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# Environmental justice in Halmahera Utara: lost in poverty, interests and identity

Laure d'Hondt and M. Syahril Sangaji

## 1. Abstract

In the late 1990's, mining company NHM (Nusa Halmahera Minerals) came to the district of Halmahera Utara, in North Maluku province. Since then the poor population has been struggling to get a share of the benefits.

Initially, this research was to focus on the ways in which the local population addresses the injustices resulting from the environmental impact of mining, and the barriers they encounter when seeking redress. However, in the course of the research it became clear that the situation was too complex to answer these questions in a straight forward manner. The local population cannot be seen as a homogeneous group which opposes the company as one united front. Further, the

quest for a more just situation does not only entail redress for environmental injustices. There are varying interests at stake which makes the struggle for justice complicated and dynamic.

Therefore the main questions of this research evolved to become: how do local circumstances affect the extent to which environmental injustices – which are provoked by the mining industry in Halmahera Utara and which are experienced by the most vulnerable people – are addressed and which attempts are made to achieve certain redress for these injustices?

A sub-question that derives from these is: who are the most vulnerable people in the area near the mining company? From this research it becomes clear that in different villages, and even within the same village, the negative and positive consequences of the mining are experienced in different ways by different groups of people. However, it is important to keep in mind that against the background of the generally poor circumstances in which the local population lives, many people seek economical redress or benefits from the company.

Another sub-question is: what environmental injustices are being experienced by the most vulnerable? Many people say that they noticed negative environmental changes since the mining activities started, such as a shrinking fish stock in the nearby Gulf of Kao. And some worry about the future health impacts. Others, however, say there is no environmental impact from the mining at all. Information from government institutions regarding this issue is also inconsistent. Furthermore, some locals feel they are affected to a greater extent than others. Fishermen saw their income drop when the amount of fish decreased, while taxi drivers did not directly notice such an effect on their livelihoods. The conclusion, given the differing opinions of locals and the contradictive information government institutions gave, has to be that the actual environmental impact is unclear. Whatever the case may be, for locals who are not directly affected, or at least not to a great extent or not yet, the environmental impact does not seem to be a priority.

And finally, what factors affect the extent to which environmental injustices can be addressed, and thereby the extent to which redress can be achieved? The answer to this question is very much related to the conclusions of first two sub-questions. The poor

Map 1. Indonesia and Halmahera Utara



population is highly aware of the benefits which the company might bring; benefits such as jobs and community development funds, but also material forms of redress for injustices. Many different arguments are used to make the case for redress. However, some arguments cannot be called upon by every member of the local population equally. For example, the migrant population cannot claim compensation for the company's usage of customary land while the indigenous part of the local population can. The issue of achieving proper redress is further complicated by the fact that different parts of the population are affected differently by the mining, or at least see themselves as differently affected, and this affects which arguments they can use. What makes the matter even more difficult is that many facts are unclear. The environmental impact is uncertain, but it is also unclear who experiences which injustices, and what type of redress they should be entitled to.

The quest for justice seems to mainly aim for greater economic benefits for the locals. Ironically, the division of these benefits, which is related to people's backgrounds (such as the village in which they live, their position within their village and their ethnic background) leads to great tensions among them. The process of seeking proper redress for the environmental injustices is frustrated by the complicating circumstances of poverty, varying interests and identity.

## **2. Methodology**

The aim of this research is to provide insights into the process for achieving appropriate redress for environmental injustices. This is a dynamic and complex issue because there are many factors which influence the process.

It is always important to be open and clear about how research came about and which methodology was used. In this paper we want to give special attention to this matter because while we conducted this research it became apparent that the justice seeking process in Halmahera Utara is a very sensitive topic. This paragraph is dedicated to clarifying the methodology in order to enable all readers, including the involved stakeholders, to carefully evaluate the research findings.

In the Access to Justice in Indonesia Programme, the Van Vollenhoven Institute of Leiden University cooperates, among others, with UNDP LEAD (henceforth LEAD). LEAD has a great deal of experience with implementing development projects to improve access to justice for poor and disadvantaged people, while VVI examines legally complex situations from an academic perspective. To bring both worlds together it was decided that this particular case study, which was to look at access to justice concerning environmental issues, would be conducted in the context of the mining company NHM. In this area LEAD is active through one of its partners, the local environmental NGO Walhi North Maluku (henceforth Walhi Malut). In preparation for the research we learned that according to LEAD and Walhi the local population in this area has struggled for years to achieve redress for the environmental injustices they experience. According to LEAD, the major obstacle to achieving this redress is the lack of appropriate forums where the injustices can be addressed, and hence it supports Walhi Malut to help establish such forums.

The sources of information used for this research can be divided into three main clusters: documentation, respondent interviews with inhabitants of villages in the area of the mining site and informant interviews with people who have special expertise on the topic.

The cooperation with LEAD and Walhi made it possible to get access to documentation from Walhi National's archive. We also gathered newspaper articles and found information on the internet on the subject. Such materials enabled us to reconstruct some of the main developments in addressing injustices from the time the mining company became active in the area. It brings into view the various actors who have come to the fore to

address complaints and bring claims. It is important to note that by definition these actors managed to find some stage from which voice their opinions. It is quite possible that these actors do not voice the opinion of all community members, even if they claim to represent the community. Some of these actors portray the community members as forming a homogeneous group in their attitude towards the mining company, although this may in fact not be the case. Thus, newspaper articles referred to various groups which claimed to represent 'the community' but voiced contradictory opinions on the mining issue. Different opinions amongst the community members might create dynamics which can influence the process of addressing environmental injustices. To get an impression of these dynamics on a village level we decided to conduct respondent interviews.

The respondent interviews were held in three villages close to the mining site. We anticipated that the interviews could bring to light some of the village dynamics which might influence the extent to which, and the way in which environmental issues are addressed. Due to time and budget restrictions, these interviews were conducted in three villages – Ngofagita, Balisosang and Dum Dum Pantai – with at least 15 respondents per village. We are aware that with this number of respondents we cannot claim the results to be representative, but within the limitations of this research we did our best to sketch an image of the situation in these villages. The villages and respondents were carefully selected to include the views of people with various backgrounds. In the paragraph in which the respondent interviews will be further discussed we will elaborate on the criteria for the respondents and on how the interviews were conducted.

The third cluster of information consists of informant interviews. More than thirty people with special expertise on the research matter were interviewed. Amongst them are staff members of the local NGO Walhi Malut and villagers trained by this NGO. Some interviewees work for relevant government institutions on a district, provincial or national level, some are researchers on the environmental impact of the mining activities, and others work for the mining company. The information from these interviews is helpful to get a better understanding of certain issues.

Before proceeding with this paper we would like to remark that we are aware that this research has its limitations and that we think it certainly provides a good case for further investigation and discussion to be done.

### **3. Introduction**

In 1997 mining company PT. Nusa Halmahera Minerals (NHM) signed a 'Contract of Work' (CoW) with the Indonesian central government to start gold mining activities in an area that is now called the sub-district of Malifut. Malifut is part of the district of Halmahera Utara in North Maluku province. The area around the mining area is a remote rural area. The district's capital, Tobelo, is a two hour drive away, the vast majority of the population in the area is poor, and many people do not have a stable source of income.<sup>1</sup>

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<sup>1</sup> The interviewed inhabitants from the villages Ngofagita, Balisosang and Dum Dum Pantai often indicated themselves that poverty and not having a stable source of income are the biggest problems they face. In this research we did not focus on gathering information on how poor people are exactly and what percentage of the villagers live below the poverty line.

However, other research by Sulton Mawardi Akhmadi (2006) which was conducted in the district of Halmahera Utara, yet in another village –i.e. Gura-, focused on this issue in particular. The informants were asked to define the various levels of prosperity in their village. The respondents defined being 'rich' by matters such as having a cell phone and having a two storied house. The lowest level of prosperity is described as not having electricity in the house, not eating regularly, not having a fixed income and having an income between 0 and 20.000 Rp. per day. This lowest prosperity level as determined by these respondents corresponds with the government poverty line which is set at 550.000 Rp. per household per month. Thereby the researcher concludes that the government poverty line and the community poverty line are identical. Besides all the categories which the respondents

Despite these common features the population is diverse. The main sources of income vary in the different villages. In some villages the majority earns its income through farming, in others the sources of income are mainly fishing or illegal mining. However, many people do not have a permanent source of income. Besides the variation in sources of income the villages differ in ethnic and religious backgrounds, which contributed to a violent conflict in 1999 and 2000.

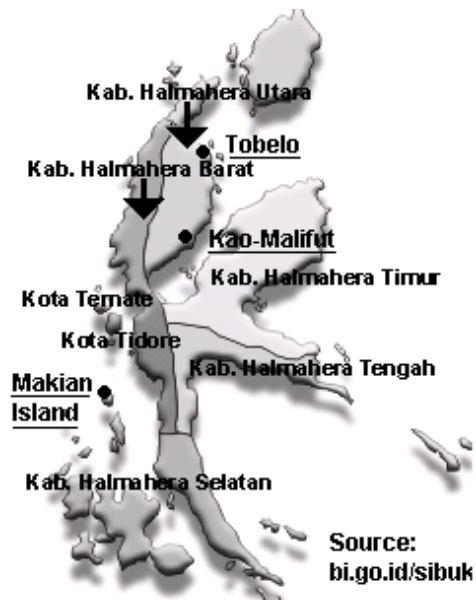
### 3.1 The ethnic conflict in the Kao-Malifut area

The people who have inhabited the area close to the mining site the longest are the Kao. The Kao are Christian, but many of them also feel strongly attached to the customary *adat* system. Kao is a collective term to describe the various ethnic groups in the region, such as the Pagu, the Boeng and the Madole.

In 1975, as a result of a government decision, Makian people migrated to the Kao area after they were evacuated from their nearby island of origin due to the threat of a volcanic eruption. In the following decades the Makian managed to gain a strong economic and political position in the region. This contributed to tensions between the Kao and Makian and resulted in an outburst of violence in 1999, when the Makian received official recognition of their own sub-district called Malifut, which was located in the area of the former Kao sub-district.<sup>2</sup> The Kao people had opposed the plan for this new sub-district,<sup>3</sup> partly because five Kao villages would be included in what would be a Makian dominated area.<sup>4</sup> The presence of mining company NHM also seems to have played a role in the growing tensions between the Kao and Makian. In June 1999, two years after NHM's arrival, Kao leaders complained to the company that the mining site, which according to the new plans would be situated in Malifut, belonged to the Kao sub-district. They also expressed their dissatisfaction about the division between the Kao and the Makian regarding the available jobs at the mining company. They demanded that NHM prioritize the Kao over of the Makian.<sup>5</sup>

On 18 August 1999 the Malifut sub-district was officially established and on 19 August violence broke out in Malifut between the Kao and the Makian. Both sides were

Map 2. North Maluku




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distinguish between 'rich' and the community poverty line –categories to which almost all inhabitants of that particular village belong-, the respondents mention the 'elite' as an exceptional category. People who belong to this category are able to travel by plane and offer good education possibilities to their children (up to post-graduate level). (Mawardi (2006), 'Moving out of poverty; The Case of Gura, Kabupaten Halmahera Utara'. SMERU research Institute pp.13-7.)

The situation of the villagers of Ngofagita, Balisosang and Dum Dum Pantai seems comparable with the those in Gura. Although some face more poverty than others, and some could categorize themselves as rich when compared to others in their village, the levels of prosperity are still generally low.

<sup>2</sup> The new division of the administrative sub-districts was a decision of the central government. Peraturan pemerintah 42/1999.

<sup>3</sup> International Crisis Group, Asia Briefing N. 86 (22 January 2009).

([http://www.crisisgroup.org/~media/Files/asia/south-east-asia/indonesia/B086\\_local\\_election\\_disputes\\_in\\_indonesia\\_\\_\\_the\\_case\\_of\\_north\\_maluku.ashx](http://www.crisisgroup.org/~media/Files/asia/south-east-asia/indonesia/B086_local_election_disputes_in_indonesia___the_case_of_north_maluku.ashx))

<sup>4</sup> The five Kao villages in the Malifut sub-district are Gayok, Wangeotak, Sosol, Balisosan, and Tabobo.

<sup>5</sup> Minutes on meeting between Kao community and PT. NHM, 21 June 1999. 'Pembicaraan antara masyarakat Kao (4 suku) dan PT. NHM pada hari Senin, 21 Juni 1999 di kantor NHM, Gosowong.'

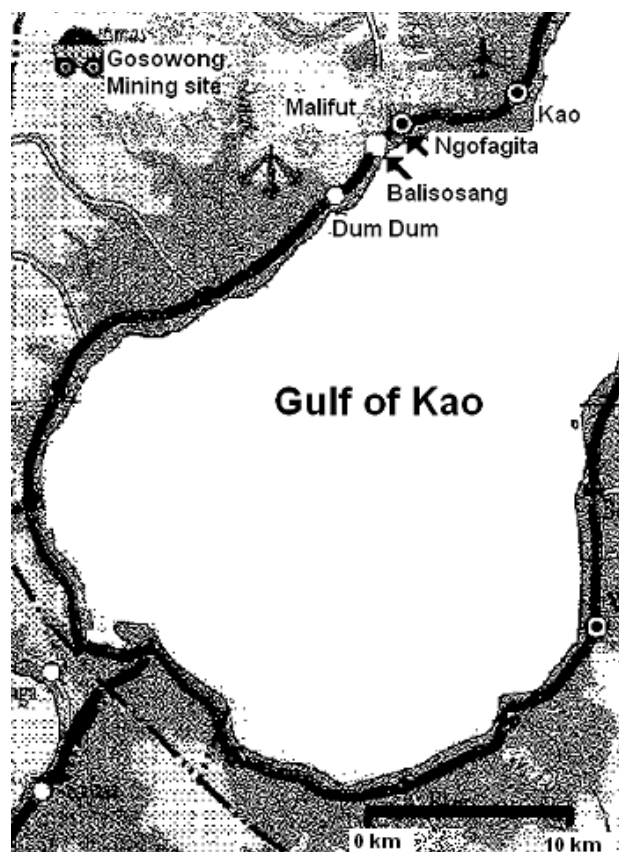
engaged in violent attacks. Many people were injured, and both Makian and Kao people fled to other regions.

One month later, the conflict in the Kao-Malifut area spread to other regions in North Maluku. Some say the clash between the Kao and Malifut was used to fuel the political rivalry between the Sultan of Ternate and the Sultan of Tidore. The ethnic rivalry between the Sultans has existed since centuries. In the late 1990's the rivalry evolved around the location of the capital of the new province of North Maluku.<sup>6</sup> Although both Sultans are Muslim, the violent events across North Maluku were often interpreted along religious lines. This is because the Sultan of Ternate is the highest authority within the *adat* system of the Christian Kao and, in accordance with the *adat* tradition, the Sultan of Ternate protects the Kao. The followers of his colleague from Tidore are predominantly Muslims. It appeared to the outside world there was a division between Muslims and Christians, while in fact the root of the conflict was more complex, deriving from *adat* ties, natural resource politics and rivalry between the Sultans. In September 2000 the violence ended when the area was placed under civil emergency and troops were shipped in<sup>7</sup> but by then some 3,500 people across North Maluku had been killed and thousands wounded, hundreds of schools, mosques, churches and houses were burned down, and around two hundred thousand people fled to other areas.<sup>8</sup>

### 3.2 NHM's impact in the region

The presence of NHM affects the region in many ways: positively, negatively and in ways which are hard to label as merely good or bad. Mining provides economic benefits such as labour opportunities and funds for community development (usually referred to as 'comdev'), but it also impacts the environment and the social relations within society. In the course of this research it became clear that it is difficult to pinpoint the exact consequences of the mining. In large part this is due to the difficulty of accessing information about the mining, and of interpreting the often contradictory information that was available. Due to the limitations of this research we decided not to spend too much energy on tracing the ins and outs of these facts. After all, the focus of this study is not to prove any environmental or other impact of the mining activities. Instead it seeks to give insights into the process for achieving appropriate redress for injustices

Map 3. The Kao - Malifut area



<sup>6</sup> The Sultan of Ternate wanted the capital of North Maluku to be located in Ternate. The Sultan of Tidore supported Bahar Andili, who had helped to restore the Sultanate of Tidore. Bahar Andili was the district head of Halmahera Tengah and wanted the capital of North Maluku province to be in the town of Sofifi (in Halmahera Tengah). (International Crisis Group, policy briefing nr. 86, , 'Local Election Disputes in Indonesia; the case of North Maluku', p.2)

<sup>7</sup> Brown, G., Wilson, Hadi, S., (2005) *Overcoming Violent Conflict, vol.4, Peace and Development Analysis in Maluku and North Maluku* p. 19 (<http://www.crise.ox.ac.uk/Maluku.pdf>)

<sup>8</sup> International Crisis Group, Asia Briefing N. 86 (2009) and Cordaid Mission report Maluku Utara (2001).

experienced by poor and disadvantaged people in the area.

Taking “experienced injustices” as a point of departure indicates that perception is very important. Although it is difficult to quantify the “hard” facts relating to the exact impact of mining and to identify what are the real life problems people experience, it is possible to draw a picture of the perceptions that poor and disadvantaged people have of the injustices. We would like to remark that the confusion about the facts and the lack of access to information which we confronted during the research could indicate that poor and disadvantaged people also experience this same lack of clarity. This confusion seems to be an obstacle that prevents people who experience problems from achieving appropriate redress.

Despite the difficulties in providing facts on the impact of the mining we feel it is important to provide a rough impression of the situation. This will create a better understanding of the context in which the process of achieving redress occurs. Special attention will be paid to the environmental impact, since injustices related to environmental problems are the point of departure of this case study.

### **3.2.1 Work opportunities**

The arrival of NHM brought with it job opportunities for the local population. In 2008 around one thousand people worked directly for NHM and almost another thousand were working as subcontractors.<sup>9</sup> Since many local people have a low level of education they often only qualify for non-skilled positions.<sup>10</sup> Many people aspire to a job at the mine because it pays well. While in Indonesia it is common for unskilled labourers to earn around Rp. 1 million per month (€66), it is said that the wage at NHM is around eight times as much. Semi-skilled labourers<sup>11</sup> can earn as much as Rp. 20 million per month.

Work opportunities for local people at the mine have been the subject of discussion for many years. When NHM started its activities it was criticized in relation to the division of non-skilled jobs between the Kao and Makian people. NHM had committed to employ 60 percent Kao and 40 percent Makian people for the available non-skilled jobs. In 1999 Kao leaders complained that NHM did not fulfil this commitment and that the percentage Kao people working at non-skilled positions was too low.<sup>12</sup>

Nowadays the labour issues have changed. In 2009 there were many complaints about the limited number of local people (meaning people from North Maluku of whatever ethnic background) who are hired for non-skilled jobs. NHM states that in 2008 almost 62 percent of its workers were local and almost half of the subcontractors’ employees were of North Maluku descent.<sup>13</sup> While NHM is blamed for not employing enough locals, people also blame the subcontractors, who are believed to mostly employ people from outside the region. According to a NHM worker the subcontractors are often companies from other regions of Indonesia who bring their own people and hire very few locals. Others think NHM itself offers too few jobs for the local population and criticize the process of recruiting. Although NHM advertises vacancies in newspapers, which makes it possible for anyone to apply, it is often said that the only way to get a job at the mine is to “know someone inside”.

The mining activities of NHM do not only create direct work opportunities through jobs at NHM itself and with its sub-contractors. The mining also creates opportunities for

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<sup>9</sup> Perbaikan Laporan Rencana Kerja dan Anggaran Biaya tahun 2009, (Improved rapport on Work and Budget Planning 2009) NHM, Februari 2009, p. I.1-3

<sup>10</sup> With non-skilled employees is referred to employees who might not have finished high school.

<sup>11</sup> Semi-skilled laborers have graduated from high school and possess some technical expertise.

