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Seeking Environmental Justice in North Maluku How Transformed Injustices and Big Interests Get in the Way*

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Abstract

Appropriate redress for environmental injustices is not easily achieved, certainly not in the Indonesian province of North Maluku. This article explores the process of seeking justice in the Kao-Malifut area in North Maluku, where a gold mining company has been active for over a decade. Based on information from an environmental NGO and an international donor organization, I expected that the core issue in this case would be seeking redress for the environmental injustices caused by the mining as experienced by the entire local population. A lack of properly functioning and accessible dispute settlement forums where people could address these injustices was considered to be one of the biggest barriers to justice. However, the local population did not perceive the issues as clear-cut environmental ones. They experienced the consequences of the mining in various ways, and not necessarily negatively, for the mining activities provided jobs and other potential benefits. This case study shows that identifying injustices and their victims - which, at least in theory, are the very points of departure within the justice seeking process - can be problematic. During this process, when addressing the original problem did not lead to redress or more benefits, a shift or transformation took place in the injustice problem to be addressed. At some point, local interest groups and intermediaries collaborated and captured the forms of injustices into a slogan against the mining company. However, this sense of unity could not effectively establish appropriate redress for victims. At the same time, interest groups opposed each other, implying perhaps that the local population could not be viewed as one homogeneous group of justice seekers; they were stakeholders in the justice seeking process whose interests were considerable. Once the mining company provided benefits such as jobs and the community development funds, their distribution resulted in tensions among the local population. The article examines a process of seeking justice that consists of several attempts to get redress for injustices. It shows that the justice seeking process itself changed what people experienced as injustices. The article concludes that the justice seeking process not only had impact on relations within the local society, but also created new problems.

Keywords: *Environmental justice, access to justice, transformation of disputes.*

1. Introduction

At the beginning of 2009, I went to the Kao-Malifut area in North Maluku, Indonesia, to conduct research on the access to justice process in disputes concerning environmental issues. In the late 1990s, the Australia-Indonesian mining company Nusa Halmahera Minerals (NHM) began exploiting mainly gold in the Kao-Malifut area. According to Walhi, an environmental organization which was active in that area, as well as UNDP-LEAD (UNDP)¹ which supported Walhi, this was a good place to find answers to my key research question, specifically what obstacles do victims of environmental pollution encounter when they want to get redress for the environmental injustices they experience? Walhi and the UNDP informed me about the problems people in the area encountered. Critical amongst these was the effect water pollution from the mining company activities was causing. As a result of the pollution a particular species of fish had disappeared from the neighbouring Gulf of Kao and therefore many fishermen lost their source of income. People also noticed negative health effects such as skin diseases after being in contact with the polluted river water. The picture of the situation which these organisations created was clear; the whole local population was against the presence of the mining company for its activities had a severe negative environmental impact on the surroundings of the mining site and their inhabitants. According to Walhi and the UNDP-LEAD, lack of properly functioning forums to which people could address their complaints was viewed to be one of the major obstacles in the process of achieving justice.

However, during my fieldwork, the situation appeared to be different from what I had expected. The injustices which the locals experienced were more diverse and did not always correspond with the injustices as put forward by local justice seeking groups who claimed to represent the population, and those put forward by organizations from outside the region that supported these local groups. Therefore I felt that it would be inappropriate to seek answers to difficulties experienced by people in their quest for redress by merely focussing on the specific barriers to access to justice and the procedural inherent in the redress mechanisms. Instead, it was imperative to take a step back and revisit the questions that are at the root of the justice seeking process. For instance, what are the daily struggles and real life problems experienced by the local population? And which issues are experienced as injustices, and by whom?²

*I would like to express my gratitude to M Syahril Sangaji who accompanied me on my journey in North Maluku and who assisted me in shaping and conducting this research. I want to thank Jacqueline Vel, Adriaan Bedner and Abdul Paliwala for their valuable comments on this article. I would like to give many thanks to environmental NGO Walhi National that allowed me to search in their archive for documents on this case.

¹ UNDP LEAD stands for United Nations Development Program Legal Empowerment and Assistance for the Disadvantaged

² This approach to the access to justice process is derived from the 'Rule of Law-Access to Justice (Rolax) scheme as developed by Adriaan Bedner and Jacqueline Vel (*in this issue*). This scheme divides the access to justice process into several steps. It starts with the real life problems which people experience. These might then develop into experienced injustices. When a party is being blamed for the injustice and a claim is made, the injustice has become a grievance. Next, the forums for dispute settlement between the parties come into play. What normative systems do people rely on when they formulate their grievance? What barriers exist to access these dispute settlement forums? And how does a particular forum handle the case? Finally, what redress is found? Is this redress appropriate and is it enforced?

When analysing the justice seeking process in North Maluku one should keep in mind that because it concerns environmental issues, there may exist several complications in the quest for justice. Gould et al (1996:14-5) observed that when citizens are confronted with environmental injustices they often face the dilemma of the 'citizen-workers.' On the one hand, they can benefit from the employment opportunities created by the industry. However, on the other hand, they do not want to be affected by environmental pollution. Van Rooij (2010:63-4) pointed to a similar dilemma by noting that a major obstacle for citizens to take action against a polluter is their financial dependency on the polluting entity. Furthermore, to successfully initiate action against a polluter, a sustained collective action is often required. This demands some leadership qualities and sense of coherence in the object and methodology of the affected community. Once (material) redress is granted, the decision and method of apportioning entitlements to individuals or groups might create tension if the process is not managed efficiently due to a lack of good leadership, coordination and coherence.³

Thus, to understand the developments in the justice seeking process in the Kao-Malifut area, one should look further than the 'classic' modes and narratives of explaining injustices such as a lack of rights awareness, and a lack of good, accessible and properly functioning dispute settlement mechanisms. The process is not an one-directional process that starts with an injustice and, if all goes well, passes the various steps to achieve redress, or, when less successful, becomes a barrier block on the road to redress. Since the mining activities affect the community in many ways - economically, environmentally and socially - one should be aware that not only do the local circumstances affect the justice seeking process, but that the justice seeking process affects the local society. It affects what is perceived as unjust, what the desired redress is, but above all, the relations between the people within the local society.⁴ To understand the process one may wonder 'what is the problem, and for whom?' These questions lay at the foundation of the process.

