This policy brief presents the summary of a study\(^1\) from the Department of the Interior and Local Government (DILG) and the United Nations Development Programme (UNDP). The main objective of the study is to recommend and encourage reforms in the policy environment for the sharing of revenues from natural resources between the National Government (NG) and Local Government Units (LGUs) and for their utilization for poverty alleviation and environmental protection. Systems review of the entire budgeting and release process was conducted from the national level down to the local levels of government. The entire process of estimating government revenues from natural resources to actual receipt of the funds to disbursement and recording to public dissemination of relevant financial statements was analysed. The review led to the identification of gaps or areas that need to be strengthened through revision of existing laws, new policies, information systems and governance processes.

### Outputs

The first four outputs can be classified under Systems Development. The next three outputs are geared towards Effecting Policy Reforms while the last three outputs can be used to Advocate for Legislative Actions.

#### Systems Development

1. Documentation of implementation of DBM-DOF-DENR-DILG Joint Circulars 2009-1 and 2010-1
2. Proposed revisions to JCs 2009-1 and 2010-1 and strategies to implement new circulars including designation of one agency to oversee implementation
3. Proposed framework to further speed up release of LGU shares in the proceeds from National Wealth (NW) and lobbying/advocacy strategies
4. Proposed improvements in the Electronic Statement of Receipts and Expenditures (e-SREs) of LGUs

#### Effecting Policy Reforms

5. Assessment of possible linkages of PPEI to the Wealth Accounting and Valuation of Ecosystem Services (WAVES) project and strategies for their convergence
6. Linkages of PPEI to the agenda of the Philippine Council for Sustainable Development (PCSD) and Mining Industry Coordinating Council (MICC)
7. Review of laws and policy issuances on Small-Scale Mining to improve collection of taxes from small-scale miners

#### Advocating for Legislative Actions

8. Proposed amendments to the Local Government Code of 1991 (LGC) or R.A. 7160
9. Proposed provisions on the automatic appropriation of LGU Shares in the proceeds from NW
10. Position papers on amending the Electric Power Industry Reform Act (EPIRA) and Renewable Energy (RE) Act to increase the share of LGUs in the proceeds from NW

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\(^1\) The study “Encouraging Policy Reforms and Improving Governance Processes to Facilitate Timely Release of NR Revenues to LGUs and to Improve the Poverty Benefits from NR” was conducted by Dr. Ma. Cecilia G. Soriano and Ms. Elizabeth P. Makayan, in 2012 under the PPEI Phase 1-Year 2, Component 1: Encouraging Reforms and Improving Governance Processes in the Policy Environment of NG-LGUs Sharing of National Wealth.
1.0 Systems development

1.1 For computing and releasing LGU shares from National Wealth

In Section 12 of E.O. No. 79, the concerned national government agencies (NGAs) particularly the Department of Environment and Natural Resources (DENR), Department of Budget and Management (DBM) and Department of Finance (DOF) were directed “to ensure the timely release of the share of LGUs in the National Wealth pursuant to Section 289 of Republic Act (R.A.) No. 7160 or the Local Government Code (LGCC) of 1991." These agencies were likewise directed “to study the possibility of increasing LGUs’ share as well as granting them direct access similar to existing arrangements with the Philippine Export Zone Authority (PEZA).”

Background

Section 7 of Article X of the 1987 Constitution states that “LGUs 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.” This is reiterated in Section 289 of the LGCC.

Section 290 of the LGCC specifies that the LGUs’ share is 40% of the gross collections derived by the National government (NG) in the preceding fiscal year (…) in the utilization and development of National Wealth.

Section 294 of the LGCC adds that the shares from National Wealth received by LGUs shall be appropriated by the local legislative bodies to finance local development and livelihood projects.

To respond to the clamor of LGUs to be given what is due to them, the DOF, DBM, DILG and DENR jointly issued on March 31, 2009 Joint Circular (JC) No. 2009-1 to streamline and update the guidelines and procedures for the release of LGUs’ shares in revenues from mining, particularly from mining taxes. The same four agencies jointly issued on June 25, 2010 JC No. 2010-1 to do the same for LGUs’ shares in royalty income collected from mineral reservations.

