Mobilisation, mapping and legal action help indigenous community oppose mining activities

In 2003, fifteen indigenous Pagu communities of North Maluku, Indonesia, started opposing the expanding gold mining activities in their territories, as these activities were causing the contamination of water sources and the ecosystem. With the support of AMAN and AIPP, the communities mapped their territories, mobilised wide support to save the ecosystem of Kao Bay, and filed a petition to revoke the license of the mining company. This prompted the local government to review their mining regulation in indigenous peoples’ territories. In 2013, the government recognised the Pagu communities' land rights in the contested mining area.

PRINCIPAL ORGANISATIONS INVOLVED
Aliansi Masyarakat Adat Nusantara (AMAN)
Asia Indigenous Peoples Pact (AIPP)

LOCATION
North Halmahera, North Maluku, Indonesia

TIMELINE
2003 - present

TARGET AUDIENCE
Civil society organisations, government authorities, private sector companies

KEYWORDS
Community mobilisation, customary forest, mining, territorial mapping, transparent investments
Case description

Background issues

The indigenous peoples of Pagu in North Maluku, a northern province of Indonesia, are mostly farmers and fishermen. For generations, they have lived in peaceful co-existence with their environment, which is rich in marine and terrestrial life. The Pagu used to move freely to collect non-timber forest products (NTFPs) and hunt or fish in their territory. In 1997, however, this situation changed dramatically with the expansion of mining activities in the area. The Government of Indonesia gave a "Kontrak Karya" (Concession permit) to the PT Nusa Halmahera Minerals (PTNHM) company, a subsidiary of Melbourne-based Newcrest company, for mining gold in North Maluku through Presidential Decree No. B. 143/Pres/3/1997. The mining operations have adversely affected the livelihood of the communities in Pagu, affecting approximately 10,000 villagers. Their natural resources (marine and terrestrial) are slowly vanishing, and animals for hunting are becoming scarce. Some of the villagers are now working as rock miners, while others have sought to continue traditional livelihoods in what is remaining of their land and natural resources. Furthermore, numerous health problems have arisen in the community, with the emergence of unexplained skin diseases and death caused by drinking contaminated water. A number of sacred areas have also been damaged due to the area’s mining operations, including the destruction of 50 hectares of sacred forest.

The expansion of operations of this kind was rendered possible by a legal context unfavourable to indigenous peoples and local communities with customary practices and usage of natural resources. In 1999, the Indonesian Forestry Law stated that "customary forests are state forests located in the areas of custom-based communities". The denial of rights to customary forests has resulted in loss of livelihoods, poverty, and widespread suffering among indigenous communities, as evident with the Pagu peoples in North Maluku. Addressing both this legal dimension and the local empowerment of the communities are necessary components of an effective strategy for recognition and protection.
Solution

The Pagu indigenous people’s movement against PTNHM started in 2003, when they protested against the company’s activities in the Toguraci forest (one of their sacred areas). Mobilization was very difficult as the Pagu territory consisted of 15 villages, most of which are hard to access due to their location within the confines of the mining company’s concession area.

In 2011-2012, the indigenous peoples in Pagu became more organized through their customary institutions and the active involvement of all affected villages. With the support of AMAN and AIPP, in this period they intensified their mobilization and representation through the Sangaji Pagu (customary leaders), and strengthened their claim to land, territories, and natural resources by mapping their customary lands.Capacity building and awareness raising activities were undertaken. In 2012, the communities became more determined and conducted a series of protests and demonstrations. These events resulted in the arrest and detention of 32 villagers, who were eventually released.

While the communities were engaging with the gold mining company, a ruling was passed in the Constitutional Court - No. 35/PUU-X/2012 Customary Forest (MK35) - declaring that customary forests are not state forests. The modification of the Forestry Law was strongly driven by the legal efforts put forward by AMAN and others, who petitioned for a judicial review of the Forestry Law on the grounds of being inconsistent with the Constitution of the Republic of Indonesia. The decision of the Constitutional Court was a positive step forward in the recognition of customary forests in indigenous territories.

Leveraging the opportunities created by this historical development, with the support of AMAN and AIPP, the communities in Pagu started to demand that PTNHM return them their land and forests. They continue to work towards what they hope will be a successful conclusion.

Activities

1997
The Government of Indonesia granted a concession permit to the PT Nusa Halmahera Minerals (PTNHM) company for mining gold in North Maluku through Keputusan RI No. B.143/Pres/3/1997. Since then, the mining operations have adversely affected the livelihoods of the communities in Pagu.

1999
The Indonesian Forestry Law was modified to affirm that all customary forests would be considered state forests and, thus, all affairs related to forests, forest areas, and forest products would be governed by the state.