Methodology

As a preliminary effort to analyse the developments in the justice seeking process over the past decade, I embarked on desk research. First, I gathered newspaper articles and other documentation⁵ starting from the time that mining company NHM began its exploiting activities in 1999. It became clear that over the years several groups had taken action in the justice seeking process. During my fieldwork in 2009, I interviewed some of these actors. Based on documentation and interviews, I looked at which complaints the various justice seeking actors had lodged over time and their attempts to get redress. These actors - comprising local interest groups such as customary leaders, former employees of the mining company, or other organizations within and outside North Maluku region - brought to light various forms of injustices. This created a picture of that the actors said represented the daily struggles of the population and what they believed the local population experienced as unjust.

³ Cappelletti and Garth (1977:194) noted that when there are diffuse interests among the justice seekers, this can be a great barrier to obtain justice. There is a diffuse interest when 'either no one has the right to a remedy for the infringement of a collective interest or the stake of any one individual in remedying the infringement is too small to induce him or her to seek enforcement action.'

⁴ Felstiner et al (1981:632) have noted that within the social process in which the claim making takes place, a transformation of disputes occurs. The actors in this transformation process are 'creators of opportunities' who shape the way in which their grievances will be heard and treated. The context in which injustices are being perceived needs to be taken into account to understand how people respond to this.

⁵ Many documents I found in the archive of the environmental NGO Walhi National have been useful.

However, I did not want to rely on what these actors presented as local problems. And so to better understand the justice seeking process and the position of the local population in it, it was necessary to examine what the local population viewed as their main problems in their daily struggles and what their position was in relation to the mining issue. Nearly fifty people in three different villages close to the mining site were interviewed.⁶ The three villages were selected based on the different characteristics of their inhabitants, such as their ethnic backgrounds and their divergent sources of income. It was expected that these characteristics would impact the villagers' interests in issues related to mining. This article chronicles the events in North Maluku and from that, it explores the varying aspects of the justice seeking process. The subsequent discussion is structured in two main parts. Part 2 provides a historical account of developments within the justice seeking process between 1999 and 2009. Part 3 builds on this by providing analyses of the dynamics and processes of the justice seeking process.

2. Justice Seeking in Kao-Malifut Region: A Historical Account

The local population inhabiting the surroundings of the NHM mining site is ethnically diverse. The tensions between the two ethnic groups in the region - the indigenous Kao and the migrant Makian - already existed before the mining company came to the area. However, the tension has been aggravated by the company's arrival, as will be explained below. The tense relationship between the groups has shaped the perception of injustices related to mining and the desired redress for these injustices.

In the 1970s, a volcanic eruption threatened the island of Makian, some 100 kilometres from the Kao-Malifut area. The Indonesian central government decided that the Makian people - who are Muslims - had to migrate to the Kao region on the island of Halmahera. The indigenous population on Halmahera, the Kao, are predominantly Christians and have a customary system in which the highest leader in the hierarchy is the Sultan of the nearby Ternate island. Interestingly, this Sultan is not a Christian, but a Muslim. Over the years, the migrant Makian managed to gain a relatively strong economic and political position in the poor Kao region. Furthermore, there was confusion regarding the status of the land. While the Kao believed that the land was theirs and that they had allowed the Makian, previously displaced by a natural disaster, to reside there, the Makian had been told that the land on which they lived was State land allocated to them by the government. This led to increasing tension between the Makian and Kao (Wilson, 2008:54-6).

In the 1990s, the Australian-Indonesian company NHM came to the Kao-Makian area to begin its mining activities, mainly exploiting gold. A few years later, a number of Kao representatives complained to the company and demanded more jobs for the indigenous Kao people,⁷ more respect from the company for their customary leaders as well as favouring

⁶ Because of the generic nature of their responses and as a means of preserving anonymity, these respondents are not identified by name in this article.

⁷ According to Chris Wilson (2008:56) NHM had attempted to maintain a policy to hire as many Kao as Makian. However, because the Makian were usually better educated and had more organisational skills, in August 1999, 90 percent of the local NHM-workers were Makian, and only 10 percent was of Kao descent.

them over their neighbours, the Makian immigrants.⁸ The tension between the Kao and the Makian exploded in the late 1990s. Its timing was linked to the process of decentralisation, introduced after the fall of the Suharto regime in 1998. Decentralisation offered the opportunity for resetting the administrative boundaries between provinces, districts, and sub-districts, while providing considerable autonomy to the district governments. Hence, many new districts emerged all over Indonesia (Van Klinken & Schulte Nordholt, 2007:18-25), including in the Kao-Makian area. The former Kao sub-district was divided after the Makian managed to get official recognition for their own sub-district named Malifut, in which the mining company was located as well.

In August 1999, a day after the official recognition of the Makian sub-district Malifut, a violent conflict erupted between the Kao and the Makian. Local leaders in other parts of North Maluku, in particular two Sultans in the area, seized the opportunity of the conflict in Kao-Malifut for their own interests. The regional leaders split over the location of the capital of the newly established province of North Maluku and the ethnic differences among North Maluku's population were used to mobilise people for that cause. That is why soon after the violent events in Kao-Malifut erupted, the violence spread to other areas throughout North Maluku. Although the conflict was primarily related to ethnic differences between the various groups in North Maluku, it was often interpreted along religious lines, between Christians and Muslims. The violence brought about major destruction to life and property.⁹ In North Maluku, some 3,000 people were killed and thousands were injured, with another 200,000 people internally displaced (Van Klinken, 2007:107-9, 118-9; Wilson, 2008:1).

