. 2003-30, shall be incorporated as a mandatory requirement in the ECC being issued by the DENR Secretary, EMB Director, or EMB Regional Director to Contractors/Permit Holders.

²⁴⁸ Philippine Mining Act of 1995, section 71, RA No. 7942; Item f, Section 1 of Executive Order No. 270-A

²⁴⁹ Annual Provision = Cost of Implementing the Approved FMR/DP x Percentage Required Per Table 1

²⁵⁰ On application by the mining company, the MRF Committee may allow a later date for the payment of the first annual provision.

²⁵¹ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 187-B.

²⁵² Id., Sec. 188.

²⁵³ Id., Sec. 187-C.

Committee's evaluation will be integrated in the succeeding year's work and financial plan.²⁵⁴

The FMRDP is reviewed or revised or both at a date not exceeding two years after its approval and every two years thereafter. The FMRDP may also be reviewed or revised whenever amendments are justified by changes in mining activities; the review or revision may be made on the mining company's initiative or at the request of the MGB Director or Regional Director. Based on this review, annual provisions to the FMRDF may be increased or decreased.²⁵⁵

Upon the mining company's assessment that the mine closure objectives are based on the approved FMRDP, it must prepare and submit a Final Rehabilitation Report with third party Environmental Audit (FRR with EA) for pre-evaluation by the MRF Committee and final approval by the CLRF Steering Committee.²⁵⁶ The MRF Committee or CLRF Steering Committee may, after evaluation of the FRR with EA, conduct field validation of the reported accomplishments. The Committees may recommend revisions to the submitted report or require additional rehabilitation works to be done.²⁵⁷

If residual care is still needed, the mining company is required to submit a Site Management Plan detailing how to manage the identified residual rehabilitation commitments. The CLRF Steering Committee may then issue a Certificate of Final Relinquishment to the mining company signifying approval of the FRR with EA and freeing the mining company from any further obligations insofar as the rehabilitated areas are concerned.²⁵⁸

Thereafter, any remaining amount of the mining company's total FMRDF annual provisions as well as MWTF payments will be released back to them. The mining company shoulders any shortfall in the amount needed to achieve mine closure objectives pursuant to the approved FMR or DP and to implement the Site Management Plan.²⁵⁹

*Case Study: Rapu-Rapu Minerals, Inc. – Closure and Rehabilitation*²⁶⁰

The mining company stopped operations in November 2013. However, to date, the company still has to present an updated Final Mine Rehabilitation and Decommissioning Plan, after the MGB Director, following the DENR Secretary's withdrawal of the approval of their original plan, directed them to revise the same for approval of the MRFC.

The Municipality is concerned with how the mined area will be rehabilitated. Both the Province and the Municipality wishes to see the area, not merely rehabilitated, but ready for ecotourism and other development purposes. It was disclosed that the mining company contends that it is merely obliged to make the mined area environmentally safe; and for future investors to develop the area. This issue regarding the extent of the responsibility of the mining company is still being discussed at the MRFC, in which discussion, the Municipality is excluded, despite its interest to ensure that the future use of the area will conform to their Comprehensive Development Plan, that is currently being updated. Based on

²⁵⁴ Id., Sec. 187-D.

²⁵⁵ Id., Sec. 187-E. Factors to be considered are (a) To credit progressive rehabilitation works undertaken by the Contractor/Permit Holder; and (b) To account for changes in the nature or cost of work to be done pursuant to the approved FMR/DP.

²⁵⁶ Id., Sec. 187-F.

²⁵⁷ Id.

²⁵⁸ Id.

²⁵⁹ Id.

²⁶⁰ KII, 22 September 2014, Legaspi City.

discussion, it is also not clear whether the relinquishment of the mined areas will include the transfer of interest over the land itself, as the same is private land titled in the name of the mining company.

Recently, the DENR Secretary issued a memorandum to convene a committee headed by the Regional Executive Director to oversee the FMR/DP implementation. These matters regarding the extent of rehabilitation, the relinquishment and the monitoring of the FMR/DP implementation are novel issues, considering that the mining company is one of the first companies in the country to stop and close mining operations under existing laws.

4.3.2.3 Mine Waste and Tailings Fees Reserve Fund

Mine Waste and Tailings (MWT) fees are collected semi-annually from each mining company based on the amounts of mine waste and mill tailings it generated for the period. The amount collected accrues to a MWT Reserve Fund deposited in a Government depository bank. This trust fund is used to compensate damages caused by any mining operations. The MWT Reserve Fund is utilized for research projects approved by the CLRF Steering Committee.²⁶²

The basic fee is computed at PhP0.05/MT of mine waste produced and PhP0.10/MT of mill tailings generated from the mining operations, subject to exceptions,²⁶³ and which rate may be increased by the DENR Secretary upon the recommendation of the MGB Director.²⁶⁴ MWT fees are payable to the MGB within 45 days after the end of each semester. The fees are based on the sworn semi-annual report submitted to the MGB Central Office, copy furnished the MGB Regional Office. The semi-annual report states among others, the (a) amounts of mine waste and mill tailings produced or both, contained or utilized; and (b) the manner by which the mine waste or mill tailings produced or both was utilized.²⁶⁵ Mining companies with no mine waste nor mill tailings generated are likewise required to submit sworn semi-annual reports stating that for the said period no such materials were generated from their operations.²⁶⁶

Mining companies are exempt from MWT fees when they utilize engineered and well maintained mine waste and tailings disposal systems with zero-discharge of materials or effluent. Companies with wastewater treatment plants, which consistently meet Department standards, are also exempted from MWT fees.²⁶⁷ In case of damage, the exempt mining company is nonetheless duty bound to pay for

²⁶² Id., Section 189.

²⁶³ Id., Sec. 190. Exceptions are where such mine waste and mill tailings were utilized in the following manner:

- a. Filling materials for underground mine openings;
- b. Filling materials for surface mine openings: *Provided*, That such materials shall not affect natural drainage systems as may be determined by the Committee or its duly authorized representative;
- c. Filling materials for engineered tailings dams, roads and housing areas: *Provided*, That such areas shall not affect natural drainage systems as may be so determined by the Committee or his/her duly authorized representative: *Provided, further*, That those with tailings impoundment/disposal system that were found to have discharged and/or to be discharging solid fractions of tailings into areas other than the approved tailings disposal area shall pay PhP50.00/MT without prejudice to other penalties and liabilities the Contractor/Lessee/Permit Holder shall be subject to under other existing laws, rules and regulations: *Provided, finally*, That said amount shall accrue to the MWT Reserve Fund;
- d. Concreting and manufacture of concrete products; and
- e. Mine waste impounded for future use: *Provided*, That a two-year work program on the utilization of the said materials shall be submitted together with the semiannual report: *Provided, further*, That said materials shall be utilized for its beneficial use within a period of two (2) years. Mine waste materials, which are not utilized within the two-year period, shall be charged the corresponding fee of PhP0.05/MT. Non-submission of the work program shall mean disqualification from exemption from payment of fees.

²⁶⁴ Implementing Rules and Regulation of Philippine Mining Act of 1995, Section 190.

²⁶⁵ Id., Sec. 191.

²⁶⁶ Id.

²⁶⁷ Id., Sec. 190

damages incurred due to previously exempted mine waste and tailings.²⁶⁸

If the companies fail to submit the semi-annual reports, it cannot avail exemption from MWT fees and it can be penalized with a P5,000.00 fine. Failure to comply with MWT fees means 10% surcharges on the principal amount for every month of delay. The same surcharge is also imposed if the mining company fails pay²⁶⁹ for the mine waste and tailings generated, which were previously requested for exemption from payment of fees but were denied based on the verification report.²⁷⁰

In 2012, a total of P1,170,743.00 representing payments from 6 companies was paid as MWTF. Of this amount, nothing was spent as compensation for damages incurred. Seven mining companies were deemed to have generated no waste and six mining companies were exempt from payment.

The MGB did not have complete nor any data on the 22 mining companies, which included 2 companies that made their payments late and 1 company that did not submit any report nor made any payment. This lack of information on MGB's part runs contrary to the regulation requiring mining companies to submit sworn semi-annual report to the MGB Central Office, copy furnished the MGB Regional Office. This indicates either a lack of compliance on the part of the mining companies and enforcement on MGB's part or a poor filing and recording system within the agency. A summary of the 2012 MWTR paid by mining companies is found below.²⁷¹

Table A.4.8 Summary of 2012 Mine Waste Tailings Reserve of Covered Mining Companies

6 Companies with Paid MWTF	
Mining Companies	Payment Made (PhP)
Lepanto Consolidated Mining Company	25,418
Philsaga Mining Corporation	14,811.2
Philex Mining Corporation	941,942.03
TVI Resource Development Phil, Inc.	117,868.70
Krominco, Inc.	23,832.75
Rapu-Rapu Minerals, Inc.	46,870.20
5 Mining Companies with No Waste Generated	
Marcventures Mining and Development	Zambales Diversified Metals Corporation
Eramen Minerals, Inc.	Benguet Nickel Mines, Inc.
LNL Archipelago Minerals, Inc.	
6 Mining Companies Exempt from Paying MWTF	
Carmen Copper Corporation	Taganito Mining Corporation
Citinickel Mines and Development Corporation	CTP Construction and Mining Corporation – Adlay Nickel Project
Hinatuan Mining Corporation	
Carrascal Nickel Corporation	
22 Mining Companies with No or Incomplete MWTF Data with MGB	
Cagdianao Mining Corporation	Filminera Resources Corporation
Shuley Mine Incorporated	Philippines Gold Processing and Refining Corporation
Platinum Group Metals Corporation	Johnson Gold Mining Corporation

²⁶⁸ Id., Sec. 192.

²⁶⁹ within sixty (60) calendar days upon receipt of notice

²⁷⁰ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 192.

²⁷¹ Based on the responses of MGB to the PWC 2014 EITI Reporting Template on Environmental Funds.

Shenzou Mining Group Corporation	Apex Mining Company, Inc.
CTP Construction and Mining Corporation – Dahican Nickel Project	Oceana Gold (Philippines), Inc. <i>*Payment was done on December 5, 2013</i>
Oriental Synergy Mining Corporation	Greenstone Resources Corporation
SR Metals Incorporated	Cambayas Mining Corporation
Sinosteel Phils. H.Y. Mining Corporation	Berong Nickel Corporation
Adnama Mining Resources, Inc. <i>*No report submitted nor payment made.</i>	Mt. Sinai Mining Exploration and Development Corporation
Leyte Iron Sand Corporation	Rio Tuba Nickel Mining Project
Ore Asia Mining and Development Corporation <i>*Payment was done on January 25, 2013</i>	PMDC/AAM-PHIL Natural Resources Exploration and Development Corporation

It is interesting to note that with respect to the 4 out of the 5 mining companies that did not generate any waste and did not pay any MWT in 2012, suspension orders were issued against them in July 2014. This was due to their unsystematic mining or stripping methods in mining operations that led to nickel siltation of river systems, farmlands, fishponds, and seashores. Local residents of Sta. Cruz and Candelaria, Zambales filed the complaints in May 2014.²⁷²

4.3.2.3.1 Accessing MWT for Compensation for Damages

As discussed above, MWT are trust fund meant to answer for damages suffered by third parties due to mining company operations. These damages are those caused by any mining operations on lives and personal safety, lands, agricultural crops and forest products, marine life and aquatic resources, cultural and human resources, and infrastructure; and the revegetation and rehabilitation of silted farm lands and other areas devoted to agriculture and fishing.²⁷³

The following persons are qualified to claim for compensation:

- a. Any individual for loss or damage to his or her life, personal safety or property;
- b. Any private owners of damaged infrastructures, forest products, marine, aquatic and inland resources;
- c. Any applicant or successor-in-interest for damage to private lands who holds title or any evidence of ownership;
- d. Any applicant or successor-in-interest for damage to alienable and disposable lands;
- e. Any agricultural lessors, lessees and share tenants for damage to crops; and
- f. Any ICC in case of damage to burial grounds and cultural resources.

For any damage caused to the property of a surface owner, occupant or concessionaire, the regulations provide for a different process.²⁷⁴ Applications for compensation for damages must be filed using a prescribed application form (MGB Form No. 18-2), together with supporting documents,²⁷⁵ with the

²⁷² Mines and Geosciences Bureau, 2014

²⁷³ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 199.

²⁷⁴ Id.

²⁷⁵ Applications should be supported by the following documents:

- a. Proof of ownership, such as tax declaration, perfected land titles, homestead and free patent. It should be understood, however, that tax declarations shall be honored as proof of ownership only for the purposes of compensation under these implementing rules and regulations;
- b. Receipt of expenditures for improvements made in the affected property(ies); and
- c. Other requirements that may be required by the CLRF Committee.

Regional Investigation and Assessment Team (RIAT) within 30 calendar days from the occurrence of the damage.²⁷⁶ Compensation is in amounts equivalent to the following:

- (a) Costs of rehabilitation for damaged agricultural land, industrial and residential lands or infrastructures;
- (b) Loss of projected net income in case of damage to crops, forest products or inland aquatic resources;
- (c) Compensation for damage to burial grounds and cultural resources of an ICC will be determined by said ICC, the LGU concerned or the National Museum or both.²⁷⁷

The CLRF Committee evaluates the application based prescribed guidelines²⁷⁸ and renders a decision that is considered final and executory unless appealed to the DENR Secretary within 30 days from receipt of the decision.²⁷⁹

4.4 Donations and Turn Over of Facilities Upon Cessation of Mining Operations

Another benefit that government may potentially receive are donation and turn-over of all company facilities at the end of mining company's operations or in case it has withdrawn or abandoned its operations on public land.²⁸⁰ The mining company may remove all improvements on mining premises found on public land that are no longer socially usable within a year from the end of its mining operations after consultation with the LGU and community.²⁸¹ Otherwise, all the social infrastructure and facilities will be turned over or donated tax-free to either the national or local government authorities to ensure that the facilities are continuously maintained and utilized by the host and neighboring communities.²⁸²

4.5 Corporate Social Responsibility

As part of good corporate governance, mining, oil, and gas companies also have corporate social responsibility or CSR activities that go beyond compliance with the law. Rooted in philanthropy, and earlier perceived as a peripheral, an add-on or an almost apologetic activity or tactical response to potential crises, CSR is now adopted as a "best practice" absorbed into the core functions and value of systems of businesses.²⁸³ In the mining sector, the increased awareness of environmental impacts, the socio-economic implications of mining, and a downturn in productivity have highlighted the need for mining companies to adjust their business management process.²⁸⁴ The Chamber of Mines of the Philippines has taken the cudgels in leading this process consistent with its objective of developing CSR standards by which compliance and progress can be gauged and monitored.²⁸⁵ In its CSR Guidebook, the

²⁷⁶ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 199.

²⁷⁷ Id., Sec. 201.

²⁷⁸ Id., Sec. 200.

²⁷⁹ Id., Sec. 201. Damages compensated by the operating mining company(ies) shall no longer be considered compensable under these provision, subject to certain conditions

²⁸⁰ Philippine Mining Act of 1995, Sec. 61.. Prior to cessation of mining operations occasioned by abandonment or withdrawal of operations, on public lands by the contractor, the latter shall have a period of one (1) year therefrom within which to remove his improvements; otherwise, all the social infrastructure and facilities shall be turned over or donated tax-free to the proper government authorities, national or local, to ensure that said infrastructure and facilities are continuously maintained and utilized by the host and neighboring communities. See also Section 139, Implementing Rules and Regulation of Philippine Mining Act of 1995.

²⁸¹ Under Section 139, Implementing Rules and Regulation of Philippine Mining Act of 1995, the end of operations may be due to abandonment, cancellation or termination of the Agreement/Permit/Lease. The removal must be consistent with the social aspect of the Final Mine Rehabilitation and/or Decommissioning Plan.

²⁸² Philippine Mining Act of 1995, Sec. 61, RA 7942; Implementing Rules and Regulation of Philippine Mining Act of 1995 Section 139,...

²⁸³ Asian Institute of Management RVR Center for Corporate Responsibility n.d , p. 1.

²⁸⁴ Hubo 2010, p. 9.

²⁸⁵ Philippine Chamber of Mines 2010, p. 9.

Chamber of Mines spells out a clear definition of CSR that is acceptable to all mining stakeholders, as “commitment of business to contribute to sustainable economic development, working with employees, their families, local community and society at large to improve the quality of life, in ways that are both good for business and good for development.”²⁸⁶ CSR activities of mining companies revolve around the six themes of environmental management, community engagement and development, safety and health, security and human rights, labor, and management and governance.²⁸⁷

On the field, however, it would appear that CSR activities and SDMP activities can give rise to confusion and even jealousy between beneficiaries and host and neighboring communities, when these programs are not clearly communicated. In Tubay, for example, municipal officials report that SR Metals Corporation granted scholarships even to non-residents of host communities. Upon verification, the mining company reported that these scholarships are not part of their SDMP, but part of their CSR program. The scholarships were given to children of the employees of the mining companies.²⁸⁸

CHAPTER 5. INSTITUTIONAL ARRANGEMENTS AND PROCESSES

5.1 Fiscal Arrangements

5.1.1 Local Collection and Actual Receipts

5.1.1.1 Collection and Distribution of Tax Revenues

As discussed in the preceding sections, LGUs’ taxing authority is either provided under statutes or each specific tax ordinance pursuant to statute or from its independent authority to raise revenues. Although the taxing authority may be granted by statute to one specific LGU, the collection and enforcement may be delegated to another. In the same manner that the authority to legislate, assess and collect the tax is granted to one LGU, the other LGUs within the same unit may benefit from the proceeds of the tax imposed. In simple terms, imposition, collection and share in proceeds may be distributed among different LGUs pursuant to law.

a) Real Property Tax

In the case of real property tax, the province, city or a Metro Manila municipality has the authority to impose and levy such tax and administer the same²⁸⁹, while the city or municipality is tasked to collect the same. The *barangay* may also be deputized by the city or municipality to collect taxes for properties located within its boundaries.²⁹⁰

²⁸⁶ Id.

²⁸⁷ Id., p. 16.

²⁸⁸ KII with Tubay Municipal Officials on 15 August 2014, Tubay, Agusan del Norte_ and SR Metals Corporation’s Officers and Staff on 16 August 2014, Tubay, Agusan del Norte.

²⁸⁹ The Local Government Code of 1991, Sec. 232 *Power to Levy Real Property Tax*. - A province or city or a municipality within the Metropolitan Manila Area may levy an annual ad valorem tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted.

Id.. Sec. 200. *Administration of the Real Property Tax*. - The provinces and cities, including the municipalities within the Metropolitan Manila Area, shall be primarily responsible for the proper, efficient and effective administration of the real property tax.

²⁹⁰ Id.. Sec. 247 *Collection of Tax*. - The collection of the real property tax with interest thereon and related expenses, and the enforcement of the remedies provided for in this Title or any applicable laws, shall be the responsibility of the city or municipal treasurer concerned. The city or municipal treasurer may deputize the barangay treasurer to collect all taxes on real property located in the barangay: Provided, That the barangay treasurer is properly bonded for the purpose: Provided, further, That the premium on the bond shall be paid by the city or municipal government concerned.

The proceeds of the basic real property tax, including interest thereon, are distributed among the province, its component city or municipality and *barangay*. The distribution in the proceeds of real property tax is as follows:²⁹¹

(a) In case imposed by the province:

- (1) Province - 35% accrues to the general fund;
- (2) Municipality - 40% to the general fund of the municipality where the property is located; and
- (3) *Barangay* - 25% accrues to the *barangay* where the property is located.

(b) In case imposed by the city:

- (1) City - 70% accrues to the general fund of the city; and
- (2) 30% will be distributed among the component *barangays* of the cities where the property is located in the following manner:
 - (i) 50% accrues to the *barangay* where the property is located;
 - (ii) 50% accrues equally to all component *barangays* of the city;

(c) In the case imposed by a municipality within the Metropolitan Manila Area:

- (1) Metropolitan Manila Authority - 35% accrues to the general fund of the authority;
- (2) Municipality - 35% accrues to the general fund of the municipality where the property is located;
- (3) *Barangays* - 30% will be distributed among the component *barangays* of the municipality where the property is located in the following manner:
 - (i) 50% accrues to the *barangay* where the property is located;
 - (ii) 50% accrues equally to all component *barangays* of the municipality.

b) Tax on Sand and Gravel

In the case of tax on sand, gravel and other quarry resources, permit to extract sand is issued exclusively by the provincial governor or the city mayor of a highly urbanized independent component city, pursuant to the ordinance of the *sangguniang panlalawigan or panglungsod*, and proceeds are distributed among the province, its component city or municipality and *barangay* as follows:²⁹²

- (1) Province - 30%;
- (2) Component City or Municipality where the sand, gravel, and other quarry resources are extracted - 30%; and
- (3) *Barangay* where the sand, gravel, and other quarry resources are extracted - 40%.

c.) Community Tax

The community tax is imposed by the city or municipality and accrues to their general funds and to the *barangay*, while a portion of the tax accrues to the general fund of the national government to cover the actual cost of printing and distribution of the forms and other related expenses.²⁹³ The city or municipal treasurer collects the community tax, but may also deputize the *barangay* treasurer to collect the same. The proceeds of the community tax actually and directly collected by the city or municipal treasurer

²⁹¹Id., Sec. 271.

²⁹²Id., Sec. 138

²⁹³Id., Sec. 164

accrues entirely to the general fund of the city or municipality concerned. When the community tax is collected through the *barangay* treasurers, the proceeds is apportioned as follows:²⁹⁴

- (1) 50% accrues to the general fund of the city or municipality concerned; and
- (2) 50% accrues to the *barangay* where the tax is collected.

d) Business Tax

In general, most municipalities and cities impose business tax on mining companies by classifying them either as manufacturers or exporters. A company is classified as manufacturer when the sale of minerals takes place within the country, and classified as exporter when the sale is consummated outside the country, with a tax rate at half of the manufacturer's rate. Mining companies are classified as contractors when they are not holders of Mineral Production Sharing Agreements (MPSA) and Financial or Technical Assistance Agreements (FTAA) and merely act as contractors of said holders. The classification is usually based solely on the classification provided by the mining companies to the licensing office of LGUs as provided in their corporate or business name registration with the Securities and Exchange Commission or Department of Trade and Industry, respectively.²⁹⁵

As a general rule, business tax is paid to the city or municipality where the company maintains a branch or sales outlet that makes the sale or transaction.²⁹⁶ If there is no such branch or sales outlet, then the sales are recorded in the principal office and the tax is due to the municipality or city where such office is located.²⁹⁷

In the case of mining companies where extraction happens in a locality different from the its principal place of business, the sales recorded in the principal office is taxable as follows:²⁹⁸

- (1) 30% is taxable by the city or municipality where the principal office is located;
- (2) 70% is taxable by the city or municipality where the project office, or plant is located.

However, exceptions to the revenue raising powers of LGUs in collecting business taxes are explicitly provided under the LGC²⁹⁹ particularly on mining companies registered under the Board of Investments³⁰⁰ and on businesses covered by the National Internal Revenue Code.³⁰¹

e) Occupational Fees

Occupational fees are paid to the treasurer of the municipality or city where the onshore mining areas are located, or to the MGB Director in case of offshore mining areas, on the date the mining agreement is registered with the appropriate office and on the same date every year thereafter.³⁰² Late payment incurs a 25% increase.³⁰³

²⁹⁴ Id.

²⁹⁵ Based on KII with relevant officials of Pasig City

²⁹⁶ Id., Sec. 150 (a).

²⁹⁷ Id.

²⁹⁸ Id., Sec. 150 (b).

²⁹⁹ Id., Sec. 133.

³⁰⁰ Id, Sec. 133(g) Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration;

³⁰¹ Id, Sec. 133(h) Excise taxes on articles enumerated under the national Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products

³⁰² Philippine Mining Act of 1995, Sec. 87.

³⁰³ Id.

In the case of occupational fees located in onshore mining areas, it is the province or the highly urbanized and independent city, that set the rates of the fees in their local tax codes, while the component city or municipality does the collection and, at the same time, share in the proceeds. The occupational fees are paid to the treasurer of the municipality or city where the onshore mining areas are located by mining permit holders.³⁰⁴

The occupation fees collected in onshore mining area is allocated to the LGUs by percentage depending on where it is located:³⁰⁵

- Province – 30%
- Municipality – 70%
- Chartered City – 100%

Below is a summary of LGUs’ varying schemes of tax imposition, collection and distribution.

Table A.5.1 LGUs Tax Imposition, Collection and Distribution Scheme

Taxes	Imposing LGU	Collecting LGU	Distribution of Proceeds
Real property tax (RPT) on lands, buildings, and machineries	Province, City and Municipality within Metro Manila	City/ Municipality; Barangay may also be deputized	a) Imposed by Province: Province - 35% Municipality - 40% Barangay - 25% b) Imposed by City: City- 70% Barangay - 30%
RPT - Special Education Fund	Province, City and Municipality within Metro Manila	City/ Municipality; Barangay may also be deputized	50% to the Provincial School Board 50% to the City/ Municipal School 100% to the School Boards of independent cities or Metro Manila city or municipality
Professional Tax	Province	Province	Province
Fixed Tax on Delivery Trucks	Province	Province	Province
Tax on Quarry, Sand & Gravel	Province	Province	Province - 30% City/Municipality -30% Barangay - 40%
Business Tax	City/ Municipality	City/ Municipality	70% by Host LGU; 30 by Head Office LGU
Community Tax	City/ Municipality	City/ Municipality or Barangay	Collected by City/Municipality: 100% City/Municipality Collected by Barangay: Barangay – 50% City/Municipality – 50%
Occupation Fees	MGB/ Province	City/ Municipality	Province 30% Municipality 70% Chartered City – 100%

³⁰⁴ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 219

³⁰⁵ Id., Sec. 88.

