



At Lake Mainit, people share their experience with mining (Source Nokie Calunsag)

THE MYTH OF GOLD AND A BETTER LIFE IN MINDANAO

Since March 2013, a coalition of different NGOs and church members is protesting against ruthless large-scale mining in the Caraga Region in the northeast of Mindanao. Especially the Chinese mining company Marcventures Mining and Development Corporation (MMDC) is accused of human rights abuses, polluting the water and destroying the ancestral domain

However, not only MMDC is responsible, also the government is blamed for ignoring human rights and not acting because of the great influence of international mining companies in the Philippines.

Rich Country, Poor People

The Philippines rank first in the world concerning the iron ore deposit, third in gold, fourth in copper and fifth in nickel. It is assumed that 9 Mio hectare out of a total of 30 Mio hectare are potential mining areas. Approximately 1,4% of this potential area is being mined now. Furthermore, the Asia Monitor Resource Centre reports that the gold reserves alone could amount to 16.873 billion US Dollar (Arago 2012). This would be enough to completely eradicate poverty in the country. The reality looks different though. Mindanao for example, the richest island in natural resources, registers the highest poverty and unemployment

rate in the whole Philippines. Only 0,6% of all jobs in the Philippines are in the mining sector, and most of these people are working in small-scale mining.

The Philippines Welcome International Companies

With the Mining Act of 1995, the government welcomed international multi-mining companies in the Philippines. Nowadays, it supports specifically large-scale mining. With the argument that only big companies with high-level technical equipment and the required capital are able to mine effectively, they legalise the on-going land grab. Since the Mining Act of

1995, international companies are enabled to mine without any Philippine involvement whatsoever. With this law, the government also follows the international economic dictate of the Worldbank, Asian Development Bank and other financial institutions, which demand laws that are advantageous for free trade and less state action. Nowadays, every foreign international company can apply for 81.000 ha land in the Philippines only for the first steps of its mining. Furthermore, these companies have tax immunity for the first five years and 100% tax-free bank transfers of their profits to their home countries. This does not address sustainable and reasonable mining, it rather facilitates fast and ruthless mi-



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ning. The consequences such as a completely destroyed landscape are already visible. This is also a result of the legal possibility to clear the forest unlimitedly and using as much water as needed for the operations. Forced displacement, check points and paramilitary unions are possible, too. Everything seems to be allowed for some forees: even though the mining contributes only with 6% to the national income, it provokes 57% of environmental destruction. Admittedly, there are some regulations which are designed to protect the environment and the population. But in reality there is a lack of implementation and prosecution. Indictments are ignored like in the conflict between the MMDC and local activists from Caraga Region in Mindanao.

Mining versus Human Life Quality

The Caraga Region is noted as the mining capital of the Philippines due to the presence of several mining companies conducting exploration or operating in the area. However, with the mining emerged environmental problems, too. For example, the five municipalities Cantilan, Madrid, Carasal, Carmen and Lanuza area affected by the ruthless nickel-mining in the northeast of Mindanao. Five international companies, including MMDC, are mining in this area, and the results are silty and contaminated rivers. Analysis of the University of the Philippines Natural Sciences Research Institute reveal an exceed of nickel of approximately 10.000 times the standard values in drinking water. This might be endangering not only the marine flora and fauna, but also the quality of human life. Different coalitions of local environmentalists, human rights defenders, Indigenous People and the Social Action Center blamed MMDC in particular for this situation. They claim the company acts without providing sedimentation or siltation dams, which are necessary to prevent erosion and siltation of the rivers. Furthermore, MMDC is claimed to operate illegally because business permits are missing since 2010. Additionally, the operating area of MMDC is located in a region declared watershed forest reserve, surrounded by ancestral domain. In November 2010, a coalition of different human rights defenders and several tribal communities named Tribal Coalition of Mindanao (TRICOM) filed a petition to the Regional Trial Court Branch 41. The signatories of the petition call for the immediate stop of allegedly illegal mining operations of 5 mining companies, including MMDC, because the water source of local communities and the livelihood of fishers are threatened by mining. The court granted the petition on the same day, but it was only confirmed later, in May 2011. The judge issued a Temporal

Environmental Protection Order (TEPO) and consequently a mining stop in this region as "subsisting and effective until there is an order lifting, revoking or dissolving it". However, despite the court order, until now MMDC is still operating in the area. Also the Regional Director of the Mines and Geosciences Mining Bureau Roger A. de Dios confirmed taking no action in implementing the TEPO until he gets an order from Manila. How is this possible and why can civil servants ignore court orders?

