

The Final Report of the Joint Research

Date of Submission: **July 11th, 2014**

Project Title: **Enhancing Environmental Governance through Transparency and Public Participation in the Philippines' Mining Industry**

Project Description

Students should indicate the general idea of the research and the specific purpose of the research clearly and specifically with the literature referred to as needed. The following points should be highlighted.

- 1) Background of Research Project
- 2) Importance and Necessity of this Project and its Expected Impact upon the Target Field of Research
- 3) Research Objectives and Targeted Goals of this Project

This research project explores policy and legal tools employing concepts of transparency and public participation to address the environmental, social and institutional concerns in the Philippines mining sector.

1. Background of the research project

1.1 Environmental governance in a globalizing world

Globalization has a major impact on governance because of the growing interaction of different legal sources (national, international, transnational)¹ and different institutions. First, globalization demands interactions between international law and transnational law² (for example the codes of conduct) in the regulation of legal relations. In the era of globalization private actors can deliver many of the activities and services traditionally delivered by the State.³ Second, globalization creates a necessity to include actors other than the State in the political and legal analysis.⁴

Globalization has also a major impact on environmental governance. Environmental governance can be defined as "the set of regulatory processes, mechanisms and organizations through which political actors influence environmental actions and outcomes."⁵ Environmental governance creates a common concern of humankind regarding the elements of the global environment, such as climate and biodiversity. The character of environmental governance in the era of globalization involves both public and private sector particularly relevant in the creation and implementation of international norms of environmental protection. Indeed, "global environmental governance paradigm holds the promise (···) of expanded cooperation among social actors that may have been previously outside the policy process: corporate interests, social movements, and nongovernmental organizations."⁶ In this context, individuals and private entities, such as business companies, NGOs and civil society at large, are indispensable stakeholders in the prevention and reduction of environmental degradation.⁷ It is acknowledged by international organizations,⁸ international courts,⁹ and in the literature¹⁰ that transparency and public participation are key elements to improve environmental governance.

The private sector has also become a vehicle for the mobilization of financial resources in support of environmental programs, to channel investments in addressing global environmental problems. Without the contribution of the private sector, many of these programs would fall beyond the economic capabilities of the territorial states.

1.2 Potential and problems in the Philippines mining sector

This section provides a political and legal background of the mining industry in the Philippines, presenting the stakeholders, their interests and the relevant law. The Philippines detains \$840 billion worth of unutilized minerals,¹¹ but is ranked 114th in the Human development index of the UNDP, with 18,4% of the population living below 1,25\$ PPP per day.¹² The mineral potential of the country could contribute to solve poverty. However, the mining industry is very controversial in the Philippines because of its negative environmental and social impact. Moreover, the mining industry is a focus of resistance from separatist forces in the South of the Philippines and Communist armed groups in the North, leading to violations of human rights through extra-judicial killings.¹³

In the mining sector, the state is responsible for promoting mining investment as well as ensuring the respect to environmental and social legislation. The state relies on the mining industry to boost development, through taxes leverage and employment opportunities. The state, however should ensure that mining activities do not negatively impact the environment and the local communities. The organization of the Philippines' administration brings challenges to the balance between promotion of investment and sustainable development. In this context, Mines and Geosciences Bureau (MGB), which grants mining permits and monitors social development plans, is under the authority of the Department of Environment and Natural Resources (DENR), the state agency responsible for environment protection. This situation makes the state particularly vulnerable to criticism.

From a political perspective, this contradiction appears in the changes in mining policy over the past twenty years. Following the recommendations of the World Bank, the Philippines provided a law in 1995 to liberalize the mining industry and investments.¹⁴ As a consequence, both small and large scale mining expanded and increased their contribution to the growth of the whole industry sector. The actual presidential administration adopted the executive order No. EO-79 in 2012, which defined the mining policy of the country. On the one hand, the EO-79 declared a moratorium to grant a new mineral permit until a legal reform rationalizes the benefit sharing scheme. On the other hand, this act provided with a set of measures aimed at enhancing the efficiency of mining procedures, as the creation of a "one-stop shop for all mining applications and procedures."¹⁵ In the Philippines, mining is unlikely to impact political competition¹⁶ since President Aquino, elected in 2010, cannot ballot for a second term. However, the House of the Congress is supposed to pass a new mining bill in 2014, which modalities regarding benefits sharing still oppose the civil society and mining industry.¹⁷

From a legal perspective, this contradiction appears in the Mining Act of 1995. While prioritizing mining activities,¹⁸ it also contains advanced provisions for environmental protection. The liberalization accompanied the development of environmental law in the Philippines. According to World Bank and Asian Development Bank experts, "the Philippines has the most progressive environmental legislation in the region."¹⁹ The environmental protection is guaranteed at the constitutional and legislative level.

In addition, the *Mining Act of 1995* provided in its 11th chapter a whole set of dispositions for environmental protections.²⁰ The small-scale mining act also provided the implementation of environmental programs and respect to environmental norms.²¹

Large and small-scale mining have different impacts on the environment, and therefore are regulated by different legal provisions. Additionally, at the administrative level, three orders are relevant for such regulations. The EO-79 defines the mining and environmental policy. The Department of Environment and Natural Resources administrative order (DAO) 2003-30 governs the Environmental Impact Statement (EIS) system. Finally, the DAO 2010-21 regulates the implementation of the mining act. This administrative order required the companies to apply an environmental protection and enhancement program (EPEP). The EPEP includes a description of the expected and considered acceptable impacts, and set out the life-of-mine environmental protection and enhancement strategies.²²

The other stakeholders consist of mining company, civil society, the local government and the impacted community. The mining companies in the Philippines officially promote responsible mining,²³ claiming that mining industry can contribute to sustainable development. Mining companies claim their satisfaction with the actual legislative framework and assert that raising taxes will destroy the industry.²⁴ Moreover, mining industry is interested in having a safe environment to operate as well as a quick and efficient administrative process. Indeed, armed conflicts²⁵ and the length of the environmental and social assessments of mining projects and bureaucratic procedures are considered to hamper investments.²⁶ These interests clash with the position of the civil society.

