

## Cultural Impacts of Mining in Indigenous Peoples' Ancestral Domains in the Philippines

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### Introduction

According to the Philippines' largest mining company, *Philex Mining Corporation*, "there is life in mining". In its advertising campaign, the company tells the public that it "values the environment and community" through "responsible mining" (Hilomen-Velasco, 2011). For indigenous peoples, however, who belong to the most marginalised and vulnerable sectors of society, large-scale mining often leads to the loss of their lands and thus poses a serious threat to their livelihoods. About 60 percent of mining operations in the Philippines take place in ancestral domains<sup>2</sup> and often without the consent of the affected communities, which fall victim to displacement and numerous human rights violations, such as arbitrary detention, persecution, killings of community representatives, demolition of houses, destruction of property, rape, and forced recruitment (Brawner Baguilat, 2011). These abuses occur in an environment of impunity, as perpetrators – state as well as private armed forces – are usually not held responsible.

Mining affects the strong cultural ties of indigenous communities and leads to the loss of their culture and identity (Brawner Baguilat, 2011). The following paper will look at impacts of mining on indigenous communities in two selected areas: Abra Province in northern Luzon and the Tampakan Mining Project in Mindanao in the

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2 The term "ancestral domain" is defined in the Indigenous Peoples Rights Act of 1997 and refers to all areas claimed by indigenous peoples in the Philippines based on tradition and heritage. It includes ancestral land, forests, pasture, residential, agricultural land, watersheds, natural resources, as well as traditional hunting grounds, burial grounds, and worship areas (Congress of the Philippines, 1997, Sec. 3a Ancestral Domains).

south of the Philippines. It will not limit its focus to large-scale mining, but also include small-scale mining. Primary data on the two cases was collected during a study tour<sup>3</sup> on mining and human rights in the Philippines, the purpose of which was to gain insight into different challenges connected with mining in the Philippines. Visits to the affected areas were the main component of the tour where open group discussions with community leaders and members took place. Round table discussions with local NGOs and individual interviews with government officials provided additional information. For the following article, the collected primary data was complemented and updated by secondary sources, such as newspaper articles. The selected cases are only two examples of numerous similar experiences in other areas of ancestral domains in the Philippines. They show the divisive effects of mining on communities where positions vary between those who strongly oppose mining and those who hope to benefit from it. The situation raises questions about the future of ancestral domains, including indigenous peoples' cultural heritage and natural resources.

### ***Mining in the Philippines***

The Philippines is said to host one of the world's biggest deposits of undiscovered minerals, especially of gold and copper (Herrera, 2012). Mineral reserves are estimated at about 7.1 billion tonnes of 13 known metallic and 51 billion tonnes of 29 non-metallic minerals, many of which are located in areas of rich biodiversity and within ancestral domains of indigenous peoples (Alyansa Tigil Mina [ATM], 2011a, p. 5). With the enactment of the Mining Act of 1995 (Republic Act 7942), the Philippines liberalised its mining policy and opened both public and private lands, including protected areas, to foreign investments (ATM, 2011a, p. 7). For 2012, the *Mines and Geosciences Bureau* of the *Department of Environment and Natural Resources* (DENR) expects USD 2.27 billion of foreign investment in mining (Herrera, 2012).

In addition to the Mining Act, Executive Order 270-A of 2004 promoted mining as a priority industry in the country (Brawner Baguilat, 2011), which, according to NGOs, marked a policy shift from "tolerance" to "aggressive promotion" of large-scale min-

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<sup>3</sup> The study tour was organised with support of the German-based *Philippinenbuero* and took place from 24 February to 17 March 2012. Participation was open to individuals from different sectors such as research, journalism, and NGOs.

ing. Between 2004 and 2011, 32 mining projects were pipelined and more than 2,000 applications for mining contracts and exploration permits were filed (ATM, 2011b, p. 3).

Despite this “aggressive promotion” of the mining industry, investments stayed below the government’s initial target and the mining industry only accounted for about one percent of the annual GDP (ATM 2011a, p. 18). In June 2012, President Benigno Aquino III signed a long-awaited executive order (E.O. 79) which defines the future direction of the Philippine mining policy. The E.O. 79 aims at increasing revenues from mining to at least 5 percent while it also defined “no-go zones” for mining such as prime agricultural lands, eco-tourism sites, and other protected areas (Cheng, 2012). Thus, it sought to find a balance for different stakeholders, although not all expectations were met. The Chamber of Mines of the Philippines welcomed the order saying that it would provide a “consistent and stable business environment” attractive for investors (Olchondra, 2012). Environmental groups, however, complained that they were not consulted and the Catholic bishops of the Philippines, who have always spoken out against destructive mining, criticised that the E.O. 79 would serve business interests and launched a signature campaign in support of an alternative mining bill (Cheng, 2012).