*"Mining shall be pro-people and pro-environment in sustaining wealth creation and improved quality of life",
Homepage of the Mines and Geosciences Bureau (MGB)*

The Mines and Geosciences Bureau (MGB) is, among other things, in charge of the administration and disposition of the country's mineral lands and mineral resources. They name rehabilitation and mine-related pollution thresholds; mine environmental audit and research; development of strategies for a comprehensive environmental protection program for mining operations; and mine safety and health audit as some of their duties. Regional Bureaus of the MGB and especially the Regional Directors are in charge of the implementation of pertinent laws, policies, rules and regulations. But this is only written on paper:

After the court decision the mining company MMDC continued its mining meanwhile the responsible MGB regional director Mr. Alilo Ensomo denied his competence for implementing the TEPO. Finally, a congressional inquiry was held in August 2011. The consequence was a memorandum issued by the national MGB Director Leo Jasareno which was addressed to the regional director to enforce the TEPO. Almost two years later, human rights defenders confronted the new MGB Regional Director since 2013, Roger A. de Dios, with the ongoing mining, but he still refuses to enforce the TEPO without a written order of the MGB Director. His main argument against the implementation is that he allegedly never got a personal order from his former colleague or the Director of the MGB in Manila-he therefore does not consider himself, to be in charge. The Philippino newsportal Mindanews reported in March 2013 that the National MGB Director Leo Jasareno said that the TEPO would be enforced if he were the Regional Executor. On the other hand, he could not enforce it even



Earth Day in Mindanao – people demonstrated peacefully against ruthless mining (Source Nokie Calunsag)

then because of a standing motion for reconsideration that the mining company has filled against the TEPO (Mindanews 2013a). However, in reality this does not affect the implementation: as long as there is no new court decision, the old order is binding. This means that the MGB is not acting even though it should. Meanwhile, three different judges refused the case, and a request to the supreme court to appoint a new judge or transfer the case to another City on neutral ground is still without action so far. Finally, in March 2013, the National MGB office sent a Memorandum of Agreement (MoA) with the order to enforce the TEPO, but there is still no action. The anti-mining activist Daniel Arias reports IPON from his experience that MoAs are often used to fool the people. „They are full of empty promises but not hard facts according to action.’ This situation is not only an example of missing state action and an existing kingdom of lawlessness for the mining companies. Especially the fact that state actors like the Regional

MGB Director delay the implementation of the TEPO by ignoring court orders and orders of their superiors shows that they work in favor of mining companies and against the interests of the Philippine people.

Nokie Calunsag of the environmental NGO Green Mindanao uttered criticism in an interview with mindanews: „This is a very funny decision from MGB, a very controversial one since the mining firm operating in the area is closely linked to politicians in Surigao del Sur. A law is a law and nobody is supposed to be above the law,[...] I’m sure there is a bigger anomaly behind this and that the MGB is afraid that this might come out open.”¹

More than 100 Environmental and Human Rights Activists Killed since 2010

Even the Executive of the local MGB-Office support the mining issues and not the interests of the people. There are still many activists and NGOs who observe and protest against ruthless

mining. But public criticism might be very dangerous: Missio counted more than 100 killings in the context of large-scale mining, illegal logging and other environmental conflicts since 2010. Also in context with the MMDC conflict, human rights abuses took place. Last October for example, Dr. Isidrio Olan, an activist against MMDC, was ambushed. In May 2013, another environmentalist was shot down in the Caraga Region. Other activists are still threatened, and mining companies are not innocent.

Destroyed Homeland and Damaged Society

Approximately one third of the mining tenements are founded in ancestral domain, and in many parts of the Philippines this has had a disastrous impact on the livelihood of the Indigenous People and their environment. The special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, reports

1) Mindanews: Almeda, Vanessa (2013): MGB-13 insists it won't enforce court order vs mining firm in Surigao Sur.

<http://www.mindanews.com/top-stories/2013/03/15/mgb-13-insists-it-wont-enforce-court-order-vs-mining-firm-in-surigao-sur/>

that „activities are often carried out without their prior, free and informed consent, as the law stipulates. Communities resist development projects that destroy their traditional economy, community structures and cultural values, a process described as ‚development aggression‘. Indigenous resistance and protest are frequently countered by military force involving numerous human rights abuses, such as arbitrary detention, persecution, killings of community representatives, coercion, torture, demolition of houses, destruction of property, rape and forced recruitment by the armed forces, the police or the so-called paramilitaries[...].“²

In theory, the state established protective law mechanisms with the Indigenous Peoples Rights Act (IPRA) in 1997. This law is modeled on the UN declaration on the rights of Indigenous People. It includes the right for self-determination of IP, including their lands, territories and resources. IPRA also recognized their right to manage their ancestral domain and to define its sustainable development and protection. This also includes the Free Prior and Informed Consent (FPIC), which granted them Native Rights. Even when they do not have an official title, they are recognized as the traditional inhabitants. This means in particular that the Indigenous Peoples have the right to use their land and the natural resources. But the state also reserved for itself in the constitution the privilege of the final ownership of all mineral resources in public and private lands. In reality, this means that mining companies have to ask the Indigenous People for the FPIC title and the state will decide about different permits. „But each state agency, like the Department of Environment and Natural Resources (DENR), the Mayor, Governor or National Commission on Indigenous Peoples (NCIP) get for each permission its bribe shares for their special permits“, explains Daniel Arias from a coalition of anti-mining activists. Furthermore, mining companies promise almost everything to get the FPIC from the local people: schools, health centers, infrastructure, jobs and money are only some possibilities. Another strategy are fake FPICs, corruption, or the use of force. Additionally, the law on the FPIC does not matter if the mining project was decided before the Indigenous Peoples Rights Act in 1997.