2000-2003

The mining company NHM, which had only started mining a few months before the conflict broke out, had to stop its activities during the violent conflict. According to NHM many local workers were 'restricted to work due to the civil riots' and the workers' salaries were cancelled.¹⁰ The limited labour opportunities at the mine raised an issue that was already experienced as an injustice by the Kao before the violent conflict broke out. After the conflict, labour related issues remained a source of dissatisfaction for some within the local population, although the focus was no longer on the division of the available jobs between the Kao and the Makian. Between 2000 and 2003, the focus of the resistance against the company was on the issue of the workers who had been dismissed during the violent conflict. The former NHM employees, Kao and Makian alike, held demonstrations, and brought the case to the attention of the governor of the province, who facilitated negotiations with the company to reinstate some jobs. This resulted in a positive arrangement for some of the former employees, but many others kept on waiting to become re-employed.¹¹

⁸ 'Pembicaraan antara masyarakat Kao (4 suku) dan PT. NHM pada hari Senin, 21 Juni 1999 di kantor NHM, Gosowong.' Minutes of meeting between Kao community and PT. NHM, 21 June 1999.

⁹ International Crisis Group, Asia Briefing n.86, 2009 <http://www.crisisgroup.org/en/regions/asia/south-east-asia/indonesia/B086-local-election-disputes-in-indonesia-the-case-of-north-maluku.aspx>) Cordaid Mission Report Maluku Utara, 2001

¹⁰ List of 117 'Local Employees Restricted to Work due to Civil Riots,' PT. Nusa Halmahera Minerals, (date unknown) (on file with the author)

¹¹ 'Perinal: Penghentian Pembayaran Gaji Kerena Force Majeure', letter of NHM to one of the ex-employees, 25 January 2000 / 'Permohonan rekomendasi kerja', letter from the restricted workers to North Maluku's governor, 29 June 2000. / 'Status karyawan NHM-Kao/Malifut', letter from the district's head of North Maluku-Halamahera Utara, 28 September 2000. / 'Karyawan permanen NHM Gosowong', instruction of North Maluku's Work Agency to NHM, 23 October 2000. / 'NHM permanent employees from Kao-Malifut', letter from NHM

2003-2008

A new wave of developments took place in 2003, when NHM decided to start mining at a nearby second location. This so-called Toguraci-mine is an open-pit mine - a cavity in the landscape exposed to the open air - and is located in a protected forest area. Open-pit mining in what was a protected forest area drew attention of many organizations from outside the region, who together formed the Coalition against Mining in Protected Areas (henceforward Coalition).¹² They lobbied against NHM and sought media attention within Indonesia and abroad. The Coalition addressed several issues in their bid to put pressure on the company to change its ways. They mentioned issues related to customary rights (stating that the land on which NHM operated was traditional, indigenous land),¹³ labour issues (regarding the limited job opportunities for the local population), environmental pollution and the role of special police force which secured the mining site and was accused of violating human rights.

However, one of the main issues the Coalition focused on was the violation of the new Forestry Law of 1999 by NHM. This law explicitly prohibits open-pit mining in protected forest areas. Besides extra-legal strategies to put pressure on NHM, by lobbying, seeking media attention, and supporting demonstrations which were organized by locals close to the mining site, the Coalition resorted to litigation through the Constitutional Court. However, the case taken to the Court had a broader scope than just the issue in North Maluku. The plaintiffs demanded a review of a Government Regulation and a Presidential Decree which had permitted 13 companies all over Indonesia, including NHM, to conduct open-pit mining in protected forest areas. They argued that the Regulation and Decree were inconsistent with the Forestry Law of 1999.¹⁴

In 2003, not only organizations from outside the region, but also local interest groups joined forces to take action against the mining company.¹⁵ An example is a group of former NHM employees, dismissed at the time of the conflict, who joined up with a local customary rights organization consisting of Kao representatives. Even though these two groups initially aimed to address different forms of injustices, they filed a joined petition in which they alleged that NHM and the government had not paid sufficient attention to labour and customary rights

to North Maluku's Work Agency, 25 October 2000. / 'Statement of problem by workers of NHM', letter from the local workers from North Maluku to the Indonesian national government (date unknown). / 'Settlement of workers rights', letter from North Maluku's Work Agency to NHM, 27 July 2002. / 'Reply to settlement of workers rights', letter from NHM to North Maluku's Work Agency, 21 August 2002. / 'Ask support from adat leaders of Pagu, Modole, and Boeng', letter from restricted workers to adat leaders of Pagu, Modole, and Boeng, 21 June 2003.

¹² Among the organizations united in this Coalition were environmental organization Walhi, WWF Indonesia, the Mining Advocacy Network Jatam, and the Australian Mining Policy Institute.

¹³ Referring to the issue of traditional land fits with developments elsewhere in Indonesia, where local communities struggled for state recognition of their customary land rights in order to gain and secure access to localities of value. (Bakker and Moniaga, 2010:1).

¹⁴ 'Fact Sheet 11/1/2004, Kao and Malifut Community oppose PT Nusa Halmahera Minerals/Newcrest', Coalition against Mining', January 11, 2004. (<http://users.nlc.net.au/mpi/tr/docs/h4-eng-factsheet-NHM-Newcrest-hires.pdf>) / 'Walhi urges government to solve dispute in Halmahera', Jakarta Post, 15 January 2004. / 'Constitutional Court bows to pro-mining pressure', Down to Earth, no. 66, August 2005 (<http://dte.gn.apc.org/66min.htm>).

¹⁵ See also A.L. Tsing (2005: 245-68). She describes how collaborations between organizations with different ideals can be effective to achieve a common goal. They adapt the presentation of the local situation to the international view on issues such as on environmentalists' desires.

issues as well as environmental matters.¹⁶ From the petition, it is not clear what the exact problems and injustices concerning labour, customary rights and the environment are. It seems the petition was written not only to seek support amongst other customary leaders against the company, but also that it was meant to project the company in a bad light especially to others, such as the environmental NGOs Walhi. In this sense, the petition was used to put pressure on the company without aiming to address the injustices to a particular dispute resolution forum.