Public utility charges	Province/ City/ Municipality	By the imposing LGU	By the imposing LGU
Toll fees or charges for the use of road, pier, and wharf constructed by the LGU	Province/ City/ Municipality	By the imposing LGU	By the imposing LGU
Barangay Clearance	Barangay	Barangay	Barangay

5.1.1.2 Actual Collections and Reporting Process

The collection process of LGUs on direct payments by extractive companies go through a simple process of assessment, collection and issuance of receipt. Local treasurers are required by the BLGF to submit a quarterly report or data on actual tax collections. The BLGF maintains a Financial Data Modeling and Reporting through the Electronic Revenue and Expenditure System (eSRE) designed for collecting and maintaining financial information on, and to monitor the financial health of LGUs. This online system provides open access to reported data for the public, subject to security measure of registration.³⁰⁶

Using this system, the BLGF merely checks, records and consolidates the data provided by the LGUs. The BLGF's data is dependent on LGUs' quarterly submission of reports. According to the BLGF, LGUs do not have 100% reporting compliance.³⁰⁷ Thus, the BLGF does not have any data on local payments, unless reported by LGUs. The BLGF may impose sanctions on local treasurers for erroneous reports as validated by BLGF Regional Office, but provides no sanctions for failure to report.

To encourage complete and accurate reporting by LGUs, there are current initiatives made by BLGF that may enhance reporting compliance such as the *Iskor ng Bayan* and the Performance Standards for Local Treasurers, which is yet to be rolled out.

Based on data provided by LGUs, below are some of actual payments they received in 2012.

Table A.5.2 Actual Collections of Selected LGUs in 2012

Tax/ Fee	Local Government Unit	Rate	Amount (PhP)
Business Tax	M. of Rapu-Rapu	55% of 1% of Gross Receipts (GR), at P2M GR	P62,000,000 [highest]
Business Tax	MacArthur	P200,000 at P10M Gross Receipts	P200,000 [lowest]
Tax on Mining Operations	M. of Cagdianao	1.1% of Gross Receipts	P11,780,589.04
Environment Enhancement Fees	Zambales	P50/ metric ton (Nickel)	P36,718,100.00
Extraction Fee/Municipal Clearance Fee	M. of Quezon, Palawan	P5/cu. m	P11,780,589.04

5.1.1.3 Collection Problems Encountered by LGUs

a) Non-Collection

The LGUs' inability to collect taxes is either a problem of legislation or enforcement. It stems from not

³⁰⁶ <http://115.84.253.164:8080/SREWebComponent/jsp/login.jsp>

³⁰⁷ Data provided by BLGF on official request. BLGF Consultation Meeting, August 2014, Manila.

knowing what taxes to assess and collect based on the impositions provided under their revenue codes, which is a problem of enforcement, or from an absence of provisions to impose certain tax to mining corporations in their revenue codes, which is a problem of legislation.

In the case of the Municipalities of Tuba and Itogon and Benguet, they have not been charging business taxes from Philex Mining Corporation (Philex) despite the fact that the company has been operating for decades in their locality. Itogon only enacted its tax ordinance in 2002 while Tuba in 2003. Both thereafter imposed on the mining company business taxes on mining operations.

However, the company questioned the legality of said impositions and did not pay any business tax. After a long-standing issue on non-payment of business taxes, a compromise agreement was entered between the LGUs and the company in May 2014 for a settlement amount of P100 Million each for Itogon and Tuba. Philex agreed to pay a total of P100 Million to each municipality, P50 Million by way of cash and P50 Million by way of projects that will be identified by the LGUs for their communities and to be completed in 2015, as settlement for all unpaid business taxes earlier until 2013. Parties furthermore agreed that the LGUs shall assess Philex the business tax based on the tax rates provided under the local ordinances at the rate of “exporter” and not as tax on mining operations beginning 2014.

b) Potentially Double Taxation of Business Tax and Tax on Mining Operations

The issue raised by Philex was not on double taxation, but on the authority of the LGUs to impose tax on mining operations. From the desk review of local tax codes, it appears that both business taxes and tax on mining operations appear under different sections of the tax codes of several LGUs. In case both taxes are imposed by an LGU, only those provisions on tax on mining operations that were based on Sec. 143(h) of the LGC on other business are appear to be in the a form of double taxation. However, most LGUs do not actually assess and collect tax on mining operations, even though such imposition are specifically provided in their local tax codes. Based on survey questions, some LGUs, including the Municipality of Cagdianao, treat the two tax exactions as one and the same.

For as long as these provisions of the local ordinance remains unquestioned and not invalidated by the courts, they are presumed to be valid and enforceable. LGUs can legally exact compliance and enforcement and mining companies are obliged to pay these taxes, including paying under protest, in case of any question.

c) Payments Under Protest

Even with full compliance on payments made by companies, a legal issue remains unresolved when payments to LGUs are complied by companies, but made under protest. Although payments under protest do not necessarily lead to a case in court, LGUs remain under threat of litigation when companies are questioning the authority or basis of assessment made by the LGUs.

In the case of Quezon, Palawan, payments made by Berong Nickel Corporation in 2012, including payment of business tax and Municipal Inspection and Monitoring Clearance Fee, are all made under protest on the ground that the company is BOI-registered and enjoys the privilege and tax holidays from the Board of Investments.

d) No Prior and Periodic Consultations

Some LGUs raised their concerns that mining projects operating in their locality did not go through publicconsultations. In fact, some LGUs are also complaining that no periodic consultations are being conducted. In the case of Sta. Cruz, Zambales, the municipality claimed that there were no prior

consultations that were conducted with the LGU before the mining companies started their operations, which according to them caused their non-issuance of the Mayor's Permit, among other reasons.

LGUs also report that there are even instances when they do not have any knowledge at all of a project authorized and regulated by the National Government with ongoing operations in their locality. In the case of Service Contract 40 operated by Forum Energy in the Municipality of Bogoto and Daanbantayan in Cebu, the province of Cebu is not aware of this project at all.³⁰⁸ The Mayor of Bogoto also discloses that he is neither aware of any operations of Forum Energy nor was a Mayor's Permit secured since in 2013.³⁰⁹ Hence, there is no assessment and collection of any fees at all from the company.

e) Poor Enforcement and Imposition of Sanctions

Despite the powers granted to LGUs under the LGC, LGUs struggle with collections and enforcement of laws as projects involving extractives are projects regulated by the national government agencies. Since these agencies are the main regulators of mining companies, most powers of LGUs are weakened, or even rendered inutile.

In the case of Sta. Cruz, Zambales, the mining companies have been operating since 2012 without the mayor's permit required by the municipality. This is an instance where the LGU is not able to impose any sanctions on the mining companies and operations continued despite the lack of mayor's permit required by the local ordinance. Without delving into the merits of the issues for non-issuance of the permit, still it appears that the LGUs' hands are tied when it comes to the exercise of their power to enforce their own ordinance.

In Rapu-Rapu, the mining company has not yet been issued a Mayor's Permit for 2014. While previously it religiously paid all local taxes due, the mining company did not complete their application and did not pay business tax. It claimed that it should not be assessed based on gross receipts, since they are now only continuing their business for rehabilitation purposes. Since the company did not supply the Municipality information on their January-October 2013 gross receipts, the Municipality could not compute the business tax due.³¹⁰ In August 2014, the company even claimed that they had overpayments from their 2012 business taxes by showing a computation of their gross receipts and taxes paid. Using the data furnished by the company, the Municipality demanded payment of P19M business taxes in early September 2014.

5.1.2 NGA Collection and Transfers to LGU

As discussed above, indirect payments to LGUs consist of share in the national wealth, i.e., excise tax, and royalty income, and share from oil and gas production, from the preceding fiscal year and the IRA. These are collected by the national government agencies then transferred to the LGUS. The DOFD, BIR DBM, DILG and the DENR and DOE have their respective roles and responsibilities in determining the shares and releasing these to the LGUs.

³⁰⁸ Based on KII, May 2014, Cebu Province.

³⁰⁹ Telephone Conference, 9 September 2014.

³¹⁰ The business taxes imposed by the Municipality is computed at a rate of 2.2% of the gross receipts, which rate already incorporates the 10% increase every 5 years authorized by the Local Government Code.

DBM reports that they transferred the 2012 shares in excise taxes, royalty income, and share from oil and gas to the following LGUs.³¹¹

Table A.5.3 DBM Transfer of LGU Share in Excise Taxes, Royalty and Oil and Gas

LGU		Excise Taxes (PhP)	Royalties from Mineral Reservation (PhP)	Oil and Gas Production
Province				
1	Agusan Del Norte	3,337,680		
2	Agusan Del Sur	4,795,982		
3	Albay	10,451,487		
4	Benguet	22,378,568		
5	Bulacan	221,050		
6	Cebu	537,763		
7	Compostela Valley	3,217,368		
8	Dinagat Island	3,368,826	12,005,916	
9	Eastern Samar	No share received		
10	Leyte	No share received		
11	Masbate	19,206,076		
12	Nueva Vizcaya	No share received		
13	Palawan	10,651,718		39,628,039
14	Surigao del Norte	19,832,429	60,521,530	
15	Surigao del Sur	8,006,484	33,640,665	
16	Zamboanga Del Norte	6,150,837		
17	Zambales	2,994,140		
Municipality/City				
1	Aroroy, Masbate	43,213,669		
2	Bataraza, Palawan	15,058,309		
3	Basilisa, Dinagat Island	4,915	1,789,208	
4	Cagdianao, Dinagat Island	6,257,592	13,932,763	
5	Candelaria, Zambales	6,736,816		
6	Cantilan, Surigao del Sur	No share received		
7	Carrascal, Surigao del Sur	18,014,588	75,690,568	
8	Claver, Surigao del Norte	31,963,562	109,396,567	
9	Dona Remedios Trinidad, Bulacan	No share received		
10	Guiuan, Eastern Samar	No share received		
11	Itogon, Benguet	No share received		
12	Javier, Leyte	No share received		
13	Jose Panganiban, Camarines Norte	No share received		
14	Kasibu, Nueva Vizcaya	No share received		
15	Loreto, Dinagat Island	1,322,266	9,628,750	
16	Mac Arthur, Leyte	No share received		
17	Maco, Compostela Valley	7,239,078		
18	Mankayan, Benguet	8,316,949		
19	Narra, Palawan	719,477		
20	Quezon, Palawan	3,772,950		
21	Rapu-Rapu, Albay	23,513,546		

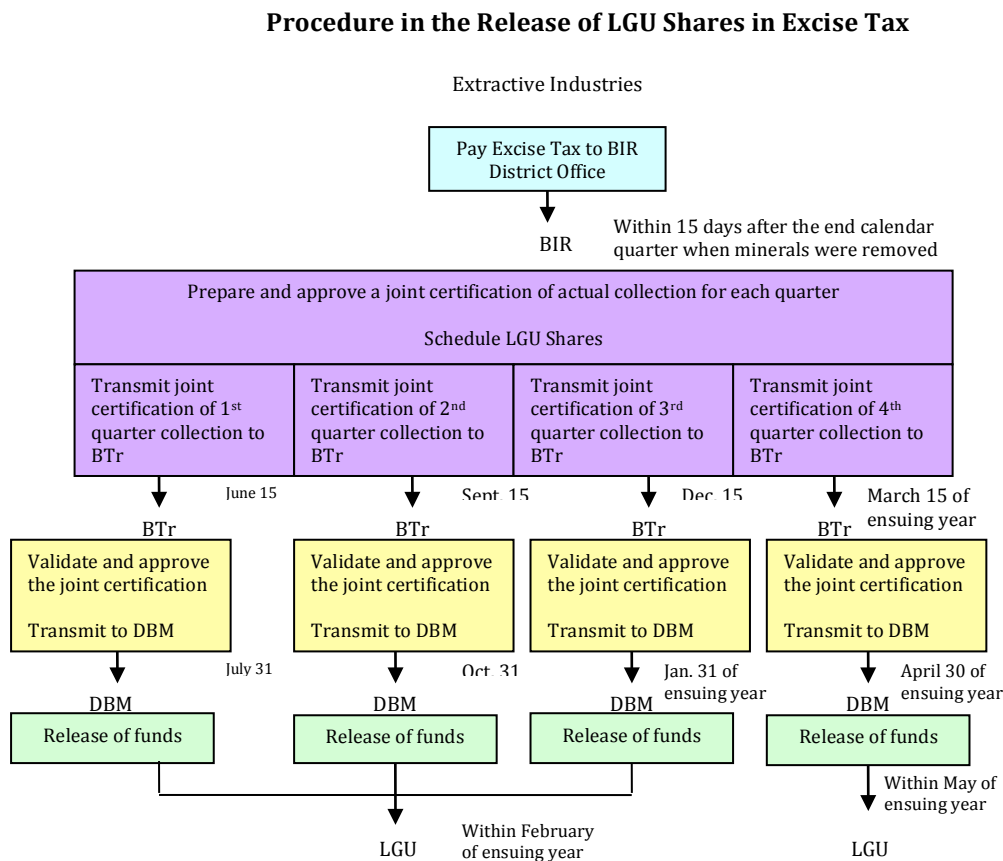
³¹¹ DBM Report of Releases, Annex 6

LGU		Excise Taxes (PhP)	Royalties from Mineral	Oil and Gas
22	Rosario, Agusan Del Sur	45,144		
23	San Jose, Dinagat Island	No share received		
24	Siocon, Zamboanga del Norte	13,829,340		
25	Sofronio Espanola, Palawan	No share received		
26	Sta. Cruz, Zambales	No share received		
27	Tagana-an, Surigao del Norte	12,659,404	26,337,649	
28	Toledo, Cebu	64,464,823		
29	Tuba, Benguet	21,012,767		
30	Tubay, Agusan Del Norte	7,509,779		
31	Tubod, Surigao Del Sur	No share received		

5.1.2.1 Excise Tax Collection and Transfer

Regulation ³¹² outlines the roles and responsibilities of these departments in excise tax collection and release of funds to LGUs. It also provides for the procedure and the timelines for submission of documentation and release of the funds. A flowchart of the procedure based on the regulation is shown below.

Figure A.5.1 Procedure in Release of LGU Share in National Wealth: Excise Taxes



³¹² Updated Guidelines and Procedures on the Release of the Share of Local Government Units from the Collections derived by the National Government from Mining Taxes..

5.1.2.2 LGU Commentary on the Procedure

LGUs receive their share from the national wealth, via a notice from DBM,³¹³ indicating the amounts transferred from the utilization and development of minerals, oil, gas, forestry or fishery resources. Some LGUs³¹⁴ suggest that the amounts be disaggregated to provide details indicating the source of transfer according to the kind of natural resources and the extractive company that made the payments.

LGUs also reported some inconsistencies in DBM's notices of transfer. The LGUs usually receive the Notice of a Funding Check Issued, with the corresponding details; but in some case, they only receive Special Allotment Release Order. Other LGUs³¹⁵ claim that they did not receive such notices and only learned of the transfer as they were credited only in the LGU bank accounts.

In some instances, LGUs³¹⁶ have to provide proof of BIR data payments to DBM, instead of DBM getting them directly from the BIR or the BIR transmitting them to DBM as provided in the regulation. LGUs perform the extra task of coordinating with companies for proof of payments and of forwarding them to DBM, and perform all necessary follow-ups with DBM for the release of their shares.

According to most LGUs, they also want to know how the shares are computed so that they could check if they received the correct amounts of what they are supposed to receive. Benguet Province has a proactive way of finding out in advance the exact amount of their share in the national wealth, which information they use in their budget planning.³¹⁷ Every first quarter of the year, the host municipalities requests mining companies copies of their excise tax returns. With such information, the province is able to compute their share in the national wealth per company and verify the correctness of the amount of the releases from the national government. So far, there have been no discrepancies between their own computation and their actual receipts.

5.1.2.3. Timeliness of Transfer of Share in National Wealth: Excise Taxes

Based on the Local Government Code, the shares from the national wealth of the preceding fiscal year must be released on a quarterly basis within five days after the end of each quarter.³¹⁸ The DOF-DBM-DILG-DENR Joint Circular improves this period by mandating that by May of the ensuing year, all shares must be transferred to the LGUs. The release timeline of an LGU's share in mining taxes for 2012 would be as follows:

Table A.5.4 2012 Mandated Schedule of Release of Share in National Wealth: Excise Taxes

Date of Releases	LGU Share in National Wealth: Excise Taxes
February 2013	Release of funds for 2012 1 st to 3 rd quarter collection
May 2013	2012 4 th Quarter Collection

³¹³ This is in the form of a Notice of Funding Check Issued (NFCI) which indicates the following information: check number, date of the check, account number of the LGU to which the check has been credited, amount, the quarter and year to which the payment represents and SARO (Special Allotment Release Order) Number. In a KII, the Provincial Treasurer of Agusan del Norte observed that since 2013, DBM has been sending them Notice of Authority to Debit Account instead of the NFCI.

³¹⁴ KII on 27 May 2014 and 17 July 2014, respectively, in Cebu Province and Surigao del Sur.

³¹⁵ KII on 10 July 2014 with Sta. Cruz LGU, Sta Cruz, Zambales

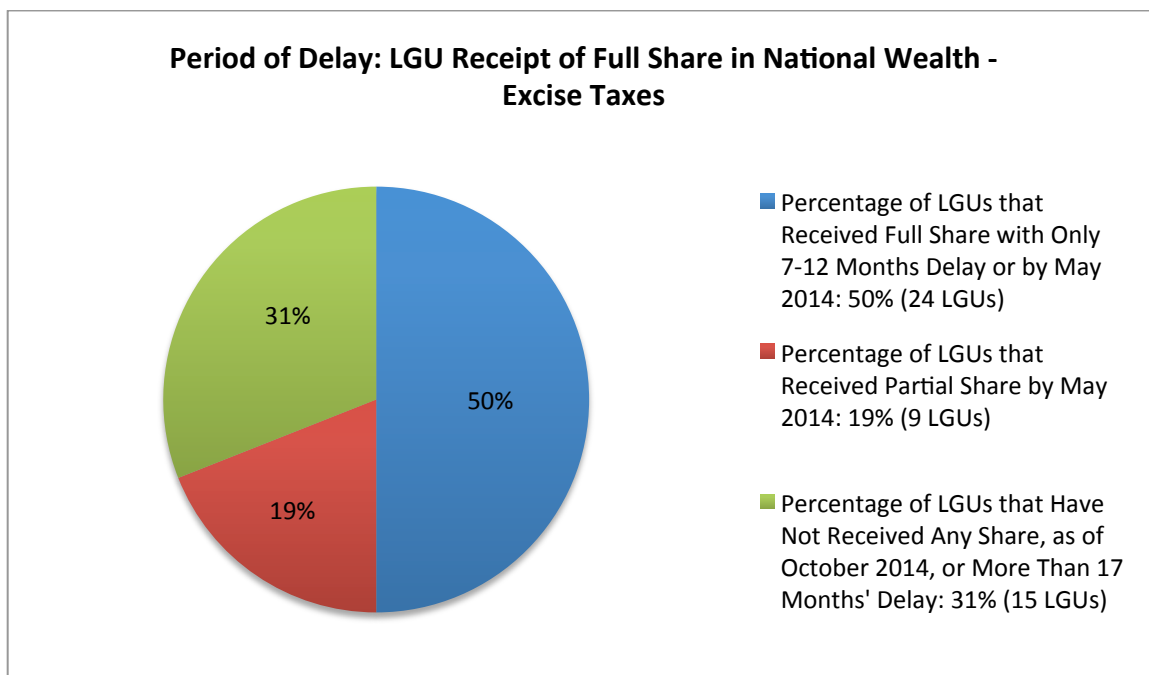
³¹⁶ KII on 22 July 2014 with Narra LGU, Narra, Palawan

³¹⁷ KII in Benguet PTO Staff. 26 August 2014, La Trinidad, Benguet.

³¹⁸ The Local Government Code of 1991, Sec. 290.

Based on the mandate of release under the LGC and the schedule under the Joint Circular vis-à-vis DBM’s transfer report for LGUs’ share in 2012 on excise tax, it appears that none of the LGUs received their shares on time. Even assuming that the Joint Circular laid down the directive under the LGC, there has been delay in the releases as most of the shares for the first quarter were received by the LGUs in March 2013 when these should have been received in February. Most of the 4th quarter shares were received in December 2013 when these should have been received in May 2013. The following pie chart shows the summary in delay in transfers after May 2013:

Figure A.5.2 Summary of Delay in Transfer of 2012 LGU Share in National Wealth: Excise Tax after Last Mandated Period in May 2013



Some LGUs have difficulty disaggregating their 2012 share as this is lumped together with shares from other years. In Agusan del Norte, for example, they received all shares for 2012 in 2013 but with 2009, 2010, 2011 shares lumped together as one sum.³¹⁹

Table A.5.5 Amount and Date of 2012 Actual Receipt of Share in National Wealth: Excise Taxes

Share from National Wealth	Amounts Received (PhP)	Date Received based on NFCI	Remarks based on NFCI information
1 st Quarter	702,904.00	March 14 2013	
2nd Quarter	492,545.00	June 13, 2013	
3rd Quarter	1,404,315.00	December 26, 2013	Notice of funding check indicates that the amount includes share from 3 rd quarter of 2011.
4 th Quarter	733,060.00	January 2, 2013	
	739,275.00	December 27, 2013	Notice of funding check indicates only that the shares cover 2009, 2010, and 2012, but does not indicate to which quarter it covers.

³¹⁹ KII with Agusan Norte Provincial Treasurer. 15 July 2014.

While the law and regulation provides for automatic release, some LGUs need to constantly follow up with the DBM for the release of their share. In Tubay, for example, the mayor³²⁰ reported that to follow up on the release of their 2006 share, the LGU spent about P100,000 for follow up expenses alone.

Meanwhile, the following 15 LGUs have not received their share in national wealth from mining taxes in 2012, while nine LGUs have partially received their share from the 2012 excise tax collection.³²¹

Table A.5.6 LGUs with No Reported Receipt in Excise Taxes from 2012 Collection

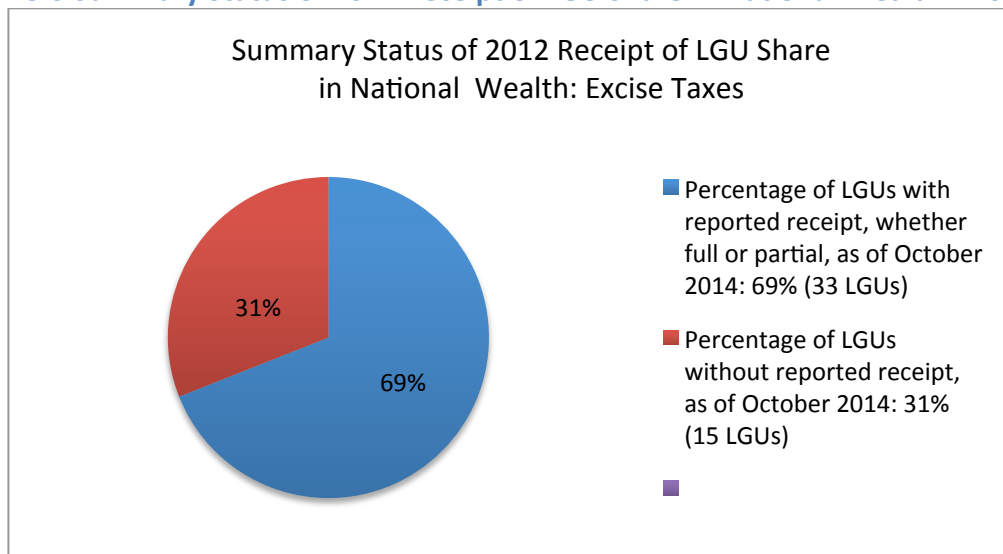
15 LGUs with No Reported Receipt of Share in National Wealth (Mining Taxes)			
Sofronio Espanola, Palawan	Eastern Samar	Camarines Norte	Doña Remedios Trinidad, Bulacan
Cantilan, Surigao del Sur	Guian, Eastern Samar	Leyte	Tubod, Surigao del Norte
San Jose, Dinagat Island	MacArthur, Leyte	Jose Panganiban, Camarines Norte	Sta. Cruz, Zambales
Kasibu, Nueva Vizcaya	Javier, Leyte	Nueva Vizcaya	

Table A.5.7 LGUs with Reported Partial Transfer of Excise Tax from 2012 Collection

9 LGUs with Partial Receipt of share in National Wealth (Excise Tax)			
Narra, Palawan	Zambales	Rosario, Agusan del Sur	Candelaria, Zambales
Basilisa, Dinagat Island	Carrascal, Surigao del Sur	Quezon, Palawan	Surigao del sur
Loreto, Dinagat Island			

Based on the above data from DBM report of transfer, the figure below shows the status of transfers of excise tax to LGUs, as of this report.