Major issues and concerns

There is a lack of transparency, predictability and accountability in the process of computation, collection and distribution of ENR revenues in terms of the following: (a) the amounts supposed to be paid by each mining company and the amounts actually paid; (b) the amounts supposed to be received by each beneficiary LGU and the amounts actually received; (c) the timing of the LGUs’ receipt of the funds; (d) the planned use of the funds to be received by the LGUs; and (e) the actual use of the funds received by the LGUs.

Recommendations

To address the said concerns, a five pronged approach is recommended:

1. The first recommendation is that consensus and funds be secured to create a common database or electronic data sharing system to facilitate the gathering and verification of raw information and computation of NG and LGU shares, starting at the regional level.

2. The second recommendation is to designate one of the agencies involved in JCs 2009-1 and 2010-1 to oversee the implementation of their provisions particularly those related to the sharing of information. Based on the Implementing Rules and Regulations (IRRs) of the LGCC, the former should be the DILG. Article 392 of the IRRs states that “The DILG, in coordination with DOF and in actual consultation with the leagues of LGUs, shall monitor the proper implementation of Part Two of this Rule”, referring to Rule XXXII on Shares of LGUs in the Proceeds of National Taxes.

3. The third recommendation is to implement the provision in the LGCC for LGU shares from National Wealth to be remitted in the same manner as the Internal Revenue Allotment (IRA). Section 293 of the LGCC states that LGU shares in National Wealth shall be remitted in accordance with Section 286 of the LGCC. The use of the same section on the automatic release of the IRA for the release of the LGU shares from NW makes it very clear that the intent of the LGCC is to have the latter released in the same manner as the former. The procedures adopted in effecting the automatic release of the IRA should also be followed for the release of LGU shares from NW.

4. The fourth recommendation is to implement the provision in the IRRs of the LGCC for DBM and other concerned NGAs and GOCs to provide LGUs with advance information on the shares from National Wealth that they can expect to receive in the following year.

5. The fifth recommendation is to include non-metallic mineral products more fully in the scope of JC 2009-1 so that LGUs can get more of their shares in mining taxes. There should be a provision for MGB to submit to the Bureau of Internal Revenue (BIR), among the volumes and values of non-metallic mineral products for the period for the preparation of the national budget proposal.

A. Proposed Amendments to DOF-DBM-DILG-DENR JC 2009-1 and 2010-1

The proposed amendments to the two joint circulars relative to the guidelines and procedures on the release of LGU shares in the proceeds from NW from mining taxes (JC 2009-1) and royalties from mineral reservations (JC 2010-1) aim to further streamline the process of NG-LGU revenue sharing and to facilitate compliance with the relevant provisions of the LGCC, its IRRs and E.O. No. 79.

What is National Wealth?

National Wealth (NW) is defined in Article 386 of the Implementing Rules and Regulations (IRRs) of the Local Government Code of 1991 as “all natural resources situated within the Philippine territorial jurisdiction including lands of public domain, waters, minerals, coal, petroleum, mineral oils, potential energy forces, gas and oil deposits, forest products, wildlife, flora and fauna, fishery and aquatic resources, and all quarry products.”

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2 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.
The specific objectives are as follows:

- To enhance the correctness and accuracy of the mining taxes/royalty income expected to be collected and actually collected so that the full benefits from these tax collections may be received by both the NG and beneficiary LGUs.
- To give beneficiary LGUs advance information about their expected shares in the NW to be collected from mining activities and reservations within their jurisdictions and to encourage them to appropriate these for local development and livelihood projects.
- To further expedite the computation, processing and release of the LGU shares in mining taxes/royalties from mineral reservations through the timely and, wherever possible, electronic sharing of information among the concerned parties and the more active involvement of the regional offices of the concerned national government agencies as well as the beneficiary LGUs themselves.

B. Draft Provisions on Automatic Appropriations

It should be recognized that LGU shares in the proceeds from NW should not only be automatically released but also automatically appropriated in the same manner as the IRA, as provided by Sections 293 and 286 of the LGC. This can be done by including provisions in the General Provisions of the forthcoming General Appropriations Act (GAA).

The proposed provisions for automatic appropriation of LGU shares in the proceeds from NW will aim to achieve the following objectives:

- To ensure the timely release of LGU shares in NW in line with Section 12 of E.O. No. 79.
- To ensure that the full amounts due to LGUs are released in the year immediately after the proceeds from NW were collected.
- To comply with the intent and provisions of the LGC that LGU shares in NW are to be released in the same manner as the IRA.