The civil society in the Philippines is dynamic and very active in the struggle against mining industry.²⁷ The civil society, which includes environmental NGOs and the Church, strongly opposes to mining industry. They challenge the constitutionality of the Mining Act,²⁸ claiming that the current mining legislation is outdated. The current Mining Act aims at promoting foreign direct investment through the mining operations, but underestimates protecting rights of local residents and indigenous communities.²⁹ Therefore, the civil society proposed an alternative mining bill in 2009 to introduce a new mining policy which places more emphasis on the land and natural resources management aligned with a human rights-based approach.³⁰ Specifically the bill proposed an increase in royalties to indigenous peoples more than 5% of the total revenue.³¹ In addition, the bill proposed securing an environmental guarantee funding mechanism to ensure that companies will be able to pay affected people in the event of an environmental disaster.³²

Finally, the local governments and communities impacted by the mining activities expect benefits in term of employment, taxes, social services and infrastructure.³³ More particularly, the local governments can consent or reject a mining project³⁴ and are in charge of environmental protection.

The mining sector in the Philippines is struggling with many problems regarding negative influence on environmental sustainability caused by mining. Despite the progressive legal provisions, environmental governance in the Philippine mining sector is still fragile as shown in the tailings spill incident at the Marcopper Mine in 1996.³⁵ This incident exposed the negative effects of mining as follows: discretionary EIA procedures³⁶, insufficient self-compliance to the environmental regulation by the mining companies, and few protections toward residents of the mining affected areas including workers at the site.

As a result, some local governments adopted a ban on mining activities, destabilizing the investing environment. Compared to other mining countries, the contribution of mining to Philippines' Gross Domestic Product (GDP) is low as International Monetary Fund attributed only 1.5% of Philippines' GDP to mineral production.³⁷ In 2011, investments in the mining sector fell by 35%.³⁸

Therefore, the problem in the Philippines' mining sector is principally related to the proper implementation of environmental and mining law. The problem of environmental governance in the Philippines must highly rely on the current context and developmental challenges of the country. Arguably, one cause of a lagging implementation of laws is an issue of corruption. Corruption is generally defined as "the abuse of public office for private gain"³⁹. The Philippines is experiencing a persistent corruption issue⁴⁰, as the Corruption Perception Index by Transparency International ranks the Philippines below the average of all countries.⁴¹ In the mining industry, corruption usually takes a collusive characteristic, where mining companies and governments that provide a license for operations build a network of illegal flow of the wealth.⁴²

Another obstacle for the implementation of environmental and mining laws is the limited capacity of the national and local governments to protect the environment.⁴³ The problem has been already noticed by different governmental and non-governmental organizations leading to launch a number of capacity building trainings. The Access Initiative-Philippines in partnership with the World Resource Institute provides a baseline for access in law and build capacity for collaboration of local and national government and partner NGO's. This initiative also helps to develop the pool of knowledge, public participation and justice in environmental decision-making in the Philippines.⁴⁴ Another initiative coordinated by the Department of Environmental and Natural Resources of the Philippine's government is the Clean Development Mechanism (CDM) aimed at capacity building in the Philippines projects implemented with the DENR.⁴⁵ The project aims at strengthening the capacity of local government units in projects in the area of waste management. The destructive effect of the mining sector on the natural environment in the Philippines led to the establishment of the initiative by several international NGOs entitled the Mercury Reduction in Artisanal and Small-Scale Gold Mining in the Philippines 2011-2014.⁴⁶ This initiative involves the training of miners in non-mercury gold extraction, teaching of rural healthcare workers about how to deal with mercury poisoning and raising awareness about the dangers of using this chemical element. Currently capacity building projects play an important role in increasing the environmental protection in the Philippines.

Therefore, it is essential to take into account sustainability related issues such as revenue sharing, acceptance of mining by civil society, or the lack of capacity of local government. After a literature review and consideration of various approaches, the team decided to focus on transparency and public participation since these key elements can help to cover most of the problems.⁴⁷ The question of transparency and public participation in the mining sector has been investigated in a number of Asian countries, over the past 23 years.⁴⁸ However, few studies have been conducted concerning transparency and public participation in the Philippines' mining sector.⁴⁹

2. Importance and necessity of this project and its expected impact upon the target field of research

2.1 Impact of the mining industry on the environment

Mining operations have a significant impact towards the environment, causing pollution of water, air and soil but also endangering wildlife and biodiversity. Small-scale and large scale mining are different industries which rely on different technologies. According to the Philippine's legislation, small-scale mining refers to "mining activities which rely heavily on manual labor using simple implements and methods and do not use explosives or heavy mining equipment,"⁵⁰ while large scale mining requires capital, heavy equipment, and high technology. In terms of volume of production, a large scale mining operation produces more than 50,000 metric tons, while a small-scale mining operation does not exceed this amount. Therefore the impacts on environment are different.

2.1.1 Environmental impact of large scale mining

Firstly, mining affects water quality and availability of water resources.⁵¹ The most negative impact of large scale metallic ore mining on water quality are acid drainage, contaminant leaching and dumping mineral wastes into water systems.⁵² Leaching of toxic constituents, such as arsenic, selenium and other metals are another source of water pollution. Mining activities produce significant number of rock wastes, which pollute water systems. It is estimated that in order to make a single golden ring, the average amount of rock waste generated in a mine is over three tones.⁵³ Secondly, mining activities have negative impact of air quality, which have a direct impact on human health. Mining operations mobilize large amounts of material, and waste piles containing small size particles which are easily dispersed by the wind and further inhaled by people.⁵⁴ Thirdly, mining negatively impact the soil quality, affecting any agricultural activities in the areas surrounding mining projects. Finally, mining activities cause damage to wildlife. The impacts stem primarily from disturbing, removing, and redistributing the land surface.⁵⁵