Figure A.5.3 Summary Status of 2012 Receipt of LGU Share in National Wealth: Excise Taxes



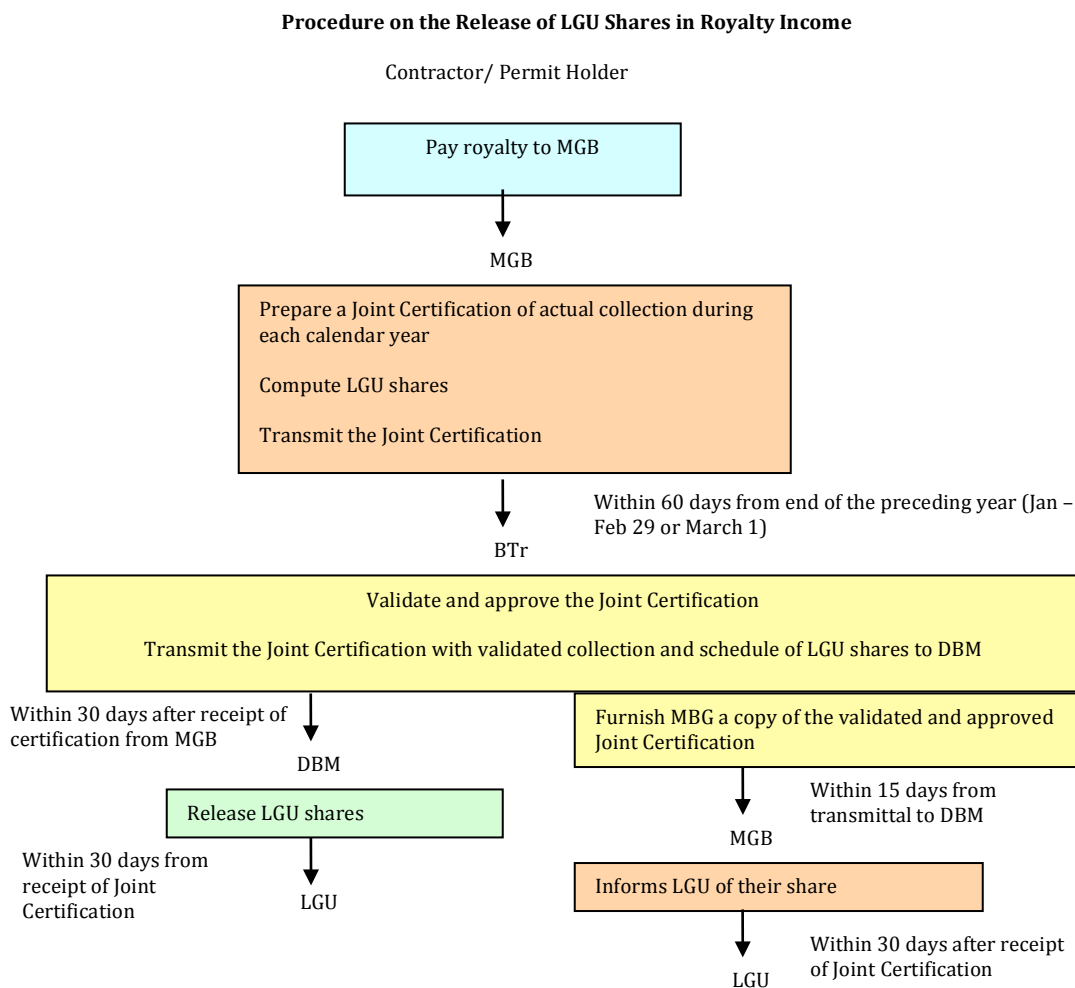
³²⁰ KII with Tubay Mayor, 15 August 2014.

³²¹ DBM Report of Releases.

5.1.2.4. Royalty Income from Mineral Reservations: Collections and Transfer

Regulation ³²² outlines the roles and responsibilities of national government agencies in the collection and release of shares in royalty income to LGUs. It also provides for the procedure and the timelines for submission of documentation and release of the funds. The procedure showing the flow of royalty income from collection to its release as LGU share in the national wealth is shown below.

Figure A.5.4: Release of Share in National Wealth: Royalty Income in Mineral Reservations



5.1.2.5. LGU Commentary on the Procedure

Unlike in the procedure for the release of LGUs’ share in excise taxes, this procedure provides that the MGB must release information to LGUs on their share in royalty. The timeline, however, provided in the regulation, defeats the purpose of notifying the LGUs. The BTr will only transmits the information to MGB after its transmittal to DBM; and MGB has 30 days after receiving a copy of the Joint Certification from

³²² Revised Guidelines and Procedures on the Release of the Share of Local Government Units Derived by the National Government from Royalty Income Collected from Mineral Reservations.

the BTr to inform the LGUs. Given these timing, the LGUs end up receiving the actual funding, ahead of the notice from MGB.

5.1.2.6 Timeliness of Subnational Transfers: Share in National Wealth: Royalty Income from Mineral Reservation

The regulation on royalty income transfer does not provide the specific month as due date on the release of LGUs' share in the royalty income. It only provides that DBM will release the funds to the LGUs within 30 days from receipt of the joint certification from MGB and BTr.³²³ The table below shows the timeline of submission and release of funds:³²⁴

Table A.5.8 Timeline for Submission and Release of Share in National Wealth: Royalty Income

PERIOD	MGB Action	BTr Action	DBM Action
Period	MGB Submission (of) Joint Certification to BTr	BTr Validation of and Submission of Joint MGB & BTr Certification to DBM	Release of Funds by DBM
January 1 to December 31 of the current year	Within 60 days from the end of the year	30 days from the submission of MGB Collections/15 days after completion of validation	Within 30 days from the receipt of the joint certification from MGB and BTr

Based on the number of days (a total of 105 days) allotted for MGB and BTr to complete the computation and the joint certification reckoned from the end of the year, it can be reasonably inferred that all royalty income accruing from the preceding year should have been transferred to the LGUs by May of the ensuing year.

PH-EITI covers 11 LGUs with mining reservations. LGU responses on questionnaire show that only the Municipality of Sta. Cruz, Zambales and Rapu-rapu reported receiving their 2012 shares from royalty income. But based on MGB data,³²⁵ Rapu-Rapu does not have a mining reservation. The DBM data below shows that 9 out of these 11 LGUs have received their share of royalty income from 2012 collection by November 2013:

Table A.5.9 DBM Transfer of 2012 LGU Share in National Wealth: Royalty Income

Nine LGUs that Received in 2012 Share in National Wealth: Royalty Income			
Surigao del Sur	Dinagat island	Surigao del Norte	Basilisa, Dinagat Island
Cagdianao, Dinagat Island	Loreto, Dinagat Island	Claver, Surigao del Norte	Tagana-an, Surigao del Norte
Carrascal, Surigao del Sur			

None of the LGUs were reported to have received their 2012 share in royalty income by May 2013. All LGUs receive their shares after May 2013, with most receiving them in October and November 2013 or up to a delay of 6 months. As discussed above, there is no definite month deadline identified in the Joint

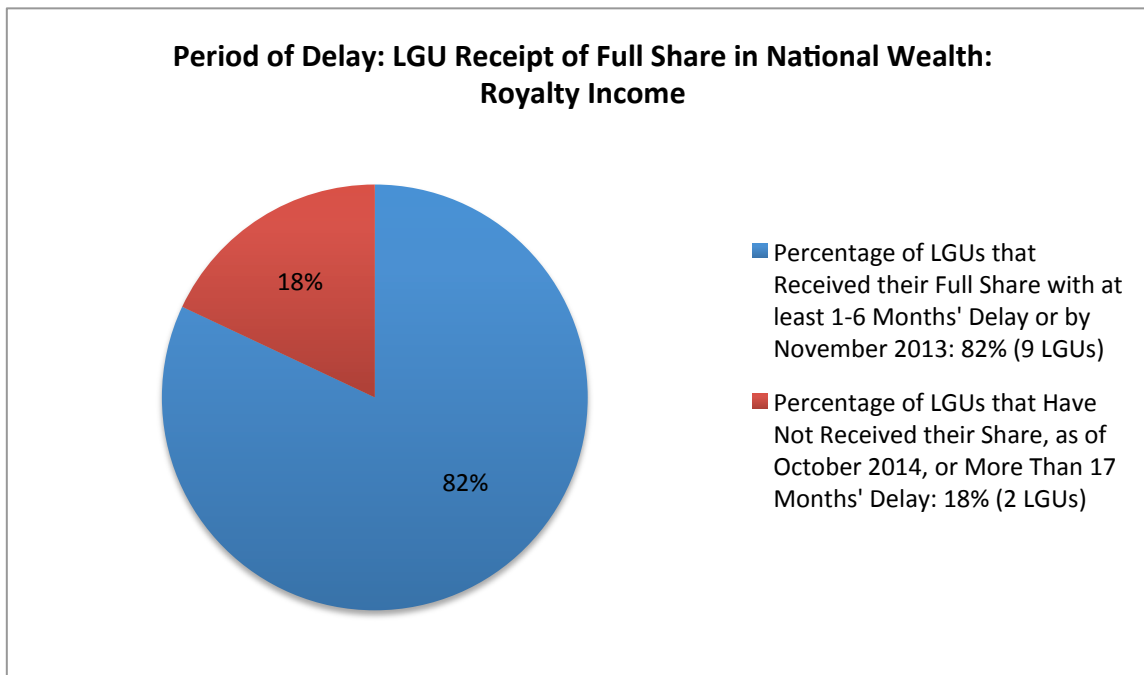
³²³ DENR-DOF-DBM-DILG Joint Circular No. 2010-1, Item 7.

³²⁴ Id.

³²⁵ Personal communication with MGB staff, 6 November 2014.

Circular. For transparency and accountability, it is recommended to provide a definite month for the timeline to guide the LGUs when to expect their shares.

Figure A.5.5 Period of Delay LGU Receipt of Full Share in National Wealth: Royalty Income



5.1.2.7 Share from Oil and Gas Production: Collections and Transfer

Every petroleum service contractor is mandated by law to render a return to DOE for each taxable year in duplicate in setting forth its gross income and the deductions herein allowed. The return is filed by the DOE of with the Commissioner of Internal Revenue or his deputies or other persons authorized by him to receive such return within the period specified in the National Internal Revenue Code and its implementing rules. Every party to a service contract shall be subject to tax separately on its share of taxable income arising from such contract³²⁶.

Beginning 2011, BIR required oil and gas companies/petroleum service contractors to remit payment of the 30% corporate income tax directly to the BIR. Payment of corporate income tax is being done on a monthly basis coupled with a return and a consolidated quarterly return submitted to the DOE and the BIR.

The portion of government share from oil and gas productions after the deduction of 30% corporate income tax is directly remitted to the DOE by petroleum service contractors. The DOE eventually remits this amount to the BTr. The DOE also files the tax return with the BIR.³²⁸

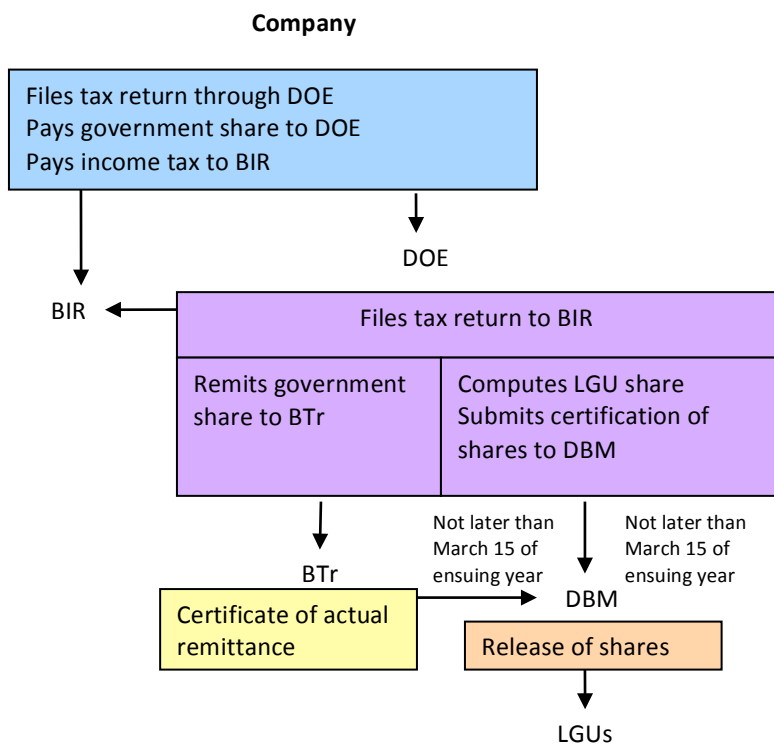
The DOE, as revenue collecting agent for the government of oil and gas production revenues, computes LGUs' 40% share and submits the certification showing the shares of each province, city, municipality or

³²⁶ The Oil Exploration and Development Act of 1972, Sec. 24.; Local Government Code, Sec. 290.

³²⁸ The Oil Exploration and Development Act of 1972, Sec. 24.; Local Government Code, Sec. 290.

barangay where the oil or gas is production is located,³²⁹ to DBM not later that March 15 of the ensuing year.³³⁰ The DBM releases the shares upon receipt of DOE's certificate and BTr's certificate of actual remittance of the revenues.³³¹ This process is illustrated in the chart below:

Figure A.5.6 Collection, Transfer and Release of LGU Share from Oil and Gas Production



5.1.2.8. Timeliness of Subnational Transfer: Share from Oil and Gas Production

The DBM-DOF-DENR-DOE Joint Circular No. 2006-1, which provides for guidelines and procedure for the release of shares from oil and gas, does not provide a specific date for the release of the shares. Based on the LGC, however, shares from the national wealth are automatically released on a quarterly basis within five days after the end of each quarter.³³² Consequently, the shares should be released to the LGUs within April 1-5 of the ensuing year, for the first quarter; within July 1-5, for the second quarter; October 1-5 for the third quarter; and January 1-5 of the following year, for the fourth quarter. In practice, the DBM releases the LGU shares when they received the certifications from both the BTr and DOE, and it only makes a transfer once a year.

Only two transfers of the 2012 share in the national wealth for oil and gas were made by the DBM. Based on its data: Transfer to Palawan was made in June 2013, while transfer to Bogu Municipality was also made in June 2013.

³²⁹ DBM-DOF-DENR-DOE Joint Circular No. 2006-1, 3.1.

³³⁰ Prescribing the Implementing Rules and Regulations of the Local Government Code, Art. 390 (a).

³³¹ DBM-DOF-DENR-DOE Joint Circular No. 2006-1, 3.1.

³³² The Local Government Code, Sec. 286.

As to the share of LGUs in Service Contract 14 (Forum), the Bogo Municipality received its 2012 share based on DBM record. The province of Cebu³³³ claimed that it has not received any share at all, and is not even aware of any petroleum operations in the province.

As regards the share from Service Contract 14 (Galoc), the province of Palawan also received its 20% share from the 40% LGU share in petroleum in 2012 sometime June 2013. However, the 45% and the 35% share of the municipality and *barangay*, respectively, has not been released by the National Government for the reason that the host municipality and *barangay* remain undetermined as the operations are located offshore.

As to the share of the entire Palawan in Service Contract 38 (Malampaya), the same is not yet transferred by the national government beginning 2001 up to the present based on a territorial claims dispute on the location of Malampaya located 54 km offshore of northwest Palawan. The case is still pending before the Supreme Court. In 2009, President Arroyo signed Executive Order 254-A authorizing release of the Malampaya Fund coming from the net government share in SC 38 from fiscal year 2002-2003 to the Province of Palawan as mere assistance in the amount of Three Hundred Million Pesos (P300,000,00.00), without prejudice to the outcome of the pending case on the territorial dispute.

There is an inconsistent treatment by the National Government in releasing the shares of Palawan in SC 14 and SC 38 considering that both production areas are located offshore in northwest Palawan. The SC productions areas of Galoc and Malampaya are both outside of municipal waters and both located in the same offshore area in northwest of Palawan.

In sum, for the LGU shares in oil and gas production, the transfers were either not made by the National Government, or in the case transfers were made, there is an average delay by two months. Cebu has not received its share. Palawan only received a portion of its share because of territorial dispute, while some component LGUs within Palawan have not received any share due to territorial questions covering the offshore location of petroleum operations.

5.1.2.9 Internal Revenue Allotment: Collections and Transfer

LGUs share in the IRA as provided under the LGC is 40% of the revenues collected of the third fiscal year preceding the current fiscal year.³³⁴ This is further allocated to the provinces, cities, municipalities and *barangay*.

The DBM provides the procedure from budget preparation to release of LGUs' IRA.³³⁵ The BIR submits certification of collections of the 3rd year preceding and the amount of the 40% share of LGUs to the DBM. The DBM programs the amount in the government's expenditure program and computes the share of LGUs. The DBM Central Office releases the allotment comprehensively to the DBM Regional Office at the start of the year and issues the Notice of Cash Allocation to DBM ROs to cover monthly requirement. Subsequently, the DBM RO issues the authority to debit account to effect the transfer of IRA share to individual account of the LGUs.

³³³ KII on 28 May 2014 in Cebu

³³⁴ The Local Government Code of the Philippines, Sec. 284 and 284.

³³⁵ Briefer on Internal Revenue Allotment from the Office of Dir. Carmencita Delantar.

5.1.2.10 Effect of Delay in LGU Budgeting Process

LGUs are affected by the delay in the release of their shares from the national government. LGUs conduct budget deliberations from July to August. As provided by the regulation, the scheduled release of their share from the national wealth by May of the ensuing year is timely. However, when their shares are received later than June, the LGUs can only estimate their income for budgeting purposes. This often results to overestimation or underestimation of budget.

In Agusan,³³⁶ when they receive less than what they estimated in their budgets, they craft a supplemental budget to provide funding to complete a project. In Surigao del Sur,³³⁷ if the transfers are delayed, they exclude the shares in national wealth in the budget deliberations and instead make a supplemental budget for the shares once they received these.

In Benguet Province, since they request copy of excise tax returns from the companies, they are able to compute their share in the national wealth per company.³³⁸ Consequently, they can prepare their budget and a work plan around correct amounts, even if they have yet to receive them.

5.1.3 Actual Expenditures and Benefits

The LGC provides that shares from the national wealth such as the excise taxes and royalties are to be appropriated for financing local development and livelihood projects of recipient LGUs.³³⁹ In the case of energy resources, 80% of the LGU share must be applied solely to lower electricity cost in the LGU where the source of energy is located.³⁴⁰

LGUs appear to deviate from these rules. Based on responses from the LGUs, most of them put all their revenues, including local payments and NGA transfers, to the general fund that are then appropriated for all LGU expenses and projects. The Commission on Audit has called the attention of some of the LGUs with respect to this improper practice, requiring them to develop a separate budget for mining revenues.³⁴¹

5.2 Non-Fiscal Arrangements

Apart from the LGU's Offices of the Assessors and the Treasurer that basically deal with assessment and collection of revenues from mining companies and the P/CMRB that implements small-scale mining activities, the LGU also sits in other multi-sectoral bodies created by law to oversee implementation and monitoring of the mining operations. These are at Mine Rehabilitation Fund Committee (MRFC) organized at the regional level by the MGB Regional Office and its Multi-Partite Monitoring Team (MMT). The LGU, through its representation in the MRFC and the MMT, can also inform the decisions and processes of the Contingent Liability and Rehabilitation Fund Steering Committee organized at the national level.

5.2.1. At the National Level: The Contingent Liability and Rehabilitation Fund Steering Committee, its

³³⁶ KII with Agusan del Norte PTO. 15 August 2014.

³³⁷ KII with Surigao del Sur PTO. 17 August 2014.

³³⁸ KII of Benguet PTO staff. 26 August 2014.

³³⁹ Id., Sec. 294.

³⁴⁰ Id.

³⁴¹ KII. 15 August 2014, Tubay and Agusan del Norte.

There is an inter-agency CLRF Steering Committee headed by the DENR-MGB Director.³⁴² It has the following duties and responsibilities:³⁴³

- a. Evaluates and approves or disapproves the submitted EPEP, FMR or DP, and consults with credible experts and advisory bodies, as may be required, to clarify proposals and to discuss the adequacy of control and rehabilitation measures;
- b. Monitors the MRFs that must be established and deposited in a Government depository bank;
- c. Monitor the FMRDFs that shall be established pursuant to these rules and regulations;
- d. Resolves issues involving the final mine rehabilitation and decommissioning that must be implemented;
- e. Hires credible experts to do independent studies and researches on the environmental, engineering and sociocultural impacts of the projects in order to assist it in making judicious decisions;
- f. Monitors and evaluates the performance of the MRF Committees;
- g. Administers the Mine Waste and Tailings Fees Reserve Fund;
- h. Evaluates and decides on damage claims and awards compensations;
- i. Prescribes documentary requirements for damage claims;
- j. Appoints members of the Technical Working Group to serve as the technical staff of the Committee and Regional Investigation and Assessment Teams (RIATs) to assist the Committee in investigation and assessment of damage claims;
- k. Provides appropriate funds from the MRFs and MWT Reserve Fund for the development and implementation of research and other special projects;
- l. Implements rules and regulations; Formulates policy recommendations to the DENR Secretary;
- m. Recommends to the Secretary the grant of allowances to officials and personnel performing functions and duties to implement the rules and regulations;
- n. Prepares and submits to the Secretary, within 30 calendar days after the end of each year, an annual report of accomplishments and such periodic reports of activities, as may be required

The Committee holds quarterly meetings, while special meetings may be called by a member when necessary.³⁴⁴ In all meetings, the presence of at least five members constitutes a quorum and a majority vote of the members³⁴⁵ present is required to give effect to Committee resolutions or decisions.³⁴⁶

A Technical Working Group (TWG) appointed and convened by the Committee, acts as technical staff to assist the CLRF Steering Committee.³⁴⁷

To assist the Committee in the investigation and assessment of the damage claims, it can convene a RIAT, which is composed of representatives from the Regional Offices and other member agencies whose services are deemed needed.³⁴⁸ The RIAT is headed by the Regional Director and has the following

³⁴² Id., Section 194. The other members are Director of EMB as Vice-Chair; and as members the Director of Lands Management Bureau, Director of Forest Management Bureau, Director of Bureau of Soils and Water Management, Director of Bureau of Plant Industry, Director of Bureau of Fisheries and Aquatic Resources, Administrator of the National Irrigation Administration as Member; and Assistant Director of the MGB Bureau as Committee Coordinator.

³⁴³ Id., Sec. 193.

³⁴⁴ Id., Sec. 195.

³⁴⁵ The presiding officer of the meeting shall not vote in any matter brought before the Committee except in case of a tie

³⁴⁶ Implementing Rules and Regulation of Philippine Mining Act of 1995, Section 195.

³⁴⁷ Id., Sec. 196

³⁴⁸ Id., Sec. 198.

functions:

- a) Provides advice to interested parties on damage claims and applications forms and other related forms to claimants;
- b) Receives applications for damage claims;
- c) Conducts field investigations and assessments of damage claims (MGB Form No.18-3) and submits reports to the CLRF Steering Committee through the TWG; and
- d) Creates, when necessary, Local Task Forces to assist the RIATs in carrying out its functions³⁴⁹

5.2.1.1. Contingent Liability and Rehabilitation Steering Committee Administrative Fund

The funds for the CLRF Steering Committee comes from MGB's regular appropriation, which includes maintenance and operating budgets for actual field and travel expenses for mine site inspections, cost of in-house and external training, monthly honoraria for members of said Committee, cost of supplies and materials, cost of communication services and capital outlay for buying photocopying machines, computers, machines, and other support equipment.³⁵⁰

The MGB Director must likewise allocate financial support from the MRFs for consultancy and other expenses necessary in carrying out the Committee functions in EPEP and FMR/DP evaluation and monitoring.³⁵¹

5.2.2 At the Regional Level: The Mine Rehabilitation Fund Committee

MRF Committees are created in each region where active mining operations exist. The MRF Committee has the following duties and responsibilities, among others:³⁵²

- a. Conducts preliminary evaluation on the submitted EPEP and consults with credible experts, as may be required, to clarify proposals and to discuss the adequacy of control and rehabilitation measures³⁵³
- b. Manages and monitors the safety of the MRFs and FMRDFs deposited in a Government depository bank;

³⁴⁹ Id., Sec. 199.

³⁵⁰ Id., Sec. 197. Its duties includes as follows:

- a. Receives, processes and evaluates the submitted EPEP and FMR/DP as to its form and substance, imposes additional requirements and documentation deemed necessary and consults with credible experts, including the Director of the Philippine Social Science Council, Director of the National Museum, Offices of the Northern and Southern Cultural Communities, as well as other advisory body(ies) that may be required to clarify proposals and to discuss the adequacy of control and rehabilitation measures;
- b. Conducts annual environmental audit to ensure that the approved EPEPs/AEPEPs and FMR/DPs shall be strictly implemented by the Contractors/Permit Holders;
- c. Conducts continuing studies and research on policy options, strategies and approaches to effective implementation of environmental protection and enhancement programs and recommends such measures as may be required to address therefore to the Committee;
- d. Verifies the amounts of mine waste and mill tailings generated by Contractors/Lessees/ Permit Holders;
- e. Computes and collects the MWT fees to be paid by Contractors/ Lessees/Permit Holders;
- f. Receives, processes, evaluates and conducts preliminary investigations, if necessary, of claims for damages and submits appropriate recommendations to the CLRF Committee;
- g. Assists in the investigation and assessment of claims for damages and submits appropriate recommendations to the CLRF Steering Committee;
- h. Develops, packages and recommends research and other special projects concerning mining and the environment;
- i. Determines/estimates/prepares the cost of rehabilitating damaged industrial, commercial, residential, agricultural and forest lands, marine and aquatic resources and placer and lode small-scale mining areas caused primarily by mining operations;
- j. Coordinates and monitors the activities of the RIATs
- k. Drafts guidelines, rules, regulations, resolutions and other documents in connection with the environmental provisions of these implementing rules and regulations

³⁵¹ Id., Sec. 197.

³⁵² Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 182.

³⁵³ The MRF Committee also evaluates and approves or disapproves the submitted EPEP for Industrial Sand and Gravel Permit and Quarry Permit.

- c. Resolves issues involving the progressive mine rehabilitation programs;
- d. Hires credible experts to do independent studies and researches on the environmental, engineering, and sociocultural impacts of the projects in order to assist it in making judicious decisions;
- e. Ensures that the approved EPEPs and AEPEPs are strictly implemented;
- f. Deputizes an MMT to serve as its monitoring arm with the Regional Office taking the lead role;
- g. Monitors and evaluates the performance of the MMTs and reports its assessments to the CLRF Steering Committee;
- h. Ensures that the MTFs, RCFs, and FMRDFs are separate funds and maintains independent and specific books of records for all transactions of the said funds of each Contractor/Permit Holder;
- i. Prepares and submits to the DENR Secretary and MGB Director, within 30 calendar days after the end of each year, an annual report of accomplishments, including audited financial statements, and periodic reports of activities as may be required.

The MRF Committee is headed by the MGB Regional Director as Chairperson and the DENR Regional Executive Director as Co-Chairperson, and the following as members:

1. EMB Regional Director
2. Autonomous Regional Government representative, if applicable
3. LGU representative
4. NGO, PO, Church or Civic Organization representative
5. Mining company representative

In Albay, the MGB Regional Office limited the representation of the LGU to the Province, through the Office of the Provincial Governor, despite the request and interest of the sole host island LGU, the Municipality of Rapu-Rapu, to become part of the MRFC.³⁵⁴ This appears to be a very restrictive application of the regulation. The regulation does not specifically provide for such limitation. The regulation must thus be interpreted liberally in favor of transparency and accountability. This liberal interpretation, allowing for a wider greater representation to include the municipality, should have been applied, especially given the unique circumstances in this case. The MGB may clarify this matter, via an administrative issuance, to guide regional offices nation-wide in the future.