<sup>12</sup> Minutes on meeting between Kao community and PT. NHM, 21 June 1999. ‘Pembicaraan antara masyarakat Kao (4 suku) dan PT. NHM pada hari Senin, 21 Juni 1999 di kantor NHM, Gosowong.’ (Walhi archive)

<sup>13</sup> Perbaikan Laporan Rencana Kerja dan Anggaran Biaya tahun 2009, NHM, Februari 2009, p. I.1-3

income in an informal way. When NHM found gold in the area it inspired others to try mining themselves. It even attracted people from outside North Maluku. They use gold-bearing material which is found within the area to which NHM has the exclusive right to exploit according to the CoW. This type of mining happens without a licence and therefore is referred to as “illegal mining”, but depending on who is talking it is also called “traditional” or “community mining”. For the sake of consistency we henceforth will use the term “illegal mining”. Some local people feel it is the right of the Indonesian people to exploit its natural resources and it should not be a privilege of a foreign company. Sometimes reference is made to the Indonesian Constitution in support of this argument.<sup>14</sup> Demonstrations are regularly held to advocate legalization of this type of mining. Although it is likely that illegal mining damages the environment, at least to some extent, this doesn’t keep people from advocating for it. Remarkably, a member of the environmental organisation Walhi is involved in organizing demonstrations for this cause.<sup>15</sup>

### **Box 1. Illegal mining and how it works**

The process of “illegal mining” starts with secretly gathering material from the NHM terrain. These volcanic, gold-bearing rocks are brought to places outside the terrain and then processed in a *tromol*, a round barrel to which water and the chemical mercury are added. Although it is said mercury is more expensive than cyanide (the chemical used by NHM to extract gold from rock), and the process of extracting gold from the material is slower than when using cyanide, the illegal miners still use it, since it is much easier to obtain mercury than cyanide. After the mercury is added to the barrel, it is spun around for several hours while the gold is extracted. The waste water from this process is said to be released into the river almost directly. This illegal mining happens on large scale. NHM estimated that between 2003 and 2005 around three thousand *tromols* were located in the area. This number now has diminished to some five hundred. According to NHM the decrease is connected to the fact that NHM used to exploit open pit mines from which it is relatively easy to secretly obtain material. Now NHM only operates an underground mine which is harder to access for illegal miners. Others say the fear of the Brimob, the mobile brigade unit from the police who is in charge of securing the mine site, has stopped illegal miners from entering the area to gather the raw material.

### **3.2.2 Community development funding**

NHM states that since 1998 it has donated corporate social responsibility (CSR) funds – otherwise known as community development fund, but usually referred to as “comdev” – to communities in the area of the mines. The fund is spent on health, education (including scholarships) and infrastructure amongst others. The amount of funding has fluctuated over the years. After the conflict of 1999 and 2000, there was a slight increase in the amount of funding, after which it decreased and then grew again. NHM states that since 2007 it has allocated one percent of its gross revenues to the community development fund, and the amount increased drastically to Rp. 24 billion that year (almost €1,6 million).<sup>16</sup> According to some NGOs, NHM did not provide any community development fund at all until after large

<sup>14</sup> 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’.

<sup>15</sup> See for example ‘*Hari ini massa 5 kecamatan kembali demo*’, Malut Post, February 21, 2008.

<sup>16</sup> www.nhm.co.id, last consulted on 15 October 2009, ([http://www.nhm.co.id/index.php?option=com\\_content&view=article&id=10&Itemid=16&lang=en](http://www.nhm.co.id/index.php?option=com_content&view=article&id=10&Itemid=16&lang=en))



demonstrations in 2003.<sup>17</sup> These demonstrations, in which many NGOs were involved, are discussed further in the next chapter.

Since 2007, the yearly available community development fund has been divided equally among five sub-districts close to NHM’s mines, including Malifut.<sup>18</sup> The sub-districts divide the funding amongst their 82 villages. This means that in 2007 a village should have received on average around Rp. 292 million (€9 thousand). Depending on the profit NHM

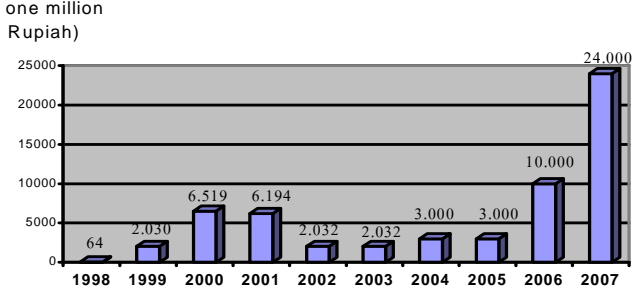
makes in a year and on the number of villages in a sub-district, this amount fluctuates. In 2008, each village in the sub-district Malifut received around Rp. 163 million (almost €1 thousand) each,<sup>19</sup> while the villages in the sub-district Kao Utara received around Rp. 300 million (€20 thousand) each.<sup>20</sup>

The process of allocating the the fund has changed over time. In the first few years a Community

Consultative Committee (CCC) managed the budget. After the conflict in the area, the CCC was dissolved and in 2002 and 2003 the company itself managed the comdev fund. For the following three years, until 2007, the money was distributed through the district government. According to NHM this led to many problems, and a large part of the money disappeared. In 2007 the company established its own CSR team.<sup>21</sup>

At the moment, the CSR team has two coordinators per sub-district who work full time to inform and discuss the division of the comdev in each village. Each village has a “village team” (*tim desa*) which consists of three community members who write a proposal on how the village wants to allocate the funds. The allocation needs to meet certain requirements set by NHM. It is NHM’s new policy not to give out cash money any longer. It will only provide payment in kind, such as building materials (distributed through sub-contractors), some health services and scholarships. According to NHM there are people who do not agree with this new system in which cash no longer is provided, but a CSR member states there are hardly any problems with the division of the fund anymore, involving only ten percent of the villages.<sup>22</sup> However, on its website NHM admits that there are difficulties with allocating the community development fund for the implementation is not well targeted, the communities highly depend on the fund and the demands increase .NHM also states its own interest in allocating the fund as well as possible, namely that it is hoped that the fund can contribute to keeping the company’s operations free from disturbances.<sup>23</sup> Some of the specific problems with allocating the fund within certain villages will be further discussed in Chapter 4. Some general complaints often heard concern the sub-contractors, who are responsible for delivering construction materials which are part of the community development fund. Some suspect they are involved in corruption. Often doubts are expressed about the amount of the

**Chart 1. CSR Fund per year**



<sup>17</sup> Interviews with Husni A. Rahim (Walhi Malut), 25 March, 2009 and Siti Maimuna (Jatam), 17 April 2009.  
<sup>18</sup> The sub-districts which receive comdev are Malifut, Kao, Kao Utara, Kao Barat and Kao Teluk. All are situated in the district of Halmahera Utara.  
<sup>19</sup> Interview with Frank Namotemo (village head of Balisosang), 3 April 2009.  
<sup>20</sup> Interview with Swingly Kalime (NHM’s CSR team), 25 April 2009.  
<sup>21</sup> Surat Keputusan Panitia Konsultasi Masyarakat Setempat, No. 01/CCC/IV/1999, PT. Nusa Halmahera Minerals, March 13, 1999. Interview with Swingly Kalime (NHM’s CSR team), 25 April 2009.  
<sup>22</sup> Interview with Swingly Kalime, 25 April 2009.  
<sup>23</sup> www.nhm.co.id

community development fund which NHM provides. Some wonder if it really is one percent of the company's revenues.<sup>24</sup>

### 3.2.3 Compensation

Besides receiving community development funds, some people have been compensated by NHM for the loss of land and plantations. Most of the area in which the mine Toguraci (one of the three NHM mines) is located belonged to five farmers from the village of Dum-Dum. In 2001 NHM agreed with these five farmers that, in return for not obstructing the exploration activities, they would receive an amount of compensation per tree lost – from Rp. 150 thousand (€10) for a small sago tree to Rp. 600 thousand (€40) for a large clove tree.<sup>25</sup> The farmers donated a large part of this money to the community of Dum Dum to build a rather impressive church in the village (see photo 1). Some people who own land in areas where NHM planned activities, for example for construction of an airstrip, also received compensation. One villager from Dum Dum explains that NHM came to the village last year to negotiate a price for a piece of land his family owned. The family asked for Rp. 50 million, but NHM would only pay Rp. 20 million. They still agreed, but the respondent said it was very little. Others think NHM generally pays a fair price for land. Besides, whether or not NHM pays a fair amount of compensation, there is disagreement as to who is entitled to it. NHM pays to individual, private land owners. Some people we spoke to in the villages (Kao as well as migrants) think this is fair, while others feel NHM is active on community *adat* land, and compensation should be paid to the whole village or to the members of a certain tribe.

**Photo 1. Dum Dum's church**



#### **Box 2. Who owns the land? *Adat*, land and identity**

In post-New Order Indonesia, *adat* (custom or tradition) has been revived as a ground for claiming land property, for individuals as well as for communities. But difficulties with conflicting interests, defining which claims can be made and land registration leads to many problems. Besides aspects which relate to land rights, *adat* also has an identity component. One of the reasons for *adat*'s revival was the reaction of marginalized groups which suffered oppression under Suharto's regime. *Adat* developed from being a concept interpreted along

<sup>24</sup> For example interview with Nofino Lobiua (former chairman of the regional Parliament (DPRD) Halmahera Utara, April 25, 2009.

<sup>25</sup> Memorandum of Understanding between NHM and five farmers from Dum Dum (March 2001).

merely ethnic lines towards an interpretation in which the interests of underprivileged social groups in general are advocated.<sup>26</sup>

As in other parts of Indonesia, land claims based on *adat* are made in the Kao-Malifut area. The ownership of the land used by mining company NHM is contested based on *adat* claims. But there is no consensus on who exactly can claim – in particular, whether individuals are entitled to compensation for the land on which NHM is active or if the entire community can claim this.

In the Kao-Malifut area there does not seem to be a common view among the indigenous Kao population on the meaning of *adat* in relation to the land. What is remarkable is that some Kao people who we interviewed indicated they felt strongly attached to their tribe, but hardly made any connection between this attachment and their relationship to the land. One woman explained that *adat* is important to her. The most important aspect is that she respects the local *adat* leaders, especially the “*sangaji*”, the tribe leader. However, rituals and land are not that important. Although some ancestors are buried in the area where NHM now operates, people have not gone there for a very long time to worship them. Before NHM arrived the land was mostly used for hunting activities, she says. A priest in the predominantly Kao village Balisosang, and the brother of the *sangaji* of the Pagu tribe, explained that since Christianity came to the area the costumes and rituals of the Pagu tribe have disappeared, such as worshipping ancestors. “Only recently a NGO from Ambon came here and taught us that we could make claims on the land based on *adat*” he said. *Adat* for many Kao people seems to be an important element of their identity – perhaps because it enables them to contrast themselves against the Makian-immigrants – although many have difficulty pinpointing what *adat* means to them exactly. “We are *adat* people although I do not know much about rituals. People do not do that anymore. I know we are not allowed to violate the *adat* laws. This means for example we have to respect other people in the community,” a woman in Balisosang explained. A small group of people in the village of Dum Dum were asked about *adat* as well. They affirmed that *adat* was important to them. When asked to which tribe the belonged one woman answered they belong to the Boeng tribe. Some agreed with her. Then someone made the remark; “Aren’t we part of the Pagu tribe?” “Oh, that’s right! We are Pagu!”

There are also indications that some Kao people feel that NHM is violating *adat* rights by using the land. Therefore they feel compensation should be paid to the community as a whole, rather than merely to individual owners. Many respondents who we interviewed indicated that they feel NHM does not respect *adat* as it should. Fourteen (61 percent) of the 23 respondents who said that *adat* was important to them, felt that NHM was violating their *adat* rights, although not all of them said this is because of land issues. Some said NHM does not show enough respect for their leaders. The *adat* leaders themselves too demanded that NHM would respect them as *adat* leaders, not clearly indicating what they meant by that<sup>27</sup>.

As an inspiration for the *adat* related claims the situation in Papua where mining company Freeport is located, has played a role. In Papua the local population, which could be identified much more clearly as the indigenous population than the inhabitants of the Kao-Malifut area, managed to make an agreement with the company that would compensate them for the loss of *adat* land. Members from the Kao-Malifut communities and representatives of the district’s Parliament traveled to Freeport to examine its arrangements. Many people in the Kao-Malifut area have heard of this example in Papua and compare it to their own situation.

It is beyond doubt that the information given to us indicates that many Kao people feel strongly attached to *adat* in the sense that it is very important for their identity. However, to

<sup>26</sup> Henley, D. and Davidson, J. (2007) *In the name of adat: Regional perspectives on reform, tradition and democracy in Indonesia*. Cambridge University Press

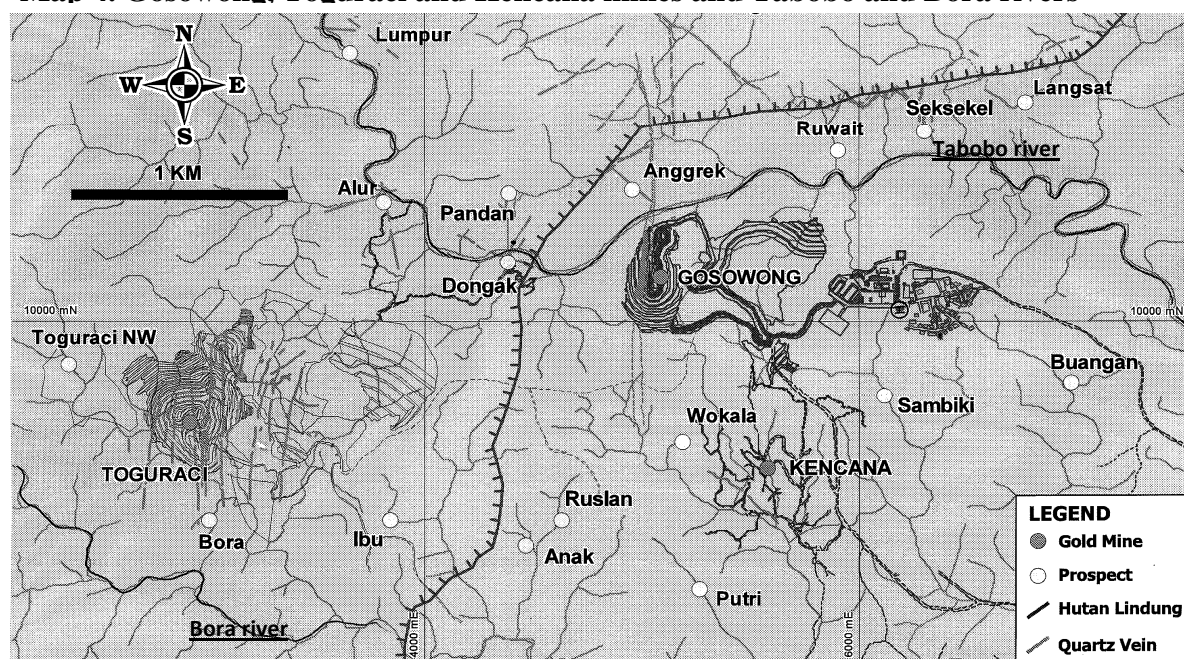
<sup>27</sup> Minutes on meeting between Kao community and PT. NHM, 21 June 1999

what extent the attachment to *adat* is connected to land claims is less clear. Some said they do feel attached to the land for they are indigenous Kao, but sometimes the impression was given that land claims based on *adat* were only made after people realized this might lead to great economic benefit.

### 3.2.4 Environmental impact

NHM operates in an area of almost thirty thousand hectares which accommodates three mines. The first two mines that came into operation are the Gosowong mine (1998) and the Toguraci mine (2003). Both are ‘open pit’ mines, meaning that they are craters open to the air. Both are now exhausted and so NHM has stopped exploiting them. Since 2006 NHM solely exploits the underground Kencana mine, with gold deposits located 350 meters below surface.

**Map 4. Gosowong, Toguraci and Kencana mines and Tabobo and Bora rivers**



Source: Newcrest, Denver Gold Forum, 2005 ([www.newcrest.com.au](http://www.newcrest.com.au))

To extract gold from the volcanic rocks the company uses the chemical cyanide. The waste materials from the process are called tailings. To clean this material NHM applies a detoxification programme. The tailings are transported from the processing plant to a tailing dam in which it solidifies and the remaining water goes into several ponds where the level of cyanide in the water is lowered.<sup>28</sup> Afterwards the water is released into the Bora river.<sup>29</sup> The company says it monitors the tailing disposal on a daily basis and it claims that the level of cyanide meets the World Health Organization’s standards before it is discharged.<sup>30</sup>

According to NHM, its operations meet all national and international environmental requirements. On its website it even mentions proudly that it received the Aditama (Gold)

<sup>28</sup> [www.nhm.co.id](http://www.nhm.co.id)

<sup>29</sup> This information was given by Muhammad Djunaidi, teacher at the Faculty of Technique at Universitas Muhammadiyah Maluku Utara, who conducted research on the water quality in the area where NHM is active (interview 28 April 2009). According to an official of Regional Environment Impact Management Agency (Bapedalda), - the institution which should monitor the water quality in the mining area, the water is released into the Tabobo river (Interview with Said Basalamah, 30 April 2009). According to an official from the Department of Mining on provincial level NHM’s outlet is in the Tabobo river as well (Interview with Lukman Umar, 29 April 2009).

<sup>30</sup> [www.nhm.co.id](http://www.nhm.co.id)

Environmental Award for Mineral Mine Reclamation for the period between 2004 and 2006 given out by the Indonesian Ministry of Energy and Mineral Resources.<sup>31</sup>

Although NHM reports that it meets the standards, others express serious doubts. Some community members express their concern about pollution of the rivers. A more often heard complaint is about the decrease of the amount of *teri*, a small type of fish, which is said to have lived in the Gulf of Kao abundantly in the days before the arrival of NHM. NGOs have expressed similar complaints. We will come back to the perspective of the community members and NGOs in the next chapters, which focus upon the perspective of the justice seekers.

Besides justice seekers, others doubt NHM's statement that its environmental impact stays within the acceptable limits. An official of the Ministry of Environment at national level, Vivien Rosa, explains that the complaints received from the community led to a team with representatives from various departments being sent to the area to conduct research on the environmental impact of the company in 2007. On the way back to Jakarta several water samples got lost. These samples were recovered, but did not reach the laboratory in time for the results to be valid. Nevertheless, the invalid samples showed the levels of cyanide pollution were too high. Because North Maluku is far from Jakarta, there has not been the time and resources to redo this research, Vivien Rosa says.<sup>32</sup>

The former chairman of the district Parliament (DPRD), Nofino Lobiua,<sup>33</sup> and an official from the Mining agency at provincial level, Lukman Umar,<sup>34</sup> both refer to an environmental audit which was conducted in the summer of 2008 by representatives from the Department of Mining and the Department of Environment at district, provincial and national levels. According to Lobiua the results are not public but they were shared with the district Parliament. It showed that NHM did not possess the required license for the tailing dam. Umar says the environmental audit indicated there are no environmental problems. Since the district Parliament did not trust the results from the audit, it requested additional research, Umar explains. The PSLH (Pusat Studi Lingkungan Hidup or Centre for Environmental Studies) of UGM University Yogyakarta, was approached to conduct this research. The results from UGM indicated that the levels of cyanide and mercury are within tolerable limits.<sup>35</sup> <sup>36</sup> The UGM report was criticized by Walhi on several methodological aspects, such as the location of the sample taking.<sup>37</sup>

UGM's research results also surprised Muhammad Djunaidi,<sup>38</sup> who conducted research in 2007 on the levels of water pollution in the NHM area. He took water samples in two rivers, the Tabobo and the Bora river, and investigated the presence of cyanide in the water, as well as mercury, the chemical used by the illegal miners to extract the gold from the volcanic rocks. Djunaidi gathered his samples in the dry season and compared his results to those of a colleague who conducted similar research in the rainy season. Both researchers found the levels of the two chemicals were above the legal tolerable limits.

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<sup>31</sup> [www.nhm.co.id](http://www.nhm.co.id)

<sup>32</sup> Interview with Vivien Rosa, Ministry of Environment, 7 May 2009

<sup>33</sup> Interview with Nofino Lobiua (former chairman of the district Parliament (DPRD Halut), 24 April 2009.

<sup>34</sup> Interview with Lukman Umar (Mining and Energy Agency, North Maluku (provincial level), 29 April 2009.