Although the petition lacks clarity vis-à-vis the problems with land, labour and the environment, an aide memoire of two customary leaders provide a snippets of opinions of the local community. Regarding labour, the leaders referred neither to the problem of the workers who were dismissed during the violent conflict, nor to the division of the available jobs between the Kao and Makian. Instead, they complained about another labour issue; the limited amount of available jobs for the local population in general - Kao and Makian alike - in comparison with the amount of people from outside the region who were working at the mine. On the environment, they lamented the pollution of the river which they believed led to a decrease in fish stock of a particular species of fish (*teri*) in the nearby Gulf of Kao. The customary leaders also reported that one man suspected his leg became infected by river water which allegedly was polluted because of the mining activities. This document does not reveal how the customary leaders felt about the situation regarding customary rights. However, one of the leaders did indicate that if the mining company would meet with the demands for compensation, the community was likely to agree with that and would cease its protests.¹⁷ This indicates that some sort of monetary redress was sought, rather than other kinds of redress, such as environmental or non-material measures to show respect for the customary system of the Kao. The customary leaders did not mention the issue of open-pit mining in protected forest areas, which was prominently put forward as an injustice by the Coalition.

Around 2003, several local organizations took action against the mining company, not only by writing action statements and other documents,¹⁸ but also by organizing mass demonstrations.¹⁹ The variety of injustices which were brought up at that time was wide. This include the violation of indigenous rights,²⁰ the lack of job opportunities²¹ and environmental

¹⁶ Letter to the adat leaders Pagu, Madole and Boeng from the chairman of a group former NHM employees, June 21, 2003. / *'Surat Bersama, No. 01/SKB-LADK/PS/V/2003 tentang Pernyataan Sikap'*, Lembaga adat suku Pagu and Ikatan Persaudaran Karyawan Local (IPKL), 24 May 2003.

¹⁷ 'Notes from several discussions with Samson from Baileo and Bpk Jance Namotemo' in 2003 (exact dates and interviewer unknown).

¹⁸ See for example the letter from the Kao and Malifut Indigenous Community Council (tribes of Pagu, Madole, Boeng and Towiliko Kao) – North Halmahera Regency to the President of Indonesia 'Grounds for opposition to Toguraci mining', 18 July 2003 (<http://www.minesandcommunities.org/article.php?a=1334>) / Letter from the Kao and Malifut Indigenous Community Council to the Ministry of Forestry and Commissions III and VIII of the National Parliament, 7 November 2003.

¹⁹ *'Pemberitahuan dan permohonan klarifikasi mengenai operasi pertambangan PT. NHM di Toguraci, Halmahera'*, letter from Walhi National to the Ministry of Forestry, 18 December 2003. / 'Thousands of Indigenous protestors blockade Australian Mine', press release Mineral Policy Institute and HUMANUM Foundation, 2 November 2003. / *'Masyarakat adat Halmahera: Newcrest bongkar hutan adat kami dan langgar hukum'*, press release Walhi and Jatam, 23 December 2003.

²⁰ Letter from the Kao and Malifut Indigenous Community Council to the President of Indonesia, 18 July 2003. / Letter from the Kao and Malifut Indigenous Community Council to the Ministry of Forestry and Commissions III and VIII of the national parliament, 7 November 2003. / 'Thousands of Indigenous protestors blockade

matters such as the open-pit mining in a protected forest area and pollution caused by the mining.²² Yet, according to NHM and the police force which secured the mining site, the protesters had a different aim. They stated that the protesters were illegal miners who wanted to profit from the natural resources in the company's mining area.²³ The demonstrations showed an overall dissatisfaction with the company. However, it remained unclear what were the exact problems and injustices experienced by the justice seekers. Additionally, the nature and scope of claims for redress were not specific. In 2003, the strategy was to pressure the company and the government as much as possible - through demonstrations, seeking media attention and lobbying - in order to generate at least some redress or more benefits for the local population in general, regardless of the particular injustice experienced by a particular section of people.

However, the mass demonstrations came to a dramatic end in January 2004, when one of the protesters was shot dead by the special police force which secured the mining site.²⁴ Soon after the demonstrations ended, it became clear that while some locals were involved in these demonstrations, not everyone supported them. A group of community, customary, religious and youth leaders from the Kao-Malifut region dissociated themselves from the people who protested against the mining company. They wrote a statement saying they did not support the protesters' statements regarding customary rights and customary land and that these protesters wrongfully acted on behalf of the local customary community.²⁵ This statement clearly indicates that the local population could not be considered as one homogeneous group of justice seekers, who experienced the presence of the mining company the same way.

Although the demonstrations came to an end after the shooting incident, the resistance against NHM did not stop completely. However, in the period after the incident, attention to the original injustices - labour, customary and environmental issues - decreased. Instead, the focus was on the role of the police force and their alleged violation of human rights.²⁶ In the spring of 2004, the Coalition brought the case disputing the Government Regulation and the Presidential Decree allowing open-pit mining in protected forest areas before the

Australian Mine', press release of Mineral Policy Institute and HUMANUM Foundation, November 2, 2003. / *'Masyarakat adat Halmahera: Newcrest bongkar hutan adat kami dan langgar hukum'*, press release Walhi and Jatam, December 23, 2003.

²¹ 'Notes from several discussions with Samson from Baileo and Bpk Jance Namotemo' in 2003 (exact dates and interviewer unknown). / Results from interviews with 46 inhabitants of the villages of Ngofagita, Balisosang and Dum Dum Pantai.

²² *'Di hutan lindung mengeruk emas'*, Tempo 21 December 2003. / *'Dipertanyakan, penambang di hutan lindung Toguraci'*, Media Indonesia, 22 December 2003.

²³ *'Himbauan Pengosongan Areal Tambang Toguraci'*, call on the illegal miners at Toguraci from the Brimob, 27 November, 2003.

²⁴ *'Satu tewas ditembak, enam ditangkap dan ratusan lainnya dipukuli Brimob demi kepentingan perusahaan tambang PT NHM/Newcrest di Maluku Utara'*, press release by Solidarity with the Kao and Malifut Community, 8 January 2004.