The MGB Regional Office provides the technical, secretariat and administrative support to the Committee.³⁵⁵ The MRF Committee holds quarterly meetings, with a quorum of four and a majority vote of members present needed for any resolution or decision; special meetings may be called if necessary.³⁵⁶ The Committee provides the CLRF Steering Committee with a copy of the minutes of its meetings within seven working days after the meeting.

5.2.3 At the Regional Level: The Multipartite Monitoring Team (MMT)

An MMT, deputized by the MRF Committee, serves as its monitoring arm and is composed of the

³⁵⁴ KII with Albay Province and the Municipality of Rapu-Rapu, 23 September 2014, Legaspi, City. Despite a March 2012 request of Rapu-Rapu to have a seat in the MRFC, the MRFC denied such request on the ground that the LGU is already represented by the Office of the Governor. The MRFC allowed them to sit on an observer capacity; but the Municipality do not receive any invitation nor notices of the MRFC meetings. Provincial representatives also disclosed that they receive their notices to MRFC meetings usually a day or two before the scheduled activity.

³⁵⁵ Implementing Rules and Regulation of Philippine Mining Act of 1995, Sec. 183.

³⁵⁶ *Id.*, Sec. 184.

following:³⁵⁷

- a. Representative from Regional Office as Head;
- b. Representative from Department Regional Office as Member;
- c. Representative from the EMB Regional Office as Member;
- d. Representative of the Contractor or Permit Holder as Member.
- e. Representative from the affected communities as Member;
- f. Representative from the affected ICCs, if any, as Member; and
- g. Representative from an environmental NGO.

The MMT may request the MRF Committee for technical assistance when deemed necessary. The Head of the MMT must submit to the MRF Committee, at least five working days before the scheduled regular meetings of the latter, a report on the status or result of its monitoring activities, copy furnished the CLRF Steering Committee.³⁵⁸

In Surigao del Norte that hosts 8 operational mining companies, the MGB Regional Office, through its new Regional Director, removed the representatives of the provincial and municipal governments to the MMT in 2013. According to the Province of Surigao del Norte,³⁵⁹ the MGB claimed that there is only one LGU representative indicated in the law, which representation it gave to the barangay.³⁶⁰ Again, similar to the position taken by the MGB Regional Office in the MRFC in Albay, this is a restrictive application of the regulation. There is no such specific prohibition in the regulation. The province and the municipalities are affected communities, albeit in a larger scale. The regulation must thus be interpreted liberally in favor of transparency and accountability. This liberal interpretation, allowing for a wider greater representation to include the provinces and municipalities, should have been maintained, as has been previously practiced. Likewise, the MGB may clarify this matter, via an administrative issuance, to guide regional offices in the future nation-wide.

5.3. How Roles of Local Bodies Relate to EITI and How to Strengthen Capacities of Local Bodies

As discussed above, LGUs have organic offices namely the treasurer's office, the assessor's office that play a role in the assessment, collection, and recording of direct payments from the extractive industry and the transfer and receipt of indirect payments from the national government agencies. These offices are also responsible for the record keeping and reporting of this financial information to the national government. The treasurer's office is vital in providing prompt and accurate data for EITI reporting, both at the national and subnational level. At the provincial level, provincial treasurers also play a strategic role in terms of financial data collection and consolidation vis-à-vis component cities and municipalities reporting to the provinces.

Under the LGC, there is another office that may also play a role in EITI subnational implementation in terms of monitoring social expenditures and other environment-related funds. These are the LGU-environment and natural offices and multi-sectoral local development councils.³⁶¹ Under the law, LGUs

³⁵⁷ Id., Sec. 185.

³⁵⁸ Id.

³⁵⁹ KII with the Province of Surigao Del Norte, 18 September, Surigao City.

³⁶⁰ This was questioned by the Mayors; but the question is still unresolved. Provincial and municipal LGUs are not part of the MMT in Surigao Del Norte; and only participate in the MRFC, up to the present.

³⁶¹ The Local Government Code of 1991, Sec. 302 (b), Sec. 476(b)(5).

have the option to appoint Environment and Natural Resources Officers (ENR Officers).³⁶² Some LGUs regularly allocate funds for this position, including a budget for human resources and programs. Some LGUs designate their existing officials to concurrently discharge the duties of an ENR Officer. In most cases, ENR Officers or staff serves as representatives of the LGU in the MRFC or in the MMT; otherwise, the officer designated by the local chief executive sits in these bodies. These officials and representatives can provide the information regarding the social expenditures and environment-related funds and their monitoring results to their counterparts in the treasurers and assessors' Office. Based on LGU responses,³⁶³ it appears that LGUs at the provincial, city and municipal level lack knowledge and information on the social expenditures of mining companies in their jurisdiction. By regulation, mining companies are only required to furnish LGUs of the approved Memorandum of Agreement implementing the 5-Year Social Development Management Plan.

Working together, the local treasurers as well as the assessors and the environment officers or designates can produce the data for an EITI subnational report. At present, existing capacities must be strengthened to enable these offices to work together for EITI subnational implementation. LGUs³⁶⁴ identify the priority needs for capacity building in the following areas for EITI subnational implementation:

Table A.5.10 Identified Priority Areas for Capacity Building

Priority	Area for Capacity-Building
1	Knowledge on Mining Laws and Regulations
2	Enforcing Laws and Regulations
3	Assessing Socio-Economic Impacts of EI
4	Monitoring/Verifying Financial Payments
5	Knowledge on Social Expenditures of EI
6	Assessing Environmental Impacts of EI
6	Communication and Education
6	Addressing/Resolving Conflicts
6	Monitoring/Verifying Social Expenditures

*Based on the Results of Focus Group Discussions, August-September 2014.

It appears that LGUs see the need to be more knowledgeable and more familiar with the legal and regulatory framework for extractive industries and the need for the enforcement of related laws and regulations in general. They also see the need to grow in their ability to assess socio-economic impacts of the extractive industry as a priority, preceding even the need for their ability to monitor and verify financial payments.

With respect to the MRFC convened by the MGB Regional Office, the LGU also enjoys representation in this committee, as provided for in the regulation. The membership in the MMT merely provides for the representation of the affected host communities, without specifically referring to the LGUs. This text may be open to interpretation to include or not include the LGU at the provincial, city or municipal level. As discussed above, an MGB Regional Office has restrictively interpreted this, despite the interest of the provincial, city and municipal governments to participate in the MMT.

³⁶² Id, Sec. 484. x xx The appointment of the environment and natural resources officer is optional for provincial, city, and municipal governments.

³⁶³ Of the 37 LGUs responding to a Survey Questionnaire, only 6 LGUs reported data on social expenditures.

In terms of SDMP implementation, the LGU is specifically involved only in terms of (a) either the barangay or the municipality representing the host and neighboring community in the execution of a Memorandum of Agreement (MOA) to implement the SDMP; (b) being furnished a copy of the approved MOA; and (c) the Province and the Municipality being consulted for scholarships under the SDMP. The host and neighboring communities, which may include the barangay, is involved in the SDMP implementation through the (a) required consultation in the development of the SDMP; (b) the execution of a MOA to implement the SDMP; and (c) together with the mining company, the monthly monitoring of the SDMP implementation. Other than these, the LGU has no other role in the development, approval, implementation and monitoring of the SDMP. Significantly, neither the provincial, city nor municipal government is consulted for the development of the SDMP nor apprised of the results of the monitoring of the SMDP implementation. This is an area where the MSG can recommend the greater participation of LGUs in the development, approval, implementation and monitoring of the SMDP to ensure that these expenditures create the required impact to develop the host and neighboring communities.

Chapter 6. Overview of Small Scale Mining and Coal Extraction and Development

6.1 Small Scale Mining

6.1.1 Policy and Concept

Apart from large-scale mining through co-production, joint ventures and financial and technical assistance agreements, another mode of mineral development and utilization is through small-scale mining.³⁶⁵ The policy behind the promotion, development, and protection of viable small-scale mining activities is to generate more employment opportunities and to provide an equitable sharing of the nation's natural resources.³⁶⁶

Small-scale mining relies heavily on manual labor using simple implement and methods and does not use explosives or heavy mining equipment.³⁶⁷ Distinguished from large-scale mining in terms of mining area size and duration, a contract area is limited to a maximum of 20 hectares per contractor³⁶⁸ and for a term of 2 years, and renewable only once.³⁶⁹

PD No. 1899 (Establishing Small-scale Mining as a New Dimension in Mineral Development) and RA No. 7076 (The Peoples' Small-scale Mining Act of 1991) govern small-scale mining operations. For areas not declared as Peoples' Small-Scale Mining Area (PSSMA) under RA No. 7076, PD No. 1899 applies.³⁷⁰ Presently, E.O. No. 79, s. 2012 mandates measures to improve small-scale mining activities.³⁷¹

6.1.2 Governing Bodies: MGB and P/CMRB

The DENR, through the MGB, is in charge of administration and disposition of mineral lands and resources, including undertaking geological, mining, metallurgical, and mineral exploration surveys.³⁷² The

³⁶⁵ The Philippine 1987 Constitution, Art. XII, Sec. 2.

³⁶⁶ The Peoples' Small-scale Mining Act of 1991, Sec. 2.

³⁶⁷ Id., Sec. 3(b).

³⁶⁸ Id., Sec. 10.

³⁶⁹ Id., Sec. 13; Clarificatory Guidelines in the Implementation of Small-scale Mining Laws, Sec. III.

³⁷⁰ Clarificatory Guidelines in the Implementation of Small-scale Mining Laws.

³⁷¹ Id., Sec. 11.

³⁷² Philippine Mining Act of 1995, Sec. 9.

MGB, with its regional offices,³⁷³ has the power to recommend to DENR Secretary grants of mineral agreements to qualified applicants and monitor compliance of contractors.³⁷⁴

The Small-Scale Mining Act creates a multi-sectoral³⁷⁵ Provincial/City Mining Regulatory Board (P/CMRB) that serves as the DENR's implementing agency.³⁷⁶ Presided by the MGB Regional Director,³⁷⁷ the Board is under the direct control and supervision of the DENR Secretary. Its functions include declaring and segregating exiting gold-rush areas for small-scale mining, awarding contracts to small-scale miners, rule making, and conflict resolution.³⁷⁸

Based on responses to the survey questionnaire, 9 out of the 13 respondent Provincial LGUs indicated that they have convened their PMRB, while 4 did not indicate any response to the question. Of the cities that responded to the questionnaire, 1 indicated an operational PMRB.

6.1.3 Access, Use, and Management of Resources

The DENR implements the People's Small-scale Mining Program to have an orderly, systematic and rational scheme for small-scale development of mineral resources in certain mineral areas. Its purpose is also to address the social, economic, technical, and environmental issues connected with small-scale mining activities.³⁷⁹ The P/CMRB declares and sets aside people's small-scale mining areas in onshore site subject to review by the Secretary and to certain conditions.³⁸⁰

A people's small-scale mining contract entitles the contractor to mine and dispose mineral ores for commercial purposes. It may not be subcontracted or transferred.³⁸¹ A mining contractor enjoys easement rights to existing facilities such as mining and logging roads, private roads, port and communication facilities, processing plants, subject to payment of reasonable fees to its owner.³⁸²

6.1.4 Environmental and Social Safeguards in Small-Scale Mining

A People's Small-Scale Mining Protection Fund equivalent to 15% of the national government's share is established. The funds are used primarily for information dissemination and training of small-scale miners on safety, health and environmental protection, and the establishment of mine rescue and recovery teams. It is also used for buying rescue equipment necessary in case of landslides, tunnel collapse, or the like as well as for addressing the needs of the small-scale miners brought about by accidents or fortuitous events.³⁸³

Similar to the procedure in large-scale mining application, if applied small-scale mining area is on ancestral lands, the free and prior informed consent of the cultural communities concerned must be

³⁷³ Id., Sec. 10.

³⁷⁴ Id., Secs. 8 & 9.

³⁷⁵ The Peoples' Small-scale Mining Act of 1991, Sec. 25.

³⁷⁶ Id., Sec. 24.

³⁷⁷ Id., Sec. 25. The other members include the representative of (a) the Governor or City Mayor; (b) small-scale mining; (c) big-scale mining and the representative from the non-government organization who shall come from an environmental group. Representatives from the private sector shall be nominated by their respective organizations and appointed by the DENR-MGB Regional Director.

³⁷⁸ Id., Sec. 24.

³⁷⁹ Id., Sec. 4.

³⁸⁰ Id., Sec. 5.

³⁸¹ Id., Sec. 12.

³⁸² Id., Sec.11.

³⁸³ Id., Sec. 20.

obtained. Moreover, if ancestral lands are declared as people's small-scale mining areas, the members of the cultural communities therein will be given priority in the awarding of small-scale mining contracts.³⁸⁴

Recently, E.O. No. 79, s. 2012 that adopts a six-point agenda to set the direction for implementation of responsible mining policies, included stringent action and enforcement of standards by way of environmental and social safeguards. Among others, it specifically mandates providing measures to improve small-scale mining activities. The agenda are as follows:

- a. Improve environmental mining standards;
- b. Increase revenues to promote sustainable economic development and social growth
- c. Declare areas closed to mining applications;³⁸⁵
- d. Enforce environmental standards in mining;³⁸⁶
- e. Review of the performance of existing mining operations and cleansing of non-moving mining rights holders;³⁸⁷
- f. Provide measures to improve small-scale mining activities.³⁸⁸

6.1.5 Recommendations regarding Inclusion of Small-Scale Mining in Future EITI Reports

At the sub-national level, material direct and indirect payments received by LGUs may be included in future EITI Reports, as shall be discussed below. Beyond financial payments, there appears to be interest to include social expenditures and environment-related funds of oil, gas and large-scale mining companies. Similarly, there is also interest in disclosing payments received from small-scale mining operations.³⁸⁹

However, there are several factors that must be considered in determining whether small-scale mining will be included in future EITI reports. A key consideration would be the limited resources at the disposal of the government, both at the national and local level, which may be used for producing an EITI Report, in terms of a dedicated staff, staff time, communication and coordination and other database-management related requirements. Expanding the scope of the report at this time to include small-scale mining operations may not be optimal. Currently, there appears to significant gaps in terms of financial data recording and their completeness, access and sharing between and among national government agencies. Apart from the foregoing, there is also an influx of unauthorized small-scale mining that needs to be regulated by government³⁹⁰ that competes with the legal operations of registered small-scale mining operations.

In the province of Surigao del Norte, they disclosed that there are no authorized small-scale mining, since 2010. No mining permits have been issued, there being no applicant. However, they reported that there are a lot of illegal small-scale mining operations within large-scale mining operations. They shared that at the municipal level, LGUs want these areas declared as Minahang Bayan; but this move is opposed by large-scale mining since these are within their areas. Illegal small-scale mining occur in Claver, Placer, Alegria, Malemono, and even with Surigao City (Mat-i). Mining companies let them be; while the

³⁸⁴The Small Scale Mining act of 1991, Sec. 7.

³⁸⁵EO 79, s. 2012, Sec. 1.

³⁸⁶Id., Sec. 2.

³⁸⁷Id., Sec. 3.

³⁸⁸Id., Sec. 11.

³⁸⁹Based on Focus Group Discussions with LGUs, August 19, 2014, September 1, 2014, September 8, 2014.

³⁹⁰KII, Focus Group Discussions, August-September 2014..

Province do not have staff to regulate, monitor and curb these activities. They also disclosed the danger attendant to the situation, as these are usually in remote areas where security is an issue. In particular, the LGU cited the situation regarding the Dagami Association of Small-Scale Miners. The association wanted to mine gold in certain areas near the watershed. They applied for a permit, but the Water District opposed this. No permit was issued. However, it would seem that operations are still on-going. Purportedly, cyanide now is being used, rather than mercury, since cyanide is easier to procure and able to extract more gold. It is claimed that a percentage of the income from each tunnel is allocated to rebel groups. 7 years ago, these tunnels were closed by the Province, and but as the enforcement team was returning from the site, there was a shoot-out resulting in the death of 4 policemen. For small-scale mining, the Province needs to rely on the assistance of the Philippine National Police, as the Province issues Cease and Desist Orders to violators and illegal small-scale miners.³⁹¹

In sum, it is recommended that the MSG focus first on strengthening systems and processes that will enable national government agencies and subnational governments to effectively and efficiently report financial payments of large-scale mining corporations. These would pertain to record-keeping and transmittal of financial certifications between and among national government agencies namely the DOF, DBM and DILG and the corresponding prompt releases of subnational transfer payments; record-keeping of social expenditures and impact monitoring results by the MGB; and data reporting, data sharing and data access between and among national government agencies and local government units on direct and indirect payments, among others. When these arrangements are set up and institutionalized to facilitate prompt and accurate production of EITI Reports, it is then recommended that the MSG may consider including payments and even social expenditures and environment-related fund expenditures of small-scale mining operations for a broader and expansive scope of the EITI Report.

6.2 Coal Extraction and Development

6.2.1 Legal and Institutional Framework.

PD 972, also known as the Coal Development Act of 1976, as amended by PD 1174, is the basic law governing the exploration, development, exploitation, production, and utilization of the country's coal resources. Similar to oil and gas, the DOE is the main agency authorized to carry out the provisions of the Coal Development Act. DOE, as the main regulator of coal resources, has full access to the accounts, books, and records of coal operating companies. Companies are also obliged to promptly furnish the DOE with all information, data and reports which it may require.³⁹²

6.2.2 Local Payments

PD 972 provides that the coal operating contracts may provide incentives, including exemption from all taxes. Hence, similar to oil and gas contracts, coal operating contracts provide for exemption from payment of local taxes.³⁹³ LGUs can merely collect regulatory fees from coal companies similar to oil and Gas. LGUs take their share in the national wealth similar to the share in oil and gas resources

³⁹¹ KII, 19 September 2014, Surigao del Norte.

³⁹² Pres. Decree No. 972 (1976) Sec. 9 (i) and (e).

³⁹³ *Id.*, Sec. 16.

The largest coal operating contract in the country was awarded to Semirara Mining Company operating in the Barangay Semirara, Municipality of Caluya in the Province of Antique. Apart from the share in the national wealth, the LGUs do not receive any substantial payments from the mining company. The Municipality of Caluya is only able to assess a Mayor's permit fee of P250,000 per annum.

In disbursing the indirect revenues from the share in nation wealth, the issue encountered by the LGUs³⁹⁴ is the requirement under the regulations requiring them to spend 80% of their share in national wealth to support electrification projects. Considering that coal mining activities, although regulated by the DOE, is not similar to power generation business, they should not be covered by the regulation, as coal mining directly affects more the livelihood of the residents similar to the effect of mining operations.

6.2.3 Social Development Programs and Environment-Related Funds

The LGUs benefit from social investment programs of the mining company. Similar to oil and gas, the expenses for social development programs form part of operating expenses of the company and are cost-recovered against the government. Hence, they are also not out of pocket expenses that can be attributed directly to coal companies.

Semirara Mining Company's social development programs was develop pursuant to the Environmental Management Plan pursuant to the ECC conditions of the company and focuses on programs to answer the needs of the community for livelihood, food and nutrition, education and electrification. In 2012, the company put up a 10-classroom building for the Semirara Elementary School. Since 2007, the company also provides to the residents of Barangay Semirara free use of electricity equal to P200.³⁹⁵ The Provincial Environment Officer of Antique represents the province in the Multipartite Moitoring Team (MMT) that was organized to monitor the company's compliance with the ECC and the implementation of the social programs. The company also has a P1.5M deposit and P3.5M bond representing the Environmental Guarantee Fund required of the company under its ECC.³⁹⁶

³⁹⁴ KII on 2 October 2014 with Antique and Caluya LGUs.

³⁹⁵ Id.

³⁹⁶ Id.

PART B. Experience in Other Countries and LGU-Bantay Kita Sites

Chapter 1. Experience of Subnational Implementation in Other Countries

Mongolia, Ghana, Democratic Republic of Congo (DRC), and Peru are some of the countries that are already implementing subnational EITI. The World Bank has documented some of their experiences in a study entitled *Implementing EITI at the Subnational Level: Emerging Experience and Operational*.⁴²⁷ Some of these experiences will be useful in determining how subnational EITI implementation would look like in the Philippines. The various issues that these countries have encountered may also happen here. Hence, their experience can serve as a useful guide for the Philippines as it considers EITI subnational implementation.

1.1 Mandates for EITI Subnational Implementation

Subnational EITI implementation is usually mandated through a government resolution. This is true in Mongolia, Indonesia, and Peru where subnational implementation EITI was established through government issuances.

In Mongolia, the government passed Government Resolution No. 80 requiring all government entities including local and regional government to “issue an EITI report, coordinate relevant activities, and to monitor on whether entities with extractive industries licenses and operating in their respective territories produce EITI reports.”⁴²⁸

In Indonesia, Presidential Regulation No. 26 of 2010, provides for the general EITI mandate, but includes a stipulation on transparency of revenues accruing to the subnational governments.⁴²⁹

In DRC, the establishment of subnational EITI is less formal. It is included as work plan of MSG and Comité Executif of DRC. The work plan identifies five provinces where provincial EITI committees would be established.⁴³⁰

1.2 Determining Materiality at the Subnational Level

When direct payments and transfers to local governments are material, EITI Standards provide that these have to be reported in the EITI report. MSGs are mandated to determine materiality in their respective countries.

In Indonesia, their MSG has a broad definition of which revenues are deemed material. It is material if the amount is significant or has an impact to other functions. For the purpose of EITI reporting definition of materiality is confined to percentage of each value of type revenue toward total of extractive industries revenue as recorded in the LKPP (Central Government Financial Report).

Revenue may be insignificant in amount but if has sufficient impact to other function, then it is deemed

⁴²⁷ Aguilar et al., 2001.

⁴²⁸ Id., p. 35.

⁴²⁹ Resolution 80 has since been revised by Government Resolution No. 222. Resolution of Government 222, English translation as provided by EITI Secretariat of Mongolia.

⁴³⁰ Aguilar et al., 2001, p. 34.

material. For example, land rent in mining sector is less than 1% of the percentage to total of revenue from extractive industries in 2011 LKPP (Central Government Financial Report). But they deem it material because the amount can give a picture of the company's mining area. This information is useful for CSOs to check whether companies pay what they are supposed to pay.

1.3 Types of Reporting and Coverage for Reconciliation

There are four types of reporting practices by implementing countries:⁴³¹

- 1) The reconciliation process focused on direct EI revenues collected by the sub-national governments and compared them to companies' payments (revenue collection, i.e. Mongolia).
- 2) The effort focused on revenue transfers from the central to the sub-national governments and compared them to the sub-national governments' receipts (revenue distribution cash flow, i.e. Peru).
- 3) The process focused on revenue transfers from the central to the sub-national governments and compared them to the rules that should be applied (revenue distribution process, i.e. Ghana).
- 4) In addition to these sub-national EITI reconciliation processes, some governments have decided to unilaterally disclose sub-national governments' expenditures (i.e. Ghana).

1.4. Subnational Multi-Stakeholder Group

Countries implementing sub-national EITI have two types of subnational MSG structures: Representation of subnational governments in national MSG or a separate local MSG.

In Ghana, Nigeria, and Indonesia, subnational governments are represented in the national MSG. In Indonesia, for example, Presidential Regulation no. 26 of 2010 reserves three seats for subnational government officials on the EITI Indonesia multi-stakeholder working group, and three regional secretaries of three-resource-rich provinces appointed by the minister of home affairs.⁴³²

In Peru, on the other hand, the regional government of Cajarma, one of the pilot regions for subnational EITI, instituted a separate regional MSG, which they call Grupo Promotor Regional.⁴³³

In Mongolia, they have a subnational council in the provincial level. To date, 18 out of the 22 aimags (provinces) have been established.

These two structures have their advantages and disadvantages:⁴³⁴ Having subnational representatives in the national MSG reinforces the national EITI reporting process. A separate local MSG allows for stronger

⁴³¹World Bank 2012. P. 1.

⁴³² Aguilar et al., p. 37.

⁴³³ Id., p. 37.

⁴³⁴ Aguilar et al., p.37.

collaboration with local CSOs and companies. However, there is a risk that its subnational authorities are not sufficiently involved in the National EITI.

1.5. Constraints in Subnational Implementation

The following constraints were also identified in the study. The Philippines, through the MSG, may consider these and explore options to address these constraints.

a) Local Administrative Capacity

Subnational EITI implementation essentially requires data from subnational governments. Problems in local administrative capacity such as underfunding, personnel and training deficiencies, and lack of IT equipment may result to insufficient capacity in revenue collection and recording.⁴³⁵ This hampers subnational EITI implementation. In Mongolia, for example, subnational reconciliation was slowed down because some subnational governments had no internet and fax, which hampered communication with the reconciler.⁴³⁶

b) Financial Constraints

Subnational EITI implementation requires funding and means additional costs on top of financing EITI national implementation. Government stakeholders are concerned about subnational EITI's sustainability since it is operationally dependent on donor funds.⁴³⁷ To address this, some of the implementing counties came up with the following solutions:

- In Mongolia and Ghana, the reconciler for national EITI report also did the work for subnational EITI as part of its terms of reference/contract for the national EITI report.
- In DRC, some provincial governors declared their willingness to cover the costs of the local EITI structures in their province.

c) Legal Uncertainty

In some of these countries, lack of legal support regarding revenue distribution and transfers hampered subnational EITI implementation. In Ghana, only district assemblies report their receipts of royalty transfers from the central government.⁴³⁸ The other two beneficiaries, the traditional authorities and stools or customary land title owner, do not. Some stakeholders are concerned that traditional authorities may not comply with reporting due to the legal separation of their power from the state.⁴³⁹

d) Logistical and Infrastructure Constraints

Inaccessibility due to large distances and lack of road infrastructures can also hamper subnational EITI implementation. In DRC, artisanal miners undertake 80 percent of mineral production at sites all over the country.⁴⁴⁰ Boats can only reach some of these sites. Consequently, a large number of them are unregistered.⁴⁴¹

⁴³⁵ Id., p. 46

⁴³⁶ Id., p. 46.