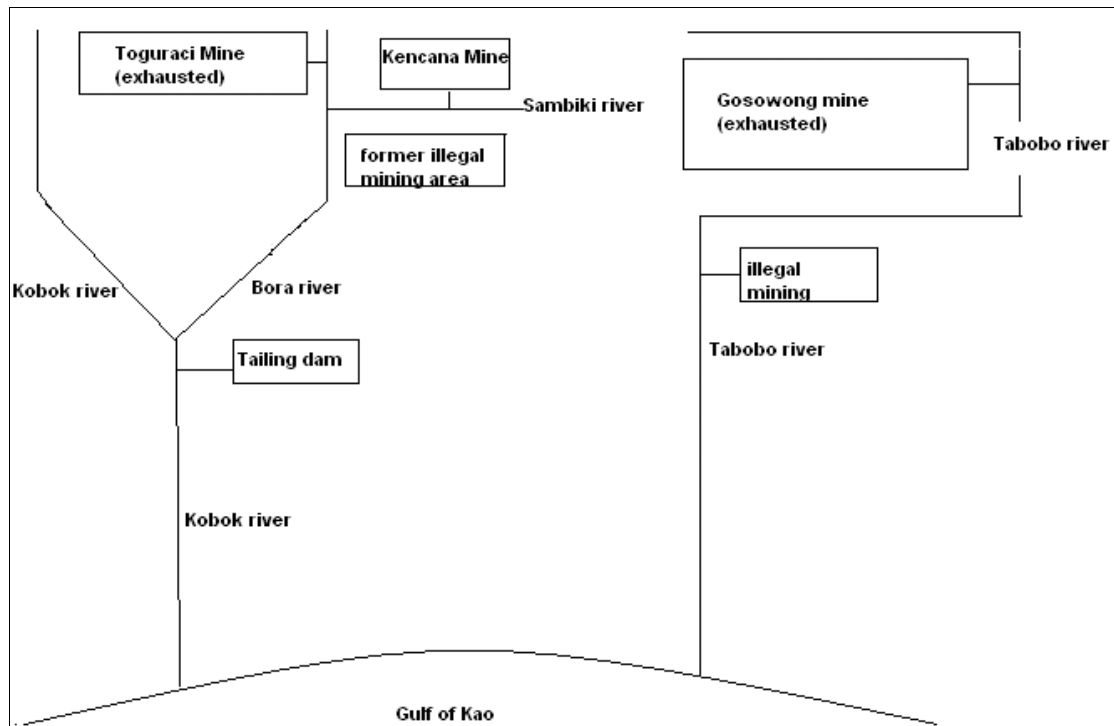
<sup>35</sup> PSLH UGM (Pusat Studi Lingkungan Hidup Universitas Gadjah Mada) and DPRD Provinsi Maluku Utara: 'Laporan Final, Penelitian Pengelolaan Lingkungan Kegiatan Pertambangan, PT. NHM, PT. KPT, dan PETI, Provinsi Maluku Utara, (December 2008), Bahan Presentasi'

<sup>36</sup> The levels are considered tolerable if they are in accordance with PP no. 82/2001 and Kepmen Lingkungan Hidup no. 202/2004.

<sup>37</sup> Walhi's comments on the UGM rapport on the situation involving NHM, January 2009 (on file with the author).

<sup>38</sup> Interviews with Muhammad Djunaidi, 10 March and 28 April 2009

**Map 5. Schematic map of rivers, mines and illegal mining sites**



Source: Muhammad Djunaidi and UGM report on NHM, presentation slides

The above map is a schematic representation of the situation as described by Djunaidi and as pictured in the UGM report. Djunaidi found cyanide and mercury in the Bora as well as in the Tabobo river, close to where NHM and illegal miners are, or have been, active. Djunaidi does note that, in the Bora river -near the outlet for NHM's tailing dam-, the levels of cyanide were higher, while in the Tabobo river -close to the area where illegal mining currently takes place-, the levels of mercury were higher. In terms of damaging health effects of cyanide and mercury, both are equally devastating, Djunaidi explains. They can cause cancer and infertility, but the effects will not be visible until 15 to 20 years after exposure, which in the case of NHM would mean the effect will not show before 2013. Contradicting Djunaidi's statement is the remark made by an official from the Environment Impact Management Agency (Bapedalda) claiming that mercury, used by the illegal miners, is more harmful to its environment than cyanide.<sup>39 40</sup>

Apart from the environmental impact caused by cyanide and mercury the mining can affect the pH-value of the water, potentially disturbing flora and fauna. In particular, the exhausted open pit Gosowong and Toguraci mines are said to produce acid since they are exposed to open air and sunlight. Both mines are filled with water, but the Gosowong mine is fully filled up and overflows at times of rainfall, potentially causing water with a low pH-value to flow into the environment. NHM has taken measures to neutralize the pH-value in

<sup>39</sup> Interview with Said Basalamah, ((Bapedalda North Maluku (provincial level), April 30, 2009.

<sup>40</sup> Both mercury and cyanide are toxic. Depending on factors such as the duration of exposure and the form of mercury, mercury can cause damage to the brain, lungs and kidneys and cause peripheral neuropathy, a disease which affects the nerves of which the symptoms are itching, burning and pain. Cyanide halts cellular respiration which means that the cells of an organism cannot use oxygen. Exposure to low levels of cyanide for a long period of time can cause weakness and other symptoms such as permanent paralysis ([www.wikipedia.org](http://www.wikipedia.org) (mercury poisoning and cyanide poisoning), consulted on 27 June 2010).

the water,<sup>41</sup> but according to an official of the provincial Mining and Energy Agency the pH-value does not always stay within the legally determined tolerable margins.<sup>42</sup> Especially at times of heavy rainfall, the amount of water that overflows from the mine pit is too much to be neutralized sufficiently before it flows into the surroundings.

Several representatives of local governmental agencies<sup>43</sup> claim there is no environmental impact from the mining at all and some say that if there would be any impact, it will be difficult to identify which pollution is caused by the company and what is the result of illegal mining.<sup>44</sup> The provincial Environment Impact Management Agency claims that one of the difficulties with measuring who causes what environmental impact is that officials do not dare to enter the area where the illegal mining takes place. Illegal miners would intimidate the officials, the official says.<sup>45</sup>

Independently from the above discussed cross departmental research conducted by the Ministries of Mining and Environment there is the PROPER-programme, a programme of the Ministry of Environment in which companies are rated with a color which corresponds with their environmental (un)friendliness. The most environment friendly companies can be rated 'gold', and then it is downhill, from green via blue and red to black. In the period 2006-2007, the same time in which NHM received the Aditama (Gold) Environmental Award from the Ministry of Energy and Mineral Resources, NHM received a red code in the PROPER programme, meaning that the company's efforts did not meet the minimal legal standards. NHM itself mentions this red color rating in its Work and Budget Planning report 2009, explaining this was related to the lack of certain required licenses the company did not obtain. The report also states the situation has improved and that in 2008 the company received the blue code, meaning it met with the legal standards.<sup>46</sup>

Nevertheless, the district Parliament's former chairman (DPRD), Nofino Lobiua, remarked that NHM does not possess the required license for its tailing dam.<sup>47</sup> A similar remark is made by Vivien Rosa, official from the Ministry of Environment, who declared that the fact that NHM has a tailing dam but does not possess a license for dumping hazardous waste means that it is committing a criminal offence. Since the Ministry of Environment does not have sufficient resources to prosecute the company, nothing is done about this. The official says: "North Maluku is far from Jakarta. It is expensive and it will take a lot of effort to do anything about NHM. On top of that, there does not seem to be a clear and strong demand from the community."<sup>48</sup>

The last environmental topic which is mentioned here is the issue of open pit mining in a protected forest area, which was made illegal under the Forestry Law of 1999.<sup>49</sup> Several NGOs have claimed that the open pit Toguraci mine is situated in a protected forest area. Map 4 of this paper, which was taken from the website of Newcrest (NHM's mother company),

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<sup>41</sup> Perbaikan Laporan Rencana Kerja dan Anggaran Biaya tahun 2009, (Improved rapport on Work and Budget Planning 2009) NHM, Februari 2009, p.I.2-4

<sup>42</sup> Interview with Lukman Umar (Mining and Energy Agency, North Maluku (provincial level), 29 April 2009.

<sup>43</sup> Interview with Said Basalamah, (Bapedalda, North Maluku (provincial level)), 30 April 2009. Interview with Ridwam Putun, (Bapedalda, Halmahera Utara (district level)) 23 April 2003. Interview with Lukman Umar (Mining and Energy Agency, North Maluku (provincial level)) interview 29 April 2009.

<sup>44</sup> Interview with Jayatirta Iranta, (Mining and Energy Agency, Halmahera Utara (district level)), 20 March 2009. Interview with Said Basalamah, (Bapedalda North Maluku (provincial level)), 30 April 2009.

<sup>45</sup> Interview with Said Basalamah (Bapedalda North Maluku (provincial level)), interview 30 April 2009.

<sup>46</sup> Perbaikan Laporan Rencana Kerja dan Anggaran Biaya tahun 2009, (Improved rapport on Work and Budget Planning 2009) NHM, February 2009, p. I.2-15-16.

<sup>47</sup> Interview with Nofino Lobiua (former chairman of the district Parliament (DPRD)), 24 April 2009.

<sup>48</sup> Interview with Vivien Rosa, Ministry of Environment, 7 May 2009.

<sup>49</sup> Forestry Law (1999), art 38 (4)



also shows that Toguraci is located within a “protected forest” (*hutan lindung*) area. Nevertheless, an official from the district’s Mining and Energy Agency<sup>50</sup> informed us that the status of this area had been converted to “production forest” area, in which case the Forestry Law was not violated. In the Down to Earth magazine<sup>51</sup> another view on this issue is displayed (Box 3).

### **Box 3. Open pit mining in protected forest area**

In August 2005 Down to Earth Magazine published an article on the decision of the Indonesian Constitutional Court concerning open pit mining in protected forest areas. Mining in such areas became illegal in 1999 when the new Forestry Law was introduced. In article 38(4) of this Forestry Law it states open-pit mining is prohibited in protected forest areas. This was reason for which President Megawati’s cabinet issued a Government Regulation in Lieu of Law (*Perdu*) (No 1 of 2004) which allowed several companies to continue their open-pit mining activities in protected forest areas. A Presidential Decree was issued, naming thirteen companies which were now allowed to continue with their activities. It included NHM and its open pit mining activities at Toguraci.

According to the Indonesian Constitution (art 22.1) a Government Regulation in Lieu of Law may only be issued in conditions of a “compelling emergency”. Nearly one hundred individuals and NGOs from several parts of Indonesia protested and requested the Constitutional Court to review the Government Regulation and the Presidential Decree, arguing there was no compelling emergency which would justify issuing the Government Regulation and the Presidential Decree. The Court ruled it shared the appellants’ opinion regarding the dangers and negative impact of open-pit mining in protected forests, but it also understood the cabinet’s reasoning that a transitional regulation which continues the rights or legal status gained by companies before advent of the Forestry Law (1999) was needed (Source: Constitutional court decision, conclusions, pp. 413-4). Nevertheless, the Court’s judgment also states that the 1999 Forestry Law clearly bans open-pit mining in protected forests and that laws apply retrospectively to legal relationships, presumably including Contracts of Work. According to the authors of Down to Earth’s article, Contracts of Work include permits for exploration but not for exploitation. A company may only receive a license for exploitation once an Environmental Impact Assessment (*AMDAL*) has been carried out. Usually companies are required to conduct a separate *AMDAL* for each major mining site, even if it is situated within the CoW area. In the case of NHM and its Toguraci mine, the Down to Earth article says, an *AMDAL* was required in 2003, meaning the exploitation license for this area had not yet been given out. Since NHM did not hold an exploitation license for Toguraci at the time the Forestry Law 1999 was introduced, the Constitutional Court decision would mean that the Government Regulation cannot be applied to NHM’s Toguraci mine, the Down to Earth’s article states.

In 2003, several activists organized demonstrations against NHM on the basis that open pit mining in a protected forest area was prohibited by the Forestry Law. This will be further discussed in the next chapter. Nowadays the issue is seldom raised to challenge NHM. The main reason for this is probably that the Toguraci mine is already exhausted and the damage has been done. But perhaps it also has to do with the fact that bringing the case to court did not result in stopping NHM and it led many to feel there is nothing that can be done anymore. Maybe the issue faded as a focus of discussion because there is confusion about the

<sup>50</sup> Interview with Jayatirta Iranto, Mining and Energy Agency Halmahera Utara, 20 March 2009.

<sup>51</sup> Down to Earth, Science and Environment magazine, No. 66, August 2005. (<http://dte.gn.apc.org/66min.htm>, last consulted on 13 October 2009)



status of the area and about whether NHM has operated there in accordance with the law or not. Or perhaps other issues have become more urgent in the eyes of the justice seekers.

This section on the environmental impact of the mining activities in the area reveals that there is a lot of disagreement and confusion about what is the environmental impact of the company's mining – and the illegal mining – and what is legally allowed. This lack of clarity seems to play a role in the failure to address environmental injustices, as we will see later. Besides the lack of clarity regarding the exact environmental consequences, another factor is important when trying to understand why these environmental issues are hardly addressed. The locals live in rather poor circumstances. They do not prioritize the environmental issues when they are not (yet) affected by it. As long as there are other issues which they can address which might lead to economic benefits that is what people will aim for.

### **3.2.5 Suspicion**

The mining activities in the area have a big impact on the social relations. For some people mining has become a source of income, legally or illegally, while others claim their income has decreased as a result of the mining. Payments from the company became available and have to be divided among the people in the region. New actors have come to the fore: the company itself, NGOs, international donors. Government agencies have received certain tasks. The stakes are high and facts are not always clear.

This situation often leads to suspicion. Some NGO workers suggested NHM applies the strategy of recruiting particularly those people who criticize the company so that they will then stand on the company's side. It is believed the company has created pressure groups within the communities to silence critical voices. On the other side, some people in the village expressed their doubts about the motives of NGOs that came to the area. They say that these organisations might be there for their own personal gain since it allows them to start projects and get funding.

It is difficult to prove which accusations are true, but it seems that the mining in the region has caused a distrust among people.

## **4. Injustices, how they are being experienced and addressed and by who**

To analyse the process from an experienced injustice to achieving appropriate redress, we follow the steps as indicated in VVI's analytical framework for Access to Justice issues. Since the framework starts with the injustices as experienced by poor and disadvantaged people this is the point of departure in this case study. In the previous chapter a rather extended overview was given of subjects that are potentially experienced as injustices, regardless of whether the facts and rumours are true or not. In this chapter the manner in which possible injustices are being experienced will be discussed. It appears that the perception of the injustices by potential justice seekers is an important factor in the process of trying to achieve appropriate redress in North Maluku, even more so when there is a lot of confusion about the facts about the impact of the mining and which claims can be made.

This paper looks at the way in which injustices are being experienced from two perspectives. On the one side we look at local justice seekers and intermediaries who managed to get positions that allow them to express their opinions and make claims. They appear in newspapers and other documentation. The other perspective is of villagers in the area who often have not found a stage from which to express what they feel is unjust. The discrepancy between these two perspectives helps to explain the difficulties in the process of achieving appropriate redress.

#### **4.1 Complaining and claiming actors since NHM's arrival**

Newspaper articles and other documents reveal interesting developments regarding happenings, complaints, claims and actors appearing on the scene since the arrival of NHM in 1997. Many of these actors state that they act on behalf of the community when voicing their opinion and making claims. Some of them are locals, others are from outside the region.<sup>52</sup>

It is possible to identify three distinct periods since NHM came to the area, in which these complaining and claiming actors focused on particular injustices. These periods will be discussed below, and will demonstrate the complexity, the difficulties, and the chosen strategies to achieve redress.

##### **4.1.1 The period between 1999 and 2003**

The CoW between the Indonesian central government and NHM was signed in 1997, and after an exploration phase of two years NHM started its exploitation activities at the so called Gosowong mine in the beginning of 1999. Soon the company established a Community Consultation Committee<sup>53</sup> with inhabitants from the Kao, Malifut and Jailolo sub-district.<sup>54</sup> In March 1999 NHM stated that this committee was meant to discuss relevant issues between the company, the work force and the community. NHM planned to have this one forum to distribute information to the communities and to have one place where the community could post proposals and ideas. The committee would also help the company to distribute and carry out the Community Development Program.<sup>55</sup>

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<sup>52</sup> In VVI's Access to Justice framework (Bedner and Vel (2010)), a distinction is made between justice seekers and intermediaries. The difference between these two is that justice seekers personally experience a certain problem, while intermediaries do not. Instead they assist the justice seeker in the process of seeking justice, for example by creating awareness of certain rights among justice seekers and by addressing injustices. However, sometimes the line between justice seekers and intermediaries is thin, as is the case in North Maluku. For example, Walhi National, -an environmental NGO which is based in Jakarta and thereby clearly plays a intermediary role in the mining case in the Kao-Malifut area. Walhi National is closely connected to the local environmental organisation Walhi Maluku Utara (Malut). Walhi Malut consists of members from Ternate (who are not personally affected by the mining in the Kao-Malifut area) as well as from the Kao-Malifut area. These latter can only be qualified as a justice seeker if he personally experiences the problem related to the environmental consequences of the mining. This leads to the conclusion that Walhi Malut cannot easily be qualified as merely a justice seeker or a intermediary. Also for other actors it is sometimes difficult to determine whether their claims are based on problems they personally face or if they are merely claiming to represent some members of the local population without themselves being victims. Because of this sometimes problematic distinction I will not classify the actors which I discuss in this paragraph as justice seekers or intermediaries.

<sup>53</sup> Surat Keputusan Panitia Konsultasi Masyarakat Setempat, No. 01/CCC/IV/1999, PT. Nusa Halmahera Minerals, 13 March 1999. Ringkasan Pertemuan Panitia Konsultasi Masyarakat setempat pada Pertemuan yang ke-5, PT. Nusa Halmahera Minerals, 17 May 1999.

<sup>54</sup> Malifut is part of the district Halmahera Utara, while Jailolo is situated in the Halmahera Barat district. The fact that representatives from the Halmahera Barat district were included in this Community Consultation Committee, established by NHM, is an interesting detail when looking at the current situation in the village of Dum Dum. A border dispute divides the village between supporters of the Halmahera Utara district and those of the Halmahera Barat district. The Halmahera Barat supporters do not receive community development funds because the 'village team' decided that inhabitants from Halmahera Barat are not entitled to 'comdev'. The reasoning behind this is that NHM is situated in Halmahera Utara and the company would only have provided the comdev funding to villages within the Halmahera Utara district. Based on the fact that when the Community Consultation Committee was formed in 1999 in which there were representatives from both districts, NHM did not seem to have a problem with this issue. I will come back to this in paragraph 5.5 when the situation in Dum Dum is discussed.

<sup>55</sup> Surat Keputusan Panitia Konsultasi Masyarakat Setempat, No. 01/CCC/IV/1999, PT. Nusa Halmahera Minerals, 13 March 1999.

Three months later, in June 1999, self proclaimed representatives from four ethnic Kao groups – none of whom were members of the Community Consultation Committee – had a meeting with NHM. In the period before this meeting, demonstrations were held by Kao people to push for more privileges for the Kao then for the Makian. The tension between the Kao and Makian became obvious from the claims the Kao representatives brought to the fore in the meeting. They demanded NHM to recognise that the mining area of Gosowong belonged to the Kao sub-district, and not to the Malifut sub-district. The Kao representatives also demanded that NHM comply with its agreement to fill the positions for unskilled labourers with 60 percent Kao and only 40 percent people from Malifut. The Kao *adat* representatives demanded that NHM give priority to the Kao over the Makian and respect the *adat* leaders. In that meeting NHM agreed to pay an “*adat* fine” of Rp. 4 million to the Kao in order to avoid further demonstrations by Kao people.<sup>56</sup>

Various matters stand out when analysing this meeting’s report, and here we begin by looking at these matters in light of developments that took place in later years.

Besides the obvious tensions between the Kao and the Makian, the minutes from this meeting in 1999 are the first piece of documentation in which the issue of job availability at NHM was mentioned. As we will discuss later, in the following years the labour issue became one of the main injustices which was addressed, although after the conflict of 1999 and 2000 the contrast between Kao and Makian regarding the division of the jobs lost its importance.

The Kao representatives also asked for recognition and respect for their *adat* status, distinguishing them from the migrant Makian.

