

Reaching high: The Gilgel Gibe III hydropower plant uses the power of the Omo in Ethiopia. With a height of 243 meters, the dam is one of the tallest in Africa.



NATURE IN DISPUTE

TEXT: MICHAELA HUTTERER

Extreme mining, huge dams, spreading infrastructure: when economic development endangers the habitat and culture of Indigenous and other local communities, environmental rights appear to offer a solution. But how can such human rights or rights of nature really help? A legal and anthropological research team from the Max Planck Institute for Social Anthropology seeks answers in Mongolia, Ethiopia, Ecuador, and Colombia.

Enkhtuya casts a scrutinizing glance at the long groove in the ground. He has dug a trench, studded with spikes around his yurt and winter camp, deep down into the vast, barren landscape of South Gobi Province in Mongolia. At the edge of the trench, six torn rubber tires are piled up, weighted down with stones, like a guardian calling out to all who pass by: “Stop, no trespassing, this is Enkhtuya’s land!” For the cattle herder, both trench and tire pile are signs of resistance against the overwhelming power of Mongolian mining companies like Erdenes Tavan Tolgoi in the South Gobi, a region that had hitherto managed without boundaries for thousands of years.

But life has changed since truck after truck began hauling coal, copper, and other metals to the nearby Chinese border. “Without a barrier, the trucks run over and kill my cattle, and destroy the pastureland,” the herder says. A few hundred kilometers away, Uranmandakh has also built a fence around her belongings – made of old metal plates, scrap metal, and pallets. “The mining companies are more likely to pay for the damage if we can show that we have put a fence in place,” reports the herdsman, who is trying to adapt to the new situation.

“This is an experience shared by many nomads I encounter during my field research in the South Gobi,” Bayar Dashpurev, a lawyer and doctoral student at the Max Planck Institute for Social Anthropology in Halle, Germany, says. “Since Mongolia declared the extraction and export of mineral resources as its number one economic sector, herders are losing valuable pastureland and access to already

scarce water sources, and kilometer-long convoys of trucks are cutting through traditional trails,” Bayar reports. From September 2021 to February 2022, the legal scholar investigated how people are fighting back against those damaging the environment in three different locations in South Gobi Province.

His findings: they hardly ever do – at least not by utilizing the legal system. To date, there have been no successful compensation lawsuits and no examples of the court denying a mining permit. Yet Mongolia had already enshrined environmental rights in its constitution in 1992, and strict regulations and standards apply in this area. “The constitution recognizes a right to an intact environment,” the lawyer says. Every citizen has “the right to a healthy and safe environment and protection from pollution and ecological imbalance.” Taking measures to protect the environment and sustainably use and restore natu-



ral resources, he says, is the government's responsibility.

But this does not seem to apply in the expanses of South Gobi. Environmental pollution and degradation are progressing, mining licenses are being extended, and the nomadic culture, which has been the essence of rural life for generations, is visibly fading.

However, the nomadic way of life is considered to be particularly resource-saving. "According to the constitution, every Mongolian has a duty to protect the environment. Nomads have been practicing this for thousands of years by tradition," Bayar reports and recounts an old proverb: "Leave everything as you would like to find it again next year." However, people are no longer actively fighting for environmental protection.

Why? Ethnographic studies provide some insights here. In interviews, observations, and research, the scholar examines his theses and identifies patterns. "There are many reasons why people seem to accept the current circumstances," the lawyer says. Lack of knowledge is certainly one reason, he adds, but not the only one. Lack of access? Most certainly. "Many herd-

ers told me that they don't go to demonstrations against mining companies because they cannot leave their livestock alone for more than a week," the researcher says. For the same reason, many also tend to avoid court proceedings in far-away urban centers.

At the same time, the lawyer also observes a deep split in local communities. Local residents and newcomers, herders outside and inside affected areas as defined by the mining companies, as well as herders with their own herds, and livestock owners who employ herders on their behalf, cannot find a way to reach a consensus or even a common strategy for litigation.

In addition, the herders' legal standing is weak. Mongolian law does not grant nomads private ownership of land in the Gobi. "Everything belongs to everyone, pastures are public land," Bayar reports. "However, mining companies have extensive rights of use for the extraction of raw materials." How the compensation and coexistence of mining and local residents is to happen has not been legally clarified," he says. And yet practical solutions can be found. The communities have found their own ways to secure their

Left View: Gezahagn Belewa Akudongole looks at the remains of his farm in the lower Omo Valley in Ethiopia.