⁴³⁷ Id., p. 48.

⁴³⁸ Id., p. 47.

⁴³⁹ Id.

⁴⁴⁰ Id., p. 49.

⁴⁴¹ Id., p. 49.

e) Political Issues

Lack of political support and intergovernmental communication can also hamper subnational EITI implementation.

In Peru, political leaders at the subnational levels who lack political will has been perceived as an obstacle for subnational EITI implementation.⁴⁴² In Mongolia, lack of cooperation and communication between the central government bodies and subnational bodies hampered subnational EITI implementation. To improve exchange of information and networking between central and subnational tax authorities Resolution no. 80 was revised.⁴⁴³

Chapter 2. Transparency and Accountability Initiatives at LGU Level with Bantay Kita

2.1 Transparency and Accountability Initiative at the LGU Level

Bantay-Kita, a coalition of non-government organizations, which promote transparency in extractive industries, had two sub-national projects in Compostela Valley and T'boli, South Cotabato. Both projects already ended. The implementation in the two areas was context driven, and therefore had different approaches in implementation. In Compostela Valley, the initiative focused more on transparency along the entire value chain from obtaining Free Prior and Informed Consent (FPIC) to monitoring LGUs' expenditures, while in T'boli, the focus was more on building capacities of small-scale miners.

2.1.1 Compostela Valley

In Compostela, Bantay Kita pilot sites are in three municipalities: Nabunturan, Maco and Maragusan. The initiative covers two large-scale mining, Apex Mining Inc. and Alsons Consolidated Resources Inc., and two small-scale mining cooperatives.

The talks on transparency initiative started in 2010 triggered by violence within IP communities about accounting for money received from large-scale mining companies.⁴⁴⁴ It was initiated by National Commission on Indigenous Peoples (NCIP) and the local NGO. A Provincial Board Member became champion on the initiative and Bantay Kita provided funds and technical support.

The multi-stakeholder council and transparency and accountability mechanism were institutionalized through Executive Order 020-2012 issued by the Compostela Governor. Bantay Kita funded the process while the province funded meetings and council sessions. The multi-stakeholder council was composed of representatives from the following:

- Provincial government
- Municipal government
- Indigenous People
- Large-scale mining company
- Small-scale mining cooperatives

⁴⁴² Id., p. 50.

⁴⁴³ Resolution of Government 222.

⁴⁴⁴ Consultation with Bantay Kita Executive Director, September 2014.

- Local Civil Society Organization
- National Civil Society Organization
- Mines and Geo-Sciences Bureau
- Department of Social Welfare and Development

Compostela’s transparency mechanism was an expanded version of EITI reporting requirement, because it covered even the FPIC process including disclosure by the IPs of how much they received and how it was spent. The disclosure mechanism was as follows.⁴⁴⁵

- Publish What You Say – disclosure of the whole Free and Prior Informed Consent (FPIC) processes among the Indigenous Peoples.
- Publish What You Should Do – disclosure of the terms and conditions of the agreement signed by IPs and Mining Companies and Cooperatives including monitoring of compliance.
- Publish What You Pay – disclosure of payments by mining companies and cooperatives and Ore Processors to the LGUs and IPs
- Publish What You Receive– disclosure of payments received by LGUs and IPs.
- Publish How You Spend – disclosure by LGUs and IPs how they allocated and utilized their respective revenue

The deadline for reports from stakeholders, NCIP, IP, province and municipal governments, company, and mining associations, was December 2013, which was extended to January 2014. But until now the council is still waiting for reports from the NCIP and from the IP organization.

2.1.2 T’boli, South Cotabato

The Bantay Kita project in T’boli started in January 2013 and ended in November 2013. The scope in T’boli was the municipal and barangay levels. It covered Kematu and Desawo Barangays and five small-scale mining operations. At the time of project implementation, large-scale mining companies were not yet in operation.

In T’boli, the treasurer’s office has monthly and quarterly reports on revenue, mining tax, and even on disbursement. The data were available and organized and all small-scale mining operations are registered.⁴⁴⁶ The PMRB was also functional. Consequently, the project focused more on capacity building for miners and trainings for IP.

The objectives of the project included institutionalizing transparency and accountability mechanisms, strengthen the local community in identifying, planning and implementing social development programs for economic and environmental sustainability, and promote participation of women, IPs and other stakeholders in governance.⁴⁴⁷

⁴⁴⁵ Compostela Valley Transparency Initiative. Bantay Kita Powerpoint presentation, Bantay Kita Conference.

⁴⁴⁶ KII with Bantay Kita Field Officer Beverly Bamanos, 17 October 2014.

⁴⁴⁷ T’boli SSM Powerpoint, AFRIM, 4 February 2014.

T'boli mayor institutionalized the multi-stakeholders council through Executive Order No. 080 series of 2013. The T'boli mayor presided the council with the Barangay captain of Kematu as Vice Chairperson. Members are composed of representatives from the varied sector organizations:⁴⁴⁸

1. Religious sector
2. Barangay officers from Desawo and Kematu
3. Small-scale mining associations
4. IP organization
5. Women's Organization
6. Ball mill and Carbon-in-Plant operator
7. Six Landowners association
8. 2 Tribal chieftains

But transparency and accountability arrangements has yet to be finalized and included in a draft ordinance establishing the transparency and accountability mechanism in the small-scale mining industry in T'boli.

Some of the trainings conducted included topics on mining and environmental laws such as Clean Air Act, Clean Water Act, SWM Act, Hazardous Wastes Act, threats and dangers of mercury, hands-on training on Non-Mercury Gold Processing, and even lectures on SSS, Pag-ibig , and PhilHealth ⁴⁴⁹

However, there is a growing concern on the multi-stakeholder council's sustainability. After the project ended, it was observed that the council only convenes when Bantay Kita invites them to an activity.⁴⁵⁰

⁴⁴⁸ Executive Order No. 080, Series of 2013. Sec. 1.

⁴⁴⁹ T'boli SSM powerpoint, AFRIM, 4 February 2014.

⁴⁵⁰ KII with Bantay Kita Field Officer, Beverly Bamanos, 17 October 2014.

PART C. Recommendations for Philippines EITI Subnational Implementation:

Chapter 1.0 Viability of Subnational Implementation in the Philippines

In determining the viability of subnational implementation, the MSG must consider the EITI standards, present state of LGUs, their revenue flow arrangements and availability of data, among others.

1.1. EITI Standards and Guidance for Subnational Reporting

EITI standards require a comprehensive report that includes “full government disclosure of extractive industry revenues and disclosure of all material payments to government by mining, oil, and gas companies.”⁴⁵¹ Consequently, it requires reporting of subnational payments or the direct payments to LGUs by companies and subnational transfers between national government and LGU or the LGUs’ share in the national wealth, aside from national taxes, when these are material.

For subnational payments and transfers, the EITI Guidance Note⁴⁵² sets the following steps for the MSG to take in reporting payments.

For direct payments, the MSG must:⁴⁵³

- Step 1 - Identify direct payments from companies to Subnational governments
- Step 2 – Assess the materiality of direct payments from companies to Subnational entities
- Step 3 - Disclose and reconcile direct payments from companies to Subnational entities

Based on this scoping study, there are direct payments of taxes and fees from companies to LGUs based on statutes and based on local tax codes. Based on the materiality recommendation here, some of these payments may be material. Consequently, the MSG must develop a reporting procedure to reconcile company payments and government revenues and ensure that these are disclosed and reconciled in the EITI Report. The subsequent section discusses these specific recommendations for the MSG.

For transfers, the MSG must:⁴⁵⁴

- Step 1 – Establish mandated transfers by national constitution, statute or other revenue sharing mechanism
- Step 2 - Assess the materiality of extractive industry-related transfers between national and Subnational entities
- Step 3 – Establish a reporting procedure for disclosing mandated transfers

This scoping study finds that all the transfers from the national government to the LGUs, as its share in the national wealth (excise tax, royalty, and share from oil and gas), are mandated by the Constitution and laws. Another transfer mandated by the Constitution is the internal revenue allotments to LGUs, which represents their share in the national collection of taxes; which, however, is not disaggregated to specify the portion collected from the EI. Based on the materiality recommendation here, the LGUs’ share in the national wealth transferred from the national government may be material. Consequently,

⁴⁵¹ Extractive Industries Transparency Initiative 2013, EITI Standards, p. 26.

⁴⁵² Extractive Industries Transparency Initiative 2013, Guidance Note 10, p. 2 & 6.

⁴⁵³ Extractive Industries Transparency Initiative 2013, Guidance Note 10, p. 2.

⁴⁵⁴ Extractive Industries Transparency Initiative 2013, Guidance Note 10, p. 6.

the MSG may set a reporting procedure that discloses these mandated payments, when material. The revenues from mining in the internal revenue allotment, however, appears to be insignificant, and does not need to be included by the MSG, as discussed in B.1. The EITI standards further require the reporting of the revenue sharing and the discrepancies, if any, between the amounts that the LGUs ought to receive, based on the formula, and the actual amount received by them.⁴⁵⁵ The following chapter discusses these specific recommendations for the MSG.

This scoping study found no discretionary or ad-hoc transfers from the national government to the LGUs.

1.2. Subnational Reporting and Reconciliation Models

Apart from these standards and guidance, the MSG may also consider the experience of other countries as models for subnational reporting and reconciliation:⁴⁵⁶

- 1) Reporting and reconciliation on direct EI revenues collected by the subnational governments and comparing them to company payments (Mongolia experience);
- 2) Reporting and reconciliation on revenue transfers from the central to the Subnational governments and comparing them to the Subnational governments' receipts (Peru experience);
- 3) Disclosure of revenue transfers from the central to the Subnational governments and comparing them to the rules that should be applied, (Ghana experience); and
- 4) Disclosure of Subnational governments' expenditures (Ghana experience).

These models, however, must be evaluated in light of the EITI Standard May 2013 and EITI Guidance Note 10.⁴⁵⁷ EITI, which now makes mandatory, when the amounts are material, the reporting and reconciliation done in the first three models. In other words, EITI reporting must now include the reporting and reconciliation of direct payments, LGUs' share in the national wealth and the revenue sharing formula.

After reporting and reconciliation, the results have to be communicated to the public. Subnational EITI implementation then would be essentially a process of data collection via reporting, reconciliation of these data, and inclusion of the results in the EITI report and communicating the results to the public.

Based on these EITI requirements and models, together with the materiality recommendations in this report on subnational payments and transfers, the MSG may positively consider including subnational data in future PH-EITI Reports, taking into account the present state of LGUs, their revenue flow arrangements, and availability of data, among others.

1.3. Rationale for Subnational Implementation

EITI aims to increase transparency and knowledge of revenues from the extractive industries to empower

⁴⁵⁵ Extractive Industries Transparency Initiative 2013, EITI Standards, p. 29.

⁴⁵⁶ World Bank 2012, p.1.

⁴⁵⁷ Extractive Industries Transparency Initiative 2013, EITI Standards, p. 26.

citizens and institutions to hold governments accountable.⁴⁵⁸ This objective resonates even more with the LGUs as they themselves do not know how much they are supposed to receive as share in the national wealth in terms of excise taxes, royalty income, and share from oil and gas revenues. Most LGUs simply receive any transfers made to them by the national government.

In consultations, LGUs consistently articulated that they want to know how the shares were allocated and how much they are supposed to receive. Hence, disclosure in EITI Subnational report of the formula and the base amount for allocation of LGUs shares would address this need.

Report of the actual amount of share in the national wealth transferred would also give the LGUs the opportunity to compare how much they are receiving from how much they should receive.⁴⁵⁹ In Peru, for example, the EITI report revealed significant differences in the transfer of mining royalties.⁴⁶⁰

LGUs also want to receive their share on time so they can estimate their income and plan their budget accordingly. As discussed in B.2, the scoping study reveals that transfers of excise tax and royalty income in 2012 were not made on time at all. Out of 48 LGUs that are entitled to shares in the excise tax, 15 LGUs or 31% of the LGUs have not yet received their shares, as of writing, or at least more than 17 months of delay, with still no expected date of receipt. To date, 9 LGUs have only received partial shares.

The Philippines Poverty Environment and Initiative have also studied delays in transfers of LGUs' share in the national wealth. It was identified that delays are caused by verification of mining taxes collections and computation of LGU shares by the BIR because required data from government agencies are not readily available and the process is not computerized.⁴⁶¹ Some of the proposed solutions include streamlining procedures in transfers through electronic sharing among concerned parties and Local Government Code amendment allowing direct remittance of shares from company to LGUs. The MSG may consider advancing these recommendations, including those contained in this study to work with national government to speed up transfers to LGUs, alongside the MSG's implementation of Subnational reporting.

Subnational reporting will not only disclose these delays per se; but will also facilitate in making national government more accountable. By making the transfer period and the delay more transparent, this may compel the BIR, MGB, BTr, and DBM to act on these delayed transfer and work towards reducing or eradicating delays in the future. In Madagascar, the EITI report led to the discovery that revenues collected on behalf of local communities were not transferred to intended beneficiaries for 3 years.⁴⁶²

Reporting of shares from the national wealth and disclosures of the formula for allocation to the LGUs can even result to increased allocations of LGUs' share in national wealth. The oil-producing states in Nigeria, for example, pushed for better tracing of revenue redistribution from their federal government to the states and municipalities. This resulted to an increased in allocations from the National Federation Account to the States from \$1 billion to \$6 billion between 2000 and 2004.⁴⁶³

Subnational reporting of direct payments on the other hand, can minimize opportunity for corruption as

⁴⁵⁸ Aguilar et al. 2001, p. vii.

⁴⁵⁹ Scope of the First EITI Report (powerpoint). PH-EITI LGU Roadshow.

⁴⁶⁰ Id.

⁴⁶¹ Soriano & Mankaya n.d., p. 2-5.

⁴⁶² Id.

⁴⁶³ Aguilar et al. 2001, p. 32.

it discloses, not only how much the companies paid and how much the LGUs received, but also reconcile the payments. The reconciliation will show the discrepancy and can therefore discourage corruption in the LGUs. The resulting transparency from LGU's disclosure of how much it receives from the companies can also reduce perception of corruption in the LGUs and can thus help remove distrust from civil society and communities.

The national government agencies, the BIR, the BTr, the MGB, and the DBM can benefit from subnational implementation as well. When the formula allocation are disclosed and the LGUs can see for themselves how much they are supposed to receive, this can help improve the LGU's trust in the agencies and in the accuracy of their transferred share in the distribution of national wealth.

Disclosure of payments, to show that companies are responsible taxpayers, can help companies keep their social license to operate in the community. In Ghana, the companies want to show their contribution to community development to improve their relations with local communities.⁴⁶⁴ The companies also want to make sure that the central government transfers the correct amount to the communities, because they want the community to see direct benefits from their mining activity.⁴⁶⁵

Lastly, accessible information on revenues and payments from extractive industries is useful to communities and CSOs in engaging the LGUs and in holding them accountable for these payments and transfers received.⁴⁶⁶ With these data, they can monitor company payments and the LGU spending, and can further use this information in advancing appropriate programs and projects in local development councils.

1.4. Facilitating Factors

Availability of Data

Financial systems and processes at the LGU level readily facilitate the availability of the data needed for reporting direct payments and subnational transfers. The availability of these financial data was readily confirmed by the LGUs in all focused group discussions.⁴⁶⁷

The LGUs also record their share from national wealth and report these to the BLGF via the e-SRE. The Province of Zamboanga del Norte⁴⁶⁸ say that e-SRE form version 2.1 now requires the LGU to disaggregate shares from extractive industries such as excise tax from mining and royalty from mineral reservations. This facilitates recording and reporting of LGUs' share from the national wealth.

The BIR has records of excise tax and royalty payments from companies. It is also tasked to schedule LGU shares in excise. Consequently, it can provide not only data on company payments, but also the base amount and the formula in the allocation of LGU shares in national wealth as required by EITI standards. To date, 40 companies have signed the taxpayer's waiver allowing the BIR to disclose their tax and royalty declarations in the upcoming EITI country report.⁴⁶⁹

⁴⁶⁴ Id. p. 33.

⁴⁶⁵ Id.

⁴⁶⁶ Id., p. 59.

⁴⁶⁷ FGD with 6 LGUs, 16 August 2014, Baguio City; FGD with 8 LGUs, 28 August 2014, Butuan City; FGD with 3 LGUs, 8 September 2014, Cebu City, FGD with 4 LGUs, 11 September 2014, Puerto Princesa City.

⁴⁶⁸ KII with Zamboanga del Norte PTO staff, 21 October 2014.

⁴⁶⁹ PH EITI Secretariat.

The MGB collects royalty from companies and computes the LGU allocation before DBM releases the shares to the LGU. Consequently, MGB has the data on company payments and the base amount for computing LGU's share to be disclosed in the report.

The DBM, after Bureau of Treasury's final validation on the joint certification both from BIR on actual collection of excise tax and schedule of the LGU share from excise taxes, is responsible for the release of the shares to the LGU. For royalty, they are tasked to release LGU shares after MGB's final validation and computation of LGU share. Consequently, the DBM has the data needed for reporting how much the company paid and how much was transferred to the LGUs, including when these were transferred.

LGU's Organizational Structure

The LGU's inherent decentralized organizational structure can facilitate Subnational reporting. The province can direct submission of reports from its component cities, municipalities, and barangays. At the local chief executive level, it can issue an executive order to require the provincial treasurer's office to collect the reports and consolidate these reports for submission to the MSG.

Highly urbanized and independent cities can direct submission of reports from their component barangays and issue similar executive orders to direct the barangay to submit reports of material payments. The cities, in turn, can submit the consolidated barangay report and their report to the MSG.

LGU technical staff during consultations also recommended the need to involve and secure the commitment of their political leaders to EITI subnational implementation. LGU offices receive their leadership and instruction from these local chief executives and will follow legal directives.

With this organizational structure already in place, data collection and consolidation may be done without requiring additional resources. Resources required for additional personnel and IT equipment that LGUs during consultations identified they will need for subnational implementation may only be needed in provinces with several extractive operations such as Surigao del Norte that hosts 8 mining companies.

Additionally, being similarly situated, LGUs may learn from their fellow LGUs' experiences in revenue imposition, assessment and collection through Subnational implementation. The LGU orientations and roadshows conducted by PH-EITI this year already provided a venue for learning among the LGUs. During consultations, the municipality of MacArthur disclosed that after it learned of the other local taxes imposed by other LGUs on the extractive industry during an orientation, they worked to amend and update their local tax code to allow them to receive more revenues, as allowed by law. Some LGUs in the National Capital Region, as host to principal places of offices, also suggested the possibility of Subnational implementation of allowing them to work with their counterpart LGUs hosting mining operations, in determining whether the sharing scheme between such LGUs are followed and result to a 100% collection from the companies.

Existing PH-EITI MSG and On-Going National EITI Reporting

The existing PH-EITI MSG and ongoing EITI reporting arrangements at the national level present several facilitating factors for Subnational reporting. First, there is already a functional MSG that brings together the national government, the companies and the CSO, and in part, representation by the Union of Local Authorities of the Philippines. Second, most data required for subnational reporting and reconciliation (direct payments and shares in the national wealth) are already reported by the companies and

government agencies for the PH-EITI 2014 Report. Third, the reconciliation of LGU direct payments and share in the national wealth can be done at the national level since the data from national agencies and companies are already reported. Lastly, the MSG and the government are required to ensure that the EITI Report is widely distributed to the public.

LGUs during consultation recommended that subnational implementation may already be administered by the existing MSG, with an expanded representation from the LGUs from Luzon, Visayas and Mindanao. Provincial Governors representing each of these major geographical regions may sit as part of the MSG to facilitate coordination between national and local governments. At the provincial level or in case of independent cities, LGUs recommend that Treasurer, with the assistant may be appointed by the Governor, at the provincial level, or by the Mayor, in case of independent cities, to serve as the focal person to coordinate between the national and local governments. The expanded MSG, with the support of these focal persons at the local level, may continue to steer the subnational implementation alongside the national implementation of the initiative. The LGUs during consultation suggested to have the subnational implementation led by MSG to put pressure on the LGUs. According to them, this is also to safeguard the process from political influence, since mayors or their families own some of the mining companies. Based on focus group discussions, LGUs do not see the need to create separate subnational MSG and suggest on working with existing arrangements.

LGUs during consultation recommended that data collection and reconciliation for the subnational reporting be incorporated with that for the national reporting. Similarly, they also recommended that subnational report will be carried as a chapter of the national report, and not as a separate report. This practical suggestion from the LGUs will reduce expenses for a separate subnational EITI report.

The communication of the results to the general public may also be done in the same way. Communicating the results of the report is done by distributing paper copies of the report to civil society, companies, and the media; and by making the report available online.⁴⁷⁰ Communicating results of EITI subnational implementation may be correspondingly included as part of the communications for the national EITI report. In fact, some countries conducting subnational implementation communicate the results as part of their national EITI campaign. In Nigeria, the EITI organized road shows in the country's six geopolitical zones to disseminate EITI audit reports to CSOs, community leaders, state government officials, subnational government officials, and traditional leaders within the zones.⁴⁷¹ In DRC, they disseminate the report in local languages.⁴⁷² Ultimately, the budget for communication would depend on chosen IEC campaign strategy that is best for the Philippine context

1.5. Potential Challenges and Solutions

The foregoing discussion shows not only the practicability of but also the need for subnational implementation. First, the LGUs' source of revenues includes material subnational direct payments and transfers from extractive industries that are required to be included in the EITI report. Second, the data required for reporting are available in the LGU level and can be reconciled with data from the national government and disclosure from companies. Third, given the poor knowledge on the supposed amounts of revenue due the LGUs from the national government and the delay in the transfers, there is a need to enhance transparency and accountability in this area. Fourth, any resulting improvements on the

⁴⁷⁰ Ravat et al. 2012, p. 68.

⁴⁷¹ Id.

⁴⁷² Id.

timeliness of subnational transfers will lead to better fiscal planning and development by the LGUs. Fifth, with their local autonomy and decentralized structure, LGUs can learn from their peer LGUs in terms of local taxes that may be imposed, and strategies in improving assessment and collection, among others. Lastly, the benefits of transparency and accountability from subnational implementation can have a direct positive impact in increasing good governance, enhancing trust between and among national government, LGUs, CSOs, communities, and companies, and improving the company's social license to operate at the LGUs. With its viability and the need for its implementation, conducting a subnational implementation is not without its potential challenges.

Compelling Disclosure from Companies

Other countries identified lack of legal right to compel disclosure from companies as one constraint for subnational implementation. LGUs in focused group discussions also identified the potential lack of cooperation by mining companies in providing data as one of the challenges in conducting subnational implementation.⁴⁷³ Even for national reporting, the MSG did not get from all the companies the waiver for BIR to disclose their company payments. At the LGU level, the treasurer's office does not have a similar prohibition to disclose payment. Nevertheless, subnational reporting would require companies to disclose all material payments and indicate them in a reporting template. Hence, their cooperation would be needed to facilitate reporting and reconciliation of subnational payments. Since national government agencies, such as the DENR-MGB and DOE, regulate mining, oil, and gas companies, then the DENR and DOE may issue administrative orders requiring cooperation from the companies through submission of reporting templates, if companies do not offer their voluntary cooperation.

Local Administrative Capacity

In several focused group discussions,⁴⁷⁴ LGU cited administrative capacity in terms of coordinating collation of data from other LGUs, government agencies, and companies. They feel the need for additional personnel, IT equipment, and trainings on laws and regulations about mining to be able to conduct subnational implementation. Nevertheless, the LGUs have expressed confidence in their records - that all the data is there. Consequently, this makes the LGU's role in subnational implementation not as hard as they perceived it to be. All that would be required of them is to report the material payments they received from the mining companies and the material transfers from DBM. Not all payments and transfers would have to be reported.

For the provincial treasurer's office, which is recommended to take the lead in collecting and collating data from municipalities, cities, and barangay, they may or may not need additional staff and IT equipment depending on the number of the LGUs that would be required to report. Based on MSG's initial materiality threshold and the recommended definition of materiality for subnational payments here, the LGUs required to report may not be that many. However, should LGUs required to participate in subnational report prove to be quite a number, then it is recommended that the LGUs will be given time to prepare for these additional tasks by a phased-approach to implementation so that they can steadily step up their administrative capacity.

Political Will of Local Leaders

Peru cites lack of support from local leaders as a hindrance to subnational implementation. LGUs during consultations also expressed the need for support from the local chief executives. This may also be a

⁴⁷³ FGD in Cebu, 8 September 2014; Palawan, 11 September 2014.

⁴⁷⁴ FGD in Cebu, 8 September 2014; FGD in Palawan, 11 September 2014; Butuan, 28 August 2014.

major challenge in subnational implementation in the Philippines. Local chief executives namely the governors and mayors provide leadership and directive for the treasurer’s office, accounting office, environment and natural resources offices, and other local government offices, to provide the full support to the subnational implementation.

The local chief executives may issue the executive orders requiring the regular reporting of their respective direct payments and transfers received. The governor may direct the provincial treasurer office, acting as focal person, to collect and collate the data for submission to the MSG. The Bantay Kita experience, in both Compostela and T’boli, shows that the support of the governor and mayor were crucial in institutionalizing the multi-stakeholder councils through an executive order.

It is important for the MSG to gain the support of local chief executives for subnational implementation. The PH-EITI’s LGU orientation on subnational implementation attended by governors and mayors was a good initiative in gaining the leaders’ support. LGU consultations in Tubay, Agusan del Norte and Tuba, Benguet were attended by their mayors, who showed much interest in subnational implementation because they have issues with direct payments and delay in transfers. They want to know if they are receiving what they ought to receive. This EITI feature seems to be the main driver for LGUs to participate in subnational implementation. Successes in this area may therefore be highlighted to attract the support of local chief executives and the rest of the LGUs.