Apart from these, hardly any concrete claims put forth in this 1999 meeting were based upon the Kao’s status. In later years, claims did not differentiate between Kao and Makian peoples. Also, in the following years more claims concerning material assistance and compensation arose, rather than non-material demands such as respect.

Here we make one final remark about the events in the period before the violent conflict began. NHM paid a certain amount of money, an ‘*adat* fine’, to limit the demonstrations by the Kao people. It should be noted that the fine was only a small amount of money and that this economic benefit was given to the leaders of the community. It is not clear what happened with it or if the leaders used it for the benefit of the whole community. Nevertheless, it does not appear that the specific injustice that led to the demonstrations – namely, the belief by the Kao that the Makian were given an unjustifiably favourable position – was handled in such a way that appropriate redress was achieved. The Kao did not secure privileged treatment over the Makian. Instead they received a small amount of money to stop their demonstrations. This indicates an inconsistency between the injustices complained about and the achieved redress. This issue – the link between experienced injustices and some sort of redress, appropriate or not – is discussed further at the end of this chapter.

On August 19, 1999, two months after the meeting between NHM and the Kao representatives and one day after Malifut was officially recognised by the state as a sub-district, communal violence broke out in the region between Kao and Makian. Many people were killed, houses and public building were destroyed and many had to seek refuge elsewhere.

NHM suspended its activities during the time of the conflict. One hundred and seventeen local employees were “restricted from working due to the Civil Riots”<sup>57</sup> as NHM

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<sup>56</sup>Minutes on meeting between Kao community and PT. NHM, 21 June 1999. ‘Pembicaraan antara masyarakat Kao (4 suku) dan PT. NHM pada hari Senin, 21 Juni 1999 di kantor NHM, Gosowong.’ NHM, 21 June 1999.

<sup>57</sup>List of 117 ‘*Local Employees Restricted to Work due to Civil Riots*’, PT. Nusa Halmahera Minerals, date unknown (Walhi archive)

itself described it and the company stopped their salary payments.<sup>58</sup> NHM did not recommence its activities until the conflict ended in September 2000, but afterwards it did not reemploy all local workers who had been restricted from work. In the period between 2000 and 2003 the main injustice which is mentioned in newspaper articles and other documents is the labour issue of these dismissed workers. The focus point was not the division of jobs between Kao and Makian, as it was before the conflict erupted. The topic now concerned the local workers in general, both Kao and Makian. The workers united and brought the case to the attention of the governor of Maluku and the district head of North Maluku; letters were sent and demonstrations were held at the district's office.<sup>59</sup>

#### 4.1.2 The period between 2003-2004

In 2003 a new wave of developments took place. NHM's announcement that it planned to mine on a new location was a reason for several groups to bring up several new injustices. In April of that year NHM planned to start open pit mining activities at Toguraci, a protected forest area close to the first mine, Gosowong. Open pit mining in protected forest areas is explicitly prohibited in the Forestry Law of 1999, but in an agreement with the Ministry of Mining and the Ministry of Forestry a temporary permit of one month was granted to NHM for the Toguraci area.<sup>60</sup> The Ministry of Forestry justified its decision to give out the permit by emphasizing the importance of labour opportunities that the mining generated.<sup>61</sup> Some believe the permit was granted under NHM's threat to leave the country. During this one month period in which the temporary permit was valid, NHM cleared the Toguraci area by cutting all the trees and scraping some twenty meters of the earth layer. According to several NGO's, after NHM had cleared the area, the Ministry of Forestry stated it had not intended to give permission for these activities. The Ministry declared that the permit was meant to give permission to continue the current mining activity, not to clear the area.<sup>62</sup>

The developments at Toguraci triggered a wave of resistance against NHM. This time the injustices that were raised did not only relate to labour opportunities and the Kao's *adat* rights. The focus moved to the *adat* rights of whole local population – Kao and Makian alike – and to the environmental impact of the mining. It is interesting to note that groups that experienced different injustices joined together to stand against NHM.

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<sup>58</sup> Letter of PT. Nusa Halmahera Minerals to one of the ex-employees: *Perihal: Penghentian Pembayaran Gaji Kerena Force Majeure*, PT. Nusa Halmahera Minerals, 25 January 2000.

<sup>59</sup> In Walhi's archives correspondence between the company, the district and provincial government and the group of dismissed employees, and local *adat* leaders can be found. ('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- Halmahera 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 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.)

<sup>60</sup> This permit was independent of the Government Regulation in Lieu of Law no. 1/2004 and Presidential Decree (discussed in Box 3).

<sup>61</sup> 'Permohonan izin Melanjutkan Kegiatan Perluasan Tambang Emas Gosowong di Toguraci', letter from the Ministry of Forestry to the Ministry of Energy and Minerals, 9 May 2003. Newcrest Market Release, Newcrest May 28, 2003.

<sup>62</sup> 'Fact Sheet 11/1/2004, Kao and Malifut Community oppose PT Nusa Halmahera Minerals/Newcrest', Coalition against Mining in Protected Areas, January 11, 2004.

After the *Adat* Pagu Organisation formulated a Pagu Constitution,<sup>63</sup> this organisation and a group of former NHM employers, the Local Workers Brotherhood, (IPKL), sought each other's support<sup>64</sup> and wrote an action statement. Together they stated that NHM and the government had treated them badly by not paying attention to labour, *adat*, human rights and environmental issues.<sup>65</sup> The statement is not explicit about how these rights are violated. A report from talks held around that same time with two local Pagu leaders, including priest Yance Namotemo from Balisosang, clarifies some of the complaints at that time. The local leaders mention the dissatisfaction regarding the labour situation. This does not concern the position of the dismissed workers, but the unfair division of employment between locals and people from outside the region. Worries were also expressed about the pollution of the rivers caused by the mining. One man suspected his leg had become infected by the contaminated river water during the rainy season, due to the overflowing of the mines by heavy rain fall. Also, the fish stock in the Gulf of Kao had diminished so that fishing had become difficult. In the report the local leaders also said that the community members do not live in the area where the mining takes place, but that the Gosowong site has some sacred significance. The leaders demanded, besides scholarships for the communities' youth, negotiations with the NHM about compensation for its operations at Gosowong and Toguraci. The report mentions that if the demands for compensation were met, the community would be likely to agree with the company's activities at Toguraci.<sup>66</sup> In an interview with priest Yance Namotemo in 2009 he looks back at what happened at that time. He says that the community was not familiar with the claims they could make based on *adat*. "Honestly speaking, we did not know much about our right to *adat* 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 *adat* leaders. Before we became Christians, people went there to worship their ancestors, but not anymore. Nevertheless people still have respect for that. The grave has been destroyed by NHM." One great frustration in priest Yance's eyes is the exclusion of the community in the decision making process and he links this to *adat* rights. "The biggest problem in Balisosang is that *adat* rights are not respected. Although the CoW was an agreement between the company and the central government, the community should have been involved in the decision making. It should have been an agreement between the company, the government and the community."<sup>67</sup>

In 2003 priest Yance was part of *Tim 13*, a team of 13 local leaders from Christian as well as Muslim villages, who organised demonstrations against NHM. The team received support from outside the region. NHM's activities at Toguraci attracted attention from many actors from Jakarta. A 'Coalition against Mining in Protected Areas' was established, consisting of organisations such as Walhi (Friends of the Earth), Jatam (Mining Advocacy Network), the Indonesian Centre for Environmental Law (ICEL) and WWF Indonesia. The injustice on which the Coalition focussed was the open pit mining activities which NHM conducted in protected forest areas,<sup>68</sup> but it brought up other complaints as well, such as the environmental impact of the already exhausted Gosowong mine, the labour issues and the violation of *adat* rights by NHM since the company had taken *adat* land without the

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<sup>63</sup> 'Surat Keputusan Nomor 002/Kpts/LASP-BLS/DASP/V/2003 tentang Musyawarah Luar Biasa Dewan Lembaga Adat Suku Pagu'. Lembaga Adat Suku Pagu Kecamatan Kao.

<sup>64</sup> Letter to the *adat* leaders Pagu, Madole and Boing from the chairman of a group former NHM employees, June 21, 2003.

<sup>65</sup> '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.

<sup>66</sup> 'Notes from several discussions with Samson from Baileo and Bpk Jance Namotemo' in 2003 provided by UNDP LEAD (exact dates and the interviewer are unknown).

<sup>67</sup> Yance Namotemo, interview April 2, 2009.

<sup>68</sup> 'No mining in protected forest', Statement by Coalition against Mining in Protected Areas, 4 mei 2004.

communities' consent.<sup>69</sup> The Coalition contacted actors in the capital, such as the National Parliament, the Ministry of Forestry and the National Human Rights Commission<sup>70</sup> and tried to attract media attention, not only nationally,<sup>71</sup> but also in Australia. Attempts were also made to call upon NHM's shareholders to put pressure on the company.<sup>72</sup>

An alliance of student organisations from North Maluku, AMPERA, also protested and urged the provincial government to evaluate Government Regulation 1 of 2004 which allowed open-pit mining in protected forest areas, to supervise sea and air transportations from and towards NHM and to take action against the violation of the law in general by NHM.<sup>73</sup>

In June 2003, 38 village heads and indigenous leaders in the districts of North and West Halmahera formulated a statement, in cooperation with JATAM, saying that on behalf of the entire indigenous community, they strongly opposed NHM's activities at Toguraci.<sup>74</sup> In July the Kao and Malifut Community Council, representing the Pagu, Madole, Boing and Towiliko Kao tribes, sent a letter to the President of Indonesia in which they informed the President about their opposition against NHM's plan to conduct mining at Toguraci and their demands for compensation for the infringement of the indigenous rights. These demands are based on a list of 13 points in which various grievances are mentioned. Among those are the lack of proper consultation with the indigenous community by NHM, the lack of contributions to local customary institutions, the failure to acknowledge the indigenous community's land rights and a lack of providing economical benefits to the indigenous community. They also complain about the impact of the mining on the communities' livelihoods through the decline of fish stocks and the loss of hunting grounds and community farms, a lack of transparency regarding the environmental impact and dissatisfaction with several labour issues. For each grievance, the letter referred to national legislation to indicate the violation of the law by NHM.<sup>75</sup> In November the Community Council sent a letter to the Minister of Forestry and to the National Parliament to ask for clarification on the granting of the licence for mining in the protected forest area.<sup>76</sup> Walhi also asked the Minister of Forestry to clarify this issue.<sup>77</sup>

Besides addressing injustices in the media, letters and statements, other strategies were used as well. A very visible manner to voice the dissatisfaction with NHM were large demonstrations that started in October 2003.

On October 24, 2003 protesters occupied the Toguraci mining site. According to several NGOs this happened after a meeting between the company, the government and the community had not lead to the desired results. NGOs stated that over two thousand protesters were at the scene, most of whom were members of the local Pagu, Madole, Boeng and

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<sup>69</sup> 'Fact Sheet 11/1/2004, Kao and Malifut Community oppose PT Nusa Halmahera Minerals/Newcrest', Coalition against Mining in Protected Areas.

<sup>70</sup> See for example 'Catatan rapat Koalisi Tolak Tambang di Hutan Lindung', Notes from a meeting of the Coalition against Mining in Protected Areas, 7 January 2004

<sup>71</sup> See for example '*Masyarakat adat Halmahera: Newcrest bongkar hutan adat kami dan langgar hukum*', Press release by Walhi and Jatam, 23 December 2003

<sup>72</sup> Igor O'Neill, (who in 2003 worked for the Mineral Policy Institute), interview 17 February 2009

<sup>73</sup> 'Wagub akui PT. NHM Gosowong selalu bukin bodoh' (newspaper article: date and source unknown)

<sup>74</sup> Statement by Village Government North Halmahera Regent and West Halmahera Regent, 31 June 2003.

<sup>75</sup> 'Grounds for opposition to Toguraci mining', letter from the Kao and Malifut Indigenous Community Council (tribes of Pagu, Madole, Boing and Towiliko Kao) – North Halmahera Regency, to the president of Indonesia, July 18, 2003.

<sup>76</sup> Letter from the Kao and Malifut Indigenous Community Council to the Ministry of Forestry and Commissions III and VIII of the national Parliament, November 7, 2003.

<sup>77</sup> '*Pemberitahuan dan permohonan klarifikasi mengenai operasi pertambangan PT. NHM di Toguraci, Halmahera*', Letter from Walhi National to the Ministry of Forestry, 18 December 2003

Towiliko Kao tribes, including women and children.<sup>78</sup> In a press release by NHM, three days after the occupation started, the company's general director said the protesters were illegal miners who occupied the site in order to start their illegal mining activities, using mercury which has long term effects on the environment. He also stated that one of the leaders of the illegal miners threatened NHM employees with violence. To secure the safety of the company's employees and the company's assets NHM discussed with the government authorities how to enforce the law and to remove the illegal miners, but the gold production at Toguraci would be delayed, the general manager said.<sup>79</sup> On October 30 and November 3, the governments of the district Halmahera Utara and the sub-district Kao sent out letters to the protest leaders, members of *Tim 13* who initiated the demonstration. The letters ordered them to immediately leave the area.<sup>80</sup> The Kao and Malifut Indigenous Community Council responded to these letters by saying they were threats to the *adat* community and hence violations of Indonesian law. The Council also stated that the community refused to follow government instructions to leave the area. In the end of November the Brimob, a special police force in charge of NHM's security, also urged the illegal miners to leave.<sup>81</sup> Walhi and Jatam reported that on December 1 the Brimob removed around twelve thousand people from the Toguraci area using violence.<sup>82</sup> According to NHM the occupation by the unauthorized miners had come to an end without major incidents and after negotiation with the local police. The company stated the removal occurred with support of the Indonesian government, the local government and the local community. It expected the gold production to recommence soon.<sup>83</sup>

The various sources of information are contradictory on what purpose the protesters had, and who they were. Were they illegal miners or did they protest against other issues? Were they there just for their own gain for they wanted to mine illegally, as the company suggested, or were they genuinely unhappy with certain other issues? Based on the available information we cannot answer these questions decisively. However, the many different issues which were brought up at that time suggest that there was not one specific issue regarding which people were dissatisfied. It seems the protesters had various issues in mind which made them decide to take action against the company.

Although NHM announced the removal of the protesters, the resistance against NHM was not over. The Kao and Malifut Indigenous Community Council demanded compensation for the loss of *adat* land, livelihood and the labour dismissals and sent four representatives to Jakarta to defend their cause. The Coalition Against Mining in Protected Areas discussed a plan for further action, including meetings with members of the national Parliament, the Minister of Forestry, the National Commission for Human Rights, the army and the police.<sup>84</sup> The case received attention from the media. NHM was portrayed negatively in various

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<sup>78</sup> *'Thousands of Indigenous protesters blockade Australian Mine'*, Media release of Mineral Policy Institute and HUMANUM Foundation, November 2, 2003.

<sup>79</sup> Press release by NHM, October 27, 2003.

<sup>80</sup> Letter from Musyawarah Pimpinan Kecamatan Kao to Pagu leader, Yacobus Namotemo, October 30, 2003. Letter from the district government of Halmahera Utara and sub-district of Kao to protest leaders Yacobus Manotemo, Junus Ngetje and John Djinimangale, November 3, 2003.

<sup>81</sup> *'Himbauan Pengosongan Areal Tambang Toguraci'*, call on the illegal miners at Toguraci from the Brimob, November 27, 2003.

<sup>82</sup> *'Masyarakat adat Halmahera: Newcrest bongkar hutan adat kami dan langgar hukum'*, press release Walhi and Jatam, December 23, 2003.

<sup>83</sup> *'Mining Operations Relevance at Toguraci'*, Newcrest Market Release, 8 December 2003

<sup>84</sup> *'Catatan rapat Koalisi Tolak Tambang di Hutan Lindung'*, Notes from a meeting of the Coalition against Mining in Protected Areas, 7 January 2004

articles<sup>85</sup> while in a letter published in the newspaper Kompas, NHM's general director denied that NHM violated regulations by performing mining activities in a protected forest area.<sup>86</sup>

The protests on location continued as well, only coming to a dramatic end when on January 7, in an attempt to clear the area, one of the protesters was killed by the Brimob and several others were arrested. The event led to great indignation, including from a group of NGOs named 'Solidarity for the Kao Malifut Community', consisting of the Coalition against Mining in Protested Areas and nine other organizations.<sup>87</sup> Walhi invited the National Human Rights Commission to conduct an investigation on the killing of the protester<sup>88</sup> and urged the national police to prevent NHM from provoking the local population which could lead to conflict among themselves.<sup>89</sup> This request by Walhi seems to have been a reaction to an interesting development. It seemed that not everybody within the local community sympathized with the protesters. A group of community, customary, religious and youth leaders from the Kao-Malifut area formulated a statement in which they expressed their support for the actions of the security forces on January 7, which was aimed at people who participated in the demonstration "for the sake of illegal mining". The statement says:

"We are very disappointed with the actions of some people from Kao and Malifut who joined *Tim 13*. They always act on behalf of the Kao community to object against PT NMH in the form of protests which time and again are acted out without following valid law regulation. *Tim 13* is not a legal institution of the Kao communities. Therefore we do not support *Tim 13*'s statements in any form involving customary rights and *adat* land which they always mention when they act on behalf of the Kao customary organization ... We hope that the other members of *Tim 13* who have not yet been arrested by the security forces can be found and arrested in order to avoid them to provoke the community to arrange other things we do not want to happen."<sup>90</sup>

Criticism was also expressed towards the organizations that supported the protesters. In a newspaper article a police commissioner suggested that Walhi provoked the local community to occupy the area.<sup>91</sup> In March it was reported that several members of *Tim 13*, including priest Yance, were arrested by the local police.<sup>92</sup> After two members of Walhi visited the area at the end of January they reported that according to the local police *Tim 13*

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<sup>85</sup> 'Di hutan lindung mengeruk emas', Tempo 21 December 2003. 'Dipertanyakan, penambang di hutan lindung Toguraci', Media Indonesia 22 December 2003, 'Masyarakat adat Halmahera: Newcrest bongkar hutan adat kami dan langgar hukum', Press release by Walhi and Jatam, 23 December 2003

<sup>86</sup> 'Mengatasnamakan masyarakat lokal' Letter by general director NHM John Blake, Kompas, 29 December 2003

<sup>87</sup> '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

<sup>88</sup> 'Informasi lanjutan PT Nusa Halmahera Minerals di Maluku Utara', Letter from Walhi National to the National Human Rights Commission, 13 January 2004.

<sup>89</sup> 'Informasi lanjutan PT Nusa Halmahera Minerals di Maluku Utara', Letter from Walhi National to Kapolri, January 13, 2004.

<sup>90</sup> '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, January 9, 2004.

<sup>91</sup> 'Situasi di gunung tuguraci kembali normal', Sinar Harapan, January 10, 2004.

<sup>92</sup> 'Kronologis penangkapan terhadap Pak Yance dan Pak Yakob' Akmal Iskander Alam and Fadli Ali Taslim, March 8, 2004



did not represent the *adat* community. In reaction, the Walhi members expressed their suspicion that the police were trying to influence the public opinion.<sup>93</sup>

After the incident on January 7, attention was diverted from some of the injustices which were initially the reason for the demonstrations, such as *adat* and labour issues. Several actors, including the Coalition against Mining in Protected Areas,<sup>94</sup> focussed on addressing the actions of the Brimob<sup>95</sup> by attracting media attention and asking the National Human Rights Commission to investigate the killing of the protester.<sup>96</sup>

There were several initiatives to address the issue of open-pit mining in protected forest areas at court. Walhi made an initial draft for an indictment against NHM to file at the state court of South Jakarta in which open-pit mining in protected forest areas and other issues related to environmental impact assessment were addressed.<sup>97</sup> This indictment never passed this early phase of drafting because neither Walhi nor other members of the Coalition against Mining in Protected Areas had enough manpower and other resources to proceed with a court case against NHM. Igor O'Neill, who in 2003 worked for the Mineral Policy Institute explains. 'We were planning to file a case against NHM. One of Walhi's lawyers was working on it. The problem was that Walhi's lawyer was just too busy with other cases.' A prominent member of Walhi National, Erwin Usman, says: 'Walhi does not aim for court cases because they take too long and are expensive'. He explains how cases often last for years because of appeals to higher courts. 'The only way to achieve something is through a combination of mass mobilisation on grass root level and advocacy on national and international level'<sup>98</sup>.