2003
Concerted efforts to counter the mining company began by local Pagu communities. A protest was staged in the Toguraci forest area, blocking operations for numerous weeks. The communities’ requests were centred on compensation for the land, resources, and livelihoods lost. Communities also demanded that the company fulfilled its promise to build a school, provide scholarships, and involve village heads in mine planning, management and supervision. The protest was brutally suppressed.
Since late 2011, AMAN and AIPP have been supporting the Pagu communities in their fight for recognition and protection. Capacity building and awareness raising activities were undertaken in order to enhance understanding of indigenous peoples’ rights and local capacities for participatory mapping of their customary territories, disaster risk management, community organization, investigative and citizen journalism and other skills/tools for advocacy, reporting and protection.

Through the support of AMAN, a number of collective concern letters were sent to relevant State agencies. Support from more than 2,000 AMAN indigenous community members was also gathered through SMS Adat. SMS Adat is one of the tools developed by AMAN to disseminate information and urgent alerts and to gather broader support from its members, partners, and other civil society actors to condemn the arrest of Pagu community members and the operation of PTNHM in the Pagu territory. Technical assistance was provided to the Pagu community in conducting participatory mapping.

May 2012

With the support of its legal team, together with other two petitioners (Indigenous Peoples of Kenegerian Kuntu and Indigenous Peoples of Kasepuhan Cisitu), AMAN submitted a petition for the partial judicial review of the “Forestry Law”. The petitioners claimed that many provisions of the act were inconsistent with the Constitution of the Republic of Indonesia.

May 2013

Indonesia’s Constitutional Court ruled that indigenous peoples’ customary forests should not be classed as “State Forest Areas,” thereby ruling that the petitioners’ claims were founded in part. With this development in place, the communities in Pagu began to demand that the gold mining company return their land and forests outright. They erected sign-boards in their territories and a group of Pagu indigenous peoples gathered to pressure the government into action. This network closely monitors the negative impacts of mining activities that are affecting the people and the environment.

December 2013

On December 17, 2013, the communities conducted the “Kao Bay Rescue Movement”, a demonstration to save the Kao Bay ecosystem from the environmental damage incurred since the start of the mining operations. They submitted their demands to the Ministry of Environment, the Ministry of Energy and Mineral Resources, and the National Commission on Human Rights (Komnas HAM) to take legal action against the mining company, provide redress to the communities for the destruction of their ecosystem and their livelihoods, and review and revoke the permit issued to the mining company.

In the same year, the Government of North Halmahera passed a local regulation recognizing indigenous peoples’ rights in mining areas. With this local regulation, the government is expected to identify indigenous territories that overlap with mining areas. The communities are currently conducting their own mapping initiative, which is supported by AMAN and AIPP.

The operations of PTNHM are still continuing. However, its legality and legitimacy is now in serious jeopardy as a result of the sustained actions of the villagers to reclaim their land. This was further validated by the Constitutional Court Ruling that recognizes the

“The struggle of the Pagu people is meaningless without the participation of indigenous women and youth. It was very difficult at first to make people realise that if we didn’t fight hard, we would lose our land and territory. But I didn’t want to give up. I, as an indigenous woman, as the community leader, I have continuously sought to convince Pagu people - the elders, youth, women, men, everyone - that our land does not belong to the State. It belongs to us and we should work hand in hand and fight for it. We should keep it for the future generations.” Afrida Erna Ngato, community leader
rights of indigenous peoples over their customary forests. The villagers are hopeful that they will finally be granted legal recognition of their lands as they continue their struggle using various traditional and mainstream strategies to defend their land rights.

**Importance of the case for people-centred land governance**

The protection of indigenous and community land rights and territories from outside forces is at the heart of ILC’s mandate. Through its commitments, ILC has vowed to work towards creating the conditions in which traditional land use rights and local livelihoods are respected, and where all large-scale initiatives that involve the use of land, water and other natural resources comply with human rights and environmental obligations. This includes a thorough assessment of economic, social, cultural and environmental impacts, with democratic planning and independent oversight that is based on free, prior and informed consent. The case of the Pagu people is exemplary in its failure to meet these standards, causing grave human, spiritual and environmental harm. AMAN and AIPP’s efforts to support the communities are hence fundamental contributions to the advancement of people-centred land governance.

**Changes**

**Baseline**

Before the change to the Forestry Law, indigenous peoples’ rights in Indonesia were not recognized and protected. Land law was fragmented as the Forestry Law did not coordinate with other related acts (e.g. Human Rights Law Act, Environmental Law Act, and others). Consequently, the state could freely transfer any customary land without consent from indigenous peoples, which resulted in a disparity in land distribution, forest destruction, and poverty for millions of indigenous people in Indonesia. This was the case with the mining operations granted to PTNHM, which was done with no consultation or regard for local customary use, and which led to human and environmental hardship. Implementation of Constitutional Ruling No. 35/PUU-X/2012 Customary Forest (MK35) is still far from ideal. It was a landmark event that has provided opportunities for greater engagement in the recognition of indigenous peoples’ rights.