Availability of Funds

LGUs in the FGDs are concerned about funding for administrative costs and capacity building for subnational implementation. This was evident in Bantay Kita experience in T’boli. At the end of their project, they observed that the multi-stakeholder council only meet when they are invited to Bantay Kita activities. Availability of funds is essentially tied to sustainability of a subnational implementation.

LGUs during consultation⁴⁷⁵ suggested that subnational implementation be made through national reporting to streamline the process and reduce expenses. Since national agencies and companies report to MSG on EI national payments, all the LGUs have to do is to report their direct payments and transfers, which will be collected and collated at the provincial level.

MSG’s definition of materiality for subnational implementation may also reduce expenses. If the materiality definition is limited to the reporting by a small number of LGUs, then no additional support staff or IT equipment may needed. Using MSG’s materiality threshold of Php1 Billion reported total revenue or total company assets for national EITI, for example, only five provinces and four municipalities would be reporting, which would require minimal funding for reporting and reconciliation.

In sum, the following are challenges and solutions to subnational reporting:

Table C.1 Potential Challenges and Recommended Solutions to Subnational Reporting

Potential Challenges	Recommended Solutions
1. Lack of legal right to compel disclosure from companies	<ul style="list-style-type: none"> • Issuance from MGB requiring disclosure
2. Local administrative capacity in disaggregating and reporting data	<ul style="list-style-type: none"> • Capacity building trainings • Piloting of sites

⁴⁷⁵ 8 September 2014.

	<ul style="list-style-type: none"> • Phased-approach of implementation
3. Political will of local leaders to conduct subnational implementation	<ul style="list-style-type: none"> • Highlighting successes in transparency that leads to disclosure of how much the LGUs ought to receive • Having the MSG lead the subnational implementation
4. Availability of Funds for Subnational implementation	<ul style="list-style-type: none"> • Reporting to be done through existing arrangements, including the administration by the existing MSG. • Set materiality threshold to limit the number of LGUs that are required to report

1.6. Local Units to be Included in Sub-National Implementation

Based on the recommended materiality in this study, the following LGUs may be included in subnational implementation:

1. Host province, municipality, city, and barangay of companies' with 1 Billion production output or asset with regard to reporting and reconciliation of LGUs' share in the national wealth. The Barangay is recommended to be included since its percentage share in the national wealth is considerably higher than that of the province, at 35%, unless the actual amount of share proves to be insignificant when this 35% is further allocated to two or more barangays.
2. Province, municipality or city with business taxes and types of environment enhancement taxes that are based on extraction output or value of extracted resources if these amounts are within the materiality threshold defined by MSG.
3. Host province, municipality, city, and barangay of companies' with less than 1 Billion production output or asset, but with share in the national wealth equal to or more than the materiality threshold defined by the MSG.

Chapter 2: Expansion of Scope in Subnational Implementation

Based on FGDs, LGUs recommend the expansion of subnational implementation to include reporting LGUs expenditure of EI payments, reporting impacts of social expenditures, and environmental and socio-economic impacts of extractive industries at the subnational level.

2.1. Reporting Expenditures

Ghana and Peru's subnational implementation include disclosure of expenditures by subnational governments. In the Cajamarca region in Peru, selected municipalities report their expenditures, "and the disbursement rate of the revenues for projects was taken as measure for efficiency."⁴⁷⁶

In the Philippines, the LGUs submit a quarterly report on their expenditures to the BLGF through the e-SRE, but expenditures are not disaggregated by source of revenues. Hence this does not show how the

⁴⁷⁶ Aguilar et al. 2001, p. 42-43.

revenues from extractive industries were spent.

LGUs are actually mandated by law to appropriate revenues from the national wealth for financing local development and livelihood projects of recipient LGUs.⁴⁷⁷ But in practice, they put all their revenues, including local payments and NGA transfers, to the general fund that is then appropriated for all LGU expenses and projects. Aside from the BLGF requirement, LGUs are also mandated by law to post, at the end of the year, a summary of income and expenditure in public places. But again, these are summaries and would not show how the revenues from extractive industries were spent.

Consequently, including LGU expenditures in the reporting, would increase transparency and accountability even more as the reporting would not only disclose if companies paid what they are supposed to pay and LGUs received what they are supposed to receive, but also if the amount paid and received were spent according to law. This would also strengthen the bottom-up budgeting or grassroots budgeting participatory approach of the national government. CSO and communities can work with LGUs not only at the budgeting stage, but also at the monitoring stage, using such information to hold the LGUs accountable for revenues from extractive industries. Disclosure of expenditures then can reduce mismanagement of the revenues and diversion of funds to uses other than development and livelihood projects. Moreover, the LGUs would be compelled to follow their mandate of appropriating revenues from EI for local development and livelihood projects.

2.2. Reporting Impacts of Extractive Industry

Host LGUs of extractive industries bear the brunt of impacts of extractive operations. In all FGDs of clustered LGUs held in Butuan, Cebu, Palawan, and Baguio, LGUs expressed that the revenues they receive from extractive industries are never enough to compensate for the damage caused by mining operations. They identified the need for disclosure of environment and socio-economic impacts of extractive industries in their community:⁴⁷⁸

1. Impacts of operation on the air, water, and biodiversity;
2. Impact on health of people in the community;
3. Comparison of environment and community health before and during operation;
4. Whether commitments to IPs are honored by the companies
5. Environmental monitoring results; and
6. SDMP project information

Reporting social payment impacts, environment and socio-economic impacts may be unique to the Philippines should the MSG decide to take on this LGU recommendation. The EITI Rules do not seem to exclude this kind of reporting. In fact, the World Bank Group say that countries produce higher-quality reports and benefit more from EITI when they have extensive EITI processes.⁴⁷⁹ More information is useful for EITI goals as long as it presented in a way that can be easily understood. The caveat, however, is that the MSG must consider the resources they have available to implement such expanded reporting, including the amount of time and effort to complete the reporting process.⁴⁸⁰

⁴⁷⁷ Local Government Code, of 1991, Sec. 294.

⁴⁷⁸ FGD in Cebu, 8 September 2014; FGD in Palawan, 11 September 2014; Butuan, 28 August 2014.

⁴⁷⁹ Ravat et al 2012, p. 43.

⁴⁸⁰ Id.

Social and environmental disclosure is not entirely new. It is done voluntarily by companies through their annual reports, websites, and stand-alone environmental reports for the following purpose:⁴⁸¹

1. Assess the social and environmental impacts of corporate activities;
2. Measure the effectiveness of corporate social and environmental programs;
3. Report corporate social and environmental responsibilities; and
4. As external and internal information systems allowing the comprehensive assessment of all corporate resources and sustainability impacts.

This social disclosure is driven by globalized opposition to mining, empowerment of IPs, pressure from NGOs, which are becoming more organized and capacitated, and for companies to maintain its social license with the community.⁴⁸²

A study summarized some of the criteria for reporting environmental and socio-economic impact:⁴⁸³

1. Independent environmental audit results;
2. Environmental compliance with legislation and codes;
3. Environmental incidents and emergency response;
4. Quantification of environmental impacts; and
5. Report on health and safety and community relations

The MMT monitors company compliance with their ECC conditions, environmental management program, and other laws, rules and regulations. They submit a semi-annual monitoring report within January and July of each year.⁴⁸⁴ This report could be use for disclosure of environmental impacts. The monitoring results of the MMT, together with the follow-through action by the MRFC and the annual evaluation of the CLRF Steering Committee may provide data to address the reporting requirements.

Based on the findings and discussion, the next chapter of this scoping study recommends that ways forward and next steps that the MSG may consider as it works with the LGUs to conduct an EITI Subnational implementation.

Chapter 3.0 Framework for Subnational Implementation in the Philippines in accordance with the EITI Standard

3.1 Preliminaries: Framework Context and Guiding Principles

In adopting a framework for the Philippines EITI subnational implementation, the MSG may be guided by the following recommended principles and context:

Context

1. The Philippines, as a candidate, to the EITI Global Standard, adheres to the robust but flexible standards and guidance of EITI, *with due regard for the country's autonomy to adapt and expand*

⁴⁸¹ Gray et al. 1995 in Jenkins & Yakovleva 2004, p. 273.

⁴⁸² Jenkins & Yakovleva 2004, p. 275.

⁴⁸³ Id.

⁴⁸⁴ Implementing Rules and Regulations for the Philippine Environmental Impact Statement System, Sec. 9.

these standards as may be appropriate and necessary to the unique and particular needs and conditions in the Philippines.

2. Extractive operations take place at the level of the local government level. The provinces, cities, municipalities and barangays are directly affected, whether positively or negatively, by the socio-economic and environmental impacts of the EI.

Principles

1. The framework for subnational implementation envisions to provide a platform for government, both national and local, the extractive industry, and communities to work together in disclosing material information on revenues and transfers received by local governments and payments made by the industry as well as social expenditures of the industry in the immediate term.
2. The framework also seeks to expand in the long term the coverage of such disclosure to include the objectively verifiable impacts of the extractive industry in terms of the expenditures of local governments of such revenues, verifiable benefits to the host and neighboring communities as well as environmental and health impacts of the operations of the extractive industry.
3. The objective is to (a) increase transparency and accountability in the areas of revenue reporting, timeliness of transfers from national to subnational and collection process; (b) verify if local governments receive what they are supposed to receive; (c) verify if laws on LGU shares are complied with; and (d) strengthen capacity of monitoring teams, both government and civil society, in terms of these revenues, social expenditures and environmental and health impacts.
4. The Philippines upholds the Constitutional principles of:
 - a. The State's duty to protect and advance the right of the Filipino people to a balanced and healthful ecology in accord with the rhythm and harmony of nature;
 - b. Decentralization and the autonomy of local government units and their right to an equitable share in the proceeds of the utilization and development of the national wealth within their jurisdiction and their statutory duty and authority to protect and co-manage the environment and enhance the right of the people to a balanced ecology; and
 - c. The recognition and promotion of the right of indigenous cultural communities within the framework of national unity and development.

Adopting these context and principles, the MSG may include in the PH-EITI Report, the direct and the mandatory indirect payments to local government units and social expenditures of companies, as determined to be material, consistent with the EITI guidance.⁴⁸⁵ Based on information gathered, the study further recommends expanding the coverage of such disclosure, to include expenditures of extractive industry payments and transfers and impacts of the extractive industry, subject to further assessment, beyond the EITI guidance and standards.

3.2. Addressing Direct Payments

Identifying Direct Payments.

In the Philippines, direct payments from companies comprise the taxes, licenses and regulatory fees imposed by the local government units. These are direct payments imposed through local tax ordinances, enacted either based on specific statutes or based on the general taxing powers of local government units. A summary of these direct payments are found below.

⁴⁸⁵ Guidance Note 10: Subnational Reporting

Table C.2 Direct Payments to LGU Based on Statutes

TYPE	RATE under National Statute	LEGAL BASIS
BUSINESS TAX	Schedule of Graduated Tax Rate, Based on Gross Production	RA 7160, Sec. 143 (a) and (c), Sec. 146, Sec. 151
REAL PROPERTY TAX - BASIC	Ceiling on the Assessment Based on a Schedule of FMV	RA 7160, Sec. 200, 212, 215, 218
REAL PROPERTY TAX – SEF	1% of Assessed Value	RA 7160, Sec. 154
PUBLIC UTILITY CHARGES		RA 7160, Sec. 154
TOLL FEES	To be fixed by <i>Sanggunian (Local Council)</i>	RA 7160, Sec. 155
COMMUNITY TAX	P5 + P1/P1000 income; P500 + P2/P500 income for corporations, >P10,000	RA 7160, Sec. 157, 158
TAX ON SAND, GRAVEL, AND OTHER QUARRY	Not more than 10% of FMV	RA 7160, Sec. 138; RA 7942, Sec. 44
FIXED TAX FOR DELIVERY TRUCKS	P500	RA 7160, Sec. 154
PROFESSIONAL TAX	Not exceeding P300	RA 7160, Sec. 155
OCCUPATION FEES	P5-P100/hectare	RA 7942, Sec. 86
PENALTIES, SURCHARGES AND INTEREST	25% Penalties 25% Surcharge, max 2% Interest/month, max, up to 36 months only	RA 7160, Sec. 169

Table C.3 Direct Payments to LGUs Based on Local Taxing Power

TYPE	RANGE OF RATES FIXED BY LGUs
Mayor’s Permit	P200 – P60,500
Regulatory/Administrative Fees/ Application/Verification Fees/ Governor’s Permit/ Endorsement Fee	P500 - P10,000 (mining) P25,000 (oil and gas)
Tax on Mining Operations	1% - 2.2 % of Gross Receipts
Environmental Enhancement Fees/ Extraction Fee	P2 – P12/cu. m.

	P25/metric ton
Soil Depletion Tax	1%/Gross Receipts
Hazard Mitigation Fee	P5/cu. m
Municipal Mining Clearance Fee	P5/cu. m
Provincial/Municipal Environmental Compliance Certificate + Verification and Inspection Fees/Certificate of Non-Coverage	P600 – P5,000
Transport Fees	P10,000 – P60,000 per shipment
Delivery Receipts	P5/Delivery Receipts (DR) – P1,000/Booklet of DR
Miscellaneous Regulatory Fees	P100 – P1000 (Sanitary Fee) P500 – P6000 (Garbage Disposal)
[Voluntary Donation & Grants]	

Assessing the Materiality

The MSG may assess the materiality of these direct payments. As shown above in B.1, it is recommended that the MSG will consider only two aspects: (a) all payments made by mining companies that uses gross production output, receipt or value as the tax base in computing tax and fee payments and (b) mining company’s total payments (regardless of tax base) vis-à-vis the total revenue collections of the LGU from all direct sources. As to payments based on gross production output, receipt or value, they include business tax or permit, tax on mining operations, environmental enhancement fees, soil depletion tax, hazard mitigation fee, municipal mining clearance fee, extraction fees, transport and hauling fees, and similar taxes. The MSG may then report all these payments that meet the materiality definition approved by them. Based on this study, it appears that all mining companies and their host LGUs will be included reporting all material payments.

As to oil and gas companies, the law grants them exemption from local taxes. The local regulatory fees are of minimal amounts and forming part of their operating expenses that are being cost recovered against the government. Hence, local direct payments from oil and gas are no longer material.

Disclosures and Reconciliation

A proposed reporting template is discussed in the succeeding section. The MSG may collect the data on (a) direct payments, i.e. what was paid by companies and what was collected by local governments; and (b) the verification of direct revenue flows, i.e. what companies paid and what they must pay to local governments.

The MSG may collect these data from the provincial, city and municipal governments, through their treasurer’s offices, as collecting agents for these direct revenues. City and municipal governments may collect and consolidate the data from the barangays. Provinces may collect and consolidate the data from the cities and municipalities. For this to work, the MSG must have the institutional support of the local government units. The MSG will need to engage them both at the leadership and technical

levels. Local chief executives namely the Governor and the Mayor will direct the process at the local government level. Upon the authority of the local chief executives, treasurers, working in close coordination with environment officers or designates, may be the focal persons for this data collection and consolidation.

Companies must also provide the MSG data of their direct payments to the provinces, cities, municipalities and barangays.

The MSG, working with the Independent Auditor, may propose a system for reconciling the data collected from the local government units and the companies, where payments are material. A comparison of (a) the companies’ payments and the local government receipts may need to be undertaken, and explaining potential discrepancies, if any; and (b) the amounts of the companies’ payments and the amounts imposed by local governments based on their local tax ordinances, and explaining potential discrepancies, if any.

2.2 Addressing Indirect Payments

The MSG must also include in the PH-EITI Report the indirect payments to local government units or subnational transfers from the national government, in accordance with the EITI guidance.⁴⁸⁶

Establishing Mandated Transfers & Transfer Mechanisms

These indirect payments comprise the share in the national wealth, the share in the royalty income from mineral reservations, and the internal revenue allotment or share in all national taxes collected by national government.

Table C.4 Indirect Payments to LGUs

TYPE	RATE	LEGAL BASIS
Share in National Wealth: Excise Taxes	40% of the 2% of the Gross Output	CONST., Art. X, Sec. 7, RA 7160 Sec. 289, 290
Share in National Wealth: Royalty in Mineral Reservation	40% of the 90% of 5% of Market Value of Gross Output	CONST., Art. X, Sec. 7, RA 7160 Sec. 289, 290 DAO 2010-21, Sec.13
Share in National Wealth: Oil	40% of the Government Share in the Net Income of Petroleum Operations	CONST., Art. X, Sec. 7 PD 87, Sec. 7, 8
Internal Revenue Allotment	Based on a Formula [Population, Land Area]	RA 7160, Sec. 284, 285

The Constitution⁴⁸⁷ and RA 7160⁴⁸⁸ mandate the distribution of these shares to local government units. Law and regulation fix the formula and procedure for determining the amount and the timing of the transfer.

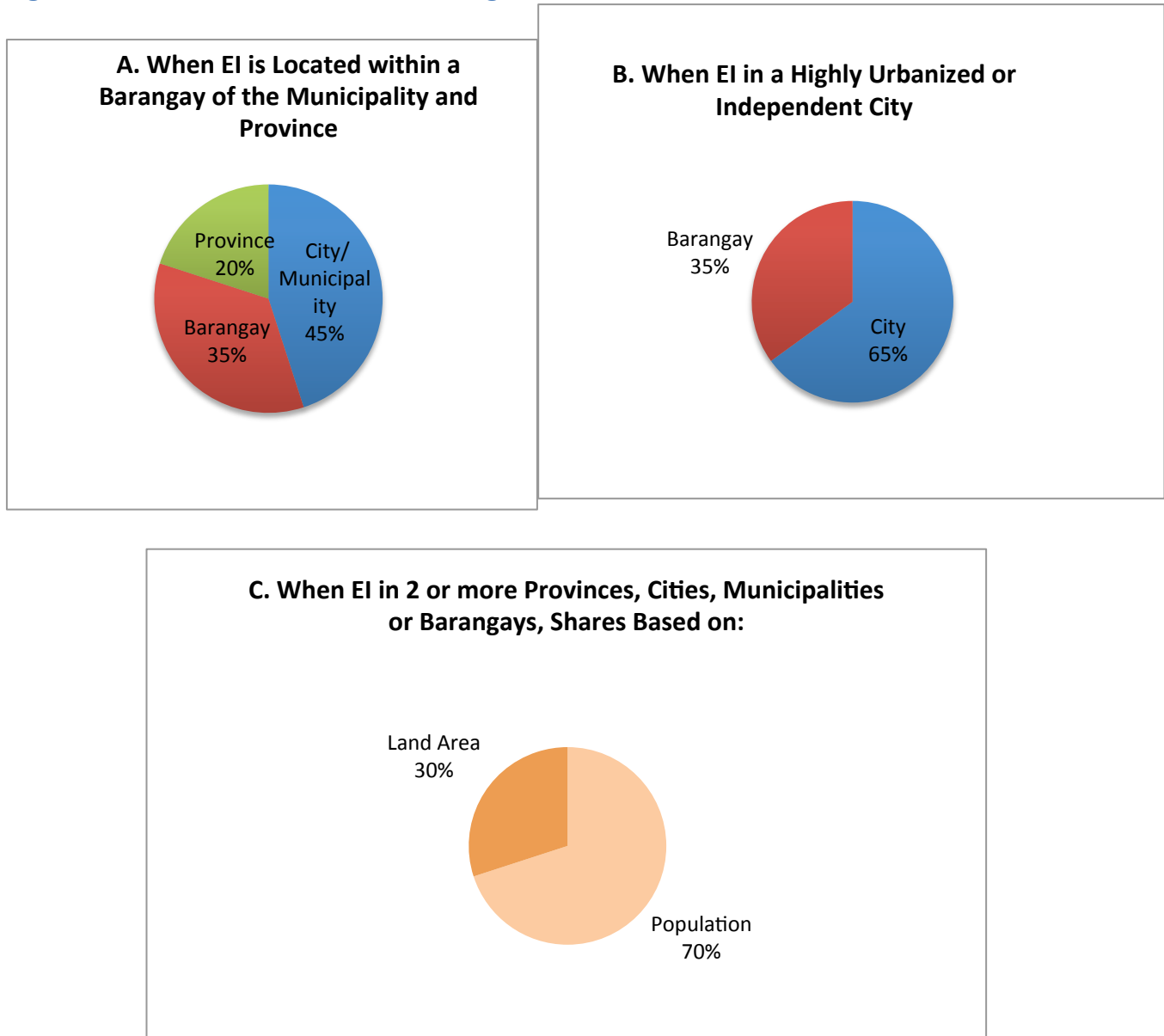
⁴⁸⁶ Id.

⁴⁸⁷ The Philippine 1987 Constitution, Art. X, Sec. 7.

⁴⁸⁸ Sec. 289.

The share in national wealth from excise taxes is distributed based on the formula of 40% of the 2% of the gross output of companies, where such 40% is further distributed among local government units as shown below.

Figure C.1. Formula for Distribution Among LGUs of Share in National Wealth: 40% of Excise Taxes



The procedure and timing for the transfer is governed by DOF-DBM-DILG-DENR Joint Circular No. 2009-1. [See Figure A.3] By regulation, the transfer of the share for the first three quarters of the preceding year must be done within February of the ensuing year and the share from the last quarter must be released within March of the ensuing year. The DOF-BIR collects these payments from the companies. The DOF-BIR and DOF-Bureau of Treasury jointly calculates the share of the local government units. The DBM releases the funds to the local government units.

For royalty income, it is distributed based on the formula of 40% of the 90% of 5% of market value of the gross output of companies, where such 40% is further distributed similarly among local government units

as shown above. The procedure and timing for the transfer of the share of the local government units in the royalty income is governed by DOF-DBM-DILG-DENR Joint Circular No. 2010-1 (See figure A.4). The MGB computes the LGU shares and prepares the joint certification for Btr within 60 days after the end of the preceding year. The Btr has 30 days to validate the joint certification then it forwards it to the DBM for release of LGUs within 30 days.

For the internal revenue allotment, the formula for distribution is 40% of the revenues collected of the third fiscal year preceding the current fiscal year and is further allocated to the provinces, cities, municipalities and barangay. The DBM provides the procedure from budget preparation to release of LGUs' IRA. The BIR submits certification of collections of the 3rd year preceding and the amount of the 40% share of LGUs to the DBM. The DBM programs the amount in the government's expenditure program and computes the share of LGUs. The DBM Central Office releases the allotment comprehensively to the DBM Regional Office at the start of the year and issues the Notice of Cash Allocation to DBM ROs to cover monthly requirement. Subsequently, the DBM RO issues the authority to debit account for the transfer of IRA share to individual account of the LGUs.⁴⁸⁹

Assessing Materiality

The MSG may assess the materiality of indirect payments by anchoring the materiality threshold on that of the national payments. As discussed in B.1, this is in terms of inclusion or prioritization of companies with at least Php1 Billion reported total revenue or total assets.⁴⁹⁰ Similarly, the reconciliation variance of 5% may be also applied on the payments made by companies, vis-à-vis National Government's collection data and LGU records.⁴⁹¹ Such companies, whose national payments are included for national reporting purposes, must also be considered in reporting the indirect payments to LGUs in terms of the LGU share from the national wealth. As discussed in B.2, the transfer of the internal revenue allotment to local government units, which includes all national tax collections from all sectors and not only from EI and are not significant, will no longer needed to be included in the reporting.

Establishing a Reporting Procedure for Disclosures

Apart from reporting and verifying the amounts actually received, it is recommended that the PH-EITI Report will also disclose the timeliness of these transfers and any delays between the mandated period and the actual period of release to the local government units.

It is recommended that the MSG collect data on (a) the amount of the transfer for each of the local government; (b) the formula for calculating the transferred amount to the specific province, city, municipality and barangay; (c) the base amount for the calculation of the transferred share or total revenues used as basis for computation of transfer; and (d) timing of the transfer.

Similar to its reconciliation of direct payments, the MSG, working with the Independent Auditor, may propose a system for reconciling the data collected from the national government and the local government units, as well those of the companies in terms of base amounts for calculating transfers. This may include (a) a comparison of the transfer made by the national government and the receipt of the local government; (b) a verification of actual amount of transfer and the amount that should have been transferred based on the mandated revenue-sharing scheme; and (c) a comparison of when actual

⁴⁸⁹ DBM.

⁴⁹⁰ Draft Minutes of the 15 Multi-Stakeholder Meeting, July 4, 2014 and Annex A (Attached Power Point Presentation of Independent Auditor). Based on the Independent Auditor's recommendation, the presumption is these companies with significant amount of revenue and assets are also the same companies that will generate higher revenue streams.

⁴⁹¹ Draft Minutes of the 15 Multi-Stakeholder Meeting, July 4, 2014 and Annex A (Attached Power Point Presentation of Independent Auditor).

transfer was made and when transfer should have been made, as mandated by regulation. In its Report, the MSG must disclose the revenue sharing formula and any discrepancy between the transfer amount calculated and the actual amount that was released to the local government unit, consistent with the EITI Guidance No. 10.

2.3 Reporting Beyond Direct and Indirect Payments to LGUs

Beyond financial disclosures, local government units also expressed the desire to expand the coverage of reporting coverage to monitoring (a) social expenditures; (b) expenditures of local government of revenues from EI; (c) results and impacts of social expenditures of companies; and (d) environmental and health impacts of operations of companies. This study also recommends reporting the expenditures of local government units of payments from companies. The PH-EITI Report 2014 currently being prepared already includes the reporting of social expenditures, and will no longer be discussed in this report.