²⁵ *'Pernyataan dukungan terhadap tindakan tegas aparat keamanan terhadap oknum-oknum yang mengarahkan dan mengerakan masa melakukan demon di areal Toguraci tanggal 7 januari 2004'*, Statement signed by 29 leaders from the Kao-Malifut area, 9 January 2004.

²⁶ *'Satu tewas ditembak, enam ditangkap dan ratusan lainnya dipukuli Brimob demi kepentingan perusahaan tambang PT NHM/Newcrest di Maluku Utara'*, Press release by Solidarity with the Kao and Malifut Community, 8 January 2004. / *'Laporan pembunuhan oleh komandan Brimob di Toguraci - Halmahera Utara'*, Letter from Solidarity with the Kao and Malifut Community to Kapolri, 8 January 2004. / *Informasi lanjutan PT Nusa Halmahera Minerals di Maluku Utara'*, Letter from Walhi National to the National Human Rights Commission, 13 January 2004.

Constitutional Court. The case was partially won by the plaintiffs; six of the 13 companies throughout Indonesia had to stop their activities in the protected forests. NHM was not among the six companies however, and could continue its activities in North Maluku. Down to Earth Magazine criticized the Court's decision regarding NHM. It argued that a separate Environmental Impact Assessment for the Toguraci-mine, necessary to obtain the required licenses, was not finalized on time and that therefore NHM should not be allowed to start mining at Toguragi.²⁷ After the Court's ruling, the attention of the Coalition members for the NHM case in North Maluku subsided. The reason for not taking further legal action was that this would be very costly and time consuming, as various staff members of the involved NGOs commented. Furthermore, the outcome of court cases would be uncertain due to possible corruption. A former staff of an NGO involved said:

“It is not possible to stop NHM. You would need a foreign law firm which is willing to invest a lot of time and money in litigation. Our goal was to put pressure through national and international platforms. We were not really after getting the mining companies to stop their activities. If the people would have been happy with compensation that probably would have been enough.”²⁸

Again, this shows the focus on achieving monetary redress, instead of attempts to achieve other kinds of redress which seemed more appropriate for the injustices which were brought up.

In the years after the demonstrations and the court case, the protests against NHM virtually ceased. In fact there was hardly any newspaper documentation on the developments within the justice seeking process from those years. However, between 2003 and 2007, the mining company increased the amount of community development funding which it donated to the local communities. This was meant for communities to spend on construction materials and scholarships. While in 2003 the company gave some 134 thousand Euros to the local community, this increased to almost 1.6 million Euros in 2007.²⁹ The company emphasised this funding was by no means redress since the company didn't cause any injustices which would make providing redress suitable. The company viewed the funding as a donation to the villages.³⁰

2009

In early 2009, I conducted fieldwork in the Kao-Malifut area. I interview nearly 50 people in three villages – Balisosang, Ngofagita and Dum Dum Pantai. Some of the injustices which the interviewees mentioned had come up before in newspapers and other documents in which justice seeking groups represented them as issues relating to customary rights, labour, and the environment. Nevertheless, the interviewees in the villages often displayed a different view on these matters than organizations who claimed to represent the population in the justice seeking process. Furthermore, some of the issues the interviewees mentioned were new. For instance, the quest for redress and more benefits had affected the relationship between the different members of the local population.

²⁷ ‘Constitutional Court bows to pro-mining pressure’, Down to Earth, no. 66, August 2005 (<http://dte.gn.apc.org/66min.htm>).

²⁸ Interview with Igor O'Neill, who in 2003 worked for the Mineral Policy Institute, 27 February, 2009.

²⁹ http://www.nhm.co.id/index.php?option=com_content&view=article&id=10&Itemid=16&lang=en

³⁰ Interview with Swingly Kalime, senior Corporate Social Responsibility officer of NHM, 25 April, 2009.

Customary Rights Issues

In the two pre-dominantly indigenous Kao villages - Balisosang and Dum Dum Pantai - the respondents were asked what it meant for them to be Kao and whether they blamed NHM for any injustices related to this indigenous status. Several organizations had suggested that NHM operated on Kao customary land. Nevertheless, the respondents' views on the indigenous identity and particularly on the customary value of the land on which NHM operated differed. In Balisosang, almost all respondents felt strongly attached to their ethnic, customary group.

“We are *adat* [customary] people, although I do not know much about the rituals. Since religion arrived, we stopped performing the rituals which our ancestors carried out. But we still respect our ancestors very much.”³¹

The identification with *adat* seems to be mainly an issue which is viewed as distinguishing Balisosang's inhabitants from their migrant neighbours.³² Most of Dum Dum's inhabitants are Kao as well. It is hard to determine what the indigenous identity and the customary system means to Dum Dum's Kao inhabitants. When one interviewee was asked to which ethnic group she belonged, she initially replied that she was Boeng (one of the Kao-tribes). Some other people standing around her agreed. Then someone asked: ‘Aren't we Pagu?’ ‘Oh yes, that's right! We are Pagu!’ the respondent and her audience replied.³³ By mixing up the various tribes which make up the Kao, the answer of this respondent indicated that she identified herself with the Kao, although the knowledge of what that meant exactly seemed less relevant.

The question whether the land on which NHM operates has customary value for the Kao people cannot be answered unambiguously. In Balisosang and Dum Dum, many respondents felt that NHM lacked respect for their customary rights as it operated on their customary land without restraint. An often heard complaint was that NHM failed to ask the Kao people permission to use the land and many are dissatisfied about the compensation paid for the land.

“NHM's mining activity is on Pagu land because the landowner of the mining area is from here. The loss of land affects not only the direct owners of that land, but the whole community. The compensation paid by NHM is very little.”³⁴

Others say they are not sure if the company violated any customary rights. These respondents said that based on their Kao backgrounds they feel no special attachment to the land. ‘We did not go to the land anymore for rituals’, someone remarked. ‘The land taken by NHM was not customary land. It belonged to private owners who were compensated,’ another argued.³⁵ The comments of one of Balisosang's leaders, who himself is Kao, gives an explanation of why the answers from interviewees varied regarding the customary value of the land. The local leader said:

³¹ Interview with a woman from Balisosang, a Kao village.