Right Self-help: Enkhtuya wants to protect himself from the truck convoys in the Mongolian province of South Gobi by digging a deep trench around his yurt.



existence: making deals instead of filing lawsuits. In the South Gobi, it is a bargain that rarely takes place in court, but mainly in the halls of the mining companies: residents haggle over compensation for destroyed grazing land, access rights, or infrastructure – making clear reference to environmental rights in order to improve their more immediate circumstances.

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Taking stock: Researcher Abduletif Kedir Idris notes down what the community leader reports about the dam. Arez Akurkori Loyalm (on the mat) is one of the few Dassanech who have visited the dam. Gezahagn (in the yellow shirt) translates.

PHOTO: ABDULETIF KEDIR IDRIS / MPI FOR SOCIAL ANTHROPOLOGY



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PHOTO: BAYAR DASHPUREY / MPI FOR SOCIAL ANTHROPOLOGY

“Previously, there were no roads, no schools, no electricity, no internet. Mining companies are now providing all of this,” Bayar says. With the extraction of raw materials, infrastructure is developing in the region through the process of exchange: pasture for electricity, dust for money, drought for employment – nomadic culture for modern life. And in accepting this exchange, nomads are doing what they have done for a long time: they are adapting – to nature and those who harm it. They create visible signs of ownership where before there were none and negotiate their future – in many cases by sacrificing their cultural identity, according to the researcher. “It’s hard to believe, but many of them move to these impact zones on purpose to start a new life.”

The extent to which government development programs can harm the local population has also been experienced by the Dassanech in the lower Omo Valley in Ethiopia. Since the government built the Gibe III dam and hydropower plant around 400 kilometers away more than ten years ago, the lives and nature of the community of around 80,000 Dassanech people have been shattered. Like other Indigenous groups, the Dassanech lived in symbiosis with the Omo river in southwestern Ethiopia, which springs

SUMMARY

Many constitutions recognize human rights to a healthy and clean environment. They promise protection from environmental interference.

In practice, this protection is not always exercised on behalf of those affected and often does not take local conditions into account.

New environmental rights, such as the rights of nature, can enhance nature conservation, but they can hardly be understood without human intervention. Differentiation is important.

in the highlands and merges after 760 kilometers with Lake Turkana in Kenya. The Omo Valley community benefitted from the life-giving cycle of flooding in the rainy season in one of the world’s least rainy regions. They followed the drying riverbank’s fertile soil to cultivate crops and raise livestock in a special form of agriculture on the wetlands.

“The construction of the Gibe III dam interrupted the flow of the river; the silt that made the soils fertile vanished for more than three years,” Ab-

duletif Kedir Idris, a doctoral student at the Max Planck Institute in Halle, reports. The legal researcher is examining how the dam, officially inaugurated in 2014, affects the living conditions of the Dassanech to this day and what they are doing to protect their living environment. It is striking that there are no court proceedings or lawsuits here either. The Ethiopian constitution has recognized a “right to a clean and healthy environment” since 1995, Idris reports. But this cannot be enforced either locally or at a national level.

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The high barrier

“No wonder,” says Idris, who is also a lecturer in public law and human rights at the University of Addis Ababa: “The barrier to taking legal action against the State, as the most important economic player and operator of numerous infrastructure projects, is very high in a country with an authoritarian political culture. The rule of law is not something that can be taken for granted here,” explains the lawyer. “This is why people don’t trust that they will receive a fair judgment in environmental disputes.”

For Idris, this is mainly due to the judiciary, which is perceived as not being independent, but also the society’s



understanding of the law and its enforcement. “State authorities hardly exercise any control over each other,” the scholar reports. For example, the Commission for Environmental Protection does not issue fines against a State-owned operator for violations. In the case of the Gibe III construction, important means of enforcing environmental rights were left out of the project. “The authority to oversee an environmental impact assessment and approve the dam construction was delegated to the agency responsible for planning and operating the power generation, which is a clear conflict of interest.”

In discussions with affected parties, local authorities, operators, experts, and government officials, Idris discovered a lack of control, the absence of a legal hearing, and the deliberate spreading of misinformation. The Dassanech were led to believe that the construction would not negatively affect their livestock or agriculture. They were promised access to electricity, which could power pumps that would be used to irrigate the soil. However, the Dassanech still do not receive any electricity from the hydropower plant. “The electricity is exported to Kenya, Sudan and Djibouti,” Idris reports. Instead, the operator has provided the Dassanech with diesel-powered water pumps. But after a short time, the pumps broke down – with fatal consequences for livestock and people.