Another element which diverted the attention of the Coalition against Mining in Protected Areas from addressing the many injustices which initially were the reason for the demonstrations in Halmahera, was a case that they, together with others, brought to the Constitutional Court. This case had broader implications than merely for the situation in Halmahera.

**Box 4: The Constitutional Court and the case against open-pit mining in protected forest**

The case, brought to the Constitutional Court by appellants from all over Indonesia, concerned open-pit mining in protected forested areas in general. The appellants requested a review of the Government Regulation 1 of 2004 and Presidential Decree which allowed 13 companies to conduct open-pit mining in protected forest which had been prohibited in the Forestry Law of 1999. The appellants won only partially because in 2005 the Court ruled that with the new Forestry Law there was a need for transitional legislation to continue the rights of mining companies gained before 1999. But it also judged that the transitional provision

<sup>93</sup> 'Catatan rapat Koalisi di Walhi, hasil investigasi ke Maluku Utara (Erwin dan Abu), February 5, 2004.

<sup>94</sup> The student organization is called *Aliansi Mahasiswa Maluku Utara Anti Kekerasan*.

<sup>95</sup> 'Fact Sheet 11/1/2004, Kao and Malifut Community oppose PT Nusa Halmahera Minerals/Newcrest', Coalition against Mining in Protected Areas', January 11, 2004. 'Walhi urges government to solve dispute in Halmahera', Jakarta Post, 15 January 2004. 'Permohonan bantuan pengacara', Letter from Walhi National to KONTRAS, January 19, 2004. 'Tindak lanjut kasus insiden 7 Januari 2004', Letter from the National Commission of Human Rights to Kapolri, January 27, 2004. 'Tindak lanjut pengaduan kasus NHM', Letter from Walhi to the National Human Rights Commission, February 6, 2004. 'Pernyataan sikap', action statement by *Aliansi Mahasiswa Maluku Utara Anti Kekerasan*', February 9, 2004, 'Kapolda diminta bertindak tegas, oknum Brimob buat onar' (newspaper article in which student alliance Ampera urges the head of police to take action towards the Brimob) publishing date and source unknown. 'Ampera tuntutan aparat Brimob BKO ditarik', Malut Post, July 28, 2004.

<sup>96</sup> 'Komnas HAM diminta turunkan tim investigasi atas pelanggaran HAM oleh PT. NHM/Newcrest dan Brimob di Maluku Utara', Press release by Coalition Against Mining in Protected Areas, 9 February 2004.

<sup>97</sup> Draft of 'Gugatan perbuatan melawan hukum, NHM', April 2004

<sup>98</sup> Erwin Usman (Walhi National), interview 26 February 2009

only applies to permits for exploitation obtained before the Forestry Law 1999 was enacted. As a result, the Court accepted a list of six companies – out of the 13 mentioned in the Presidential Decree – that had not reached that exploitation phase yet and therefore were not permitted to mine in protected forest. NHM is not included in this list, but some suggested it should be. Down to Earth magazine commented the following: ‘Companies are commonly required to complete a separate Environment Impact Assessment (EIA) for each major mining site even within the same Contact of Work licence area. For example Newcrest’s Nusa Halmahera Minerals was required to complete an EIA for the Toguraci mine.’ Although NHM had the required licences for the Gosowong mine which was already operational, it should have completed another EIA to obtain the required licences for the Toguraci mine. However, the EIA for Toguraci was completed after the company had already cleared the area, Down to Earth magazine argued.<sup>99</sup>

The case at the Constitutional Court did not result in the termination of NHM’s mining activities at Toguraci. Looking back on the Coalition against Mining in Protected Areas’ strategy Igor O’Neill says: “It was not possible to stop NHM. You would need a foreign law office that is willing to invest a lot of time and money in a court case. Our goal was to put pressure through national and international platforms. We were not really attempting to get the mining company to stop its activities. If the people would have been happy with compensation that probably would have been good enough.”<sup>100</sup>

These developments, involving many different actors, show that the process of achieving some sort of justice is very dynamic. In this dynamic process the arguments which are brought to the fore become further removed from what the actual experienced injustice is, namely the insufficient sharing of the mining’s benefits with the poor population.

#### 4.1.3 The year 2008

In Walhi’s archives not much documentation was found concerning the period after the case at the Constitutional Court in 2005. Within this research we managed to gather newspaper articles from the year 2008, but not many from the years before. This means we cannot provide a picture of the developments between 2005 and 2007. What does become clear from the articles from 2008 is that, although there are still groups which address injustices related to NHM, some things have changed; the groups which are seeking justice are mainly from Halmahera Utara and not from outside the region, the injustices which are addressed are partly similar to those addressed a few years earlier, but there are new issues as well, while some issues seem to have disappeared from the agenda. The strategies for addressing injustice has also partly changed.

In February 2008, a group which claims to represent five sub-districts and opposes NHM organized demonstrations and blocked the access to several vital work locations. As a result NHM had to stop its activities for several days. According to the local newspaper Malut Post the demonstrators expressed their dissatisfaction about NHM’s attitude towards *adat* rights and the amount of comdev the sub-districts receive.<sup>101</sup> We would like to point out that naming these two aspects together – the injustice of violation of *adat* rights and the claim for

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<sup>99</sup> ‘Constitutional Court bows to pro-mining pressure’, Down to Earth, no. 66, August 2005. (<http://dte.gn.apc.org/66min.htm>)

<sup>100</sup> Igor O’Neill, (who in 2003 worked for the Mineral Policy Institute), interview February 27, 2009.

<sup>101</sup> ‘Hari ini massa 5 kecamatan kembali demo’, Malut Post, February 21, 2008. ‘Warga penuhi janji blokir NHM’, Malut Post February 23, 2008. ‘Aksi berlanjut, NHM lumpuh’, February 23, 2008.

more comdev – suggests that these justice seekers want more comdev as a sort of redress for the violation of *adat* rights, something that comdev is not intended as redress.

The blockade was organized after the district Parliament promised to facilitate a meeting between the representatives of the five sub-districts and the company.<sup>102</sup> Shortly afterwards a meeting was arranged. The “*adat* people and people from within the ring of mining” as they are referred to in the article, demanded NHM would immediately address their complaints, although the exact demands do not become clear from the report in the newspaper. The meeting was tense and afterwards there was even physical violence towards the NHM representatives present.<sup>103</sup> In this meeting the regional Parliament acted as a facilitator, but after the meeting did not lead to the desired results the “*adat* and ring of mining people” expressed their hope that the facilitator would decide on the fourteen issues which were raised. It does not become clear from the article what these issues were precisely, whether they were complaints, demands or both.<sup>104</sup> The Parliament responded that only the Parliament was capable of accommodating the peoples’ aspirations and therefore the Parliament would further discuss it.<sup>105</sup> This suggests that the Parliament was contemplating a switch from a facilitating role to a position in which it will make binding decisions. It is not clear if there has been a follow up by the Parliament or what the outcome was. It is important to note that formally the Parliament does not have the power to make such binding decisions in a conflict between members of the local population and the company.

In 2008, labour related problems also still existed. In the conflict between the former NHM employees and NHM, the provincial Parliament facilitated meetings to try to reach a solution. These meetings were tense as well; once the NHM representatives had to flee the meeting to escape physical violence by the ex-employees.<sup>106</sup>

In March the district Parliament and the Mining Agency of Halmahera Utara approached the national Parliament to ask it to help solve the problems between NHM and the local population regarding labour and comdev issues. They asked the national Parliament to revise the CoW in order to give more power to the district government.<sup>107</sup> It is unclear what sort of power is referred to, but it is likely it concerns power on the level of enforcement.

Meanwhile demonstrations in Halmahera continued. According to several reports in newspapers, one of the main topics was to gain recognition of *adat* rights. The Indonesian National Youth Committee (KNPI) asked the people from the five sub-districts to stop their demonstration to await the discussion between the district Parliament, the district government and NHM regarding the people’s claims. One of the issues discussed was the possibility for the recognition of *adat* in regional legislation (*perda*).<sup>108</sup> If *adat* were officially recognized, it could serve as a base for making claims, although it seems as though these claims would mainly concern economic benefits. One of the sources of inspiration for emphasizing this *adat* issue was the situation in Papua New Guinea, where the large mining company PT. Freeport is located. Here the company provides many benefits for the local population; it built houses and gave them shares in the company.<sup>109</sup> A delegation of the district Parliament left for Jakarta to discuss the demands from the local population to NHM with the national

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<sup>102</sup> ‘Aktivitas NHM kembali normal’, Malut Post, February 27, 2008.

<sup>103</sup> ‘Pukul staf NHM setelah pertemuan’, Malut Post, February 27, 2008. ‘Rapat warga-NHM berjalan panas’, Malut Post, February 27, 2008.

<sup>104</sup> Within this research we were not capable to recover what these issues were. One of the problems was it is not clear who exactly are the ‘*adat* and ring of mining people’ to who is referred.

<sup>105</sup> ‘Minggu ini, tuntutan ke NHM ditindaklanjuti’, Malut Post, February 28, 2008.

<sup>106</sup> ‘Kisruh, pertemuan Deprov-NHM’, Ternate Post, date unknown. ‘Tako Kong Lompat Pagar’, source and date unknown.

<sup>107</sup> ‘Persoalan PT. NHM sampai ke DPR-RI’, Malut Post, March 8, 2008.

<sup>108</sup> ‘KNPI Halut usul Perda adat’, Malut Post, March 8, 2008.

<sup>109</sup> ‘Perjuangkan hak adat diakui di Freeport’, Malut Post, March 15, 2008.

Parliament.<sup>110</sup> It is unclear exactly what claims were made, but the distribution of the comdev was one of the topics. The district Parliament requested a meeting with the national Parliament and the Ministry of Mining about this. The regional Parliament wanted to arrange the distribution through a fund managed by the regional Parliament and not through the regional government.<sup>111</sup> The meeting resulted in an invitation by the Ministry of Mining to NHM to come and discuss the claims as presented by the regional Parliament.<sup>112</sup>

The meeting between the Ministry and NHM led to some interesting outcomes. The central government would conduct an audit on the community development fund and its distribution by the Corporate Social Responsibility team<sup>113</sup> and the regional government and Parliament would establish a foundation for the distribution of this fund.<sup>114</sup> 'Adat people' would conduct a comparative study with PT. Newmont at Freeport regarding *adat* rights and comdev arrangements. It was also decided *adat* rights would be properly arranged. Furthermore, the central government together with the Regional Planning Agency for Development (Bapedalda) would conduct an environmental audit.<sup>115</sup>

In May demonstrations were held by a group called Forpeda Halut (Forum Peduli Daerah, a forum of concerned citizens of the region of Halmahera Utara). Besides demanding more job security for workers at the mine, it asked for improvement of the management regarding the comdev distribution.<sup>116</sup> Another local group, AMPP, consisting of students from various parts of North Maluku, proposed to nationalize NHM which could lead to free education and health care, as well as transparency regarding the distribution of the comdev.<sup>117</sup> An advocacy team announced it would file a lawsuit against NHM for the mismanagement of the comdev by the Corporate Social Responsibility team.<sup>118</sup> The regional Parliament's chairman also stated that the distribution through the Company Social Responsibility team (CSR) was not transparent and NHM's empowerment program (which is part of the CSR program) did not work properly.<sup>119</sup> However, at that time there were also groups who were not dissatisfied with NHM. A group called FP2HU (Forum of concerned youth, Halmahera Utara) said the regional Parliament had evaluated NHM's performance, especially regarding NHM's assistance to the local population, incorrectly. According to FP2HU, NHM had fulfilled its duty as it should have.<sup>120</sup>

Besides the discussion about the comdev, the environmental impact of the company was also in the news. An environmental audit was facilitated by various governmental institutions, among which the regional Parliament and the Ministry of Mining and the Ministry of Environment. The outcome of the audit was a conclusion that the environmental impact of the mining was within legal limitations.<sup>121</sup> According to the chairman of the district Parliament, the Parliament did not trust the outcome of this research and approached UGM to

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<sup>110</sup> 'Sepi karena 25 anggota ke Jakarta', Malut Post, April 11, 2008

<sup>111</sup> 'DPRD Halut hari ini ketemu DPR RI', Malut Post, April 4, 2008.

<sup>112</sup> '13 Mei soal NHM dibahas kementerian ESDM', Malut Post, March 7, 2008.

<sup>113</sup> See also 'Mekanisme penyaluran dana Comdev bermasalah, kejati terus buru para tersangka', Mimbar Kierah, August 6, 2008.

<sup>114</sup> See also 'Yayasan pengelola comdev NHM diseriusi', Malut Post, July 22, 2008.

<sup>115</sup> 'Dana comdev NHM akan diaudit pusat', Malut Post, May 14, 2008. 'Pakai APBD karena NHM berbelit', Malut Post, June 18, 2008.

<sup>116</sup> 'NHM Aktivitas terganggu', Malut Post, May 26, 2008.

<sup>117</sup> 'AMPP togamoloka unjuk rasa', Malut Post, July 4, 2008.

<sup>118</sup> 'Bentuk Tim advokasi, gugat CSR', Mimbar Kieraha, August 20, 2008.

<sup>119</sup> 'NHM gagal dalam program pemberdayaan', Cermin Reformasi, May 27 2008.

<sup>120</sup> FP2HU is not the only local group who seemed to be satisfied with NHM. Earlier in 2007, a group called APMAK held a demonstration to disturb a meeting between NHM and people from several sub-districts. APMAK seemed to support the company. 'APMAK gelar aksi tandingan' Malut Post, February 27, 2007.

<sup>121</sup> 'Lingkungan NHM diuji berlapis', July 14, 2008.

perform another investigation on the environmental impact of the company.<sup>122</sup> The Parliament's chairman also expressed his strong doubts that NHM had the proper permits required for tailing its waste.<sup>123</sup> The Malut Post also reported on a meeting between Walhi's section in North Maluku (Walhi Malut) and another local organization called ORANG, in which the two expressed their suspicion that NHM was having a severe impact on the environment in the region, which had led to a decrease of fish in the Gulf of Kao.<sup>124</sup>

### **Box 5: Walhi Malut**

Walhi's section in North Maluku, Walhi Malut, was established in 2005, after various existing organizations joined forces. Walhi Malut focused on addressing the NHM issue, and in the beginning it did this in line with Walhi's general strategy, by trying to organize mass mobilization. Its chairman used to be a member of AMPERA, the student organization that in 2003 and 2004 was involved in organizing large demonstrations at NHM. In 2007 UNDP LEAD became involved with Walhi Malut and at the time of this research LEAD was Walhi Malut's only financier. LEAD's objective is to create channels through which poor and disadvantaged can complain about injustices to the government. This strategy differs from Walhi's approach. One of Walhi Malut's former members says: 'Some comments were made by a LEAD member that Walhi should not aim any longer for mass mobilization by organizing demonstrations or seeking direct confrontation. UNDP doesn't want anything to do with that.' LEAD's coordinator for the region, and a former Walhi member himself, denies he objects to the strategy of mass demonstration, but he thinks demonstrations alone will not be enough to improve the situation<sup>125</sup>. On the other side, Walhi Malut receives criticism from its national mother organization. Erwin Usman, a prominent Walhi National member thinks that Walhi Malut should organize mass support and report to Walhi National in order for the national office to start advocacy on national and international level.<sup>126</sup> Other than these conflicting views as to which strategy Walhi Malut should choose, Walhi Malut also struggles with internal, organizational tensions. These tensions led to the departure of one of Walhi Malut's members, Zulkarnaen Idris, also known as Jul. Jul is still involved in organizing demonstrations against NHM,<sup>127</sup> and other Walhi Malut members seem to approve despite the apparent disapproval of LEAD.<sup>128</sup>

An interesting detail is that Jul, originally an environmental activist, is a strong supporter of illegal mining. 'It should be legalized by the government because it is a source of income for the people. Why can foreign investors come and the people cannot take their own gold? They should have their own mining area outside the NHM area'. Jul realizes illegal mining has a negative environmental impact but argues this is used by NHM. 'NHM profits from the presence of the illegal miners because they can blame all negative environmental impact on them.' Jul's opinion on NHM is clear; 'NHM is the enemy and the people in the villages are all victims', he says.<sup>129</sup> Jul's seemingly contradictory position on illegal mining matches a remark made by former Walhi volunteer Igor O'Neill. 'Walhi tends to choose the side of the local population, they always say they have the mandate of the people. That seems

<sup>122</sup> Nofino Lobiu (former chairman of the district Parliament (DPRD Halut), interview 24 April 2009. '*Sampel peneliti dibawa ke LPPT UGM dan Batan*', Malut Post, July 15, 2008.

<sup>123</sup> '*NHM tidak miliki izin penempatan tailing*', Malut Post, July 17, 2008.

<sup>124</sup> '*NHM diduga menghilangkan ngafi Teluk Kao*', Malut Post, August 16, 2008.

<sup>125</sup> Interview with Abdul Wahid Situmorang, March 3, 2009.

<sup>126</sup> Interview with Erwin Usman, February 26, 2009.

<sup>127</sup> Interview with Zulkarnaen Idris, April 26, 2009. '*Hari ini massa 5 kecamatan kembali demo*', Malut Post, February 21, 2008. '*Warga penuhi janji NHM*', February 23, 2008

<sup>128</sup> Interview with Muhajirin Bailusy, April 26, 2009.

<sup>129</sup> Interview with Zulkarnaen Idris, April 26, 2009

more important than the actual protection of the environment. You could say it is more a socialist movement than a environmental movement'.<sup>130</sup>

Since LEAD started financing Walhi Malut in 2007, the strategy changed from aiming for mass mobilization to channeling grievances to the local government and starting a dialogue between the community members and the local government. According to LEAD, the main obstacles for the local people to receive appropriate redress are threefold. First of all, people do not possess sufficient knowledge of how to channel their grievances, meaning there is a lack of knowledge about what information to bring to which government institution to address the issue. Secondly, there is a lack of capacity to measure the environmental impact of the mining, and knowledge of how to use legal instruments and build sustainable community organizations. Finally, there is the problem of limited government services and support for the people. Through local organizations such as Walhi Malut, LEAD tries to improve the situation by focusing on training people who can conduct environmental assessments of the impact of the mining (so called “green deers”), providing legal training for so called “paralegals” and by assisting in building community organizations. LEAD’s regional coordinator explains the aim is to establish a dialogue with the local government. Taking a case to court would only be a last resort because it is difficult to provide sufficient evidence.

As part of LEAD’s programme Walhi Malut conducted a project in nine villages in the Malifut, including Ngofagita and Balisosang which will be discussed in the next section of this paper. The aim was to empower the local population to independently address their grievances regarding the mining to the local government. “Paralegals” and “green deers” in the villages were trained for this purpose and efforts were made to build community organizations. Walhi Malut conducted this program for a little over one year until November 2008. The level of success of the LEAD-Walhi Malut project was not the main subject of this research. Nevertheless, since two out of the three villages in which we conducted respondent interviews are villages in which Walhi Malut had been active, the impact on access to justice issues of this project will be discussed briefly later on in this paper.

#### **4.1.4 One decade of seeking justice; tendencies in the addressed injustices and strategies**

The elaborate description of the addressing of injustices by justice seeking groups over about a decade, shows that there have been many actors, addressing various injustices while using different strategies. In this section, we identify some tendencies and other notable features within this varied experience.

One tendency can be detected in characteristics of the groups involved in the process of seeking justice. Before the conflict in 1999 and 2000, the groups were local and they identified themselves as Kao. In the developments in 2003 and 2004, besides local justice seekers – amongst whom the division between Kao against Makian seemed to have disappeared – a group of national and even international intermediaries became involved. By 2008, it is again mostly local actors taking action to oppose NHM and appearing in newspapers.