### **Mining in Ancestral Domains**

For years, NGOs and supportive politicians have been calling for the revocation of the Mining Act of 1995, which promoted a “private sector-led and foreign market/investment-driven exploitation of mineral resources”. Instead, they have been pushing for an alternative mining bill in Congress that should regulate companies’ activities and give more attention to environmental conservation and local communities (Arquillas, 2012). For example, Congressman Teddy Baguilat who is one of the main advocates for a new mining bill demands better protection of ancestral domains in accordance with the Indigenous Peoples’ Rights Act (IPRA) of 1997 or Republic Act 8371 (Herrera, 2012). Among others, IPRA obliges the State to recognise, protect, and promote indigenous peoples’ rights to their territories “to preserve and develop their cultures, traditions, and institutions” (Congress of the Philippines, 1997, Chapter I, Sec.2). It further guarantees indigenous peoples rights to self-determination and to

their ancestral territories, which empowers them to manage and to decide over the use of the natural resources within their lands (Brawner Baguilat, 2011).

For the indigenous peoples, *land is life* which means more than a mere source of livelihood. The term *land* is strongly associated with *home* that refers to a traditional territorial claim and an identity as a community with socio-cultural values closely linked to the environment (“Binodngan Ancestral Domains,” 2011). Environmental protection is therefore crucial to the indigenous peoples’ livelihood and their cultural identity. The *Binongan* communities in Abra Province, for example, describe their responsibilities in interaction with others and with nature through a *web of values* with three main angles: (1) self-dignity and respect for others, (2) relation to the environment, and (3) spirits and the supernatural world. Mining interferes with this set of values as it is considered a symbol of the Western culture of consumption that enters into conflict with the indigenous culture of sufficiency and commonness (Community Volunteer Missioners [CVM] member, personal communication, March 4, 2012).

Village leaders or the council of elders act as guardians of values and practices and are in charge of ensuring the “protection of watersheds, water sources, and acceptable uses of forests and resources” (CVM, n.d., p. 2). However, mining has disrupted traditional socio-political systems and thereby weakened the communities’ sense of unity.

Village leaders report that conflicts have been provoked by local government officials who, following their own business interests, assigned an ‘alternative’ council of elders that – in opposition to the traditional leaders – acts in favour of mining (village of Magao, personal communication, February 29, 2012). Having village leaders on their side is crucial for mining operators, as the IPRA requires a *Free Prior and Informed Consent* (FPIC)<sup>4</sup> of affected communities prior to any extractive activities in ancestral domains (Brawner Baguilat, 2011). Nevertheless, experiences on the local level show that the FPIC is easily bypassed, manipulated, or not well implemented by companies and the government agencies in charge (Bitog, 2011). When it comes to conflicting laws, as in the case of the Mining Act and IPRA, decisions are often made in favour of business interests instead of the affected communities, which then re-

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4 The principles of consultation and participation of indigenous peoples are provided in the ILO Convention No. 169 or Indigenous and Tribal Peoples Convention of 1989. Article 6 states that peoples concerned shall be consulted through appropriate procedures and in “particular through their representative institutions” whenever measures which may affect them are being considered (International Labour Organization [ILO], 1989, Article 6). Furthermore, according to Article 16 “peoples concerned shall not be removed from the lands which they occupy”, unless they gave their “free and informed consent”. The Philippines has not ratified ILO 169, but has integrated some of its standards, such as the FPIC, into national law.

sort to their own ways of resistance. In Mindanao, for example, the B'laan's struggle for the defence of their rights and of their ancestral domains erupted into a violent conflict (Sarmiento, 2012; see also Peliño & Maderazo, 2012b).

*Case 1: Struggle Against Large-Scale Mining in Tampakan<sup>5</sup>, Mindanao*

"If the company does not leave, we will fight it with arms," a tribal leader of a B'laan community announced in March 2012 during an area visit (village of Columbio, personal communication, March 10, 2012). Two months later, members of the B'laan finally took up armed resistance against the two companies Sagittarius Mines Inc. (SMI) and Xstrata to defend their ancestral domains (Sarmiento, 2012). Swiss-based Xstrata is the world's fourth largest copper mining company and main stakeholder of SMI, which operates the USD 5.9 billions Tampakan Mining Project – the biggest foreign investment in the Philippines (ATM, 2011a, p. 25). 28,000 hectares of land are targeted for the extraction of gold and copper, affecting the four provinces of South Cotabato, Sarangani, Sultan Kudarat, and Davao del Sur. SMI has already conducted explorations of the tenement and plans to start extractive activities by 2016. If this plan pushes through, about 2,600 families or 4,000 individuals, most of them B'laans, would have to relocate (Peliño & Maderazo, 2012b).