2.1.2 Environmental impact of small-scale mining

Small-scale mining activities also highly contribute to environmental degradation by use of mercury in the process of gold extraction. According to the United Nations Environment Program (UNEP) some 26 tons of mercury are dumped annually into bodies of water in Mindanao, resulting bioaccumulation in fish and other aquatic organisms which are then consumed by people.⁵⁶ Mercury impairs brain function, damaging coordination and memory, lowering intelligence, and causing hearing loss, birth defects and miscarriages.⁵⁷ Moreover, the polluted water systems affect the cattle and livestock industry and agricultural production. When miners establish new sites they cut down the forest which causes a loss of topsoil in turn affecting the stability of the ground. For the miners, this causes regular risks of drowning from flash floods or the collapse of retaining walls during the rainy season.⁵⁸ In this context, the government of the Philippines expressed a political will in fighting the mercury use in mining by accessing to the Minamata Convention on Mercury adopted on October 10, 2013.⁵⁹

2.2 Transparency and public participation as a scope of the research

The research project contributes to the study of environmental governance through the exploration of transparency and public participation as policy tools. Taking into account the absence of unified definitions of transparency and public participation, this research project employs the following working definitions. Transparency provides stakeholders with knowledge about the processes, structures and products of government. Participation refers to the quantity, quality and diversity of input of stakeholders into government decision-making. Greater transparency and participation are often considered to operate side by side.⁶⁰ Transparency and public participation have been recommended by international organizations,⁶¹ scholars and NGOs as crucial elements of new environmental policy.

In the Philippines' mining industry, the lack of transparency and public participation has proved to impact the effectiveness of environmental regulations. In the case of Marcopper, the dam causing environmental disaster was built in spite of protests and concerns of local communities. The lack of environmental risk assessment and management led to one of the biggest catastrophes in the Philippines' mining industry.⁶² This case showed the need for an effective platform to allow public to raise concerns regarding large scale mining activities.

The lack of transparency and public participation also affects environmental governance in the small-scale mining industry. In 2012 the amount of gold legally sold to the central bank of the Philippines, which is the only body entitled to purchase ASM gold,⁶³ fell 94 % from a year earlier.⁶⁴ This situation further results in the smuggling of approximately 90% of small-scale gold production out of the Philippines. According to UN Commodity Trade Statistics, Hong Kong's official figures of gold imported from the Philippines in 2012 were over 10 times higher than the official Philippines' numbers for gold export to Hong Kong.⁶⁵

The phenomenon of gold smuggling in the Philippines disclosed the problem of lack of accountability in the small-scale mining sector. Even licensed small-scale miners do not provide information about the quantity of extracted minerals and their value. As a result, small-scale miners do not comply with environmental standards in gold extraction. Due to accountability problems the government cannot even control small-scale mining activities and check their compliance with sustainability standards. Moreover, eventual environmental catastrophes caused by small-scale miners can remain unnoticed by the government due to the fact, that many small-scale miners do not even disclose the place of their operation.

However, the positive impact of transparency and public participation on environmental governance has not been proved. The "empirical research has yet to provide evidence for the superiority of collaborative and multi-level forms of governance in terms of policy effectiveness."⁶⁶ Therefore, the research investigates transparency and public participation issues to improve environmental governance in the mining sector. The specific aim is to alleviate the difference between the recommendations by various sectors and the lack of empirical study. The expected impact upon the targeted field of research is to clarify the role of transparency and public participation in improving environmental governance in the Philippines.

To achieve this impact, the research is based on the criticisms of the concepts of transparency and public participation. Even though, it is widely accepted that transparency and public participation enhance governance, serious limits have been raised by academics. With regard to the relationship of transparency and participation, “[a] few sources shed empirical light on how one contributes to the other, but these are scant.”⁶⁷ Moreover, “[i]n some sectors, such as [...] natural resource governance, transparency and accountability work is too recent to have achieved or demonstrated any long-term impacts.”⁶⁸ Finally, another limit of transparency and public participation is that these concepts are interrelated. As such, policy prescription to enhance transparency and public participation should consider other enabling conditions, and the ultimate goal must be said otherwise. For example, “greater accountability may not be achieved by transparent information alone but may require media competition, citizen capacity to process the information and the resources to act on it.”⁶⁹ More particularly, transparency is criticized since the poor people have difficulty with accessing the ‘right’ kind of information, which is often inappropriate to meet their needs, either in content or in presentation. Furthermore, information is disseminated without understanding of needs of the users, or the contexts in which they can access and use the information.”⁷⁰ Regarding public participation, criticism is related to the quality and fairness of the public participation. Research demonstrates that “even under excellent conditions, a true representation of the public is never accomplished.”⁷¹ Low level of education and skills of the public might lead to “often trivial, overprotection of certain interests or values, or lead to actions that are inefficient or disproportional to the threat or problem”⁷². Finally, public participation is a costly process, in time and money. Indeed, “one of the most sustained criticisms of public participation is that it requires a commitment of time and money so large that the costs far outweigh the benefits of participation.”⁷³

3. Research objectives and targeted goals of this project

3.1 Research objectives

The common research objective is to provide solutions to increase environmental protection in the Philippines mining sector through promoting transparency and public participation. Based on this objective, the individual papers analyze various policy tools which could be used in the Philippines’ context. The research provides five proposals: 1) implementation of Extractive Industry Transparency Initiatives (EITI) standards; 2) an effective participatory mechanism in the Philippine Environmental Impact Statement System (PEISS); 3) public private partnership; 4) sustainability certification; and 5) corporate social responsibility. These proposals are divided into two parts, depending on the scale of mining operations. This division of the tasks and organization of the research paper is due to the fact that small-scale and large scale mining have different impact on environment and are regulated by different provisions.

The first part, dealing with large scale mining, includes three proposals. **The first proposal** focuses on improving transparency in the mining sector, with the special focus on EITI standards, which requires disclosure information about company payments and government revenues from extractive industries. The main objective of this part is to elaborate recommendations based on the comparative analysis of implementation process of EITI in other countries.

The second proposal revisits the existing participation venue for the local residents when conducting the Environmental Impact Assessment (EIA) and monitoring its actual implementation. **The third proposal** relies on public-private partnership (PPP), a measure to put a contractual obligation to the mining companies by a conditional clause. This part will analyze the practice of public private partnership related to the mining industry.