Concurrently to the legal dimension, there was also the need to support the Pagu peoples directly. At the start, mobilization efforts of the communities were dispersed and largely ineffective because of the lack of appropriate tools and skills for advocacy and protection against a counterpart of PTNHM’s magnitude.

**Achievements**

Though the community has not yet been able to stop the mining operations of PTNHM, the changes in local regulation will have a long term impact in relation to the recognition, protection and respect of indigenous peoples’ rights within the context of projects to be implemented in their territories. The Pagu indigenous peoples have now been directly involved in negotiations with several companies who want to invest in their territories. There is also a transformation in the public outlook towards indigenous peoples'
struggle as their sustained mobilization/campaign against the mining company gained wider support and contributed to putting pressure on the government to change their local regulations. Companies are now increasingly becoming careful with their interest to control lands of Pagu indigenous peoples without dialogue and consent.

Evidence

There are some clear indications that the efforts undertaken are leading to some shifts in thinking and action at different levels. The Government of North Halmahera is currently reviewing other local regulations and the concerns of indigenous peoples in the mining area. Komnas HAM has begun its inquiry on the alleged land rights violations of indigenous peoples by the mining company and its affiliates. The Pagu youth are undertaking spatial surveys and territorial mapping that will make it possible to have a clear record of the communities’ customary territory, so that ambiguities are clarified and an effective tool for further lobbying is available. Also, the indigenous women are taking initiatives to restore their ecosystems following some of the damage that has been heeded. Further, the community is strengthening their traditional institutions and is conducting regular meetings for intergenerational knowledge transfer.

Lessons learned

Lessons for civil society

Collective community action is a strong tool for bringing about positive change. Community actions at the local level should be strongly supported by indigenous organisations and its networks including CSOs at all levels. In particular, the involvement of women and youth is crucial and should be ensured by the community in its actions.

It is useful to train indigenous youth to conduct community mapping. This is a way of transferring knowledge and strengthening young people’s perspective about the importance of land, territory and resources for community life and survival. Community mapping, capacity building initiatives, lobbying and advocacy have been central to the struggle of the Pagu peoples.

Lessons for policy makers

Recommendations for governments and policy makers include:
1. Recognizing and promoting community initiatives on restoring the ecosystem on land and the seas.
2. Recognizing and respecting the intimate connection among environmental, social, spiritual and cultural practices of indigenous peoples, because it is key for sustainability.
3. Recognizing, protecting and fulfilling communities’ collective rights to their land/coastal territories and natural resources. In the case of the Pagu community’s struggle this could be done through proper implementation of the Constitutional Court Ruling No. 35/PUU-X/2012 on the judicial review of the Law on Forestry No. 41/1999, by holding the company accountable for the environmental degradation in the concerned indigenous territory, urging the State apparatus to stop all forms of intimidations on the community activists, and demanding national human rights institutions to conduct a
thorough investigation and take necessary and concrete actions in response to the alleged human rights violations towards community concerned.

4. Ensure the full and effective participation of indigenous peoples in the formulation, implementation and monitoring of laws and policies affecting them, to minimize conflicts and smoothen the working relations between the government, its subsidiaries and investors, and indigenous peoples.

Challenges

Engaging with the mining company has been wrought with challenges, partly due to the intrinsic and very powerful economic and political interests that such deals contain, and partly because of the sheer strength that companies have in comparison to local communities. The consequences of challenging PTNHM have been grave, with numerous community leaders receiving threats and many people including old women being arrested and detained. At the same time, the leaders’ commitment to the cause has become a source of widespread inspiration for the communities to pursue their struggle.

In addition to safety concerns, the remoteness of the area and language limitations are also a big challenge, increasing the physical and ideal distance between the company and people. The role of AMAN and AIPP was crucial in allowing indigenous people to articulate positions and act as mediators.

Finally, there was also the challenge of generating widespread local awareness and collective positioning on the issues being experienced throughout North Maluku. Continuous awareness-raising ultimately made the movement more consolidated.

Follow-up

AMAN and AIPP are committed to continue supporting the affected peoples through various forms of assistance.

Legal assistance and lobbying and advocacy activities will be implemented to push the Indonesian government to recognize the map produced by the community. The revitalization of the Pagu customary institutions and legal system should be treated as a priority. A continuous monitoring will be instrumental to strengthening the position of the Pagu people, despite the inconsistency of laws and policies concerning indigenous peoples in the country.

The community initiatives will be sustained and support and solidarity from other indigenous organisations/networks, in particular from the wider CSO networks, maintained. The aforementioned actions can be put in place only if Pagu peoples are strongly united as they are the centre of the movement.

AIPP remains committed to providing assistance to indigenous communities around Asia through its members and partners. The success of the activities and efforts of the Pagu peoples to secure the rights to their land, territories and resources, such as community mapping, legal assistance, and the revitalization of the Pagu indigenous institutions and legal system, shows that these should be scaled up.
Supporting material

References and further reading


Photos, videos


*Community mapping team of Pagu people (1)*

(Abe Ngingi 2013)
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