The provisions proposed for inclusion in the next and forthcoming GAAs are the following:

- “Section — Automatic Appropriations. – The amount stated under Section X.x (Allocations for Local Government Units – Shares from the National Wealth) and programmed as part of the 2014 National Expenditures Program is considered automatically appropriated. Future local government shares from National Wealth shall henceforth be automatically appropriated.”

For the succeeding GAAs, the inclusion of the following provision is proposed:

- “Section — Allocation for Local Government Units. – The LGU Shares from National Wealth which are automatically appropriated pursuant to R.A. No. YYYY …”

C. Proposed Framework to Further Speed Up the Release of LGU Shares

To further speed up the release of LGU shares from NW, it is recommended that private entities be allowed to directly remit to the treasurers of the beneficiary LGUs their shares from the gross collections derived by the NG from the development and utilization of natural resources. Section 293 of the LGC currently allows this only for GOCCs.

The recommendation is that the returns be filed with the authorized Revenue Collection Officer who will verify the correctness of the return and the identification and shares of the beneficiary LGUs. The 60% share of the NG can then be paid through any of the authorized agent banks while the 40% share of LGUs will be paid to the respective treasurers of the identified beneficiary LGUs.

This recommendation will address the need for the BIR to record the full amount of the taxes due as part of its collections while at the same time giving LGUs quick and direct access to their shares in those collections.

1.2 For recording and publishing LGU shares from National Wealth

The Electronic Statement of Receipts and Expenditures (eSRE) is the online reporting system developed by the Bureau of Local Government Finance (BLGF) of the DOF to monitor the fiscal and financial performance of LGUs.

The eSRE and the local budget preparation (LBP) forms can be useful tools for recording and releasing to the public information on the revenues which LGUs get from the development and utilization of NW as well as their utilization by the LGUs. They can also help to track the amounts that are supposed to be released and actually released to the concerned LGUs.

Major issues and concerns

At present, the data required in the e-SREs and LBP Form Nos. 1 and 2 do not have the level of disaggregation needed to identify the sources and specific amounts that LGUs receive as their shares from NW. Their utilization of these funds for poverty alleviation and environmental protection is also generally unknown. If COA can also be persuaded to require similar disaggregation in the financial statements to be filed by LGUs, the more detailed monitoring system can be better institutionalized.

A. Proposed Amendments to e-SREs of LGUs

- Disaggregation by source of national wealth: possible sources are 40% shares in mining taxes, forestry charges and royalty fees from energy resources production and 40% of 90% of royalty fees from mineral reservations and an additional line for ‘others’.

- Additional column under the General Fund to be added to encourage LGUs to keep track of the expenditures that they fund using their shares from NW.
Local governments and communities play important roles in the construction of sub-national and even national natural asset and ecosystem accounts that will be among the major activities of the PhilWAVES project, together with the construction of macroeconomic indicators and setting of sectoral key performance indicators (KPIs) to support the PDP. Through the Network of LGUs Hosting Extractive Industries which the PPEI is helping to organize, the PPEI is in a strategic position to help the PhilWAVES project reach out to the concerned LGUs and local communities. Further, the PPEI will conduct a study on the socio-economic and environmental impacts of extractive industries in selected LGUs.

Points for collaboration
- The mechanisms through which revenues from mining and other extractive industries can be used to protect the environment and alleviate poverty in a sustainable manner, as the general aim of the NG, need to be identified and properly implemented. The different components of the PPEI can contribute to the achievement of these goals.
- Updating of the 2011-2016 Philippine Development Plan (PDP) and further localizing Sustainable Development (SD) are the major items in the PCSD agenda that are related to the objectives of PPEI.
- Local governments and communities play important roles in the construction of sub-national and even national natural asset and ecosystem accounts that will be among the major activities of the PhilWAVES project, together with the construction of macroeconomic indicators and setting of sectoral key performance indicators (KPIs) to support the PDP. Through the Network of LGUs Hosting Extractive Industries which the PPEI is helping to organize, the PPEI is in a strategic position to help the PhilWAVES project reach out to the concerned LGUs and local communities. Further, the PPEI will conduct a study on the socio-economic and environmental impacts of extractive industries in selected LGUs.

Coordination and complementation with WAVES project, PCSD and MICC agenda

2.0 Advocating for legislative actions

2.1 Proposed amendments to the Local Government Code of 1991

Although many improvements in the computation and release of LGU shares from NW can be made through executive issuances among the concerned government entities, further improvements can be made and ambiguities removed by amending certain provisions of the LGC of 1991.