On 9 January 2012, however, the DENR ordered SMI to stop all operations in the area because the company did not meet the requirements for an *Environmental Compliance Certificate* (ECC), which is one of the prerequisites for large-scale mining. One reason for the denial of the ECC is an open-pit mining<sup>6</sup> ban in South Cotabato imposed by the provincial government in 2010. Despite that, the company has retained its presence in the area arguing that the ECC denial would only prevent construction-related but not "consultation-related" activities (Sarmiento, 2012).

Community leaders and NGOs have questioned the legality of SMI's activities since the application process. As the affected area has been declared an ancestral domain by the local community, an FPIC is required prior to any mining operation. Some B'laan communities, however, have not been consulted at all, while in other cases the

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5 The mining operation is known as Tampakan Project, because the main site is located in the town of Tampakan, South Cotabato.

6 Experiences from other case studies show that large-scale mining causes irreparable environmental damage. Especially open-pit mining comes with long-term negative impacts as it produces more quantities of waste than any other form of extractive activity. During the process, heavy equipment is required to excavate the pit and to remove large quantities of rock. In a next step, cyanide and other toxic chemicals are used to extract the gold from the stone. Remaining waste materials, or tailings, are then often discarded into the environment (Miranda, Blanco-Urbe, Hernández, Ochoa, & Yerena, 1998, pp. 21-22).

consultations were only conducted with selected village leaders who were offered incentives by the mining company (Marbel, personal communication during group discussion, March 8, 2012). In general, promises of material benefits such as seedlings and capital, of job opportunities, and development projects in these poverty-stricken remote areas convinced B'laan members to sacrifice their land to the mining company (Sarmiento, 2012; village of Columbio, personal communication, March 10, 2012).

Thus, the mining issue has clearly caused divisions among the B'laan communities. Some B'laan members expressed their willingness to resolve their differences with other communities based on their customary practices of conflict management (Peliño & Maderazo, 2012a). However, the high degree of militarisation in the area not only hampers conflict resolution but has also worsened tensions on the ground. Battalions have been officially deployed in a counter-insurgency mission against the *New People's Army* (NPA), the armed wing of the Communist Party of the Philippines, which is operating in the mountain area. Indigenous communities, however, claim that military operations have intensified since SMI started its activities and report a series of harassments, violations against their rights as indigenous peoples, and threats to their livelihoods. Soldiers have raided villages in search for suspected NPA members or for leaders who are involved in armed resistance against SMI. They have further prevented villagers from practicing their spiritual rituals and from hunting in the forest (Sarmiento, 2012; Marbel, personal communication, March 9, 2012).

The Tampakan case demonstrates several problems and negative impacts directly or indirectly related to mining. Apart from the abovementioned conflicts within communities and with the military, people suffer from the environmental destruction that occurs even before the start of the actual mining operation. The company's exploration and preparation activities threaten livelihoods as well as the indigenous peoples' cultural heritage. According to the B'laan communities, bulldozers of SMI destroyed their fields and traditional burial grounds to give way to road construction and drilling operations (Peliño & Maderazo, 2012a).

*Case 2: Small and Large-Scale Mining in the Binongan Ancestral Domain/Abra Province*

In Abra Province, northern Luzon, communities have successfully pushed for a stop of the large-scale mining operations of JABEL Corporation/Abra Mining Industrial Cor-

poration (AMIC). The whole province, however, is still subject to seven pending applications for gold mining covering more than 50 percent of the land area. Although JABEL/AMIC were forced to cease their activities in 2008, they might resume their operations any time, as they still hold operation permits valid for 25 years, which they obtained in 1999 (CVM, n.d., p. 2). All this happened without prior consultations of the affected indigenous communities, although IPRA was already in effect at that time. The DENR and the *National Commission on Indigenous Peoples* (NCIP) had certified that no indigenous peoples lived in the targeted areas, regardless of the fact that communities of the *Binongan*<sup>7</sup> tribe claim the land as their ancestral domain “since time immemorial” (CVM, 2012). The *Binongan* ancestral domain covers an area of 31,610 hectares and is composed of 150 villages (CVM, n.d.). The domain is known for its rich biodiversity, forests, and watersheds. The majority of the 3,000 to 4,000 inhabitants lives on subsistence farming and is settled along the rivers (CVM, n.d.). It was only in September 2008, after a series of protests by affected communities at the NCIP, when a FPIC was conducted, during which 9 out of 11 villages rejected the large-scale mining project (CVM, 2012).