The second part of the research is related to small-scale mining and includes two proposals. To enhance environmental protection within small-scale mining industry, one proposal is market based, while the other relies on CSR. **The fourth proposal** aims at exploring the possibility of the establishment of a sustainability certification scheme in the small-scale mining in the Philippines, and to design a certification scheme which would be suitable for this country. **The fifth proposal** deals with Corporate Social Responsibility (CSR) activity and its potential to solve problems that large-scale mining companies as well as small-scale mining industry are facing. The research objective is to analyze what the government can do to enhance the effective cooperation between big mining companies and artisanal and small-scale miners.

3.2 Targeted goals: transparency and public participation as a mean to enhance environmental governance in the mining sector

The targeted goal of the project is to promote environmental governance through a comparative study on policy tools regarding transparency and public participation. The policy prescriptions are designed for the Philippines, but they are supposed to contain the implications of transferability. In a globalized era, policy tools successfully implemented in a certain country are likely to be transplanted to another country, with an anticipation that they will have a similar impact.⁷⁴ In the context of environmental governance⁷⁵, the policy tools are transmitted through the assistance by national or international donor organizations. Also, multinational companies transmit their practice through contract or advocacy to the countries they operate.⁷⁶ As such, innovative policies diffuse through various channels. However, when the context varies, the same policy can have a different outcome.⁷⁷ Thus, an identification of factors for success and the creation of a general model that can be modified according to each country's context are crucial.⁷⁸ In order to achieve this goal, the five components of this joint research project provide the following:

The first proposal provides a comprehensive framework which allows the Philippines government to use mining as an instrument for achieving environmental, social and economic objectives. Particularly, based on the comparative analysis, the research proposes creation of the National Transparency and Accountability Information Center of the Philippines. This helps to better organize reforms on implementing EITI in the Philippines and to achieve systematic, convenient, and reliable disclosure information in the mining sector. Consequently the local community, civil society organizations, companies, and government will have a unified source of information concerning company payments and government revenues from the mining sector.

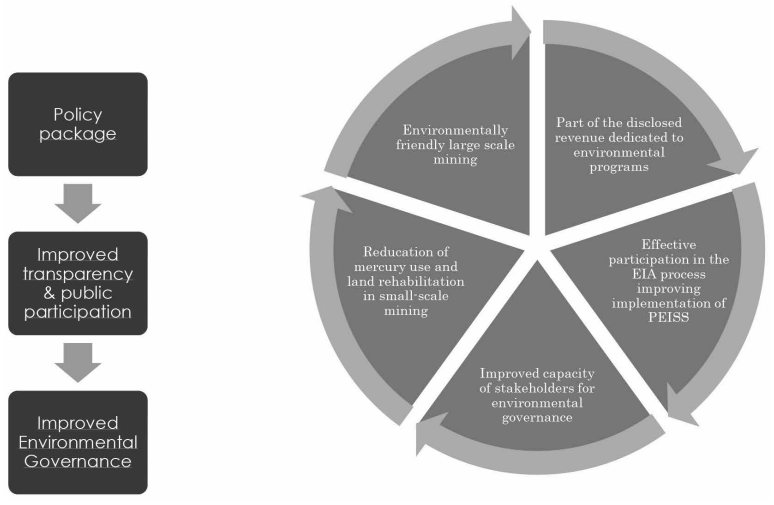
The second proposal insists on revising the Philippine Environmental Impact Statement System through enhancing public participation at a particular stage in the EIA process. The proposal argues that not only the degree of participation in the EIA process is important, but also the timing is crucial for effective implementation of the PEISS.

The third proposal will develop the cooperation between companies and local population on a contractual ground, with the emphasis on the importance of the multi-stake holder agreement and how to make it work. The main outcome of the proposal is a better participation of concerned communities. This proposal improves environmental governance in the sense that it allows a better enforcement of environmental rehabilitation plans.

The fourth proposal explores the establishment of sustainability certification schemes for small-scale mining, as a means of increasing transparency and public participation in the environmental governance in the Philippines. The certification can increase the presence of ASM products on the global market and boost the economic growth of the Philippines, making use of their natural resources. The sustainable production of minerals connected with tangible profits would create a long expected social and legal authorization of small-scale mining activities. As a result, the Philippines would be able to make a substantial profit from its rich natural resources and at the same time preserve its natural environment. This proposal improves environmental governance in the sense that it gives a momentum to support efforts in reducing the use of mercury and providing post mining land rehabilitation.

The fifth proposal has an implication for the mining industry including small-scale mining with regard to how to ensure sustainable development through CSR. There are voluntary initiatives by large-scale mining companies to involve small-scale miners in local community as a kind of CSR activities. The mining companies have a potential to provide necessary resources and knowledge to small-scale miners. At the same time, they will benefit from such an engagement by ensuring social license and preventing conflicts with local community. This proposal improves environmental governance in the sense that it allows small-scale miners to comply with environmental standards with the assistance by the mining companies.

Upon a successful implementation of these proposals, the policy package would directly improve environmental governance of the Philippines through the following solutions: 1) dedication of the disclosed revenue to environmental programs; 2) effective participation in the EIA process improving implementation of PEISS; 3) improved capacity of stakeholders for environmental governance; 4) reduction of mercury use and land rehabilitation in small-scale mining; 5) environmentally friendly large scale mining.



Members of This Research Project and Their Activities

List the names of members of this research project and their roles and contributions for this research.