- Recording the expenditures in lines 22 to 30 funded by the LGUs’ shares from National Wealth should be clearly identified and categorized by the type of expenditure (e.g. education, health, labor and employment, housing and community development, economic services).

B. Proposed Amendments to the Local Budget Memorandum

- Revision of LBP Form Nos. 1 and 2 to allow LGUs to specify the sources of their actual and projected shares from NW.

- Deletion of the phrase “from the preceding fiscal year” in Section 290
- Deletion of the phrase “based on the preceding fiscal year” in Section 291 and replacement of the phrase “calendar year” with “quarter” in Section 291 (a)
- Deletion of the phrases “remitted in accordance with Section 286 of this Code: Provided, however, that in the case of any government agency or government-owned or -controlled corporation engaged in the utilization and development of the national wealth, such share shall be” and “within five (5) days after the end of each quarter” and addition of the phrases “automatically appropriated and”, “and automatically” and “at the time of payment of the National Government share” in Section 293 of the LGC. Two more lines will be

Payment and distribution of taxes from small-scale miners: R.A. No. 7076 requires small-scale miners to “pay all taxes, royalties or government production shares as are now or may hereafter be provided by law (...) and shall be subject to the sharing provided in the LGC.” However, there is no provision in the law as to what the government production share is. D.A.O. No. 34 states that the government share shall be paid to the Municipality or City Treasurer where the mining claims are located. However, there is currently no system for monitoring these payments and their remittance to the Treasurer of the Philippines.

Compliance with the provision that all gold produced by small-scale miners shall be sold to the Central Bank should also be closely monitored and enforced. There have been oft-repeated reports that when the Central Bank was deputized by the BIR as a tax withholding agent, sales of gold to the Central Bank declined by more than 40%

Recommendations
- Determination of the government share in revenues from SSM. A system to monitor the collection of these government shares and their remittance to the Treasurer of the Philippines by the city or municipal treasurers will also need to be set up. The system should also be able to monitor and quickly verify the collection of taxes from small-scale mining by the BIR and Bureau of Customs (BOC) as well as the timely remittance of the LGUs’ shares to them.
- Proper coordination among the DENR-MGB, DOF-BIR, BOC, and Bureau of Treasury (BTr) can help educate small-scale miners regarding the taxes that they need to pay and help them comply with the tax filing and payment requirements. They can also guide and monitor the implementation of the provisions regarding the setting up of custom mills and gold buying stations in the designated areas. Small-scale miners can be assured that part of the taxes that they pay will redound to their benefit with the activation of the People’s Small-scale Mining Protection Fund.

To ensure the timely release of LGU shares from National Wealth in line with Section 12 of E.O. No. 79:

- Deletion of the phrase “from the preceding fiscal year” in Section 290
- Deletion of the phrase “based on the preceding fiscal year” in Section 291 and replacement of the phrase “calendar year” with “quarter” in Section 291 (a)
- Deletion of the phrases “remitted in accordance with Section 286 of this
added at the end of Section 293.

To give LGUs greater flexibility on how to utilize their shares from National Wealth (Section 294):

- Reduction of the 80% minimum percentage of the proceeds from energy resources to be used for lowering the cost of electricity in the host LGUs to 20% to give the LGUs maximum flexibility
- Addition of the provision that the Secretaries of the Department of the Interior and Local Government and of the Department of Energy may allow exemptions under conditions to be specified through a joint circular

To encourage LGUs to disseminate their financial information through electronic means whenever and wherever possible:

- Addition of the phrase “and on its website or other government websites” to Section 352
- Addition of the phrase “in its website” to Section 513

To make the allocation of shares from National Wealth among two or more LGUs hosting the same mining project more equitable (Section 292):

- Replacement of population and land area as the bases for the sharing formula for LGUs if the natural resources are located in more than one province, city, municipality or barangay with “the proportion of the natural resources that are located in each LGU”
- Combination of population and land area as the bases for the sharing formula for LGUs if the natural resources are located in more than one province, city, municipality or barangay with “the proportion of the natural resources that are located in each LGU”

2.2 Proposed amendments to the Electric Power Industry Reform Act (EPIRA) and its IRR

Main issues and recommendations

Increasing the amounts that the LGUs are supposed to receive as their shares from the development and utilization of energy resources:

- DOE to provide breakdown of the revenues earmarked for LGUs in Table B. 16 of the Budget of Expenditures and Sources of Financing (BESF), in the BESF and in the DOE website, by legal basis
- DOE to inform individual host LGUs of the amounts that they can expect to receive in the following year, in writing and in time for preparation of the local budget, in line with Article 409 of the IRR of the LGC
- Amend Part B of Rule 29 of the EPIRA IRR to specify the energy resources included in the Scope of Application of Rule 29

Increasing the amounts that they actually receive as their shares or benefits from the development and utilization of energy resources:

- DOE to further streamline the application and review process for the Development and Livelihood Fund (DLF) and Reforestation, Watershed Management, Health and/or Environment Enhancement Fund (RWMHEEF)

Increasing their flexibility in utilizing the shares that they receive from National Wealth:

- LGUs to propose amendments to the LGC and EPIRA to reduce the minimum 80% of their share in NW to be used to lower the cost of electricity
- LGUs to discuss with DILG and DOE possible joint circular to provide guidelines for exemptions to the 80% minimum requirement, in line with a provision in DOE Circular No. 98-01

2.3 Proposed amendments to the Renewable Energy (RE) Act and its IRR

Main issues and recommendations

Increasing the amounts that the LGUs are supposed to receive (reduction in the tax rate for hydropower from 2% to 1%): Considering the numerous tax incentives being offered to RE developers in their initial years of operation when they have many start-up costs, the argument can be made that the Government share in their gross income once they start earning should be 2% instead of only 1%. This point can be raised and considered in the on-going review of fiscal incentives for all sectors by the DOF. DOE/NG to compensate LGUs hosting existing hydropower projects for their lost revenues particularly the 80% used to lower the cost of electricity (can be made a locally funded project of DOE).

Increasing their flexibility in utilizing the shares that they receive from National Wealth: Add a provision to Section 31 to enable the use of the balance of the 80% minimum requirement to lower the cost of electricity for development and livelihood projects of the host LGUs if the lowest possible rate of electricity has already been reached, beyond which further lowering would lead to wasteful consumption.

LGU shares in the proceeds from National Wealth for the past five years

Based on Table B.16 on Earmarked Revenues, the LGU shares from National Wealth are comprised of the following: 40% of mining taxes, 40% of 90% of royalty fees from mineral reservations, 40% of royalty fees from energy resources production and 40% of forestry charges.

The actual receipts of LGU shares from NW culled from Tables F.3 to F.16 of the BESF for 2010, 2011, 2012 and 2013 show that there was an 11% increase from PhP597 million in 2008 to PhP664 million in 2009 and a 180% increase to PhP1.2 billion in 2010. These actual receipts for 2010 were 3.5 times the estimated actual of PhP335 million in the 2011 BESF which is prepared in the second quarter of 2010. Although actual receipts of PhP880 million in 2011 were lower than in 2010, they were still more than 2.4 times the estimated actual of PhP361 million in the 2012 BESF and 2.7 times the projection of PhP328 million in the 2011 BESF (Fig. 1).

Fig. 1 LGU Shares from National Wealth
Total LGU shares from NW increased from PhP597 million in 2008 to PhP664 million in 2009 and then almost doubled to PhP1,191 million in 2010. The latter was mostly due to the 165% increase in the shares of municipalities from PhP278 million in 2009 to PhP736 million in 2010. The municipalities in the province of Zambales accounted for PhP346 million or 47%. PhP117 million or 16% went to municipalities in Pangasinan while PhP100 million or 14% went to municipalities in Surigao del Norte. The province of Surigao del Norte received a 75% increase from PhP18 million to PhP31.7 million while the province of Misamis Occidental got a one-time share of PhP67.7 million in 2010, accounting for the increase in the share of provinces from PhP124 million to PhP186 million. The share of cities remained about the same at PhP269 million, with Cebu City accounting for 83% with PhP222 million in both 2009 and 2010.

On a regional basis, Region 13 (CARAGA) received the highest shares from National Wealth during the period 2008 to 2011. Its provinces, cities and municipalities received 24% of the PhP3,331.91 million total allocated during the period. It was followed by Region 7 with around 17%, Region 3 with close to 13%, Cordillera Autonomous Region (CAR) with almost 12 %, Region 2 with close to 6%, and Regions 10 and Region 1 with around 5% each (Fig. 2).

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