Analyzing the developments in injustices that were addressed over the years, various aspects protrude. Before 1999, complaints were heard concerning the labour division between Kao and Makian and the lack of respect the Kao felt NHM had for them as indigenous *adat* people, which according to them would entitle them to more privileges than the migrant Makian people. After the conflict in 1999 and 2000, the injustices related to the distinction between Kao and Makian were no longer prominently on the agenda. Between 2000 and 2003 most attention went to the former NHM labourers who had been dismissed during the conflict

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<sup>130</sup> Interview with Igor O’Neill, February 27, 2009.

and who demanded their jobs back. In 2003 and 2004 an explosion of resistance against NHM occurred. Many actors appeared on the scene addressing numerous different issues. The dismissed labourers joined forces with *adat* people and together they addressed their complaints concerning labour and *adat* matters. Various justice seekers<sup>131</sup> linked the recognition of *adat* rights with the right of the community as a whole to be involved in decision making processes. This interpretation of *adat* is remarkable since a few years earlier *adat* was used as a ground for the rights of only the Kao, not for the whole community. After the conflict, the division of available jobs at the mine between Kao and Makian was no longer an issue, but now the division between locals from North Maluku and people from outside the province was regarded as unjust. Besides *adat* and labour issues, environmental injustices were prominently brought to the fore for the first time in 2003. The issue of mining in protected forest areas was highlighted, in particular by groups from Jakarta. Worth mentioning as well are the matters concerning the role of the Brimob in the 2003 and 2004 demonstrations and the case against protected forest area at the Constitutional Court. Both matters seemed to have diverted attention from the initial injustices that were addressed with the demonstrations. After the court case, the groups from Jakarta appear to have lost interest for the case in Halmahera Utara.

Another subject that deserves special attention when analyzing the injustices raised over time are the issues of compensation and comdev. In 2003 and 2004 the right to proper compensation for NHM's use of land, was addressed, while in 2008 emphasis was on the comdev and its distribution. It can be debated whether the comdev is, can, and/or should be perceived as a form of compensation and thereby as redress; the practical result of both is some kind of financial or material benefit for (certain) community members. Nevertheless, if the company was to be asked if there is a difference between compensation and comdev, it would respond that there is. The comdev is to be viewed as a voluntary favour from the company to the community, and accordingly the company can place conditions on how it is spent. Compensation, on the other hand, may be spent by the compensated party in any way it likes. Another difference is the receiver of the compensation or comdev. In the case of the latter, the whole community should benefit. However, compensation is awarded to a specific party. It could be that this party is the *adat* community as a whole. But then, who is the *adat* community in this case – the Kao, the Makian or both? Or are individual land owners entitled to compensation? Since in this case it is unclear who is, or should be, entitled to compensation, consensus on what is a fair compensation seems rather problematic. Although the company might distinguish compensation and comdev, for groups who seek justice the practical result of both compensation and comdev is the same – a certain benefit for the local population. Since appropriate compensation seems hard to achieve, and comdev is available, justice seekers have tended to focus on comdev, which is actually seen as a form of compensation, redress, for injustices that are experienced.

From this perspective, it is interesting to consider the clustering of grievances. Given the difficulty of achieving any redress at all, in order to attain a stronger position to achieve redress, various injustices that are experienced by various individuals and groups are clustered. Groups involved in the justice seeking process join forces to pressure the company. Distinctions in what the actual injustice is that is experienced by a certain group or individual, and what would be an appropriate redress, are disregarded in order to have a chance of achieving any redress whatsoever. As a consequence, the redress is not necessarily attached to a specific injustice experienced by a specific justice seeker. This matter seems closely related

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<sup>131</sup> The Coalition Against Mining in Protected Areas, the Kao and Malifut Community Council and local leader Yance Namotemo linked *adat* rights to the general right of the community to be involved in the decision making process or being entitled to compensation for the loss of land. No distinction is made any longer between Kao and Makian and the appeal they can do on *adat* rights.

to what was discussed before regarding the distinction between compensation and comdev, which often is not made. In a practical sense, in order to achieve any benefit at all, it seems the situation is too complicated to specify who experiences which injustice and what would be appropriate redress. A related point is the need to make the grievances clear and uncomplicated. NHM is blamed for problems concerning the environment, labour opportunities and division of financial and material benefits among the neighboring communities close to the mining site. Such simplified claims can in fact often result in some confusion. They make it difficult to determine who exactly experiences which injustice(s) and what would be an appropriate redress for whom. This also makes it complicated to properly divide the available benefits in such a way which is satisfying for the many different members of the community, and thereby avoiding internal tensions. This will be discussed later on in this paper.

The categorization of the injustices and the strategy to address them developed over time as well. Before the 1999 conflict, direct negotiations between the mining company and *adat* representatives was the strategy to express injustices and try to achieve redress. In 2003 and 2004, attempts were made to attract attention by organizing mass demonstrations against NHM, involving the media and by lobbying with government institutions, mainly on the national level. Many arguments against NHM were placed within a legal framework of state law, by pointing at the violation of laws by NHM. Nevertheless, the case was not brought to court. The legal arguments were mostly used by the justice seekers in strategies to put pressure on the company in an extra-legal sense. Noteworthy as well is that the strategies that were used often aimed at having a meeting with NHM to negotiate, mainly about material compensation. Although all complaints derive from NHM's presence, demands for NHM to leave the area were seldom heard.

The last aspect we would like to point out here is the role of the government in the efforts of the justice seeking groups to achieve redress. Government institutions at district level often played a facilitating role in negotiations between justice seekers and the company. On a national level, the role of government institutions is not exactly clear, except that it is important in the lobby scene. Justice seeking groups sought the attention from the President, Ministries and the national Parliament for the issues they wanted to address. Apparently these national institutions are perceived, at least by several justice seeking groups as well as by institutions on district level, as very influential actors, although they do not have direct responsibilities in the case in North Maluku. A final remark concerns the law enforcing role of the government. As it appears from the documentation, the only event during which the government used its law enforcing powers was when protesters were removed from a demonstration location in 2003 and 2004. In 2008, the central government conducted an environmental audit, but since the environmental impact was within the legal boundaries, no enforcement followed.

#### **4.2.1. The inhabitants of the villages**

From the respondent interviews conducted in villages close to the mining site it appears that the current problems and concerns experienced by the local population are of a somewhat different nature than those portrayed or perceived by the groups who are involved in seeking justice and which we discussed in the above paragraph. The economic revenues generated by the company such as job opportunities and the comdev potentially bring benefits to the population. At the same time the division of these revenues provokes tensions within the communities. Although many share the opinion that the mining does not have a positive impact on the area, they often refer to problems related to the division of the economic benefits, and hardly ever oppose the presence of the mining company in itself. Besides the



horizontal tensions within the communities relating to the division of revenues, some villagers mention negative impacts resulting from violation of their *adat* rights by the company, or from apparent or apprehended environmental damage, such as water pollution and lower fish stocks. Nevertheless, in their eyes these issues seem to be less prominent than the problems related to the division of the revenues.

Overall, it appears as if among the local community members' injustices related to the mining are experienced differently depending on people's background, including their ethnicity, position within their village, source of income and the degree to which they are affected by the negative environmental impact from the mining. The differences between the villages clearly show this.

#### **4.2.2 Methodology for respondent interviews**

To get an impression of the dynamics within the villages which might influence whether and how injustices are addressed, a small number of respondent interviews (46 in total) were held in three villages in the surroundings of the mining site. We felt it was important to include villages with various backgrounds and histories. We also wanted to include villages in which the NGO Walhi Malut had been active because we expected that the presence of Walhi could have contributed to expanding the possibilities for addressing environmental injustices.

We choose Ngofagita, a Muslim village whose inhabitants are predominantly migrants from Makian island and one of the villages where Walhi had been active. Some of Ngofagita's inhabitants are fishermen, which made their perspective relevant. An additional reason to select Ngofagita was that LEAD produced a small report which contained recent information about the Ngofagita villagers' perspective on the mining issue.

The second village in which respondent interview were held is Balisosang, a Christian village of which the inhabitants mainly have an indigenous Kao background and therefore potentially feel strongly attached to *adat* and *adat* land. Walhi has worked in Balisosang as well. Besides the *adat* aspect, going to Balisosang allowed us to learn about the farmers' perspective on the mining issue, since most of Balisosang's inhabitants are farmers.

After our stay in these two villages it became apparent that not many people in Ngofagita nor Balisosang regarded the environmental impact of the mining as a main concern. We wanted to include a village in which the environmental impact might be a more prominent worry in the eyes of the villagers. We learned that this could be the case in the village of Dum Dum Pantai, and therefore selected it as the third village to conduct the respondent interviews. Walhi had not been active in this village.

The aim of respondent interviews was to get an impression of the dynamics in the villages which influence if and how injustices concerning environmental issues are being addressed. Thus, we spoke to people from different backgrounds who possibly had different views on the issue. In each village we started off by interviewing two key persons. First the village head, or if he was not available, the village secretary. Then, in the villages where Walhi had been active (Ngofagita and Balisosang), we interviewed people who had received training from Walhi. These informant interviews were different from the respondent interviews because the questions were directed towards the particular expertise of these respondents. Respondent interviews were held with 15 or 16 people per village. We did not focus on one group in particular, but rather tried to include respondents with various backgrounds in the sense of source of livelihood, gender and, in the case of Dum Dum, supporters from both sides in a border dispute. By including people with various backgrounds, we aimed to gather information which would clarify the dynamics within the villages. In a practical sense, this meant that in Ngofagita we interviewed not only fishermen but people from various

professions. In Dum Dum the selection of the respondents partly depended on a border dispute which divided the village, and so respondents from both sides were selected.

The respondents were approached by going to the village and asking people who matched the profile if they would like to participate in an interview. It was important to us to try to avoid group discussions, as this would increase the danger of receiving coloured, socially desirable, responses. This is why we attempted to interview people when they were alone, although this was not always possible since at times other people would join in. The interviews with the respondents lasted on average around 45 minutes per respondent. They had a semi-open structure. A fixed set of topics was discussed in an open manner. The topics included the respondents background, what they felt were their main concerns as a villager, the positive and negative impact of the mining company, and how they thought the problems they experienced as a result of the mining activity could be addressed. These open questions resulted in answers which we categorised later on. Special attention was given to documenting the remarks the respondents made and which gave good insights into their perception of the case. This approach gives a qualitative character to the respondent interviews which matches the explorative nature of this research.

#### 4.2.3 Ngofagita

Ngofagita is a Makian and Muslim village in the sub-district of Malifut. Around 137 families with a total of around 500 people live in the village. Some respondents work in the fish business, some have other professions, other have no permanent jobs or are unemployed. This unemployment or not having a permanent job is perceived as a big problem in the community. People say that, after the conflict, they lost their livelihoods because fishing plots were lost during the conflict and the opportunities for export of plantation commodities also diminished.<sup>132</sup> People in the village have a great desire for stable livelihoods. A few have found a source of income by performing illegal mining, others try to get by with less income, while many aspire to a job at NHM.

When people are asked about the presence of NHM in the region, reactions are mixed. Some mention the (potential) positive impact of the labour opportunities and the comdev. However, the same issues are perceived to have negative aspects as well. Some think too few locals get the opportunity to work at NHM. The division of comdev is the source of many complaints as well. One of the village's biggest problems is that most people appear to believe that there is an unfair division of the comdev by the *tim desa* or 'village team' (the village institution that is responsible for the comdev's division).

The comdev and its division leads to a great deal of tension in Ngofagita. Responses are mixed when people are asked what they think about the division of the fund, and how they judge the amount of comdev provided by NHM. Some respondents are satisfied with the division by the *tim desa*. 'The distribution of the fund is equal among the people in the village, but the amount provided by NHM is too little' says one respondent. Someone else comments that he is never sure as to how much assistance he can expect, but he does not blame NHM for that. 'The problems with the distribution are not the fault of NHM. The problem is with the *tim desa*.' The respondent suspects that this team is involved in corruption. Another respondent says: 'I do not have a problem with NHM, but I do with the *tim desa*.' One man comments: 'During a meeting with the *tim desa* we discussed the division of the scholarships. The village had decided that the ten available scholarships would go to

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<sup>132</sup> Mawardi (2006) notes that because of the violent conflict in 1999-2000, the fishery sector in the area was heavily impacted because a large part of the fishing fleet was destroyed. Besides, the economic situation in general worsened since trading relations changed. The trading relationship between Ternate and Ambon for example, practically came to an end after the conflict. This also impacted the trade in plantation commodities. (Moving out of poverty; The Case of Gura, Kabupaten Halmahera Utara' p.8).

people from the village. Then, after the *tim desa* met with NHM, it was decided five of the ten scholarships would go to government employees who are not originally from here. These people only moved here after the conflict. We asked the *tim desa* to clarify this issue, but it was difficult to talk to them. The team said it was NHM's decision to divide the scholarships in that manner.' Another respondent also expresses his dissatisfaction with the team. 'What NHM provides is enough. The slowness of the distribution of the fund is the *tim desa*'s fault ... People are dissatisfied with the division of the fund. There are always a lot of discussions in meetings between the team and other village members ... I suspect NHM does not know much about the situation in the village. The people who are the intermediaries in dividing the comdev can easily take advantage of the situation. Those people only think about themselves.' Someone else explains that every family in Ngofagita received ten bags of cement, however they should have received 15. 'The *tim desa* said the five bag deficiency was related to the transportation costs.' This respondent suspects that the subcontractor, who is responsible for the delivery of this form of community development, benefitted from this situation. Others are not so negative about the *tim desa*, nor about NHM. One such respondent said: 'NHM has good intentions with the comdev. The company provides healthcare services and gives assistance to teachers, government employees and to each family directly. But currently, the comdev goes through district and sub-district institutions.'<sup>133</sup> We would prefer the comdev to be distributed directly from the company to the *tim desa*. The team functions well'.

Some people complain about the limited labour opportunities, especially the limited opportunities for locals as compared to people from outside the region. 'Only eight or nine people from Ngofagita work for NHM'. One respondent mentioned the unequal division within the local population itself. 'NHM hires more Kao than Makian. The company always privileges the Kao, rather than the Makian. Maybe that is because they are afraid of them, or maybe it is because the Kao say they have more rights because of their *adat* beliefs.' This respondent applied many times for a job but without success. 'You need to know people inside the company to get a job'. Other respondents made similar remarks. One woman says 'My husband got his job because he knew someone there'. Another respondent admits that if he were employed by NHM he would be on 'their side'. 'All people would have that same reaction', he adds.

More than half of the respondents said that the mining has no environmental impact. However, some fishermen declared that the amount of fish has recently decreased. 'Particularly in the rainy season the fish stock is low. The fish moved further out in the Gulf. We do not have the equipment to go fishing there. That is why we now buy the fish from fishermen from Halmahera Timur'<sup>134</sup> who do have the appropriate equipment. But we cannot ask for a good price when we sell the fish here because people are poor. They cannot afford to pay more.' Someone else explains that in the past, ten people would work to dry, process and sell one shipload of fish. 'Now there is no more work for them.' Several people who mention the decrease of fish stocks are convinced that this is related to NHM's mining activities. Others are not so sure. 'I don't know why there are less fish. It could be because of a natural cause.' On the contrary, one fisherman whose son works for NHM says he has hardly noticed a decrease in the amount of fish. Another respondent who has worked with Walhi says: 'There are people who do not believe there is a negative environmental impact because in this village there is no clear impact visible yet. In other villages closer to the mine the impact is already more noticeable.' Four respondents say they worry about possible future health effects related to the mining.

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<sup>133</sup> As far as we understood the comdev, at time of this survey, was distributed from the company (through its CSR team) via coordinators at sub-district level (not government officials), to the village teams. The government is not involved in this process.

<sup>134</sup> Halmahera Timur is a sub-district located on the opposite side of the Gulf of Kao.

Hardly any inhabitants from Ngofagita seem to be involved in illegal mining, although several people from the neighbouring village Samsuma are. 'These people used to be farmers. After the conflict they began to mine illegally.' The observations of the respondents regarding how NHM handles the illegal miners differs. One respondent thinks NHM manipulates the illegal miners. 'NHM is tolerant towards the illegal miners. If they wanted they could have the Brimob kick them off the area, but they don't. I think that is because then the company can say the pollution is caused by the illegal miners.' Another respondent thinks the Brimob uses too much violence in order to prevent illegal mining. 'They hit people. The violence is even worse when a *bule* (foreigner) is present.' Several respondents express their desire that this type of mining to be legalized. 'NHM should allow illegal mining. The illegal miners only use material that has already been processed by NHM. It is not even new material!' By this he means that NHM does not lose any profit to the illegal miners who only use material that NHM has already discarded.

The respondents are not optimistic about the possibilities of addressing their grievances about NHM. When respondents were asked where they feel they can go to express their complaints, a few responded they can go to the *tim desa* and the village head. But some, particularly those who are dissatisfied with these village institutions, feel as if there is no forum to express the complaints related to the mining. 'We do not have enough skills to talk to the *tim desa*. It's always the same people who talk. During meetings I tried to speak but I was easily interrupted. If we already lack the skills to talk to the *tim desa*, forget about expressing our opinion to the district government.' When asked if the local government at district level could play a role in solving these problems, respondents were usually very confused. The vast majority does not even consider the option of going to the local government to complain. One man says: 'The local government is useless. There is a CoW between NHM and the central government. The central government is the only one who has the authority to do something about the situation. Negotiations with the local government are just bull shit.' The most positive answer one respondent gave was 'There is no one else I could go to, so I have to trust the local government.' It appears that people have become used to the idea of not having a forum where they can express their complaints and have accepted this situation. Instead, they accept the benefit they receive from the comdev. 'I receive only a little, but at least it's something, ten bags of cement, so I am satisfied' one man says. A woman comments 'The government makes many promises but doesn't really seem to care about the people. We normally keep silent.'

Not many respondents are familiar with the work of Walhi, who has trained paralegals and 'environment watchers' in Ngofagita for one and a half years. The opinion of the respondents who do know Walhi varies. 'There is no environmental impact from the mining. If there was, we could report our observations to Walhi, but there is not much they can do.' Two respondents relate how Walhi came to the village to inform the people about the environmental impact. One fisherman joined Walhi at that time 'but I saw they were not effective, so I left the organisation. I think they are very money minded.' Another man says 'The negative environmental impact is just invented by people who want to make money out of that.'

One of the paralegals who was trained by Walhi admits that she currently does not perform any activities which are related to Walhi's program. According to the program, it is the paralegal's task to collect proof and complaints from the village and confront district government institutions with it. However, this paralegal did not seem to have a clear idea of what should be done with the proof of the environmental impact or the complaints once gathered.

Most respondents said that holding demonstrations directly against NHM was the only possible way to address the problems. At the same time, not many of Ngofagita's inhabitants seem to participate in demonstrations any more. 'People from here do not participate', a woman remarks. 'Now it's only people from outside North Maluku who participate. The goal of the protests is to legalize mining by the people,' another says. According to someone else the demonstrators are Kao who lost their jobs at the mine. As for the demonstrations in 2003 and 2004, not many people recall what they were about. According to some respondents, labour issues were addressed. Only a few respondents from Ngofagita said that they participated in the 2003 and 2004 demonstrations.

#### **4.2.4 Balisosang**

Balisosang is a Christian village in the sub-district of Malifut. There are 92 families and 346 inhabitants. Almost the whole population is of Kao descent. Eighty-five percent of the population earns its main income through farming. Some of the farmers have lands close to the mining area and the Kobok river which is said to be used by NHM to dump waste.<sup>135</sup> According to some the unemployment is the biggest problem in the village. Only a few people from Balisosang work for NHM.<sup>136</sup>

A few of the respondents are positive about NHM's impact because of the job opportunities it creates and the comdev it provides. However the majority has a negative view of the company's impact, for various reasons. Several people mention the limited labour opportunities given to locals. 'Mainly migrants work for NHM. Perhaps this is because they have a better education'. Another says 'I can understand that NHM hires people from outside the region for skilled and semi-skilled work. But there is no reason for them not to hire more locals for the unskilled labour.' A former NHM worker says 'I worked for NHM in 1999 in construction, but after the conflict that stopped. I am still waiting to be employed again. I have applied several times but was never hired again.' One person mentions that Makian people get more job opportunities than Kao. He thinks that might be because of the level of education that according to him is usually higher amongst Makian people.

Meanwhile, illegal mining seems to have become a source of income for some of Balisosang's inhabitants. 'Some people from here mine without a licence. We just want NHM to open an area for this.' 'NHM closes its eyes for the unemployment of the people' says another. 'Because they do not give us jobs, people become involved in illegal mining'.