The EITI standard is robust, but flexible enough to enable the MSG to act on these recommendations, in keeping with the context in the Philippines, as shown above. Beyond revenue data, local government units have expressed the need to report on impacts of social expenditures and environmental and health impacts of extractive industry operations. This scoping study also notes the need to report on expenditures of local government units, as revenues appear to be lumped in general funds, without regard to the laws requiring standards for their expenditures. The MSG may thus include these additional data in the PH-EITI Report using a phased-approach to reporting, as follows:

Table C.5 Recommended Expanded Reporting Coverage by Phases

Recommended Areas of Expanded Reporting Coverage by Phases		
Immediate Reporting	Phase 1	Inclusion in EITI Report of Subnational Transfers, Direct Payments, [and Social Expenditures]
Reporting in the Long-Term	Phase 2	Expansion of Report to Include (a) Expenditures of Local Government Units of Payments and Transfers from EI and (b) Impacts of Social Expenditures
	Phase 3	Expansion of Report to Include Environmental and Health Effects of EI at the Subnational Level

Reporting in the Long-Term

After Year 1 of subnational reporting, the MSG may evaluate its implementation for adaptive management for the next reporting cycle. It is recommended that the MSG will develop performance indicators for subnational reporting by which it can evaluate the efficacy and effectiveness of the subnational implementation as well as the accomplishment of the intended objectives of subnational reporting.

When the reporting and reconciliation procedures for subnational reporting of material direct and indirect payments to local governments are in place, the MSG may proceed to implement Phases 2 and 3 of an expanded reporting coverage, subject to further study. The MSG may refine the coverage of the expanded reporting, including defining materiality of data, including those that are qualitative in nature, defining source documents for objective verification and establish procedures for reporting and reconciliation.

2.3.1 Phase 2 of an Expanded Subnational Reporting

After the implementation of subnational reporting of payments to local governments, the MSG may include, in the next reporting cycle, expenditures of local government of payments from the extractive industry and the impacts of social expenditures to host and neighboring communities as Phase 2 of subnational reporting.

The Report must disclose (a) expenditures of local governments of subnational transfers, particularly of their share in national wealth; (b) verification if these payments were spent for financing local development and livelihood projects⁴⁹² and, in case of energy resources, if 80% of its share is applied solely to lower electricity cost,⁴⁹³ and discrepancies, if any. The disclosure of the expenditures of local governments may be subsequently expanded to include those funded by direct payments collected by local governments from companies. Unlike shares from national wealth, direct payments to local governments, except for the Special Education Fund taken from the Real Property Taxes, are not mandated by law to be appropriated for specific uses. The disclosure of how these funds are used will facilitate transparency in determining and showing how revenues from the extractive industries are spent.

Local government units must disclose expenditures of EI payments and transfers, on the assumption that this data can be disaggregated. This would mean that the MSG must work with the DBM, DILG and LGUs to ensure that financial and reporting systems support the disaggregation of subnational transfers and their recording and appropriation, separate from the general funds, for specific purposes mandated by law. For this data collection and verification, the local Budget Offices and, if needed, even the Local Chief Executives who submits the budget and the *sanggunian* who approves the budget, will be involved in the EITI processes.

For the impacts of social expenditure, the expanded report may include: (a) verification of whether or not SDMP or CDP was developed in consultation with the host and neighboring communities, and discrepancies, if any; (b) a verification of whether or not the SDMP or CDP is aligned with the City/Municipal Development Plan, including Local Poverty Reduction Action Plans, and variance, if any; (c) percentage of accomplishment of the annual SDMP/CDP targets, and variance, if any; and (d) an evaluation of any positive result or impact on the development of the host and neighboring communities, and variance, if any. Given the qualitative nature of these data, it is recommended that the MSG develop and adopt objectively verifiable indicators in reporting impacts of these social expenditures. It is also recommended that the MSG define the material impacts as well as set thresholds for reporting and verifying. These evidence-based indicators must also be disclosed in the Report.

The *barangays* must also disclose these data pertaining to the verification of the impacts social expenditures, starting from the development of a plan, implementation and evaluation. Such data from these barangays or host and neighboring communities may then be submitted to the City/Municipality for consolidation and reporting to the MSG.

The MSG, together with the Independent Administrator, may develop a system for reconciling these data on expenditures of local governments provided by local governments and comparing it to that reported

⁴⁹² RA 7160, Section 294.

⁴⁹³ Id.

to the National Government, either through the DILG or the COA; and the data on impacts of social expenditures provided by barangays/host and neighboring communities and comparing it to that disclosed by companies and to that reported to the MGB, including its own annual evaluation results.

2.3.2 Phase 3 of an Expanded Subnational Reporting

The last phase of subnational reporting will include the disclosures of the environmental impacts of the operations of the companies. For the impacts on the environment and health of company operations, the expanded report may include: (a) verification of whether or not annual EPEP/EWP was implemented by company; (b) a verification of whether annual EPEP/EWP implementation was monitored in accordance with law and regulations, i.e. by the MMT, by the company, by the CLRFC Steering Committee; (c) verification on whether or not the recommendations of MMT and MRFC as well as a CLRF Steering Committee, based on quarterly monitoring and annual environmental audit, were acted upon by companies; (d) variance and delay of companies in acting upon these recommendations, if any; and (e) an evaluation of any negative or positive result and impact on the environment and health resulting from the operations of companies.

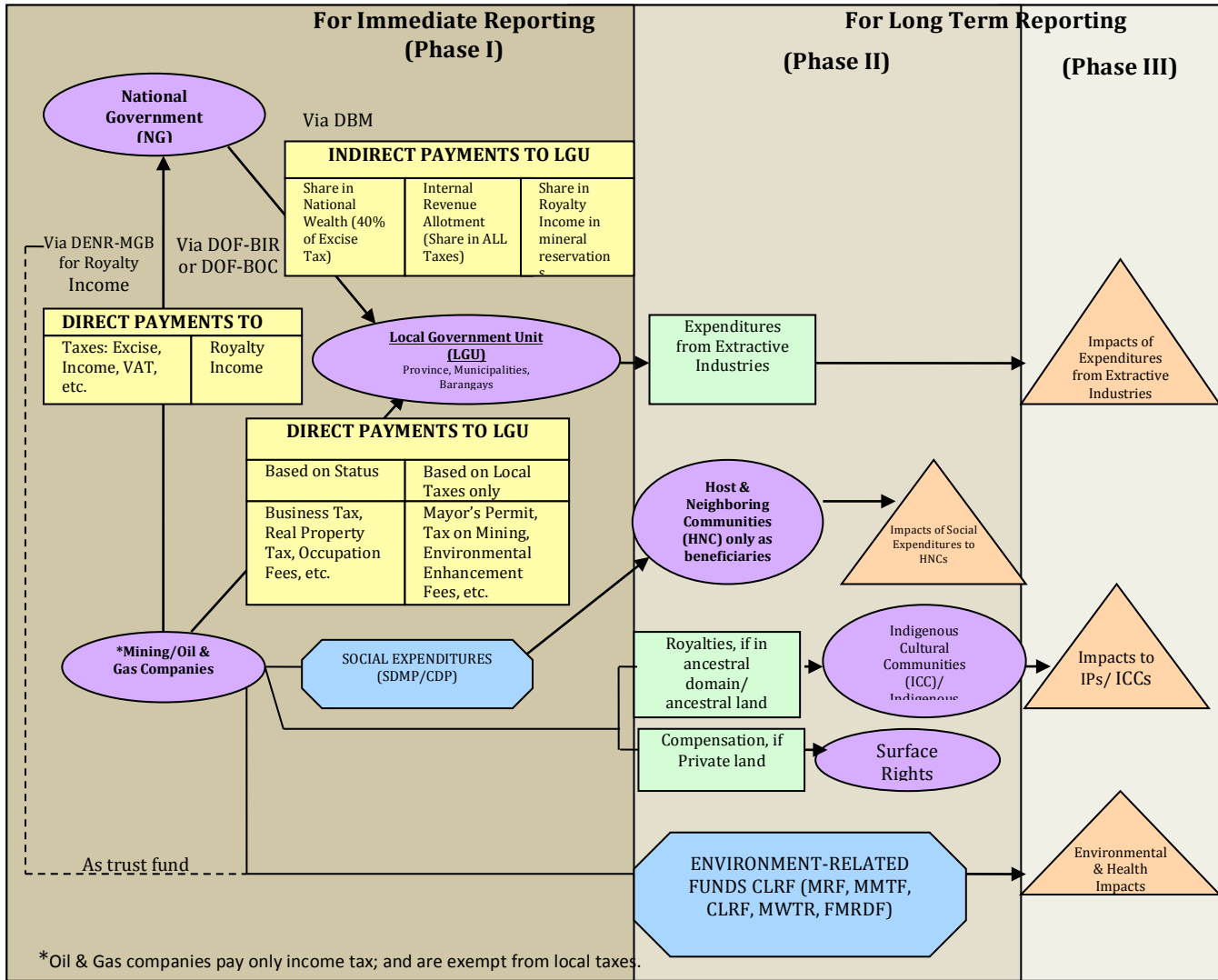
Similar to reporting impacts of social expenditures, given the qualitative nature of these data, it is recommended that the MSG develop and adopt objectively verifiable indicators in reporting environmental and health impacts of the company operations. As example, these indicators may consider number of hectares of land converted to a new use as a result of company operations, number of hectares of land with improved vegetation as a result of company investment, and number of written complaints received by company or by government from stakeholders on environmental effects of perceived company operations, among others. It is also recommended that the MSG define the material impacts as well as set thresholds for reporting and verifying. These evidence-based indicators must also be disclosed in the Report.

The MSG may collect these data from the companies, the MMT, the MRFC, the CLRF Steering Committee, the local government units, as well as any monitoring groups including the academe and the civil society that government will tap in enhancing transparency and accountability in the extractive industry. The MSG may then develop a system to reconcile the data provided by companies and compare it with that disclosed by local companies, the MMT, MRFC and CLRF Steering Committee, all led by the DENR-MGB and that of the local government units to determine any variance. It is recommended that the MSG develop and adopt objectively verifiable indicators of environmental and health impacts of operations of companies. These indicators must be disclosed in the EITI Report.

2.4 Operational Diagram for Framework:

Based on the foregoing discussion, the framework for an expanded subnational reporting anchored on a phased-approach is summarized in the figure below:

**Figure C.2 Operational Diagram for Expanded Reporting Based on a Phased-Approach:
Data Coverage and Phases**

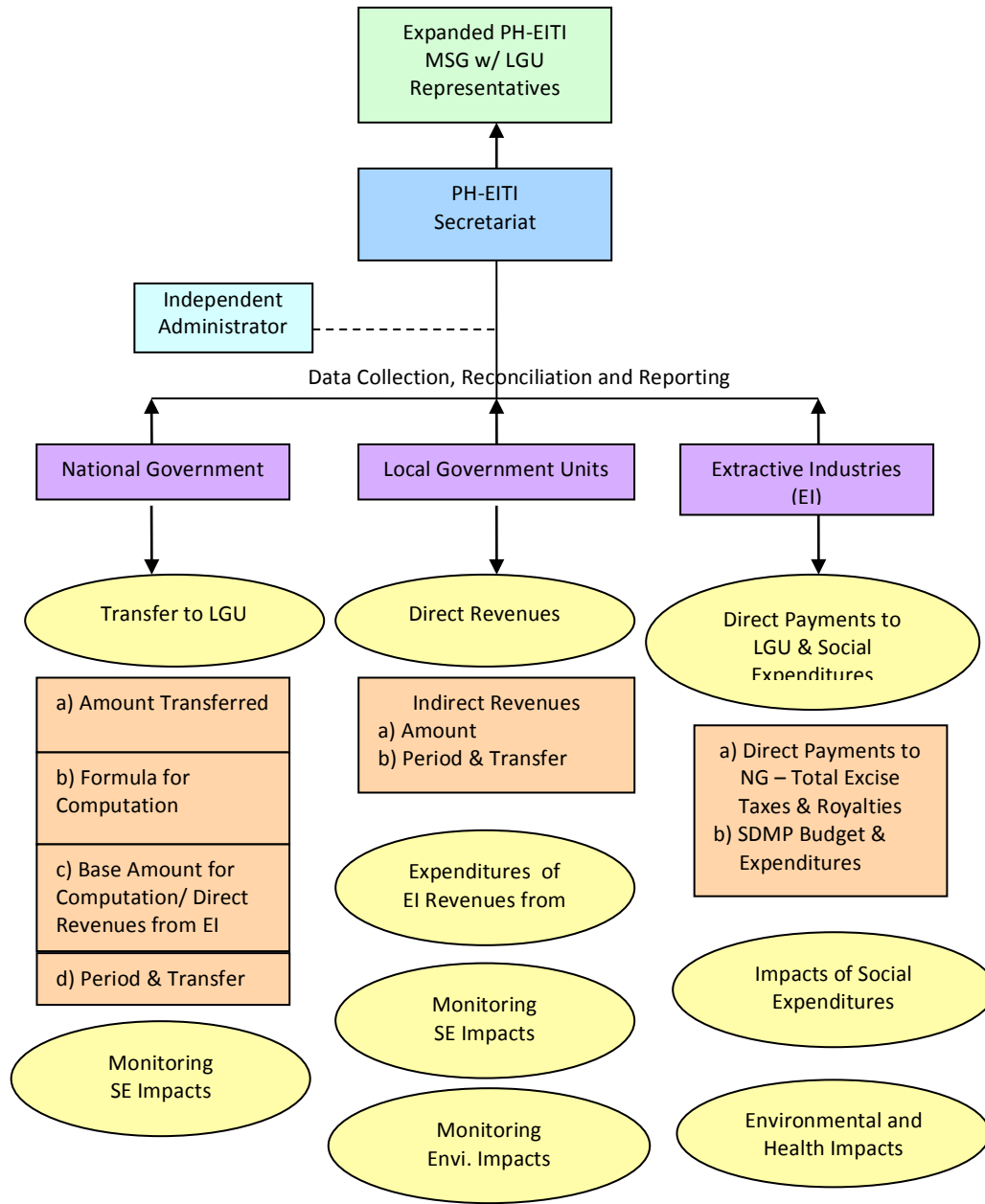


2.5 Institutional Mechanisms

2.5.1 Reporting

To implement the subnational reporting, the existing MSG may oversee and administer the reporting process at the subnational level. It is recommended that the MSG be expanded to allow for representation from the local governments, geographically each representing Luzon, Visayas and Mindanao. This will facilitate coordination between the national and local governments. The local government representation must be at the level of the Governor who can provide the leadership at the local level down to the *barangays*. The proposed coordination and reporting mechanism at the national level is illustrated below.

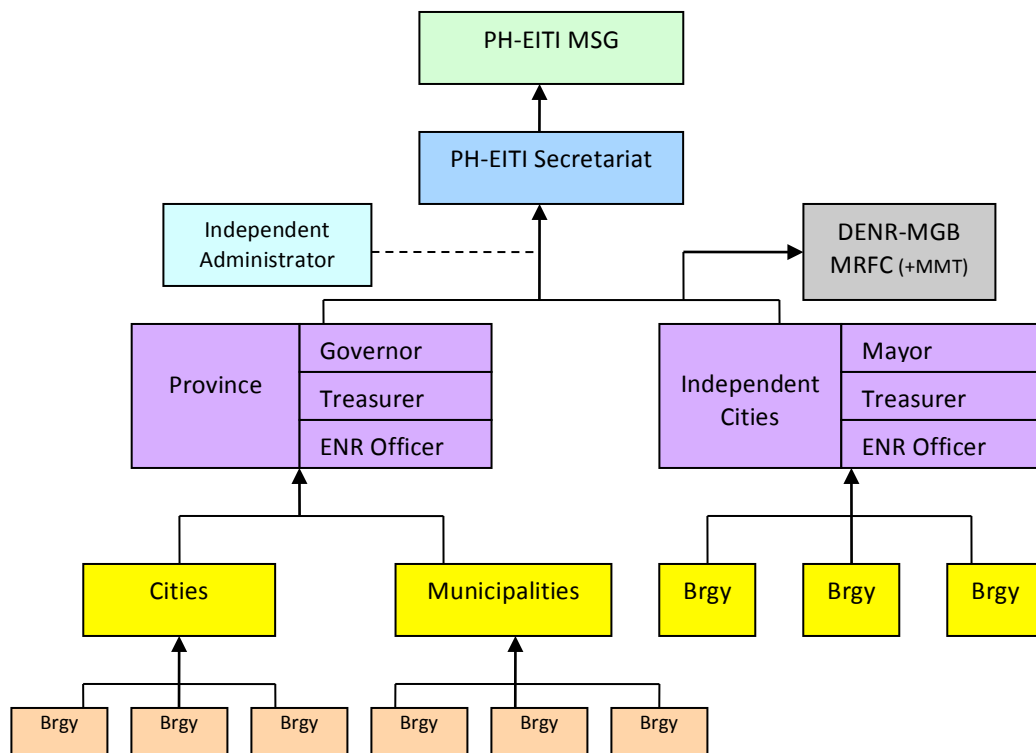
Figure C.3 Proposed Subnational Implementation Mechanism: An Expanded MSG



At the local government level, the Governor or the Mayor, in the case of a highly urbanized or independent city, may direct, via an executive order, the cooperation of all relevant component local government units. The Governor or Mayor may then designate the Provincial/City Treasurer to lead and facilitate the coordination between the MSG and the local government and between and among the component LGUs. In turn, the Provincial or City Treasurer shall direct the treasurers of the component cities and municipalities or barangays under them to comply with the data collection. The Governor or Mayor must likewise direct the Environment Officer or Designate to cooperate and work with the Provincial/City Treasurer in completing the needed data.

The data collection mechanism for the reporting is illustrated as follows:

Figure C.4 Proposed Data Collection and Coordination Mechanism at the Subnational Level



2.5.2 Expanded Reporting and Monitoring

When the subnational implementation is expanded to cover other non-revenue items, additional offices will be involved in the process. The *sanggunian*, planning, budget and accounting offices of local government units as well as Provincial/City/Municipal Development Councils will be involved in providing and verifying expenditures of extractive industry revenues of local governments. The Planning Offices, the Provincial/City/Municipal/Barangay Development Councils will also be involved in disclosing information on the social expenditures, particularly on how SDMPs or CDPs are developed, implemented and monitored. For purposes of monitoring and reporting health and environmental impacts, the LGU-Environment Offices will play a role in providing the data needed. The academe and civil society may also be tapped for these purposes. Verification and reconciliation may be done by comparing data collected from these sectors and those with the MGB or those reported and discussed in the MRFC.

2.6 Means of Implementation

Implementation Anchored on Existing Arrangements. This study recommends that the subnational implementation will be anchored on existing arrangements to streamline the processes. As discussed in this report, there are arrangements that are already in place and needs only to be tapped, or in few instances, expanded, to facilitate the data collection, verification and reporting.

Strengthening Multi-Stakeholder Partnerships Beyond Reporting. The Philippines is known for its strong

and vibrant civil society participation.⁴⁹⁴ It is recommended that the MSG capitalize on this strength and continue to build multi-stakeholder partnerships not only for purposes of reporting, but even of monitoring revenue collection and transfers, social expenditures and their impacts to host and neighboring communities, expenditures and environmental and health impacts of extractive industry operations.

Institutionalization of Subnational Implementation. The MSG must continue to work with institutions in drawing their support and involvement in the EITI process. In expanding its composition to include representation from the local government units, the MSG may ideally work for the issuance of an executive order from the President, or at least in the short-run, for the issuance of an MSG resolution, if authorized to add members to the body.

To facilitate the flow of timely and correct information between and among the MSG and the national agencies, namely the DILG-BLGF, DBM, DOF-BIR, DENR-MGB, it is recommended that the MSG facilitate the crafting of an Inter-Agency Memorandum signed by the respective Department Secretaries mandating the prompt and accurate response from the concerned agencies with the data needed for reporting, including an accountability or even liability provision.

Administrative issuances from the DILG for the local chief executives and barangay leaders and from DILG-BLGF for the local treasurers may also be crafted to direct cooperation and support as well as provide accountability for the coordination work between the MSG and the local government units. The MSG may also work with the local chief executives for the issuances of executive orders, or, even with the Sanggunian for the enactment of appropriate ordinances directing the cooperation and support for the subnational implementation, including identifying roles, responsibilities and accountabilities. These legal instruments, at different levels, will provide the basis and mandate for implementation and will contribute to the sustainability of the EITI processes at the subnational level.

Cross-Cutting Strategies: Capacity-Building, Community Awareness and Public Education, Data Management and Sharing and Monitoring and Evaluation. The MSG must continue to carry out these cross-cutting strategies to build capacities at the subnational level, to promote awareness and generate support from the stakeholders, to facilitate data management and sharing across agencies and to continuously monitor and evaluate its process for continuous enhancement.

2.7 Recommended Roadmap towards Subnational Implementation: Milestones

In summary, this study proposes the following roadmap of the MSG in implementing Subnational reporting in the EITI:

Table C.6 Milestones of Recommended Roadmap for Subnational Implementation

Milestones	
Institutional Mechanisms	
Year 0	1. Create expanded MSG to include representation from LGUs from Luzon, Visayas and Mindanao via Presidential EO or, if authorized, MSG Resolution, based on clear selection

⁴⁹⁴ Civil Society Index: Philippines, An Assessment of Philippine Civil Society, March 2011, <http://civilsocietyindex.wordpress.com/tag/philippines/>; Also World Bank, Governance and Anti-Corruption, Country Focus: Philippines <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTGOVANTICORR/0,,contentMDK:23264456~pagePK:210058~piPK:210062~theSitePK:3035864,00.html>

	process
	2. Facilitate Inter-Agency Issuance, i.e., DOF-DILG-DBM-DENR-DOE Joint Memorandum Circular for agency cooperation and responsibility in providing timely and accurate data to MSG on subnational implementation
	3. Facilitate Agency Issuances, i.e. DILG Memo to Local Chief Executives, DILG-BLGF Memo to Local Treasurers, on subnational implementation and responsibilities of LGUs
	4. Work with DOF-BIR, DBM and DILG-BLGF for disaggregation of data and corresponding reporting templates
	5. Work with Local Chief Executives for issuance of executive order designating Treasurers as focal persons for coordination between LGU and MSG; and eventually with Sanggunian for enactment of ordinance on EITI subnational implementation
Year 1	6. Work with LGUs and NGAs on data collection and verification of subnational data in EITI Reporting
Year 2	7. Review and evaluate process of subnational implementation for adaptive management.
	8. Work with LGUs and regional offices of NGA to institutionalize role of local NGOs, civil society and academe in monitoring
Reporting: Data Collection & Reconciliation	
Year 0	1. Based on identified revenue streams, determine materiality of direct payments, transfers and social expenditures.
	2. Establish reporting and reconciliation procedures, to include timeliness of transfers.
Year 1	3. Work with LGUs and NGAs on data collection and verification of subnational data in EITI Reporting, using Subnational Reporting Template
	4. Review and evaluate process of subnational implementation for adaptive management.
Year 2 or 3	5. Develop objectively verifiable indicators for measuring impacts of social expenditures.
	6. Determine materiality of expenditures of local government units and impacts of social expenditures.
	7. Expand Subnational Reporting Template to include expenditures of local government units and impacts of social expenditures of companies
	8. Establish reporting and reconciliation procedures for expanded coverage of data
	9. Work with LGUs and NGAs on data collection and verification of subnational data in EITI Reporting, using Expanded Subnational Reporting Template
	10. Review and evaluate process of subnational implementation for adaptive management.
Year 3 or 4	11. Develop objectively verifiable indicators for measuring environmental and health impacts of operations of companies
	12. Determine materiality of environmental and health impacts of operations of companies
	13. Expand Subnational Reporting Template to include environmental and health impacts of operations of companies
	14. Establish reporting and reconciliation procedures for expanded coverage of data
	15. Work with LGUs and NGAs on data collection and verification of subnational data in EITI Reporting, using Expanded Subnational Reporting Template
	16. Review and evaluate process of subnational implementation for adaptive management.
Cross-Cutting Strategies: Capacity-Building, Community Awareness & Education, Data Management	

Chapter 4.0 Specific Templates for Subnational Reporting

The MSG may consider the following templates for Subnational reporting. For the expanded phases of reporting of expenditures and impacts, a preliminary reporting template is presented, subject to further study, including the development of objectively verifiable indicators to capture qualitative data.