After large-scale operations in Licuan-Baay had ceased, small-scale miners entered the tenement. These operations come in different forms. On the one hand, there are commercialised and mechanised small-scale mining projects controlled by operators from the outside. On the other hand, artisanal gold mining is being practiced and regulated in indigenous villages.<sup>8</sup> Common to most forms of small-scale mining in the Philippines is that they mainly happen beyond state control.

While *Binongan* communities showed strong opposition to large-scale mining, positions vary when it comes to small-scale mining. The concept of *land as home and carrier of cultural identity* erodes in the face of the socio-economic difficulties in rural areas. According to some communities, farming does not produce enough output anymore to feed their families, rivers carry less water for irrigation, and more forest areas have to be cleared to plant vegetables. Under these circumstances, some community members are forced to look for alternative sources of income and get involved in small-scale mining. Other members however suspect that the decrease in agricultural output is a consequence of small-scale mining, as chemicals such as

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7 Other spellings are *Ibinongan* or *Binodngan*.

8 For the different types of mining, see also Miranda et al. (1998, p. 17).

mercury and cyanide are being used to extract gold and are eventually released into the rivers. They admit that compared to large-scale mining, in the beginning the environmental effects would be less devastating, but in the long-term, they would still negatively affect people's livelihoods (village of Cawayan, personal communication, February 28, 2012).<sup>9</sup>

Differences also occur on the issue of whether communities would benefit from mining or not. This factor might be determined by the degree of involvement of the local community. While mining controlled by the communities themselves can provide an important source of income for the locals, some communities complain that most of the small-scale miners originate from other provinces. As a village elder put it, "I don't want outsiders to come here and to destroy our land" (tribal leader, personal communication, March 1, 2012). Those who are employed in commercialised small-mining operations would not receive much profit anyway, as shares first go to the financier, the ball mill operator, the land owner, and to the maintenance of the equipment (village of Cawayan, personal communication, February 28, 2012). Moreover, people have to deal with unsafe working conditions, which in the past caused deadly accidents due to gas poisoning in the tunnels (CVM member, personal communication, March 4, 2012). These divisions have weakened the communities and consequently their capacity to protect their ancestral domains.

### **Protecting Ancestral Domains**

Both cases present mining as a source of conflict that affects indigenous ancestral domains, the protection of cultural heritage, and of natural resources. Traditional concepts and values of indigenous communities tend to erode when socio-economic realities force people to look for alternative sources of livelihood and when power-relations within communities change. Communities are divided between their responsibility to protect their ancestral heritage and prospects of economic development.

NGOs suggest indigenous peoples themselves to uphold traditional values and practices, such as peace pacts between tribes and other mechanisms of conflict reso-

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9 According to Miranda et al. (1998), small-scale mining can even lead to the same negative impacts as industrial mining. Small-scale mining causes (1) soil and water damage: collapse of underground shafts, increase of sedimentation in rivers, damages to vegetation through blasting, deforestation; (2) damages from mercury use to the environment and health as tailings get into the rivers; (3) social damage to social structures of indigenous communities (pp. 19-20).



lution, in order to strengthen the communities' ties within and among each other.

While small-scale mining in the Philippines still provides a field for further study and analysis, large-scale mining clearly bears the potential of disastrous effects not only on the environment, but also on indigenous peoples' ancestral domains. The case of Tampakan shows how the disrespect for local communities and their rights can lead to the escalation and radicalisation of resistance. The same case also exposes the state's failure to meet its obligations to respect, protect, and fulfil the rights of indigenous peoples. Solutions might be a change of mining policy itself, as proposed by advocates of an alternative mining bill, which should prioritise environmental protection and uphold indigenous peoples' rights. One suggestion is to explicitly include ancestral domains in the "no-go zones" for mining companies (Brawner Baguilat, 2011). The President's executive order failed to do so. It iterates that no mining agreements "shall be approved without the FPIC (free, prior, and informed consent) of the concerned IPs [indigenous peoples] and compliance with the social acceptability requirement of the communities affected" (Cabreza, 2012). However, it does not provide concrete measures to protect indigenous peoples' rights. In the end, calls for a new mining law remain the only measure to "rectify the flaws of the 1995 [mining] law" (Cabreza, 2012).

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