The division of the comdev amongst the villagers seems to be less problematic than in Ngofagita. All the funding goes to the construction of a church in the village and there seems to be consensus on this. Although on a village level no tensions exist in relation to the division of funding, some express their dissatisfaction with the company's CSR team. 'I don't know what happened to last years' comdev. I think the money is still stuck at the CSR. It has not arrived to the village yet'. Many are dissatisfied with the amount of comdev and think the company should assist the community not only through comdev, but in other matters as well. 'NHM should make the situation better, for example by providing schooling for our children. If we received more assistance this would be a great village' one woman says. 'NHM should give one percent of their profit as community development. Apart from that it should provide more public facilities.' Someone else remarks 'NHM promised to make a plan to improve the services to the community. They even did a survey to ask what we needed, but nothing has been done so far'. Another comments 'We have complained many times, but they don't care about it. They should improve people's lives and provide education; schools, teachers and

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<sup>135</sup> Interviews with Muhammad Djunaidi, 10 March and 28 April 2009

<sup>136</sup> We received different information on the amount of people from Balisosang who work for NHM. The amount varies between three and twelve people.

scholarships.’ ‘Other villages in Malifut get more assistance. NHM builds fences in some villages. Maybe that is because they participate in demonstrations more often.’

Many think that NHM lacks respect for *adat* rights. Almost all respondents say they feel strongly attached to their ethnic *adat* group Pagu (which forms part of Kao), which is often explained through the respect they have for their *adat* leader. ‘We are *adat* people, although I do not know much about the rituals. Since religion arrived we stopped performing the rituals which our ancestors performed, but we still respect our ancestors very much. ... I do know we are not allowed to break the *adat* laws, for example, we have to respect other people in the village.’ The association with *adat* seems to be an identity matter which separates the people from Balisosang from the Malifut (Makian) people. Several times respondents referred to Malifut as if they – inhabitants of Balisosang – are not part of that sub-district, notwithstanding that in administrative terms Balisosang is part of Malifut. The value of *adat* land to the people in Balisosang is not clear. Many respondents seem to genuinely feel that NHM has violated their *adat* rights by taking their land. An often heard complaint is that NHM failed to ask their permission to use the land. Some are dissatisfied with the level of compensation. ‘NHM’s mining activity is on Pagu land because the landowners of the mining area are 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. It is not enough for all we lost: the land, the plantations, our livelihood’. Someone else remarks: ‘They stole our land and now they don’t improve our lives.’ On the contrary, others say they are not sure if the company violated *adat* rights. They say that based on their ethnic backgrounds they feel no special attachment to the land on which NHM now performs their activities. ‘We no longer went to the land for rituals. The landowners who had plantations received compensation for the land they lost.’ These type of remarks are in line with a remark made by priest Yance which we discussed before. He explained that many of the rituals performed on that land stopped after the Christian religion was introduced in the area. The population only learned about the claims they could make based on *adat* from an NGO, the priest explained.

Some of Balisosang’s respondents also mention the environmental impact. Many say the rivers became polluted: ‘The water in the Kobok river has become brown and black, especially in the rainy season.’ One man states that he left his farming lands close to the river because of the pollution, although he is not clear as to exactly why he left. Others add that the amount of fish decreased. ‘I used to make a living by fishing and farming. The fish disappeared after NHM came. The farming is solely for our own consumption. Since we do not have the right farming equipment, the quality of the goods is not good enough to sell. This does not have anything to do with NHM’. Some worry about the possible health impact of the mining. ‘We saw the waste in the river, but the water is still used for drinking and bathing. Recently some people started complaining about an itching skin and stomach aches’. Another declares, ‘In a village meeting, government officials advised us not to drink the water anymore. But the people who have lands close to the river still drink it because there is no other water source.’ Others say the negative environmental impact does not affect them so much. ‘We don’t know about the environmental impact because we have not experienced it yet. We heard about the river pollution but that only affects people who have farming land over there, not us.’ Others are sceptical about the environmental impact. A woman remarks that she heard of some people falling ill with stomach aches and diarrhoea, but she is not sure if it is related to the mining. Another says, ‘There has been a decrease in the amount of fish in the Gulf, that’s what people say. But it could also be that this is caused by the bombs and poison which people use to catch the fish. People also complain about the quality of the river water, but they still drink it, so it cannot be that bad.’ Regardless of whether there is an environmental impact, and how significant it is, the people from Balisosang do not seem to

have high expectations that anyone will control it. 'I just wish NHM would protect us against the negative environmental impact.' Another respondent said: 'The people are confused about whether NHM or the government is responsible for controlling the environmental impact.' One man seems to have accepted the environmental damage. 'People can accept that the environment gets destroyed, as long as NHM takes care of our children's education'.

Regardless of the negative impact of the company which many experience, a vast majority does not want NHM to leave. Only one respondent answered that he wants the company to go and restore the area. 'If NHM does not do anything for the communities it should just leave.' One respondent disagrees. 'NHM gives more than enough. People always keep on asking for more material things.'

Regarding the possibilities for people to address their complaints, there is little trust in the local government. 'I feel the local government doesn't do anything. They only make promises. And the district Parliament seems to be part of NHM.' Another remarked: 'The government speaks to NHM about the problems, but NHM pays them to shut their mouths.' One man said: 'If the government had responded properly there would have been a change in this village already.' Yet another commented: 'After so many efforts to address our problems to the local, provincial and central government nothing changed. It made me come to the conclusion that it would be better if NHM would just leave.' One respondent says 'We normal people are not educated well enough to be able to communicate with the government. Perhaps the priest or village head can do that.'

About one-third of the respondents is familiar with an NGO that can potentially facilitate measures to address the problems experienced by Balisosang's inhabitants. Most refer to Walhi but think of it with some scepticism. 'Some organisation came here to talk about *amdals*.<sup>137</sup> They brought a professor to teach us about that. But there have been no results yet.' Another says: 'They only educate us, but cannot really do anything to improve the situation. Nothing has improved yet. It seems that every time people get involved to help us, they eventually get paid by the company to be on their side. One example is a lawyer who now works for them. I am very disappointed.' Several remember Walhi coming to the village. 'Walhi and AMAN<sup>138</sup> talked to the government. But it did not have any results. I can't say I think very positively of them.' Another respondent is even more sceptical. 'Walhi also meets with NHM, but they never come back to us to communicate the results. I suspect they take some kind of advantage of it.' One of the respondents was trained by Walhi to be a paralegal in the village. He attended some of the meetings organized by Walhi but he does not seem to be aware of any responsibilities that derive from his position as a paralegal. Walhi's approach to teaching people to organize themselves to undertake action doesn't seem to have come across well in Balisosang. The reactions from the people of Balisosang indicate that they had certain expectations from the organisations which had been active in their village, but that they are disappointed in what was achieved.

Hardly anybody sees addressing the problems through demonstrations as an effective strategy to improve the situation and only a few of the respondents ever participated in such protests. 'Before the conflict there was an agreement between NHM and the village heads concerning the division of labour amongst the local population. As compensation for the loss of land, 60 percent Kao people would be employed and 40 percent Makian. But then only a few Kao got a job. We organized a demonstration at NHM. Afterwards the situation improved and more Kao were hired,' one man says. Regarding the demonstrations in 2003 and 2004 many do not recall which claims were made at the time. Some recall the demonstrations were to address labour issues, a few others say it was about recognition of *adat* rights. One man

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<sup>137</sup> Amdal is the acronym of *Analisis Megenai Dampak Lingkungan*, Environmental Impact Assessment.

<sup>138</sup> AMAN is an NGO which focuses on supporting indigenous rights (*adat*).

says it was about achieving permission for illegal mining. ‘We asked NHM to give us some space for that.’ It seems very different ideas exist about which issues were addressed through the demonstrations. People are also unclear about what claims were made during the demonstrations. Hardly any respondents currently consider participating in a demonstration. ‘We are tired of the demonstrations. They don’t help’. Another comments: ‘I do not believe in the leaders of the demonstrations anymore. Those leaders take the benefits for themselves’.

Overall, Balisosang’s respondents are pessimistic about the possibilities for addressing the problems they experienced. Someone comments, ‘None of the channels through which we can complain, such as the local government and Walhi, come back to us to share the results. I am very disappointed in them’. One woman says, ‘We have no power to complain anywhere. We feel like ants fighting against elephants. So we just complain to each other’.

#### 4.2.5 Dum Dum Pantai

Dum Dum Pantai is a Christian village with around 130 families and over 500 inhabitants. Farming is the main occupation, although some villagers fish and a few work for NHM. Although quite a number of Dum Dum’s inhabitants are migrants who came from Sulawesi in the 1970s, the majority of the population is originally Pagu . However, ethnic diversity does not create tensions among the villagers in Dum Dum. The main concern is a border dispute between the districts of Halmahera Utara (Halut) and Halmahera Barat (Halbar) which divides the village’s population.<sup>139</sup> The village used to be part of Halmahera Barat, the central government’s Regulation No 42 of 1999 made it part of the Halut district, and the Teluk Kao sub-district. ‘Legally Dum Dum is part of Halut, but historically it belongs to Halbar’, the village head of Dum Dum Halbar explains.<sup>140</sup> Part of the population strongly identifies itself with Halbar and protested against this government decision.<sup>141</sup> After tensions rose, the district government of Halbar offered the villagers to join Jailolo Timur, a sub-district of Halbar. The villagers could choose individually (in practice per family) which administration they wanted to be registered under, Halbar (Jailolo Timur) or Halut (Teluk Kao). Since 2006, Dum Dum has had two village administrations; one for Halut and one for Halbar, including different village heads. According to the present village secretary of Dum Dum Halut, the majority of village’s inhabitants supports Halut, meaning that they decided to be registered under the Halut administration. However, the village head of Dum Dum Halbar claims the opposite, that the majority of Dum Dum villagers are registered under the Halbar district. Supporters of both sides live spread out over the village. The central (national) government referred the matter to the provincial government to find a solution for the border

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<sup>139</sup> Several other villages are involved in the border dispute between Halut and Halbar as well, among which Bobane igo, Pasir Putih and Tetewang.

<sup>140</sup> Interview with Barto Lumbote, village head Dum Dum, Halbar, April 8, 2009.

<sup>141</sup> The exact reason why many villagers from Dum Dum identify themselves with the Halbar district did not become entirely clear within this research. It is not likely this is strongly related to the Kao-Makian tension because the majority of other Kao villages are part of Halut as well. The village head of Halbar explains that ‘The fact that people want to be part of Halbar has to do with the identity of the people and the attachment they feel with their ancestors. Before Dum Dum belonged to Halbar (...) It doesn’t have much to do with *adat* because not all people who want to join Halbar belong to the Pagu.’ The village head himself is not Pagu. He is from Sulawesi and moved to Dum Dum in the 1970s. A respondent from the survey says: ‘Before the government regulation this was part of Halbar, ad based on the law it still is. But geographically the sub-district should be part of Halut. Another reason for it to be part of Halut is that the majority of the population is Pagu. This ethnic group lives for the biggest part in Halut. That is why the Pagu feel more attached to Halut. The Halbar government said to Halut’s government: ‘You can have NHM, but we want the people’. The Halut government wants both; NHM and the people. that is not fair.’ The limitations of this research did not allow us to investigate precisely what are the roots of this border dispute.



dispute, but it has not yet been successful.<sup>142</sup> There does not seem to be a strict relationship between attachment to Pagu identity and support for any particular district, although a few remarks indicate that more migrants support Halbar, while Halut has more people who are originally Pagu.

As a consequence of this conflict, the families that support Halbar do not receive comdev from NHM. According to the village secretary of Dum Dum Halut, this is because NHM only provides comdev to Halut, and those who support Halbar are therefore not entitled to it. Surprisingly, in a interview with a CSR member of NHM, he states that the company would not have any problem to distribute the comdev to supporters of Halbar as well. 'It is not NHM's responsibility but the government's. NHM doesn't want to get involved in that'.<sup>143</sup>

The Halut village secretary is remarkably positive about NHM. According to him, the company doesn't have any negative impact. He does mention that because of the illegal mining the rivers have become polluted. The company assists the community very well, he says. 'It helped to build the church and provides Rp. 300 million per village. This money is divided by the *tim desa*. ... The *tim* consists of the village head, a representative of the *adat* community and a member of the village Parliament.' All three members of the team are members of the Dum Dum Halut community.<sup>144</sup> The village head of Halbar is much less positive about NHM. He complains about the environmental impact of the mining. He links the mining to the decrease of fish in the Gulf. 'It is still possible to make a living as a fisherman but it is nothing compared to the 1970's when you did not even need a boat to go fishing. You could just walk through the water to catch them. Hunters lost their hunting lands and rivers have become polluted because NHM dumps its waste directly into the water.' Halbar's village head has heard of other villages where people experience itching skin because they still bathe in that water and drink it. Besides the division of the comdev, Halbar's village head thinks the recruitment of new NHM employees is unfair. 'You need to have an identity card that states you are from Halut. Otherwise you cannot apply. That is discrimination'. He mentions that a few years earlier, NHM had come to the village to ask for the people's consent to use the land. According to the village head this was only a formality. 'They actually bribed the people to agree'. He tries to clarify this with an example of a school that was built with the assistance of the Halbar government, but which was constructed on land that is included in the area of the CoW. 'NHM sent the police and the army to stop the building activities. If it had been the Halut government who built the school, this would never have happened. ... NHM makes the two local governments compete over the villages to get the benefits from the company, such as royalties. Now Halbar doesn't get anything. ... The community would be much more peaceful if NHM would just leave.'<sup>145</sup>

An interesting aspect of Dum Dum's situation is the impressive church which was recently built in the village (see photo 1). We were informed that this church was paid for with the money which several private land owners from Dum Dum received from NHM as a compensation for their land loss.

In relation to the border dispute, a clear difference in the overall opinion of NHM is noticeable among the respondents of the interviews. Those who support Halut have a predominantly positive view of NHM's impact on the region. They point to its provision of

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<sup>142</sup> This information is based on interviews with Yesaya Badiri, (the village secretary of Dum Dum Halut, April 8, 2009), Barto Lumbote (village head of Dum Dum Halut, April 8, 2009) and Riswan Ilyas (candidate for Halbar's district Parliament, March 11, 2009)

<sup>143</sup> Interview with Swingly Kalime, senior CSR officer of NHM, April 25, 2009.

<sup>144</sup> Interviews with Yesaya Badiri, the village secretary of Dum Dum Halut, April 8, 2009.

<sup>145</sup> Interview with Barto Lumbote, village head of Dum Dum Halut, April 8, 2009.

comdev and some mention the increased labour opportunities, although all of Halut's respondents named at least one negative consequence of the mining as well. Some said the amount of fish in the Gulf had diminished, a few referred to the river pollution, and others noted the unfair division of jobs among locals and non-locals. On the contrary, Halbar's supporters are unanimously negative about the company and say the company has no positive impact whatsoever. Many are dissatisfied with the way in which the comdev is divided and say it contributes to the border dispute. Several mention the lowered fish stocks, the river pollution and the unfair division of labour between locals and non-locals. Several of these issues will now be discussed more in detail.

Regarding the issue of comdev, one of the Halut supporters is convinced. 'There are no problems between Halbar and Halut regarding the division of the comdev.' However, few others, whether supporters of Halut or Halbar, agree with this respondent. From both sides, people comment that the comdev division creates major problems in the village. A Halbar supporter says 'It would be fair if the comdev went to the whole village, because the whole village is affected by the mining. The *tim desa* decided that Halbar people will not receive comdev, but NHM does not know about that.' Another Halbar supporter is less convinced that the company is not aware. 'The company is located in Halut so that is where it provides the comdev. Even if Halbar people have land in Halut, they will not receive comdev. But they never complain about it because the supporters of Halut and Halbar hardly talk to each other. Halut people just want Halbar people to leave the village'. Also interesting is the reaction of a Halut supporter when asked if she thinks the comdev division by the *tim desa* is fair. She starts laughing and then looks at others who gathered around her. Then she commented 'It is better not to say anything. I am afraid that if I will talk the village board will hear about it and will get mad at me'. One respondent explains that one year ago he was registered under the Halut administration, but he changed to Halbar after he became fed up with the corruption by the village head of Halut. 'He takes personal benefit from the assistance provided by NHM. For example, if there are ten families who have not yet received comdev, the village head reports that 20 families are still waiting for comdev and he himself will keep the difference.... 80 Million Rp. for the construction of the church is gone. It is not transparent.' Another reason for the respondent to change from Halut to Halbar was that he feels 'the Halbar government cares more about him than the Halut government does'.

Supporters from both sides express their dissatisfaction regarding the labour issue. Many think NHM should provide more jobs for the local population, and feel non-locals are being privileged 'There was an agreement that NHM should hire at least 80 percent locals, but the system of recruitment is unfair. You need to know someone inside the company to get a job.' Some respondents refer to the workers who were dismissed during the conflict. They think NHM should reemploy them.

Whether respondents feel attached to *adat* does not seem to be directly linked to their support for either Halbar or Halut. Nevertheless, some informed us that Halbar is predominantly supported by migrants who came to Sulawesi three decades ago, while Halut is supported by mainly Pagu people. To what extent they feel this *adat* attachment is hard to judge, but one respondent's reaction when asked which ethnic group she belongs to was very interesting. She initially responded 'Boeng'. 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.

Of those who identify themselves as *adat* people, less than half say they feel NHM violated their *adat* rights. 'There has not been a consultation with *adat* people, only with the local government. NHM should have made an agreement with the *adat* people, especially

with the *sangaji*.<sup>146</sup> ... The compensation for the loss of land only went to the owners, while in fact it is Pagu land so it should have gone to the whole community.’ Some of the *adat* people do not feel NHM violated their *adat* rights. ‘The land taken by NHM was not *adat* land. It belonged to private owners who were compensated’. ‘NHM bought the land from the owners who are from Dum Dum. They received a fair price’, another says. Some feel their land rights were violated, but do not relate this to *adat*. ‘The land belonged to Halbar, but we never received anything’, one person says. Another remarks, ‘Last year NHM just took our land without our consent. We asked for 50 million Rp., but we only received 20 million.’

Some respondents do not think NHM has any negative environmental impact. ‘There is no environmental impact. They have good equipment to prevent that’. Many others disagree and noticed that the fish stocks in the Gulf have diminished. Most believe this is related to the activities of NHM, but some are less sure. One fisherman says ‘I don’t know why the amount of fish decreased. It could be because of changes in the weather or because of the current. But before the company came there was still a lot of fish. It could also have disappeared because of NHM’s waste. Maybe they do not have a good waste management’. River pollution concerns several respondents as well, although some believe this is not caused by NHM, but by the illegal mining activities. One respondent mentions health effects. ‘In 2003, a man became ill after he ate fish that was contaminated by NHM’s waste. The Halbar government sent a doctor, but the doctor was not sure if it was caused by NHM’s waste.’

For those who say they experience a negative impact from NHM, most say that if more job opportunities were provided that would be sufficient redress. Others indicate they think more *comdev* would be appropriate. Several Halbar supporters express their demands for redress by comparing their situation with that of their fellow villagers who support Halut. ‘If we would get the same as the people from Halut that would be enough to compensate for the negative impact of NHM.’ Another said ‘I don’t know what NHM should give to compensate for their presence, but at least the same as what the Halut people get. NHM never came to the village to inform itself about how the distribution takes place. I don’t know who is behind the unfair distribution, the Halut government or NHM.’

Most respondents are not hopeful that their demands will be met, although one respondent has confidence in the *tim desa*. ‘We can report complaints to representatives such as the *tim desa* and then they will talk with NHM. I heard that is okay. The *tim* was received well by NHM last time.’ Another of the Halut respondents brought several matters to the attention of his district’s government. As a member of the Pagu *adat* organisation he, together with others, complained to the Parliament and government of Halut regarding six matters. Among these were the division of the *comdev* among the Halut villages, the aspiration to form a foundation to manage the division of the *comdev*, clarification regarding the environmental impact and recognition of *adat*. The respondent says he is dissatisfied with the district Parliament. ‘The district Parliament facilitated a meeting with NHM but the meeting did not have any result’. Most of Halut’s respondents seem never to have thought about how they might express their complaints and/or demands. Most react with confusion when asked where they would go if they wanted to complain about mining related issues. ‘We keep silent. The local government keeps silent as well. They don’t do anything’. The Halbar respondents answer with much more certainty. They trust the Halbar government but worry that it cannot make a difference. ‘The Halbar government really cares about us but they cannot do anything because NHM is in Halut territory.’ ‘The Halbar government is good, but cannot do anything about NHM. The Halut government has connections with NHM’. This respondent is not the only Halbar supporter who distrusts the Halut government. ‘The Halut government is

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<sup>146</sup> A *sangaji* is a local *adat* leader.

on NHM's side. The Halbar government cannot do anything'. One Halbar supporter refers to the role the province and the national government have played. 'In 2003 and 2004 we complained about NHM at the provincial level. *Adat* leaders and a priest went to Jakarta. But it didn't produce any results and NHM won the court case'.