Nr.	Member's Name	<p>Roles and Contributions (What will each member do to finish the research reports? Please list the expected roles and the contributions of each member.)</p> <p>Contents:</p> <ol style="list-style-type: none"> 1. Main role within the project to be played by this member. 2. Part of the joint project report to be written by this member 3. Tentative title of the individual report within the project report to be written by this member 4. Expected field work destination(s) of this member 5. Expected counterpart organization(s) of this member for proceeding with this research project 6. Expected expert(s) to be met by this member for consulting on this research project 7. Other factors
1	Otabek Narziev	<ol style="list-style-type: none"> 1. Research on transparency issues with focus on implementing global standards in this field. 2. The part regarding enhancing transparency in extractive industries governance. 3. Extractive Industries Transparency Initiative standards implementation: risks and challenges for Philippine” 4. Oslo, Norway; Manila, the Philippines 5. Extractive Industries Transparency Initiative (EITI), Department of Environmental and Natural Resources (DENR) 6. Bebet Gozun – The Philippines National Coordinator Philippines EITI; Wouter Biesterbos – The Philippines Strategic Advisor EITI International Secretariat; Rommel Abesamis - DENR Assistant Secretary of the Foreign Assisted and Special Projects Office (FASPO)
2	Okano Naoyuki	<ol style="list-style-type: none"> 1. Research on the perspective of private sector, especially the mining industry 2. The part regarding transparency, corporate social responsibility, and public participation in environmental monitoring 3. “Community Driven CSR: A Cooperative Relationship between Large-scale Mining Companies and Artisanal and Small-scale Miners as a Policy to Eradicate Environmental Harm” 4. Manila, the Philippines 5. The mining companies in the Philippines listed in the Philippines stock market; foreign mining companies in the Philippines, such as Sumitomo Mining Metal Co., Ltd. 6. Mr. Allen Blackman, a specialist of co-regulatory measure in Resources for the Future

3	Taguchi Jean-Isamu	<ol style="list-style-type: none"> 1. Research on community agreement for development and environmental protection. 2. Problems related to mining in the Philippines; Relations between transparency, public participation and environmental governance; Community empowerment; interests of the stakeholders. 3. Public-Private Partnerships as a way to strengthen communities and prevent environmental impact of extractive industry 4. Field research in the Philippines, in Manila, in Rio Tuba, and in Baguio. 5. World Bank Global Forum “Law, Justice and Development”; Mines and Geoscience Bureau, central office in Manila; Department of environment and natural resources, central office and regional office in Manila; Philippines Public-private partnership center; Philippines international trade corporation; National Commission on Indigenous People of the Philippines (central office and Baguio city). 6. Engr. Rodolfo L. Velasco Jr., Mines and Geoscience Bureau, Chief, Mining Environment and Safety; Marico A. Abu, DENR-EMB Region IVB-MIMAROPA; Rolando A. De Jesus, Regional Director, DENR-Mines Geosciences Bureau, Region IVB-MIMAROPA; Jojo Sarret, Senior Vice President, Rio Tuba Mining Corporation; Ms Ferosia Francisca Concordia, Public-Private Partnership Center, Director III, Project Development Service; David A. Inocencio, Philippines international trading corporation, Operations Manager; John Ray Libiran, Senior Legal officer in National Commission on Indigenous People in the Philippines, Cordillera Region Office.
4	Sakae Suzuki	<ol style="list-style-type: none"> 1. Research on revising the PEISS through enhancing public participation in the EIA process 2. The part of providing an effective venue for public participation in the EIA process and the revision of 2009 alternative mining bill 3. Revisiting the Philippine Environmental Impact Statement System through enhancing public participation 4. Manila, the Philippines 5. Department of Environmental and Natural Resources (DENR), World Bank, Department of Economic and Social affairs in UNDP 6. World Bank, Anwar Shah
5	Jacek Kozikowski	<ol style="list-style-type: none"> 1. Research on legal aspects of small-scale mining in the Philippines and possible adoption of sustainability certification schemes. 2. The part regarding sustainability certification of small-scale mining. 3. Sustainability certification of small-scale mining activities as a way to increase the level of environmental protection in the Philippines. 4. Davao City - Southern Mindanao, Manila, Philippines, 5. Panalipdan!-Southern Mindanao, Action for Economic Reforms, Secretariat for Bantay Kita 6. Fr. Medardo Salomia Vice –Chairperson PANALIPDAN – SMR, Men Sta. Ana, President of the Action for Economic Reform

Schedule of Research Activities

List the finished activities of the members for this research project.

month	Name of the Member(s)	Activities, destination(s) of the field work, if any.
April~ Nov 2013		Cf: Previous reports
Dec. 2013	1. Otabek Narziev 2. Okano Naoyuki 3. Taguchi Jean-Isamu 4. Sakae Suzuki 5. Jacek Kozikowski	1. In December 2013 the main attention was paid in finalizing comparative analysis, clarifying conclusive ideas and drawing up recommendations. 2. Based on the comments given in the official meeting, makes some modifications to the individual part, putting artisanal and small-scale mining into focus. As to the common part, deepening the research on the concept of transparency. 3. Field research in the Philippines. Polishing of the joint report and personal report: inclusion of comments from the interim presentation. Modification of the personal and joint report according to the result of the field research. Development of the theoretical framework. 4. Intense literature review on the framework of participatory budgeting in South African country 5. Researching the issue of small-scale mining certification in Bolivia. Research on the issue of gold smuggling in the Philippines in the context of Ghana experience
Jan. ~Feb 2014	1. Otabek Narziev 2. Okano Naoyuki 3. Taguchi Jean-Isamu	1. In January 2014 main research activity was in summarizing previous analysis and completing the writing of individual report. From February 2014 the main attention will be paid to improving and polishing the individual report based on comments and recommendations of professors. Also it is planned to test main research questions ideas through contacting with counterpart organizations and experts. 2. Polishing an individual contribution, especially the feasibility of the proposal by comparing with the case of Tanzania and Ghana. Completing the research on theoretical aspect of transparency, with a special attention to the limitations of and criticisms to the theory. Also, plan a field research. 3. Development of the country case study. Preparation of final presentation. Presentation of the joint and personal report. Modification of the report according to the comments of the Professors. Contact with officials met during the internship to disseminate the final result of the joint research.

4. Sakae Suzuki	4. Proposing an alternative mechanism for enhancing participatory venue for the local residents in the mining affected area. Due to scarce information on the actual implementation of participatory budgeting, the researcher shift its focus on actual implementation of the PEISS.
5. Jacek Kozikowski	5. Establishment of a connection with the association of environmental NGO's working with small-scale mining in the Philippines - Panalipdan!-Southern Mindanao. Arrangements of the eventual on site research.

Progress of Research

(Indicate the state of progress and the findings of the group research and individual researches separately.)