Phase 1: Reporting Template for Material Payments

I. Template for LGUs

Name of LGU: _____

Classification: Province [] Independent City [] Component City [] Municipality [] Barangay []

Region _____ Name of Company _____

A. Direct Payments based on Gross Production Output for Mining Companies

Year of Payment/ Collection _____

Company's Gross Production Value for the Year of Collection _____

Company's Gross Production Value for the Previous Year as tax base _____

Taxes and Fees Imposed	Rate/ Amount	Legal Basis (Local Ordinance and Section)	Amount Paid	Date Received	Reference No.	Remarks
Business Tax/ Permit						
Tax on Mining Operations						
Extraction Fees						
Soil Depletion Fees						
Environmental Enhancement Fees						
Municipal Clearance Fees						
Soil Depletion Tax						
Hauling/ Transport Fees						
Other Fees based on gross production output						

B. Indirect Payments: Share in the National Wealth (from Mining and Petroleum Companies)

Percentage in the 40% Share in the National Wealth: 65% [] 45% [] 35% [] 20% []

Frequency of Release/Receipt: Annually [] Semi-annually [] Quarterly []

Sources of transfer	Period of Payment	Amount Received	Date Received	Reference	Remarks
Excise Tax from Mining					
Royalty Tax from Mining					
Share in the Net Income from Petroleum					

C. Financial or In-kind Payments

Type of payment	Amount/ Value	Date Received	Reference	Remarks

II. Template for Mining Companies

Year of Payment _____

Gross Production Value for the Year of Payment _____

Company's Gross Production Value for the Previous Year as tax base for tax _____

Taxes and Fees Imposed	Rate/ Amount	Indicate LGU Paid	Amount Paid	Date received	Reference No.	Remarks
Business Tax/ Permit						
Tax on Mining Operations						
Extraction Fees						
Soil Depletion Fees						

Environmental Enhancement Fees						
Municipal Clearance Fees						
Soil Depletion Tax						
Hauling/ Transport Fees						
Other Fees based on gross production output						

Phase 2: Local Government Disbursements & Monitoring Impacts of Social Expenditures

A. Reporting Template for LGUS and Commission of Audit

Name of LGU: _____

Classification: Province [] Independent City [] Component City [] Municipality [] Barangay []
Region _____

Total Annual Budget _____

Total Actual Spending _____

Year of Disbursement _____

Source of Fund	Amount	Percentage from Total Annual Budget	Amount spent for livelihood and social development (100% Requirement)	Amount spent for others	Variance on the spending requirement	Unspent Amount
Indirect Payments from Mining						

Source of Fund	Amount	Percentage	Amount spent for rural electrification (80% requirement)	Amount spent for others	Variance on the spending requirement	Unspent Amount
Indirect Payments from Oil and Gas						

B. Reporting Social Expenditures Impacts

B. Template for Social Expenditure Impact Reporting for LGUs/HNC and Companies

List of SDMP/ CDP Programs	Amount Allocated for the Year	% of Total SDMP/ CDP Cost	Plan Developed in Consultation with HNC	Aligned with M/C Dev't Plan	Variance if not aligned with M/ CDP	Plan Implemented	% of Accomplishment Based on Targets	Variance between the targets and actual accomplishments
Development of Host and Neighboring Community			Yes [] No []	Yes [] No []		Yes [] No []		
Development of Mining Technology and Geosciences			Yes [] No []	Yes [] No []		Yes [] No []		
Information, Education & Communication Program			Yes [] No []	Yes [] No []		Yes [] No []		
Total Value		100%						

List of SDMP/ CDP Programs	Progress Monitored	Progress Monitored By Co. & HNC Monthly	Progress Monitored By MGB-RO Semi-Annually	Performance Reviewed [if on 5 th Year]	Impacts to HNC Based on Indicator 1	Impacts to HNC Based on Indicator 2	Impacts to HNC Based on Indicator 3
Development of Host and Neighboring Community	Yes [] No []	Yes [] No [] Frequency:	Yes [] No [] Frequency:	Yes [] No []			
Development of Mining Technology and Geosciences	Yes [] No []	Yes [] No [] Frequency:	Yes [] No [] Frequency:	Yes [] No []			
Information, Education & Communication Program	Yes [] No []	Yes [] No [] Frequency:	Yes [] No [] Frequency:	Yes [] No []			

Phase 3: Monitoring Environment and Health Impacts

Reporting Template for LGUs and Companies

Environmental Requirments	Amount/ Value	Implementation and Monitoring			
		Implemented by Company	Monitored by MMT	Monitored by MRFC	Monitored by CLRF Steering Committee
Annual EPEP		Yes, Annually [] Quarterly [] Others [] Pls. Specify _____ No []	Yes, Quarterly [] Others [] Pls Specify _____ No []	Yes, Quarterly [] Others [] Please Specify _____ No []	Yes, Annually [] No []
EWP		Yes, Annually [] Quarterly [] Others [] Pls. Specify _____ No []	Yes, Quarterly [] Others [] Pls Specify _____ No []	Yes, Quarterly [] Others [] Please Specify _____ No []	Yes, Annually [] No []

Environmental Requirements	Results of Monitoring: Total Number of Violations Noted	Total Number of Recommendations by the MMT/MRFC/CLRFC	Total Number of Actions Taken by Company	Variance in terms of timeliness of action from the time of recommendation	Variance in terms of recommended actions and actual actions taken
Annual EPEP					
EWP					

PAGE 3, Template

List of Environmental Enhancements/ Incidents	Envi and Health HNC Based on Indicator 1	Envi and Health HNC Based on Indicator 2	Envi and Health HNC Based on Indicator Indicator 3	Envi and Health HNC Based on Indicator 4
Environmental Enhancements				
Environmental Incidents				

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Annex 1: List of Covered Companies and Host LGUs by Extracted Resource

A. Metallic Mining Company

Covered Metallic Mining Company	Host Province	Host City/ Municipality
GOLD WITH SILVER		
1. Lepanto Consolidated Mining Company	Benguet (Cordillera Administrative Region)	Mankayan
2. Filminera Resources Corporation	Masbate (Region V)	Aroroy
Philippines Gold Processing & Refining Corporation (PGPRC)	Masbate (Region V)	Aroroy
3. Johson Gold Mining Corporation	Camarines Norte (Region V)	Jose Panganiban
4. Apex Mining Company Inc.	Compostella Valley Province (Region XI)	Maco
5. Philsaga Mining Corporation	Agusan del Sur (Region XIII)	Rosario
6. Greenstone Resources Corporation	Surigao del Norte (Region XIII)	Tubod
COPPER WITH GOLD AND SILVER		
7. Philex Mining Corporation	Benguet (Cordillera Administrative Region)	Tuba
8. Carmen Copper Corporation	Cebu (Region VII)	Biga, Toledo City
9. TVI Resrouce Development Philippines, Inc	Zamboanga del Norte (Region IX)	Siocon
COPPER WITH GOLD		
10. Oceana Gold (Philippines), Inc.	Nueva Vizcaya	Kasibu
CHROMITE		
11. Krominco Inc.	Dinagat Islands (Region XIII)	Loreto
12. Cambayas Mining Corporation	Eastern Samar (Region VIII)	Guiuan
13. Mt. Sinai Mining Exploration and Development Corporation	Eastern Samar (Region VIII)	Guiuan
NICKEL		
14. Zambales Diversified Metals Corporation	Zambales (Region III)	Sta. Cruz
15. Benguet Nickel Mines, Inc.	Zambales (Region III)	Sta. Cruz
16. Eramen Minerals, Inc.	Zambales (Region III)	Sta. Cruz Candelaria
17. LNL Archipelago Minerals Incorporated	Zambales (Region III)	Guinabon, Sta. Cruz
18. Citinickel Mines and Development Corporation	Palawan (Region IVB)	Narra Sofronio Espanola
19. Berong Nickel Corporation	Palawan (Region IVB)	Quezon
20. Rio Tuba Nickel Mining Corporation	Palawan (Region IVB)	Bataraza
21. PMDC/AAM-PHIL Natural Resources Exploration and Development Corporation	Dinagat Island (Parcel II of SMR) (Region XIII)	Basilisa San Jose
22. Cagdianao Mining Corporation	Dinagat Island, Surigao del Norte (Region XIII)	Valencia, Cagdianao
23. Hinatuan Mining Corporation	Surigao del Norte (Region XIII)	Tagana-an
24. Shuley Mine Incorporated	Surigao del Norte (Region XIII)	Nonoc Island
25. Platinum Group Metals Corporation	Claver, Surigao del Norte (Region XIII)	Cagdianao
26. Taganito Mining Corporation	Surigao del Norte (Region XIII)	Claver

Covered Metallic Mining Company	Host Province	Host City/ Municipality
27. Shenzhou Mining Group Corporation	Surigao del Norte (Region XIII)	Claver
28. CTP Construction and Mining Corporation	Surigao del Sur (Region XIII)	Adlay, Carrascal
29. CTP Construction and Mining Corporation	Surigao del Sur (Region XIII)	Dahican, Carrascal
30. Carrascal Nickel Corporation	Surigao del Sur (Region XIII)	Carrascal
31. Marcventures Mining and Development	Surigao del Sur (Region XIII)	Cantilan
32. Oriental Synergy Mining Corporation	Dinagat Island (Region XIII)	Bel-at, Esperanza, Loreto
33. SR Metals, Incorporated	Agusan del Norte (Region XIII)	Tubay
34. Sinosteel Phils. H. Y. Mining Corporation	Dinagat Island (Region XIII)	Loreto
35. Adnaman Mining Resources Incorporated	Surigao del Norte (Region XIII)	Urbiztondo, Claver
COPPER, GOLD, SILVER AND ZINC		
36. Rapu-Rapu Minerals, Inc.	Albay (Region V)	Rapu-Rapu
Rapu-Rapu Minerals, Inc.	Albay (Region V)	Rapu-Rapu
IRON		
37. Leyte Iron Sand Corporation	Leyte (Region VIII)	MacArthur Javier
38. Ore Asia Mining and Development Corporation	Bulacan	Dona Remedios Trinidad

B. Oil and Gas Companies

Service Contract No.	Location	Company / Partners
SC 14-A (Nido Block)	NW Palawan Basin	Oriental Petroleum & Minerals Corp.
		The Philodrill Corporation*
		Nido Petroleum Phils. Pty. Ltd.
		Forum Energy Philippines Corp.
SC14-B (Matinloc Block)	NW Palawan Basin	The Philodrill Corporation*
		Nido Petroleum (Galoc) Pty. Ltd.
		Oriental Petroleum & Minerals Corp.
		Forum Energy Philippines Corp.
SC 14B-1 (North Matinloc)	NW Palawan Basin	The Philodrill Corporation*
		Oriental Petroleum & Minerals Corp.
		Forum Energy Philippines Corp.
		Alcorn Gold Resources Corp.
SC 14C1 (Galoc Block)	NW Palawan Basin	TransAsia Oil & Energy Devt. Corp.
		Galoc Production Company*
		Galoc Production Company (2) Pte. Ltd.
		Nido Petroleum (Galoc) Pty. Ltd.
		Oriental Petroleum & Minerals Corp.
SC 38	NW Palawan Basin	The Philodrill Corporation
		Forum Energy Philippines Corp.
SC 38	NW Palawan Basin	Shell Philippines Exploration B.V.*
		CHEVRON

		PNOG - Exploration Corporation
SC 40	Northern Cebu, Visayan Basin	Forum Exploration Inc.*

ANNEX 2: Participants' List to Key Informant Interview/Consultations

Province	Bulacan		
Municipality:	Dona Remedios Trinidad		
Name of Participant	Office & Designation	Email Address	Telephone Number
Belinda Bartolome	Provincial Treasurer		0917-8868452
Miriam San Diego	LTOO IV, PTO		0933-4865418
Francisco T. De Guzman, Jr.	MAA IV, PTO		0917-5161277
Elizabeth M. Apresto	OIC BENRO		0932-771-8137
Antonio A. Cardac	SEMS, BENRO		0908-8766008
Rachel S. Torres	SAO, Administrator's Office		0917-8941007
Lorna C. Manalo	Municipal Treasurer		0918-9081533
Province:	Cebu		
City:	Toledo		
Name of Participant	Office & Designation	Email Address	Telephone Number
Milagros J. Ubre	CTO, Toledo		
Rico Infrino	CTO, Toledo		
Ofelia M. Oliva	CTO, Toledo	ofeolive@yahoo.com	09177256183
Emmanule Guial	PTO, Cebu	emmanuelguial@yahoo.com	09198170169
Marieto Ypu	Prov. Accounting, Cebu		09209327537
Julius Colinares	PENRO		09209327533
Fidel O. Abalos	Governor's Office		09155512087
Province:	Benguet		
City:			
Municipality:	Itogon & Tuba		
Company:	Philex Mining		
Name of Participant	Office & Designation	Email Address	Telephone Number
Julius Kollin	SEMS/ ENG		09995276241
Lourdes S. Fukai	LRCO IV, PTO, Benguet		09219772441
Joseph M. Cervantes	ENG III/ENRO		09219772441
Imelda I. Macanes	PT, Benguet		09185662652
Province:	Agusan del Sur		
Municipality:	Tubay		
Barangay:	La Fraternidad		
Company:	SR Metals, Inc.		

Name of Participant	Office & Designation	Email Address	Telephone Number
Percianita Racho	Provincial Administrator		09177036782
Isabelita Lucino	Provincial Treasurer		09177037140
Lauro Hinaloc	Provincial Environment and Natural Resources Officer		09294600209
Fidel E. Garcia Jr.	Municipal Mayor of Tubay		
Genara Abamonga	Municipal Treasurer	g_abamonga@yahoo.com	09091393287
	Municipal Environment & Natural Resources Officer		
Elmer Jerita	Barangay Captain of La Fraternidad		
Jerry Martinez	Municipal Administrator	Jerry_dleo@yahoo.com	09991539079
Jacquelo Modar	SR Metals CRO Officer		
Arlyn Daguiles	Liaison Officer		
Honorio de Leon	Senior Resident Manager		
Rosalina Guzo	Binaungan Barangay Captain		
Jose Dante Dulete	Religious Sector Rep.		
Fr. Raul Cabonce	Religious Sector Rep.		
Roy B. Nguho	Sanguniang Bayan Rep		
Atty. Ida Juico	Asst. Corporate Secretary		
Province:	Surigao del Sur		
Municipality:	Carrascal		
Barangay:	Adlay		
Company:	CTP Mining and Construction Corporation		
Name of Participant	Office & Designation	Email Address	Telephone Number

Lilian Frias	MTO	mto.carrascal@gmail.com	0928 402 1611
Crispa Gelli	APT	crispageli@yahoo.com	09177014743
Marlie Dalaguit	Municipal Accountant		
Bernard Ardel Bobias			
Wenifreda Perez	PTO		
Ferdinad Abis	LCRO-IV		
Charlita Cabadonga	Adlay Barangay Captain		
Charid Cuadrillero	CTP ComRel Officer		
Monalie Luengas	Community Organizer		
Noel Vertudez	Community Organizer		
Humbert Morellano	Accountant		
Charlita Cabadonga	Adlay Brgy. Capt.		
Papeniano Corpuz	Dahican Brgy. Capt		
Province:	Surigao Del Norte		
Hosted Company:			
Name of Participant	Office & Designation	Email Address	Telephone Number
Janette Pontillo	Head, Regulatory, Enforcement and Monitoring Division, PEMO	pemosdn@gmail.com	
Analee Alverastine	Staff, REMD, PEMO	pemosdn@gmail.com	
Province:	Leyte		
Municipality:	MacArthur		
Name of Participant	Office & Designation	Email Address	Telephone Number
Rodolfo P. Badiable	ICO-Provincial Treasurer	rudy@leyte.org.ph	0998-8638424
Roberto D. Arevalo	Provincial Accountant	bobby@leyte.org.ph	0917-3104820
Ma. Victoria C. Esplananda	ICO-Municipal Treasurer	randallozed@yahoo.com	0918-6551211
Margarita B. Dagsa	Municipal Assessor	pangisdagsa@yahoo.com	0918-4534640

Jericho B. Cruz	DES, Mun. Accounting Ofc.	cruzjericho@gmail.com	0919-6964444
Rosa L. Rosales	Exec. Assistant IV, MTO	rosanjianz@gmail.com	0939-9102635
Province:	Albay		
Municipality:	Rapu-Rapu		
Name of Participant	Office & Designation	Email Address	Telephone Number
Lea M. Marmol	PG-ENRO		09298468555
David G. Cua	Head, Land Resources Mgt. Section, PG-ENRO		
Arcel O. Oira	MPD-OIC		
Rosa R. Imperial	MT		0919-4023999
Imelda A. Araolo	AMT		
Allan Asuncion	SP Secretary		0917-3058748
Province:	Zamboanga del Norte		
Municipality:	Siocon		
Name of Participant	Office & Designation	Email Address	Telephone Number
Jessie Concepcion	Provincial Treasurer		09299129332
Renato Galabin	PTO-Supply Officer III		09195599594
Norberto Denura	Provincial Legal Officer and Provincial Environment Management Officer		(065) 2122597
Rowell Bardago	Municipal Treasurer's Office	adadbaronII@gmail.com	09358908735
Engr. Felizardo Canama	Municipal Environment and Natural Resources Officer		09356117709
National Government	DILG-BLGF		
Name of Participant	Office & Designation	Email Address	Telephone Number
Melcy Baluyan	Acting Chief-Plannning	melcybmb@yahoo.com	
Rowena Paril	Planning Officer II	rowenaparil@yhoo.com	5272790

Rosanna Salvador	Stat. II	Resalvador217@yahoo.com	5228771
National Government	DBM		
Name of Participant	Office & Designation	Email Address	Telephone Number
Carmencita Delantar	Director	cdelantar@dbm.gov.ph	

ANNEX 3: Schedule of Key Informant Interviews, Focus Group Discussions, and Consultations

Key Informant Interviews

Local Government Units/Company	Date of Field Visit/KII/Consultations
Province: Bulacan	May 22, 2014
Municipality: Dona Remedios Trinidad	
Province: Benguet	5-6 June 2014
Municipalities: Itogon & Tuba	
Company: Philex Mining Corporation	
Province: Cebu	28 May 2014
City: Toledo	5 June 2014
Province: Zambales	9-11 July 2014
Municipality: Sta. Cruz	
Company: LNL Archipelago Minerals, Inc.	
Company: Zambales Diversified Metals, Corp.	
Company: Iramen Minerals, Inc.	
Province: Agusan del Sur	15 July 2014
Municipality: Tubay	
Barangay: La Fraternidad	
Company: CTP Construction and Mining Company	
Province: Surigao del Sur	17 July 2014
Municipality: Carrascal	
Barangay: Adlay	
Company: Carrascal Nickel Corporation	
Province: Palawan	22-24 July 2014
Municipality: Narra, Quezon	
Barangay: Bato-Bato	
Company: Citi Nickel Corp.	
Company: Berong Nickel Corp.	19 August 2014
Province: Nueva Vizcaya, Benguet	
Municipality: Kasibu, Tuba, Itogon	
Cities: Manila, Makati, Mandaluyong, Muntinlupa, Pasig	26 August 2014
Province: Surigao del Norte, Surigao del Sur, Dinagat Island	28 August 2014
Municipality: Claver, Carrascal, Tubod, Rosario, Cagdianao	
Province: Leyte, Cebu	7-8 September 2014
Municipality: MacArthur	
Province: Palawan	11 September 2014
Municipality: Narra, Espanola, Sofronio, Batarazza	
Province: Surigao Del Norte	17 September 2014
Province: Albay	22 September 2014
Municipality: Rapu-Rapu	
Province: Antique	2 October 2014
Municipality: Caluya	
Province: Zamboanga del Norte	21 October 2014
Municipality: Siocon	29 October 2014

Annex 4: List of LGU Participants to the Survey Questionnaire

Covered Mining Company	Host Province	Host City/Municipality	Remarks (Complete, Incomplete)
GOLD WITH SILVER			
1. Lepanto Consolidated Mining Company	Benguet (Cordillera Administrative Region)	Mankayan	Incomplete
2. Filminera Resources Corporation	Masbate (Region V)	Aroroy	Incomplete, only data on revenues were provided
Philippines Gold Processing & Refining Corporation (PGPRC)	Masbate (Region V)	Aroroy	Same as above
3. Johson Gold Mining Corporation	Camarines Norte (Region V)	Jose Panganiban	Incomplete
4. Apex Mining Company Inc.	Compostella Valley Province (Region XI)	Maco	No filled up questionnaire submitted
5. Philsaga Mining Corporation	Agusan del Sur (Region XIII)	Rosario	Incomplete, no data provided on social expenditures, monitoring teams and capacity building
6. Greenstone Resources Corporation	Surigao del Norte (Region XIII)	Tubod	Incomplete, no data provided on social expenditures, monitoring teams and capacity building
COPPER WITH GOLD AND SILVER			
7. Philex Mining Corporation	Benguet (Cordillera Administrative Region)	Tuba	Incomplete, no data provided on social expenditures, monitoring teams and capacity building
8. Carmen Copper Corporation	Cebu (Region VII)	Biga, Toledo City	No filled up questionnaire submitted
9. TVI Resrouce Development Philippines, Inc	Zamboanga del Norte (Region IX)	Siocon	Incomplete, no data provided on social expenditures and capacity building
COPPER WITH GOLD			
10. Oceana Gold (Philippines), Inc.	Nueva Vizcaya	Kasibu	Incomplete, no data provided on social expenditures, monitoring teams and capacity building
CHROMITE			
11. Krominco Inc.	Dinagat Islands (Region XIII)	Loreto	Incomplete, no data provided on local revenues and capacity building
12. Cambayas Mining Corporation	Eastern Samar (Region VIII)	Guiuan	Incomplete, no data provided on collection of local revenues
13. Mt. Sinai Mining Exploration and Development Corporation	Eastern Samar (Region VIII)	Guiuan	Same as above
NICKEL			
14. Zambales Diversified Metals Corporation	Zambales (Region III)	Sta. Cruz	Incomplete, no data provided on social expenditures, monitoring teams and capacity building

Covered Mining Company	Host Province	Host City/Municipality	Remarks (Complete, Incomplete)
15. Benguet Nickel Mines, Inc.	Zambales (Region III)	Sta. Cruz	Same as above
16. Eramen Minerals, Inc.	Zambales (Region III)	Sta. Cruz Candelaria	Same as above Incomplete, no data provided on collection of local revenues, social expenditures, monitoring teams and capacity building
17. LNL Archipelago Minerals Incorporated	Zambales (Region III)	Guinabon, Sta. Cruz	Incomplete, no data provided on social expenditures, monitoring teams and capacity building
18. Citinickel Mines and Development Corporation	Palawan (Region IVB)	Narra Sofronio Espanola	Incomplete, no data provided on local revenues, social expenditures, monitoring teams and capacity building Incomplete, no data provided on collection of local revenues, social expenditures, monitoring teams and capacity building
19. Berong Nickel Corporation	Palawan (Region IVB)	Quezon	No filled up questionnaire submitted
20. Rio Tuba Nickel Mining Corporation	Palawan (Region IVB)	Bataraza	Complete
21. PMDC/AAM-PHIL Natural Resources Exploration and Development Corporation	Dinagat Island (Parcel II of SMR) (Region XIII)	Basilisa San Jose	Incomplete Incomplete
22. Cagdianao Mining Corporation	Dinagat Island, Surigao del Norte (Region XIII)	Valencia, Cagdianao	No filled up questionnaire submitted; The host province submitted an incomplete questionnaire
23. Hinatuan Mining Corporation	Surigao del Norte (Region XIII)	Tagana-an	No filled up questionnaire submitted
24. Shuley Mine Incorporated	Surigao del Norte (Region XIII)	Nonoc Island	No filled up questionnaire submitted
25. Platinum Group Metals Corporation	Claver, Surigao del Norte (Region XIII)	Cagdianao	No filled up questionnaire submitted
26. Taganito Mining Corporation	Surigao del Norte (Region XIII)	Claver	No filled up questionnaire submitted
27. Shenzhou Mining Group Corporation	Surigao del Norte (Region XIII)	Claver	No filled up questionnaire submitted
28. CTP Construction and Mining Corporation	Surigao del Sur (Region XIII)	Adlay, Carrascal	No filled up questionnaire submitted; The host province submitted an incomplete questionnaire
29. CTP Construction and	Surigao del Sur (Region	Dahican, Carrascal	No filled up questionnaire

Covered Mining Company	Host Province	Host City/Municipality	Remarks (Complete, Incomplete)
Mining Corporation	XIII)		submitted; The host province submitted an incomplete questionnaire
30. Carrascal Nickel Corporation	Surigao del Sur (Region XIII)	Carrascal	No filled up questionnaire submitted; The host province submitted an incomplete questionnaire
31. Marcventures Mining and Development	Surigao del Sur (Region XIII)	Cantilan	No filled up questionnaire submitted; The host province submitted an incomplete questionnaire
32. Oriental Synergy Mining Corporation	Dinagat Island (Region XIII)	Bel-at, Esperanza, Loreto	Incomplete, no data provided on local revenues and capacity building
33. SR Metals, Incorporated	Agusan del Norte (Region XIII)	Tubay	Incomplete, no data provided on collection of local revenues, monitoring teams and capacity building
34. Sinosteel Phils. H. Y. Mining Corporation	Dinagat Island (Region XIII)	Loreto	Incomplete, no data provided on local revenues and capacity building
35. Adnaman Mining Resources Incorporated	Surigao del Norte (Region XIII)	Urbiztondo, Claver	No filled up questionnaire submitted
COPPER, GOLD, SILVER AND ZINC			
36. Rapu-Rapu Minerals, Inc.	Albay (Region V)	Rapu-Rapu	Incomplete, no data provided on capacity building
Rapu-Rapu Minerals, Inc.	Albay (Region V)	Rapu-Rapu	Same as above
IRON			
37. Leyte Iron Sand Corporation	Leyte (Region VIII)	MacArthur Javier	Incomplete, only the names of the mining companies existing in the LGUs were provided Incomplete, only the names of the mining companies existing in the LGUs were provided
38. Ore Asia Mining and Development Corporation	Bulacan	Dona Remedios Trinidad	Incomplete, only the local revenues, monitoring teams and capacity building were provided

ACKNOWLEDGMENTS

This scoping study would not have been possible without the active participation of local government units, with the support of their Local Chief Executives. We value the contribution of the various Provincial, City and Municipal Treasurers, Environment and Natural Resources Officers and Designates, members and staff of the Sanggunian, Planning and Development Officers and their staff, and the staff from the Offices of the Governors and Mayors, for providing their tax codes, sharing their data in the LGU surveys, and sharing candid observations, comments and suggestions during interviews and consultations, and generally trusting the us with the information from their end.

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We acknowledge the PH-EITI MSG for commissioning this report that paved the way to better understanding the state of LGUs and their financial flows and receipts from the mining, oil and gas companies and for finding means to enhance transparency and accountability in the extractive industry. The team is also grateful to Bantay Kita and its staff led by Dr. Cielo Magno for pioneering the way at the local level in enhancing transparency and accountability and sharing these experiences and lessons learned with the team.

We would also like to acknowledge the unwavering support of the PH-EITI – MSG, Secretariat, led by the PH-EITI National Coordinator Atty. Alessandra Gay Marie Ordenes, and her team of Ms. Abigail Ocate, Ms. Lai Tuba, Ms. Mary Grace Estacio-Jurado and Ms. Liezel Empio, for patiently helping the team coordinate with LGUs, NGAs, companies and supporting the team in FGDs, and facilitating the data sharing with the Independent Auditor, through Pryce Water House led by Mr. Pocholo Domondon, CPA. The past months working with the PH- EITI – MSG have been most fruitful, fun and interesting.

We would also like to mention the valuable and indispensable support and assistance of our reliable and competent team member in the background, Ms. Mithi Laya Gonzales- Suarez.

Finally, we express our deepest thanks and we give back all the glory to God for all his blessings in undertaking this scoping study. May this initial work be a humble contribution towards a transparent, accountable, participatory and evidence-based governance in managing and protecting our non-renewable natural resources that will concretely redound to the just and equitable benefit of all, with preference for the marginalized communities in our society.//