Only a few believe demonstrations can be effective. 'After a demonstration things get better, like the distribution of the comdev'. Most respondents are more sceptical. A Halbar supporter says 'It is useless to take part in demonstrations. Even if they are effective we don't get anything. It only benefits the leaders of the demonstrations.' One woman says 'I would like to demonstrate, but I'm afraid of the Brimob'. Hardly any of the Dum Dum respondents has ever participated in a demonstration, although one respondent has. He is a member of the Forpeda Halut,<sup>147</sup> which according to the respondent, consists of former NHM workers (although the respondent himself never has worked for NHM). Forpeda mainly focuses on issues related to labour and demonstrated at NHM and demanded several matters, including ending discrimination against local workers, better working conditions for the current NHM employees and reemployment for the fired workers. The respondent says it has not yet had any effect. Hardly any of Dum Dum's respondents remember what the demonstrations in 2003 and 2004 were about, although a few say it was about labour or more comdev.

No NGO seems to have played a significant role in Dum Dum, since hardly anyone can name or remember a NGO coming to the village. The respondent who is a member of the Pagu *adat* organisation tells about the NGO Aman. 'It came to inform us about our *adat* rights. After that we pressured the government to make local legislation to recognize *adat*. This legislation has not yet been made.'

The general lack of proper channels through which people feel they can voice their complaints is evident in remarks one respondent made. 'I am glad this research is being done and these questions are asked. Now I can express my complaints through this research.'

#### **4.2.6 Three villages; the injustices, possibilities for redress and 'their representatives'**

The focus of the respondent interviews was on three villages; Ngofagita, Balisosang and Dum Dum Pantai, all situated on the coast of the Gulf of Kao. In Ngofagita, a Makian and Muslim village, some of the village's fishermen mention the fish stock has decreased since the arrival of NHM, but one of the biggest concerns of Ngofagita's population is the corruption at village level regarding the division of the comdev. Balisosang is a Christian village and a vast majority descends from the Kao. Most of its inhabitants are farmers. Many respondents noticed the pollution of the river close to their farming lands. Some explain how they feel NHM violated their *adat* rights by taking its people's *adat* land, although others say they only recently learned they could make claims based on their indigenous background. The *adat* value of the land to them is only limited. The main problem in the Christian village of Dum Dum is the ongoing border dispute between two districts, which means only one part of the population receives comdev while the other part does not. The dispute leads to great tensions within the community. Although the fishermen in the village complain about the decrease of fish in the Gulf, the population of Dum Dum mainly worries about the border dispute.

Judging from the responses given by the 46 respondents, the worries of the population are in part similar to the issues presented as injustices by the discussed in the first part of this chapter. Issues such labour, *adat* and environmental damage are mentioned by the justice seeking groups and respondents in the villages alike. A major issue which is not mentioned by the justice seeking groups (as opposed to the people themselves) are the internal problems on village level when it comes to the division of the economic benefits of the mining, in

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<sup>147</sup> Forpeda Halut (Forum Peduli Daerah Halmahera Utara) was briefly mentioned in paragraph 4.1.3.

particular comdev. Both in Ngofagita and in Dum Dum this issue is experienced by most respondents as a major injustice. Not surprisingly, the injustices that people mention are often related to their particular background. When they are fishermen they often mention the decrease of fish stocks in the Gulf. Farmers talk about the pollution of the river that flows close to their farming lands. People who feel they are being disadvantaged when it comes to the division of the comdev – either because of their political preference (as is the case in Dum Dum) or because of the more personal relationship with the village head and *tim desa* (like in Ngofagita) – consider the unfair division and its social implications as a major injustice. Finally, the people who feel a strong connection to *adat* and *adat* land experience the injustice of NHM violating their *adat* rights since the company operates on *adat* land. All this indicates that the people who live in the surroundings of the mines do not form a homogeneous group which experience the same injustices to the same extent. Even within a group that at first sight may appear homogeneous, differences may exist in which injustices are experienced. A good example is the issue of *adat*. Amongst the people who indicate they feel a strong connection to *adat*, some say they feel NHM violated their *adat* rights by operating on their *adat* land. Others who feel strongly attached to *adat* seem to have no special attachment to this land and experience no injustice as a result of violation of *adat* land rights.

Although many respondents experienced some kind of injustice, they often could not indicate clearly what they would like in the way of redress. Some said they would like the amount of comdev to increase or to get a job at the mines, while these desires for economic benefits were often not directly linked to the injustices people mentioned. The lack of a connection between experienced injustices and the redress for those injustices could be caused by the fact that people do not expect that what they experience as unjust will be redressed. For example, it seems unrealistic the company will leave the area as a consequence of the environmental and other impact it might be causing. Not only are there limited possibilities for getting the company to leave, the vast majority of respondents do not in fact seem to want it. Instead, the poor inhabitants of the area will settle for any benefit that is (potentially) available, which are mainly of some sort of economic nature. Apparently, these economic benefits outweigh the negative impact, at least the impact that is currently noticeable.

Also important in this process from injustice to getting redress is the aspect of available forums and strategies to complain. The respondents generally have a very low level of trust in village institutions as well as in the government to provide a decent forum. Even intermediaries such as NGOs, which can facilitate the process of achieving redress, are sometimes distrusted. The strategy of holding demonstrations is by many viewed as ineffective. Some even suspect the organizers of demonstrations to be after personal gain. This situation, in which people hardly have any confidence in forums, intermediaries and strategies, might very well contribute to them accepting the benefits which they can get, while the injustices they experienced are not addressed.

The final point we would like to bring to the fore here is the issue of increased awareness which intermediaries such as NGOs might create among the people. Although this research does not particularly focus on issues related to *adat*, we would like to use this subject to illustrate the effect which increased awareness of certain rights might have. During the research in the villages we got the impression that the practice of *adat* through traditions and customs is not very strong at the moment. Nevertheless, *adat* is important as a source of identity for the Kao, enabling them to distinguish themselves from the Makian migrants. It is interesting to consider the role played by an NGO in promoting these *adat* rights. This NGO focused on creating an awareness among the people of their *adat* rights. It seems the people already felt very '*adat*', but the NGO made them more aware of which (material) claims could be made based on this. A perhaps undesired consequence of this increased awareness of *adat* is that it could emphasize the distinction between the two ethnic groups in the area. If,

for example, the Kao would receive more material benefits than the Makian based on *adat* (note that this is currently not the case), this could contribute to tensions among the two ethnic groups. One could argue that the work done by this NGO has made the people more aware of an injustice that is being done to them, but because there is a lack of forums to achieve redress for (or at least the perception that there is a lack of forums), people are left only more frustrated and angry. This could be dangerous in an area which has such a violent recent past.

## **5. The Contract of Work, licences and monitoring**

From the story so far it seems as if most villagers are confronted with a situation which impacts their life but which they can hardly influence. There is limited trust in the local or central government to defend the villagers' interests, since many people assume the officials pursue their own interests, which are not in line with interests of the local population. Although some mention has already been made earlier in this paper, in this paragraph we will give a short overview of the legal structure and responsibilities of the government and the company regarding the environmental aspects. It will vindicate the villagers' sense that their expectations of the government should be kept low. In the first place there is confusion about the legal status of NHM's activities. Then, there seems to be problems with monitoring and law enforcement regarding the environmental impact of mining.

### *Permission and licensing*

The fact that in 1997 NHM signed a CoW with the central government determines much of the legal status of the company's activities.<sup>148</sup> Before the signing of the CoW an Environmental Impact Assessment was conducted by the company and approved by the government. With this CoW, the company received all required licences, given out by the central government, to explore and exploit the entire area. Decentralisation – the process that took place after the Suharto era and in which more power was invested in local and provincial level government instead of the central level<sup>149</sup> – has not brought about much change. A foreign investor nowadays is allowed to choose if it wants to fall under the licensing policy of the local government or under the central government by means of a CoW. In NHM's case, it opted for central government regulation, and accordingly the district and provincial governments have hardly any authority in licensing NHM's mining related activities and its effects.

According to NHM, it possesses all required licences. An informant from the Ministry of Environment disagrees. According to this informant, NHM requires a licence for dumping hazardous waste because it has a tailing dam. By not having such a licence, NHM is committing a criminal offence, the informant explains.<sup>150</sup>

Here we also refer back to the decision of the Constitutional Court regarding mining in protested forest areas. The Court ruled that mining in such areas is only permitted if an Environmental Impact Assessment was conducted before the new Forestry Act of 2003 was enacted. According to some, the Environmental Impact Assessment for the Toguraci area was not conducted until after the enactment of this law. This would mean that in the light of the Court's decision, NHM was not permitted to conduct their activities at Toguraci.<sup>151</sup> An argument against this is that the CoW gave authority to the company to explore and exploit the whole area included in the CoW, including Toguraci. During this research, we decided not to focus on this issue. For now we conclude by noting that there is disagreement as to whether NHM has lawful permission for some of its former and current activities.

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<sup>148</sup> The regulation concerning Contract of Works is based on regulation Undang Undang 11/1967.

<sup>149</sup> Undang Undang 22/1999 and 25/1999

<sup>150</sup> Interview with Vivien Rosa. Ministry of Environment, May 7, 2009.

<sup>151</sup> See box 3.

### *Monitoring the environmental impact.*

Although the necessary licences might have been provided, the environmental impact of the company's activities needs to stay within certain legal limitations. It is the responsibility of the district agencies of the Ministry of Mining and the Ministry of Environment in Halmahera Utara's district capital, Tobelo, to monitor the environmental impact. In practice, the monitoring of the environmental impact of NHM's activities is problematic due to unclear responsibilities and a lack of competences. As a consequence, political pressure seems to be of more relevance than the actual legislation regarding this monitoring.

The first of the various involved government institutions we analyse is the Mining Agency of Halmahera Utara located in Tobelo. An officer explains us that this Agency's task in relation to NHM is to occasionally accompany officials from the central government when they visit the company. The officer does think it would be better if more power was given to the district government to regulate the impact of NHM, but this is not possible because of the CoW. He does remark that it is difficult to determine what is the exact impact of the company on the environment, since so much illegal mining takes place and contributes to the contamination of the area.<sup>152</sup>

The district's Agency of Environment informs us that they have the authority to monitor the water quality, but that it has no staff nor appropriate equipment to perform this task. The Environment Agency's officers complain that the budget is determined on the national level without consultation with the agency about its needs. Now the agency has three boxes of equipment to monitor the water quality, but its personnel has not yet received training on how to use it. An additional problem is that the agency's staff are often transferred to other government institutions, resulting in a loss of knowledge. Because of these problems, the Environment Agency at provincial level has taken over the monitoring tasks of the district's agency. One of the officers also mentions that he is aware that environmental regulations have changed, but he has not yet received training on the new rules. In practice the agency only performs some administrative tasks and accompanies officials from provincial, regional and central government level on their visits to the company. 'They are the experts', he adds. The officer also explains that it is difficult to determine what pollution is caused by NHM and what by the illegal miners, but according to him all is within tolerable limits. When asked what the agency would do if it found that the limits were exceeded, the official starts laughing. Then he says 'We would probably report it to the central government'.<sup>153</sup>

The provincial Mining Agency has its office in Ternate. According to an officer of this Agency, its task is to evaluate the quarterly reports which NHM makes regarding environmental aspects such as the water quality. When a report indicates the tolerable levels are exceeded, the Environmental Agency at provincial level should take water samples to check the data provided by NHM. The Mining Agency official explains that in the rainy season intolerable levels of acid and cyanide occasionally occur due to the overflowing Gosowong mine. If the Mining Agency concludes that NHM is not complying with the environmental standards on water quality, it has the power to close down the company. However, in practice the agency would send a letter to the company to invite it to discuss the situation. When asked if the agency has ever sent such a letter the officer says the Mining Agency has never received the results from the provincial Environment Agency who is in

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<sup>152</sup> Interview with Jayatirta Irinto, officer of the Mining and Energy Agency of the district Halmahera Utara., March 20, 2009.

<sup>153</sup> Interview with three officers of the Environmental Agency of the district Halmahera Utara: H.S. Salim, Daud, and Ridwan Putun. April 23, 2009.

charge of checking the data provided by NHM. This means the Mining Agency does not have the information to be able to exercise this power.<sup>154</sup>

An officer of the provincial Environment Agency assures us there is no environmental pollution caused by NHM. He bases this on the research conducted by UGM University. He is convinced that foreign mining companies such as NHM have very good management regarding the environmental impact. The officer confirms it is the task of the Environment Agency at district level to check the environmental impact and report the outcomes to the Environment Agency at the provincial level every three months. Since the provincial agency has never received such a report from the agency at district level, the agency at provincial level has taken over these tasks. According to the official, the agency goes to the area every three months and takes samples in several rivers. Violation of the legal standards has never been found. The results of the quarterly reports are sent to the Ministry of Environment, the governor of North Maluku and to NHM, but not to the provincial Mining Agency. The official explains his agency only has the authority to give out warnings if limits are exceeded. The procedure for giving warnings is to send several letters to the company. If there is no improvement the case will be brought before court, the official says. According to him, the provincial Mining Agency does have the authority to stop the company's mining activity if the Environment Agency found that the tolerable levels were exceeded, but there is no need to send the Environmental Agency's reports to the Mining Agency because there is already communication between the Ministries and Agencies of Mining and Environment. The official adds that the impact of illegal mining is not checked because the officials are afraid to go into the area where the illegal miners are active.<sup>155</sup>

A representative of the Ministry of Environment at the central government level says she doubts that the environmental impact caused by NHM stays within the legal tolerable standards. She says that in order to be able to do something, the Ministry would need more complaints from the people in the villages neighbouring the mining area. The Ministry is very busy and has to divide its attention. North Maluku is far away and of little importance to those in Jakarta, and as such it receives no priority. The Ministry's official describes an investigation the Ministry conducted in 2007, after it had received complaints from villagers who live close to the mining site. A cross departmental team (including the Ministry of Environment and the Ministry of Mining) took water samples. These samples were lost on the plane journey back to Jakarta. By the time the samples finally reached the laboratory in Jakarta the outcomes of the tests lost their validity and thereby their value to serve as proof of the environmental impact. Nevertheless, the outcomes did indicate there was water pollution exceeding the tolerable levels. Unfortunately the Ministry does not possess enough financial and human resources to repeat such an investigation, the official explains.<sup>156</sup>

It is clear that the information regarding the environmental impact of the mining which we received from the various monitoring agencies differs, and that the division of monitoring tasks and enforcement powers is inconsistent.

## **8. Conclusion**

This case study considers how local circumstances affect the extent to which environmental injustices, perpetrated by the mining industry in Halmahera Utara and experienced by the most vulnerable people, are addressed and what attempts are made to achieve certain redress for these injustices.

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<sup>154</sup> Interview with Lukman Umar, officer of the provincial Mining and Energy Agency of North Maluku, April 29, 2009.

<sup>155</sup> Interview with Said Basalamah and M. Nasir Thaib, April 30, 2009.

<sup>156</sup> Interview with Vivien Rosa. Ministry of Environment, May 7, 2009.



To answer this, it is first necessary to clarify who are these most vulnerable people. At first glance, the whole population might be considered as a homogeneous group of poor people who experience a negative impact from the mining activities in their surroundings. However, looking more closely at three villages on the coast of the Kao Gulf, differences appear in relation to ethnic backgrounds, sources of income and social and political positions within a village. These factors in large part determine which positive and negative impacts a person experiences in relation to the mining activities in their area. The population is aware that mining has the potential to provide them benefits, such as jobs and community development funding (comdev). The access to these benefits is, or is believed to be, related to people's characteristics such as their position within their village or ethnic background. Some believe that job opportunities are determined by these factors. The initially positive effects of mining can often cause problems when it comes to the division of these benefits. This is what frequently occupies the minds of the villagers and is considered as a major injustice. The extent to which people experience other negative consequences of mining seems to be very much related to people's specific background and situation as well. People who identify themselves with the indigenous Kao and consider NHM to operate on their *adat* land often experience the use of land by NHM as unjust. More specifically looking at environmental injustices, fishermen frequently mention the lowered fish stocks in the Gulf, which most of them believe is caused by NHM. Farmers who have their lands close to rivers which they think are polluted by NHM view this pollution as a major injustice.

It is interesting to note the way in which local and non-local organised justice seeking groups (such as Walhi) portray these issues. These actors are relatively powerful, as they have the means to express their opinion and make it heard. They often claim to operate on behalf of the local population. From the gathered documentation it appears as if these groups prefer not to make distinctions among the local population. Any injustice which might be experienced is presented as if it were experienced by the population as a whole and is used in the efforts to pressure the company to change its ways.

Next, for understanding what affects the extent to which injustices are addressed, it is useful to take a closer look at the transition of an issue from injustice to grievance. We speak of a grievance when people begin thinking about how to address the injustice(s) they experience. Here, an interesting distinction can be noticed between villagers and the justice seeking groups. Many villagers seem to have accepted that there is nothing that can be done about the negative impacts of mining. Often they do not even have an idea of what they would consider as appropriate redress for the injustices they experience as a result of the mining activities. A major obstacle in achieving redress is that people do not trust the government to stand up for their interests because they believe the government has its own stakes in the mining business. Hardly anyone believes holding demonstrations is an effective strategy. Regarding environmental issues in particular, it is hard to prove the exact damage, and who has caused it. Furthermore, there is contradictory information about the environmental impact. Instead of trying to achieve redress, many just accept the available (economic) benefits the mining brings and keep silent about the negative impacts they experience.

Before discussing the justice seeking groups and how they relate injustices to redress, we would like to make a small detour. We want to highlight the aspect of creating awareness of certain injustices among the local population and the role NGOs can play in this respect. We like to refer to the *adat* issue in particular. It appears that several years ago an NGO came to the area to make the local Kao population aware of the grounds that *adat* can provide when making certain (economic) claims. Many Kao seem to now feel it is unjust that NHM uses their *adat* land. It is debatable as to whether this feeling of injustice has been created by this intervention, because before the NGO came people did not seem to feel much connectedness to this land. Now they are made aware of a situation they regard as unjust, but are left

frustrated because they are not able to do anything to achieve redress. Furthermore, emphasizing the *adat* issue as a ground to make certain (economic) claims is a particularly sensitive matter in the Kao-Malifut area, as it stresses the distinction between the indigenous and migrant population. If, hypothetically, the compensation claims for the land of the Kao were acknowledged, it would create a difference in the economic benefits received by the two different ethnic groups in the area. This could create a worrying situation, especially in an area where only recently a violent conflict took place between these ethnic groups – a conflict which, as it appears, found some of its roots in the division of economic benefits of the mining.

Now we return to the matter of how justice seeking groups go from injustices to redress. It looks as if these groups tend to pile up all injustices imaginable in their efforts to pressure the company to provide the most beneficial redress possible. In the process of pressuring the company, the link between a particular injustice and the desired redress which derives from it (and thereby who is entitled to this particular redress) seems to disappear. Any benefit that can be achieved is considered to be an improvement. But since the focus is on striving for whatever benefit is possible, and there is a weak connection between what people feel as unjust and the redress they would like, when will people feel justice is done? Will this lead to a perpetually unsatisfied desire to receive more benefits, and an incentive to complain about anything imaginable? Ironically, the economic benefits that have increased over the years contribute to tensions among the (potential) beneficiaries in the villages, since there is disagreement on how it is and should be divided.

All the above helps to understand why it is so difficult to address injustices related to the environment and to achieve appropriate redress for them, redress which will improve the situation of the people who truly suffer from an a particular environmental injustice.

We very much respect the work carried out by NGOs and others regarding their attempts to improve the situation for the local population. We invite anyone to discuss this research with us and hope it can serve as an inspiration to carry on with the efforts to seek appropriate redress for experienced injustices.

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