Progress of common part:

At this stage, the joint research has clearly identified the problems related to mining in the Philippines, and is based on the concepts of transparency and public participation to approach these problems. The group has established their definitions of transparency and public participation, terms and organization of the paper. While transparency and public participation are used as concepts that unifies and guides the proposals, the research proposals are divided into large scale and small-scale mining, since technical, financial, environmental regulations and social requirements are slightly different.

Progress of individual research:

Otabek Narziev

At this stage, the individual research has clearly identified the problems regarding the implementation of EITI standards in the Philippines. The research has identified the potential solution to these problems, trying to bring a solution for most of them. The research is based on the global standards of transparency in the extractive industries, which the Philippines is going to implement. Paper proposes recommendations on improvement of EITI standards implementation process in the Philippines. Particularly it recommends creation of the National Transparency and Accountability Information Center of the Philippines. This Center will coordinate the activity of the Multi-Stakeholder Group (MSG) consisting from 15 representatives of government, companies, and CSOs; will be the a unified source of information concerning company payments and government revenues from the mining sector; will provide an unsophisticated data and access through online, publications, branches, seminars etc.; and will be a real platform for CSOs in keeping civil control under the process.

Okano Naoyuki

The researcher has found that CSR can be used to community development, especially by giving supports to artisanal and small-scale miners. Based on the pilot paper given by ICMM, the researcher gives a policy prescription regarding what the governments can do to effectively engage big mining companies and artisanal and small-miners. There are cases where we observe a voluntary cooperation between big mining companies and artisanal and small-miners in the Philippines, Tanzania, and Ghana.

Taguchi Jean-Isamu

At this stage, the individual research has clearly identified the problems regarding the mining industry in the Philippines, based on statistics, data, and interview.

The research has identified the potential solution to these problems, trying to bring a

solution for most of them. Finally, the research has identified the political, legal and institutional background to implement the solutions. The field studies, through interviews, proved the good assessment of the issues, and confirmed the approach of the proposal. The proposal by the Chamber of Mines of the Philippines to use PPP to exploit and close abandoned mines also showed that the proposal to use PPP for mining activities is appropriate and relevant.

The theoretical framework of the proposal has been worked out, using the Ikea theory of legal transplant. The transplantability of the proposal will be proved on the basis of the theoretical framework and on the basis of the case study of Papua New Guinea. Moreover, the study of the model agreement provided by the World Bank is already a great step toward transplantability of the proposal. An effort has been put toward more contextualization of the proposal, in order to make it more accurate and more relevant.

Therefore, the case of community agreements in Australia, United States and South Africa will not be used. To put the research in a more global framework, cooperation within the World Bank Global Forum "Law, Justice and Development" has been established.

Sakae Suzuki

At this stage, the individual research has clearly identified current problems of participatory budgeting in terms of promoting environment protections in Porto Alegre, Brazil as one of the major extractive industry countries. The main problem of the participatory budgeting is how to secure adequate participation of the local residents at the mining site. The research proceeded the analysis of successful cases of providing such participatory venue by using participatory budgeting mechanism in Porto Alegre and Naga city in the Philippines. However after conducting intensive literature review on both cases, the researcher noticed the difference in available in depth reports of the participatory budgeting between Porto Alegre and Naga. While abundant information of the participatory budgeting mechanism exists in Porto Alegre, few detailed analysis are available for that of Naga. Therefore, the researcher shifted toward the analysis of the PEISS, which an effective participatory venue for the local residents on the decision making process is also essential for securing environmental sustainability in the mining affected area.

Jacek Kozikowski

At this stage, the individual research has clearly identified the problems regarding small-scale mining in the Philippines. The current thesis presented in the research is that the regulatory framework for small-scale mining in the Philippines provides no incentives for miners to comply with sustainability standards. Moreover, the sector suffers from the lack of public participation in policy making and lack of transparency in extractive operations, causing illegal outflow of minerals from the country. An alternative is a design of sustainability certification of small-scale mining activities in the Philippines. The design would invite wide public participation of different stakeholders, reflecting capacities and needs of miners and local communities which highly depend on income from small-scale mining. The certification would also address transparency issues as an inevitable part of the scheme. The research provides comparative studies between the Philippines and Bolivia regarding sustainability certification schemes for small-scale mining.

Self-Evaluation of the Research

In this section students should describe the degree of attainment of the originally planned purposes of the research, the research plan and methods, with a focus on the following points.

1. Problematic points that arose during the implementation of the group research.
2. The way how to deal with these problematic points.
3. Findings and problematic points within individual research.

1. Problematic points that arose during the implementation of the group research.

At the beginning of the joint research, one of the most problematic points was to find a common approach among different policy proposals. The group dealt with this issue by providing a common framework for each individual contribution based on the idea that transparency and public participation as means to enhance environmental governance. During the implementation of our group research, the group has encountered two difficulties both technical and substantial. For technical issues, time management among the group has been difficult. For substantial part, reaching a common understanding on the structure of the joint research paper, and establishing the common standard for combining the individual research as comprehensive joint research have been the most problematic points. Particularly two difficulties in drafting the common part arose: to find such a definition of transparency and public participation that covers all the individual contributions, and to organize a paper containing very different proposals.

2. The way how to deal with these problematic points.

For the time management, we allocated one person to fix the routine meeting time for every week, organizing the other members' schedule. In the issue of having a understanding at a same level on the structure of the joint research paper, the members have discussed and confirmed a common contents to write under the three terminology (expected impact on the field, research objective, targeted goals). Lastly for the problem of establishing the common standard for combining the individual research, the group decided to rely on a factual division of the proposal, rather than on a conceptual level. The division between small-scale and large scale mining is more practical since legal regulations of those industries are different. Moreover, from an intellectual perspective, a division based on practical issue is more clear and satisfying, rather than a division based on criticized theoretical concepts. Although analysis on each contribution by different level of transparency and public participation remains as a task, policy recommendations at the individual level are combined as a joint research depending on the incline toward the either aspect of distinctive criteria.