³² Several times respondents referred to Malifut as if they –inhabitants of Balisosang- were not part of that sub-district, while in administrative terms Balisosang is part of Malifut as well.

³³ Interview with a woman from Dum Dum Pantai.

³⁴ Interview with a man from Dum Dum Pantai. .

³⁵ Interview with a man from Balisosang.

“Honestly speaking, we did not know much about our right to customary land until in 2002 two NGOs from Ambon came to make us aware of that. [...] It is true that close to the mining site there is a grave of one of the former customary leaders. Before we became Christians, people went there to worship their ancestors, but not anymore. Nevertheless, people still have respect for that. The grave is destroyed by NHM.”³⁶

His reaction suggests that the value which many Kao attached to the land had been created only recently. However, by claiming the land has a customary value, it could serve as a basis for making (financial) claims to the company.³⁷ Nevertheless, as a side effect, the differences between the indigenous Kao and the migrant Makian are emphasized.³⁸

Labour

Many respondents in the three villages considered the limited job opportunities at the mine for the locals as an injustice, although unlike before the conflict, when Kao representatives complained to NHM, the respondents did not mention the limited amount of Kao being hired, nor did hardly any of the interviewees mention his or her dissatisfaction about the dismissals during the violent conflict. The issue which bothered many respondents in 2009 was that NHM and its subcontractors allegedly recruited their workers in an unfair manner, not based on people's qualities, but based on 'knowing someone inside the company,' as one respondent described it.³⁹ Furthermore, people complained that too many people from outside the North Maluku region were hired to work at the mine instead of locals. Although there has been a small shift regarding what people consider as an injustice precisely when it comes to labour issues, the main topic remains that more people wish to work at the mine. 'NHM closes its eyes for the unemployment of the people. That is why the people become involved in community mining', one respondent commented.⁴⁰

Community Mining

'Community mining' is conducted by people who live in the surroundings of the mining areas. They illegally take gold-bearing material from the area to which NHM has the exclusive exploitation right.⁴¹ The material is then processed in *tromols*, using the chemical mercury. Since these miners often do not take measures to prevent the chemical waste from entering into the rivers, it contributes to polluting the environment. Although the individual mining activities are on a rather small scale, the number of illegal miners is believed to

³⁶ Interview with Yance Namotemo, April 2, 2009.

³⁷ See also Joane Nagel (1994:152) who has discussed processes of ethnic identity formation and transformation, including the creation of collective meaning and construction of community through mythology and history. Bartholomew Dean and Jerome Levi (2003: 13, 26) spoke of the dilemma which indigenous peoples face. On the one hand they must become activists, for example by forming alliances with environmental and human rights organizations, in order to protect their rights and to be able to participate in a wider conversation. On the other hand, when they do so, they run the risk of losing their special 'indigenous' status which is often associated with a static- or at least not progressive-, authentic, homogeneous culture.

³⁸ Rita Smith Kipp (1993:105) mentioned how 'ethnic differences, and even ethnic animosities, around which 'primordial' loyalties emerge, complicate and mitigate other kinds of differences and animosities.' *Dissociated Identities: Ethnicity, religion and class in an Indonesian Society*, Ann Arbor: University of Michigan Press.

³⁹ Interview with a woman from Balisosang.

⁴⁰ Interview with a man from Ngofagita.

⁴¹ This exclusive right is based on the Contract of Work which the mining company has with the Indonesian government.

substantial.⁴² The prohibition to conduct this type of mining is an issue which some of the interviewees experienced as an injustice because some considered it as one of the few ways in which the local population can profit from the mining activities. This issue is a new injustice as it had not come up in documents from earlier years.

NHM and government agencies have sometimes pointed towards the problems the illegal miners cause.⁴³ They blamed them for causing environmental damage, and at the time of the big demonstrations in 2003, NHM presented the situation as if it were only illegal miners who were frustrating the company's activities and causing the unrest. Besides NHM and the government, some villagers also complained about the pollution the illegal miners caused. Nevertheless, others believed the community miners have the right to exploit gold and references were made to the Indonesian Constitution to justify this type of mining.⁴⁴ An activist who is affiliated to an environmental organization gave his support to the illegal miners, even though this is a polluting activity. He remarked that if a foreign company is allowed to conduct mining, the local population should be permitted as well.⁴⁵ This is an example of how within the justice seeking process, injustices not only transform, but that justice seeking actors can also change the issue they want to address in unexpected ways when attempts to achieve redress for one issue, in this case environmental injustices, are unlikely to succeed.

Environmental Issues

From illegal mining it is a small step to the environmental aspects of mining. To what extent are the mining activities - by the company but also by the illegal miners - polluting the environment and what are the effects?

Some fishermen have complained that after the mining company arrived, the fish stock dropped and it affected their livelihoods. However, other interviewees doubted if the decrease in the fish stock was linked to mining. Some said it might have other causes such as a changing current in the Gulf. Several farmers said they saw the rivers which run close to their lands become dirty and some people heard that others got skin problems after being in contact with the river water. Several NGOs also mentioned that the fish stock had dropped due to discharges from the company's tailing dam and said there is a risk of acid drainage into the river water.⁴⁶

⁴² Interviews with Muhammad Djunaidi, researcher and teacher at the Faculty of Technique at Universitas Muhammadiyah Maluku Utara, 10 March and 28 April 2009 / Interview with Singly Kalime, senior CSR officer from NHM, April 25, 2009 / Interview with Lukman Umar, Mining and Energy Agency, North Maluku (provincial level), April 29, 2009

⁴³ Press release by NHM, October 27, 2003. / Interview with employee of the mining agency

⁴⁴ Article 33 (3) of the Indonesian Constitution states that 'The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people' (Interview with Zulkarnaen Idris, April 26, 2009).

⁴⁵ Interview with Zulkarnaen Idris, affiliated with Walhi, April 26, 2009. / *Hari ini massa 5 kecamatan kembali demo*, Malut Post, February 21, 2008.