When Tribal Groups Break Because of Mining

Especially Indigenous Peoples (IP) are affected by poverty, unemployment, and social and political inequality in Mindanao. These are some reasons why local IP communities often welcome

the promises given by mining companies to build schools or health centers.

Normally one tribe is not homogeneous. There are different clans, groups and tribal elders, which together make up a tribe.

Only because they are one tribe does not mean they follow the same ideas in using their ancestral domain. In the conflict with MMDC, the affected area is the homeland of different clans of the Manobo tribe. The mining is against the will of the Bat-ao and Hunanhanan clans led by tribal leader Jimmy ‚Datu Dag-saan‘ Bat-ao, his tribal and church coalition. In March 2013, he and approximately 300 people barricaded an accessed the road which leadsto the mining operations of MMDC for weeks until the company suspended operation in the affected area. The protesters urged that mining be immediately stopped in their region. Moreover, they demanded more than 3 Mio US\$ in damages for the alleged desecration of the clan’s burial site and water source among other things.

As explained above, different clans of the Manobo tribe are sharing the rights over the land, and some of them are in favor of mining. One clan for example gave the mining company MMDC the FPIC and allowed them to mine.

It was Teodoro, the brother of tribal leader Jimmy ‚Datu Dag-saan‘ Bat-ao who allowed the mining activity in their shared area. Teodoro signed the agreement between MMDC and other tribal leaders, which excluded Jimmy ‚Datu Dag-saan‘ Bat-ao. This Memorandum of Agreement contains monthly allowances to the tribal elders as well as scholarships, regular jobs and a water system project. After one year, the mining company stopped all this support and dismissed Ips from the Manobo Tribe them from their jobs. Especially during the barricade, the community became more divided. People are still asking: „What will happen to the people when the mining company closes?“ Mining companies play exactly with these hopes and abuses.

False promises from the side of the companies are strategic. Local anti-mining activists report that mining companies promise every clan different things. As soon as one of the tribes realizes that these are false promises and starts rejecting mining, the company’s efforts centralize on another tribe. This results in a divided society. There is usually at least one clan that is supporting the mining company, even if they get only empty promises. Thus the mining can still go on.

People first – then Mining

Most people in the (potentially) affected area are not against mining in general. In mining they also see possibilities for their future. However

2) Stavenhagen, Rodolfo: Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, submitted in accordance with Commission on Human Rights resolution 2002/65. <http://www.ihumanrights.ph/hr-mechanism/human-rights-bodies/charter-based-bodies/special-procedures/reportsrecommendations/report-of-the-special-rapporteur-on-the-situation-of-human-rights-and-fundamental-freedoms-of-indigenous-people-mr-rodolfo-stavenhagen/>

they are against the sell-out of their land, missing participation, the ruthlessness and the environmental destruction. To improve this situation, a coalition of IPs, NGOs and church members are advocating the Alternative Minerals Management Bill. They are lobbying in Congress for principles like:

- responsible mining that serves the basic needs of the population
- (partly) Filipino involvement in production and benefit
- mining only in places where it does not endanger the ecosystem

In general, many people prefer the traditional small-scale mining. From their point of view, it ensures the local involvement and financial participation of the communities. Furthermore, it often means a regular income for the local people. On the other hand, there is no regulation about work conditions and security measures. Additionally child labor is more likely in small scale mining because there is less governmental control. However, both ways of mining are damaging the nature. That is why other local activists like the environmental NGO Green Mindanao promote the conservation of nature and sustainable development. They inform the local people about the strategies of the mining companies while providing mutual exchange of experience between affected people. But they also document extrajudicial killings and human rights abuses related to mining activities. These NGOs do the job that the state is normally supposed to do. Besides they are observing ruthless mining and questioning the relation between state and mining, thus putting themselves into danger. ■

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NEWSTICKER +++

In August 2011, a group of farmers from sugar plantation Diaz, Negros Oriental, were awarded their land title. But instead of being able to cultivate their fields they have to face a series of human rights violations and abuses culminating in the killing of farmer Arturo Maicom.

- + **31st Aug 2011** – A group of farmers receives land title for Lot No. 60
- + **Sept 2011** – Opposing group of 25 farmers occupies Lot No. 60
- + **29th Nov 2011** – Promised land-handover ceremony by Department of Agrarian Reform (DAR) fails due to resistance of opposing group
- + **5th Jan 2012** – Due to inactiveness of DAR, rightful land beneficiaries decide to enter Lot No. 60 on their own
- + **5th Jan 2012** – Opposing group attacks rightful land beneficiaries with bolos and knives. Shots are fired. Some farmers get seriously injured; Arturo Maicom is killed
- + **Jun 2013** – Until now, beneficiaries still not able to cultivate their land. DAR still has not officially handed over the land to the rightful owners. Opposing group is still resisting. Death threats against beneficiaries continue

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