3. Findings and problematic points within individual research.

Otabek Narziev

The most problematic issue within the individual research was how to respond to the lack of capacity of the civil society in the Philippines to actively participate in the implementation of the EITI standards. The issue is especially complicated because of the imbalance of power among different ethical and political groups, resulting in internal conflicts. Implementation of EITI standards is an ongoing process, which means limited access to data, and unpredictable result of implementation at the stage of research.

Okano Naoyuki

One of the problems I face is that the model I am trying to propose is not something that is existing somewhere in the other countries, but a new mode. To show the feasibility of the research, I try to draw various case studies and structure the convincing argument.

Taguchi Jean-Isamu

Findings and problematic points within individual research: Access to data regarding public private partnership and offset contract in the Philippines was limited. A field study in the Philippines confirmed that no project were to be launched in the field of mining industry, and forced to make a better contextualization of the project. A problematic finding was that due to the outdated information uploaded on internet, the proposal needed to be narrowed a lot. The aim of the study is not to introduce a new participation tool, but rather to develop and make emphasis on an existing tool.

Sakae Suzuki

Findings and problematic points within the individual research lies in the selection of appropriate case studies in terms of available data. The researcher managed to have access on literature and statistical data on participatory budgeting mechanism on Porto Alegre, Brazil, but failed to collect equivalent data on that of Naga City, the Philippines.

The failure of such research plan derives from the optimistic view that the Naga city has a detailed in depth report on participatory mechanism, only judging from the popularity of the mechanism in the Philippines reported in studies provided from the United Nations and local newspaper without conducting a field study to grasp the exact situation.

Jacek Kozikowski

On the individual level the research faced a difficulty in finding a clear connection between sustainability certification schemes and public participation in the process of its design. Moreover, as the proposal deals mainly with voluntary initiatives based on market incentives, it was challenging to accommodate the role of the government in the implementation of sustainability certifications.

Research Activities and Methods after November 2013

Describe the research activities and methods after September 2013 in a clear and specific manner. The plan should be divided into one for group research and one for individual researches. The literature should be referred to as needed and the activities and methods should indicate results through a discussion from multiple aspects, such as the action in the event that the research does not progress as originally planned. The following points should be highlighted.

Where the research activities were implemented by a group of members, indicate the specific roles of each member (using figures, tables and other visual aids). In case the research activities were implemented by each member, include the necessity and rationality and the relationship to the purpose of the group research from the **social scientific viewpoint**.

Moreover, in order to clarify the general view of the project members, state the roles of the Research Collaborators, if any [e.g., overseas advisors and cooperators, and graduate students in other courses (names and number of members may be stated)].

Furthermore, students should describe the methods and other ways to disseminate the research results of the current group research project to society and citizens.

Add pages if you need.

Otabek Narziev

From February 2014 the main attention will be paid to improving and polishing the individual report based on comments and recommendations of professors. This stage logically the final stage of the study, which assumes dissemination of achieved results of the research in cooperation with counterpart organizations. Depending on the results of the research, there will be organized wide presentation of the results of the research at the international conference at the Nagoya University and publication of them.

Okano Naoyuki

The research is focusing on the possibility of CSR activity to enhance the environmental performance of artisanal and small-scale mining. Based on the literature review and case studies, it shows the potential of beneficial cooperation among big mining companies and artisanal and small-scale companies. The research also plans to visit the mining site in the Philippines to have a concrete image of the mining industry and also estimate the feasibility of the proposal.

Taguchi Jean-Isamu

For the next month, the research activities and methods are the following. The first activity is the desk research, with research on offset practice in mining industry, and to deepen the case study of community agreement in Papua New Guinea. The second activity is cooperation within the communities of practice of World Bank on offset agreements and public private partnerships. The last activity is field research, that includes interview national and local officers, with NGO, and onsite visit of mining company to analyze the implementation of social development plans and their importance for acceptability of mining activities.

Sakae Suzuki

The research continues fundamentally based on the literature reviews. A comprehensive literature review on Latin American countries implies how local residents effectively involve themselves in the budget planning process.

Jacek Kozikowski

In the following months the research plan includes traveling to the Philippines and doing in the field research, meeting local communities and small-scale miners. The research continues will rely on materials provided by the Panalipdan!-Southern Mindanao, an organization directly involved in the operation of ASM in Mindanao.

Changes from the Initial Plan

In this section students should describe within 1 page the changes in the content of the research that is mentioned in the previous proposal for Joint Group Research II (a change in the research purpose or a change in the title of the proposed project, a change in the monthly plan of the activities that is planned to be provided from October 2013, an increase or a reduction of the group research activities and/or of the individual research activities, and other changes) on the level of the research plan and methods for the proposed project, etc., and the reasons for these changes.

Common report

An important change has been made in the organization of the joint report. Initially, the joint report was supposed to contain two parts. The first one was about transparency while the second regarded public participation. However, proposals were modified and it was necessary to reorganize the contributions according to another division. The group agreed on a division between small-scale and large scale mining, since these industries have different social, environmental and economic impacts, and therefore are regulated by different laws.

Okano Naoyuki

Naoyuki's part of the individual contributions expanded its focus from mining companies' CSR activities to including a problem of artisanal and small-scale mining. Bearing in mind that artisanal and small-scale mining is causing a serious environmental harm and big mining companies' potential to technically and financially support artisanal and small-scale mining, the new proposal looks for a way to cooperation between big mining companies and artisanal and small-scale miners.

Sakae Suzuki

The researcher initially focused on the analysis of participatory budgeting mechanism in Porto Alegre, Brazil and Naga city. The aim of the study was to extract essential factors for securing effective venue for local residents to participate in the budget planning process of environmental management projects. However, due to scarce information on the participatory budgeting mechanism in Naga, the researcher shifted its focus to the analysis of the PEISS. The PEISS consists of mainly three processes: 1) the issuance of Environmental Impact Assessment (EIA); and 2) the issuance of Environmental Impact Statement (EIS) as to summarize the results of EIA in a document; 3) Implementation and monitoring of the mining operation complied with the EIS. These three processes are similar to the three steps of participatory budgeting mechanism in a broad sense: 1) addressing the primary issues to solve in the mining affected area; 2) the issuance of a concrete budgeting proposal for implementing projects to solve such issues; 3) implementing proposed projects based on the budgeting proposal. In both mechanism, effective participatory venue for the local residents on the budget planning stage is essential for securing adequate implementation of the environmental management projects.