⁴⁶ 'Fact Sheet 11/1/2004, Kao and Malifut Community oppose PT Nusa Halmahera Minerals/Newcrest', Coalition against Mining', January 11, 2004. (<http://users.nlc.net.au/mpir/tr/docs/h4-eng-factsheet-NHM-Newcrest-hires.pdf>)

According to NHM, its mining activities do not pollute at all and that it had taken environmental measures to prevent damage. It also suggested it had won an environmental award from the Indonesian Ministry of Energy for the period between 2004 and 2006.⁴⁷ Government agencies involved in monitoring the environmental impact gave contradictory accounts on whether the company's environmental impact stays within the legally tolerable limits.⁴⁸ Several officials said the legal limitations for pollution were not exceeded.⁴⁹ However, the district agency in charge of monitoring the environmental impact (Bapedalda) admitted that they lacked the capacity to carry out its monitoring responsibility and needed assistance from their colleagues at the provincial level. A provincial official from Bapedalda stated that the environmental impact of the company's mining activity was acceptable to existing legal regulatory standards. However, his explanation on how they carried out the monitoring activities, including the cooperation with the provincial mining agency necessary to do the monitoring, was inconsistent.⁵⁰ An official from the Ministry of Environment at the national level was less certain if NHM did not exceed the legal standards for pollution. She explained that in 2007 the government sent a team with representatives from various departments to the Kao-Malifut area where they took water samples from the rivers. On the way back to Jakarta however, the samples got lost. Although they were recovered later, they did not reach the laboratory in time for the results to be valid. Nevertheless, the invalid samples showed that the levels of cyanide, which is the chemical NHM uses to extract gold, were too high. However, because North Maluku is far from Jakarta, they did not have enough time and resources to repeat this research, the official explained.⁵¹

In 2008, the North Maluku Provincial Parliament requested the Centre for Environmental Studies from the well respected UGM University to conduct research on the environmental impact of NHM on its surroundings. The Centre concluded that both cyanide, used by NHM to extract gold, as well as mercury, used by the illegal miners, stayed within tolerable limits.⁵² However, an independent researcher from Universitas Muayaharin Maluku Utara, Muhammad Djunaidi, who took samples in several rivers in 2007, concluded that both the levels of cyanide and mercury were too high.⁵³

It is hard to determine what the environmental impact of the mining is, how it affects the surroundings, what was caused by the company's activities and what by the illegal miners. However, it is remarkable that only very few respondents in the villages mentioned the environmental consequences as injustices they experienced related to the mining. Some of the respondents were even very skeptical about organizations who were trying to address the

⁴⁷ Interview with Longinus Laha, NHM's environmental department, April 25, 2009 / www.nhm.co.id

⁴⁸ The levels are considered tolerable if they are in accordance with PP no. 82/2001 and Kepmen Lingkungan Hidup no. 202/2004.

⁴⁹ Interview with Said Basalamah, Environment Impact Management Agency (Bapedalda) North Maluku (provincial level), April 30, 2009 / Interview with Ridwam Putun Environment Impact Management Agency (Bapedalda) Halmahera Utara (district level), April 23, 2009 / Interview with Lukman Umar, Mining and Energy Agency, North Maluku (provincial level), April 29, 2009

⁵⁰ Interview with Said Basalamah, Environment Impact Management Agency (Bapedalda) North Maluku (provincial level), April 30, 2009 / Interview with Lukman Umar, Mining and Energy Agency, North Maluku (provincial level), April 29, 2009

⁵¹ Interview with Vivien Rosa, Ministry of Environment, May 7, 2009

⁵² UGM (Pusat Studi Lingkungan Hidup Universitas Gadjah Mada) and DPRD Provinsi Maluku Utara: 'Laporan Final, Penelitian Pengelolaan Lingkungan Kegiatan Pertambangan, PT. NHM, PT. KPT, dan PETI, Provinsi Maluku Utara, (December 2008), Bahan Presentasi'

⁵³ Interviews with Muhammad Djunaidi on 10 March and 28 April 2009

environmental issues. One man said: 'The negative environmental impact is just invented by people who want to make money out of that.'⁵⁴ It should also be mentioned that the issue which the groups of organizations addressed to the Constitutional Court in 2005 - the issue of open-pit mining in protected areas - was not mentioned as an injustice by any of the respondents in the villages. Apparently, this legal argument put forward by the Coalition was not an injustice in the eyes of the villagers.

The Division of the Community Development Funding

In 2009, a new issue appeared to bother quite a number of respondents. It concerned the division of the community development funding which the mining company provided to the villages. In each village, a village team, consisting of three village members, was responsible for allocating the funding. In Ngofagita especially, many people were frustrated about this subject. Some respondents thought the members of the village team were corrupt and slow. 'I do not have a problem with NHM, but I do with the village team,' one man said.⁵⁵ In Dum Dum, a border dispute between two districts is dividing the inhabitants into two groups who are registered either under the North Halmahera district - where the mining company is located - or under the West Halmahera district. Dum Dum's village team, in charge of allocating the community development funding, decided that only the part of the population that is registered under North Halmahera would receive community development funding. The other part of the population did not receive anything. It led to tensions among the village's inhabitants. Both in Ngofagita and Dum Dum the distribution of NHM community funds put pressure on the relations within the villages.

3. Seeking Justice: But for What?

Analysing the justice seeking process in North Maluku shows that there are multiple reasons why it is so difficult to achieve appropriate redress for environmental injustices. It is not merely the 'classical' barriers to justice, such as a lack of rights awareness and difficulties in accessing the courts, which stand in the way.

This case shows that the justice seeking process becomes very complex when its starting point is unclear. Regarding the environmental issues, it is uncertain what the problem exactly is. Is there pollution? And if so, what are the effects and for whom? Who caused it? The company or the illegal miners? What would be the appropriate redress for the people affected? Although these questions are key to the justice seeking process the answers remained unclear. Meanwhile the process continued by seeking some sort of redress, and not only for environmental injustices. In fact, the environmental consequences were not the most prominent injustices put forward in the process. Other issues came to the fore more frequently, although again it often remained unclear who experienced which injustice.