Taguchi Jean-Isamu Taguchi

With a field research in the Philippines, many modifications has been brought to the personal report. First, information regarding the development of social development management plan (SDMP) by mining companies are outdated. The document explaining the procedure has not been changed after the implementation of an administrative order in 2010. This is an important point since the administrative order in 2010 introduce the obligation for the companies to enter in a memorandum of agreement with the local communities. Therefore, the aim of the proposal is not to introduce community agreements in the Filipino regulation, but rather to strengthen the contractual aspect of the SDMP and to provide standards and good practice for its implementation.

The second modification regards the implementation framework of the proposal. It was argued that the PPP center and the Philippines International trading corporation (PITC) would be appropriated agencies to develop and implement the proposal. This was possible since some State information mentioned the possibility to develop mining project through PPP Center, and also because the guidelines on offset contracts include environmental and mining related investments as possible compensation for foreign investment. However, according to PPP Center and PTIC officers, mining project are not to be developed in the near future, mainly because of a lack of political will.

Due to this elements, it was necessary to refine the proposal and better contextualize in order to make it more accurate and relevant.

Jacek Kozikowski

The initial plan has not been changed much. I was able to follow the planned steps of the research and accomplish it. Some new political and social context arose during the research, which forced me to deepen the knowledge about contexts surrounding the operation of the mining industry in the Philippines.

Rationality and Justification of the Travel Costs

In this section, students should fill in the budget for each expense for travels, based on the contents of the research plan mentioned in the section "Research Description" on the first page, and should then describe the rationality, justification and grounds for the total amount. A deliberation on the optimum scale and budget of the research travel will be conducted in the Steering Committee of the Leading Graduate School Program. Therefore, students should specifically describe each expense for travels (for example, in the case of travel abroad, reasons why the travel is necessary for the research and the reasons why other means cannot be used, etc.).

Statement of Costs for Travels								
(If the student travels for group and/or individual research, he should enter details, such as "the travel relating to a part of the group research", in such wording that the contents of the travel becomes clear. For long travels, not only the general explanation but also the breakdown of each visit and discussion should be stated. If the student goes internship in this term, he should also fill in the reason and the activities. (Unit: Thousands of yen))								
Date and Month when travel was Done	Destination	Institutions and Persons	Date & Time	Hotel	Travel Expense (¥)	Means of Transportation	Contents of the Activities	
December 1 st to 16th	Philippines - Rio Tuba	Rio Tuba Mining Corporation; Citnickel Mining Corporation; M. Dats Sangkula , Non-Timber Forest Product	12.02 12.03	/	75500	Plane		
	Manila	Rolando A. De Jesus , Regional Director, DENR-Mines Geosciences Bureau, Region IVB-MIMAROPA; David A. Inocencio , Philippines international trading corporation, Operations Manager Ms Abu , DENR-Environmental Management Bureau, Region IVB-MIMAROPA; Engr. Rodolfo L. Velasco Jr. , Mines and Geoscience Bureau, Chief, Mining Environment and Safety; M. Brando Cabalsi , Public-Private Partnership Center, Director IV, Project Development Service;	12.05		24000	Bus		
			12.06		80000	Hotel		
			12.09					
			12.13					
	Total					179500		
At the stage of the writing, the field research aims at giving a better and more precise understanding of the situation; it also aims at discussing the relevancy of the proposal. For the next stage, the aim of the field research is to create necessary contacts in order to disseminate the proposals.								

Add pages for other travel expenses.

Individual reports of about five pages each by every student should be followed.

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- ¹ David J. Gerber, "Globalization and Legal Knowledge: Implications for Comparative Law," *Tulane Law Review* 75 (2001): 952; William Twining, "Theorising the Global Legal Order," in *Theorizing the Global Legal Order* (Hart Publishing, 2009), 43.
- ² William Twining, "Theorising the Global Legal Order," in *Theorizing the Global Legal Order* (Hart Publishing, 2009), 43.
- ³ Jennifer Barsky, *UNDP and the Private Sector: Building Partnership for Development* (UNDP, 2004), <http://www.undp.org.cn/downloads/ppp/undpandprivatesector.pdf>.
- ⁴ Stephen Cope, Frank Leishman, and Peter Starie, "Globalization, New Public Management and the Enabling State: Futures of Police Management," *International Journal of Public Sector Management* 10, no. 6 (1997): 444–60; Christoph Knill and Dirk Lehmkuhl, "Private Actors and the State: Internationalization and Changing Patterns of Governance," *Governance* 15, no. 1 (2002): 41–63.
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- Country's Dilemma," in *International and Comparative Mineral Law and Policy: Trends and Prospects* (Kluwer Law International, 2005), 933, Mining in the Philippines; Karin Bäckstrand, "Multi-stakeholder Partnerships for Sustainable Development: Rethinking Legitimacy, Accountability and Effectiveness," *European Environment* 16, no. 5 (2006): 290–306.
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- ¹³ William Holden, Kathleen Nadeau, and R. Daniel Jacobson, "Exemplifying Accumulation by Dispossession: Mining and Indigenous Peoples in the Philippines," *Geografiska Annaler: Series B, Human Geography* 93, no. 2 (2011): 157.
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- ¹⁶ Interview with Roland A. De Jesus, Regional Director of the Mines and Geosciences Bureau-Region IVB, December 5, 2013, Manila
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and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.” However the issue of compensation is excluded in this research for the following reasons. First it is relatively a new topic s Philippines has initiated a program to enhance environmental justice in cooperation with UNDP from 2008. Second, the issue of compensation is rather incompatible in the scope of transparency and public participation, which is a key factor in this joint research. For the detail of the environmental justice project, see Philippine Judicial Academy, *Access to Environmental Justice: A Sourcebook on Environmental Rights and Legal Remedies* (Philippine Judicial Academy, 2011); See also “Environmental Justice in the Philippines,” *UNDP*, n.d., http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/projects_and_initiatives/environmental-justice-philippines/*.

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