Although the themes of the various injustices often remained unchanged - such as labour and customary rights issues - the exact injustices, who experienced them and which claims derived from that, transformed throughout the process. This happened with the issue of the available jobs. In the early years, claims were made for better job opportunities based on the

⁵⁴ Interview with a man from Ngofagita.

⁵⁵ Interview with a man from Ngofagita.

indigenous status of one part of the population. When the company recommenced its mining activities in the aftermath of the sequence of violence, the focus was on the injustice of dismissed workers who demanded their jobs back, no matter their ethnic background. In the following years, the indigenous status of the Kao did not constitute a ground on which more jobs were demanded. Nevertheless, many local people, Kao and Makian, continued to see the limited job opportunities at the mine as a great injustice. In another instance however, emphasis was placed on the ethnic differences among the local population as a basis for redress.

Years following the company's arrival, the indigenous population was made aware that based on their indigenous status they could make claims to the land on which the mining company operated, although it was not clear who would be entitled to the compensation - the private landowners or the indigenous population as a whole. Although this issue did provide an opportunity to get some redress for the population, at the same time it highlighted the differences between the two dominant ethnic groups among the local population, who already have had a tense relationship for decades. One can imagine that if redress is achieved for these issues, this could revive the tensions between the two. Not only did forms of injustices transform during the process, actors involved in the process also switched between issues they aimed to address. A remarkable example is the environmental activist who later on gave his support to the illegal miners, regardless of its dangers to the environment.

The justice seeking process went on while it was not clear what the injustices were. Attempts were even made to achieve redress which seemed not to be desired by people who were affected by a certain problem. This was the case when a group of NGOs went to the Constitutional Court and objected to open-pit mining in protected forest areas. While the plaintiffs seemed to have a strong legal argument subsequently requesting for the cancellation of the mining activities of NHM, most villagers did not seem to consider open-pit mining in protected forest areas as constituting an injustice worth fighting for. If the plaintiffs would have been successful and NHM had to stop its activities, would that have been an outcome which the locals desired? The redress sought by most villagers was the opposite of cancellation of the mining activities; they wanted to get a share in the benefits from the mining.

Another development within the justice seeking process was the formation of alliances between various interest groups and intermediaries. The actors needed to take collective action against the powerful mining company to stand a chance to achieve something for the local population. Their strategy was often to put pressure on the company by demonstrating, lobbying, and seeking media attention. To build a strong campaign, all feasible forms of injustices were incorporated into the campaign, though no actual distinction was made in respect of what people's exact experiences were. However, the nuances of what the real problems and injustices were, and who experienced them, were lost, making it very difficult to identify what might be the appropriate redress and who would be entitled to it.

Apart from the fact that the injustices that were experienced were not apparent, the exact desired redress or demands for benefits were often not clear either. However, all was directed towards some monetary gains for the local population. Claims were made for more jobs, compensation for customary land, more community development funding, and also the allowance for illegal mining so that it could become a source of income for the local

population. In contrast, environmental measures which would not have direct positive economic consequences for the local population were hardly ever pursued. It shows the local population's financial dependence on the mining company, and that for the people the biggest problem is obviously their state of impoverishment.

Furthermore, while in theory there is a distinction between redress and benefits - for redress is linked to specific injustices and people who suffer from that injustice, and seeking more benefits does not derive from injustices, nor are some more entitled to it than others - a distinction between redress and more benefits did not seem to exist in the quest for justice in North Maluku. Which argument would lead to the redress or increased benefits, did not seem important. However, because of the lack of this distinction, the division of what is achieved becomes more complicated. Who is entitled to what?

Competition over redress and benefits is a feature of the justice seeking process in Kao-Malifut. The local population is not a homogeneous group of justice seekers, but rather competing stakeholders. Not only did the locals have different characteristics which could serve as grounds to make certain claims, various groups occasionally opposed each other, stating that they did not agree with arguments as put forward by others and competing over the available redress and benefits. Once redress or more benefits were achieved, new problems among the local population arose, as appeared from the difficulties involving the division of the community development funding. This makes one wonder what would have been the effect if the attempts to get redress or more benefits would have been more successful. Would it have led to bigger tensions among the local population?

The injustices which have been brought up over a decade of seeking justice have transformed. Does that mean that the attempts to get redress or more benefits are just opportunistic moves to profit from the mining company, while in fact the local population did not experience injustices? Or is the transformation of injustices a way of framing the real problem of the local population - poverty - into legal arguments and other discourses which might provide the opportunity to achieve at least something? Achieving redress in cases of environmental damage is often hard because the causer the injustice is often quite powerful and the people who are affected are dependent on it. Furthermore, the presence and activities of the mining led to a number of different problems. To be able to achieve anything at all, various actors with different interest cooperated to strengthen their mission. As a result, forms of injustices were merged together. This made it difficult to establish who wanted what. In the case that redress or more benefits were achieved, it became problematic to allocate. Stakes are high and because it is unclear who is entitled, a fair division is not easily achieved. However, redress is hardly ever achieved, while people have become aware of the problems they did not experience before. This can be particularly problematic when the injustices are based on differences between the locals, such as their ethnic backgrounds as it can increase tensions among them.

And finally, when redress or more benefits were achieved, there was a big chance that members of the local population would compete over it, thereby heightening tensions. Seeking appropriate redress is not achieved easily when the injustices are unclear and the stakes are high. A lack of properly functioning forums to address injustices and to settle disputes was said to be one of the biggest obstacles for the local population to achieve justice in respect of the mining activities. However, when it is not clear what the problems exactly

are for which people want to seek justice, it seems that investing in building institutions where injustices can be addressed is not the first logical step. One should start with finding out 'What are the problems which the local population experiences in real life?' and 'What is experienced as unjust, and by whom?' before one can start with pursuing appropriate redress for the injustices.

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