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“You need to understand the importance of cattle to this community. It is not just a form of agriculture, but a source of identity. First and foremost, cattle determine everyday life; ownership of cattle allows people to marry, and many life events, from birth to death, are celebrated with cattle, as sacrifices, in exchange, or as gifts. If a man no longer owns cattle, he is not even entitled to burial rites under tribal law.”

For years, the communities waited for water. But when it was suddenly released in abundance, it flooded the remaining grazing fields and washed away the crops. For four years, some of the most fertile Dassanech areas would be under water. “The people

are starving and now living on handouts from various aid organizations and the government.” The rights listed in the constitution, are of no use to the Dassanech.

Law requires structures

It is no surprise to Dirk Hanschel, Fellow at the Max Planck Institute for Social Anthropology and constitutional and international law professor at the University of Halle, that there is a gap between having a right and being able to enforce it. As head of the group Environmental Rights in Cultural Context, he supervises the field research in Mongolia and Ethiopia. “Legal environmental protection does not mean that the legislator simply sets standards and hopes that they will be as fair as possible to all groups and individuals within the population. Our field studies show that, in many cases, some basic material and institutional conditions must be established before such rights can be effective.” Hanschel sees major discrepancies between the great promise of new environmental rights and the realities in some areas acutely affected by environmental degradation. “Constitutional promises often remain largely theoretical, and the actual needs of people particularly affected by environmental degradation are not sufficiently recognized,” the scholar says.

That is why his team of lawyers and anthropologists chose several locations in the Global South where severe environmental impacts can be observed. They spent several months investigating how the people react to the impacts, what forms of protest they engage in, how compensation is attempted, and what function the law fulfills there. Using ethnographic methods, the researchers were able to gain deeper insights into the issues and to discover opinions, behaviors, and social rules. This allows them to clarify whether environmental rights play a role in areas where people seek protection from environmental damage and those perpetrating it – even protection from the actions of their

own State. In short: do these rights serve the people or do they rather lend themselves to create positive perceptions in the international community, among investors, or potential donors?

“In times when environmental protection is also keeping courts around the world busy, it is particularly important to take a close look at the circumstances in which the law is made, and how it is applied in practice,” Hanschel says. A related project funded by the Volkswagen Foundation is taking him to Ecuador at the beginning of the year, where courts and the constitution have created a new form of environmental standards.

Ecuador not only grants rights to those affected by planned mining or forest clearance projects, but also to nature itself, known as Pacha Mama or Mother Earth. In this context, nature is somewhat analogous to the legal

Export through the desert: Convoys of trucks like these transport coal to neighboring China and cut up vital pastureland in Mongolia.



PHOTO: REUTERS/B. RENTSENDORF

construct of a company which finds its own rights infringed upon and can therefore take legal action. Humans represent the concerns of nature in court on a trustee-like basis.

In the case of Los Cedros, a cloud forest not very far from the capital, the constitutional court has used the rights of nature to affirm the legal personality of the forest. The aim is to provide people being adversely affected by mining activities an additional level of protection to their human rights. In Colombia, by contrast, there is no mention of the legal personality of nature in the constitution. Judges nevertheless granted a river its own rights. “In the case of the Rio Atrato, the Supreme Court in Colombia ruled that the State had to carry out concrete protective measures and designated the State and ‘the ethnic communities living in the Atrato basin’ as *guardianes* (guardians) of the river,” Annette

Mehlhorn, member of the research group and post-doctoral researcher at the Institute, reports. Meanwhile, numerous rivers around the world have been recognized as legal subjects: for example, the Colombian section of the Amazon, Rio Cauca, or Rio Magdalena. In New Zealand, the Whanganui River was granted legal entity status in 2017 following a treaty between Maori and the government. Likewise, the Turag River in Bangladesh and the ecosystem in Tamaqua Borough in Pennsylvania, USA are considered legal subjects.

“These many judgments show that the idea of the rights of nature is gaining popularity – also, or perhaps especially, among judges. But that alone is not a ‘victory’ against environmental destruction or for local communities,” Mehlhorn explains. “The precise implications of specific formulations of the rights of nature and their respec-

tive effects must be carefully examined.” The function of the rights of nature must also be analyzed. What goals are Indigenous groups pursuing when they oppose new mining licenses? Can the Pacha Mama concept be transferred to other regions and communities? After all, there are many different conceptions of nature and Mother Earth. Anthropologists are keenly aware that one-size-fits-all solutions rarely work.

“Environmental rights are an important new tool that can achieve a lot. But at the same time, their impact should not be overestimated,” Dirk Hanschel says. “Human rights to a healthy environment depend on their concrete value for people being affected by environmental degradation. And it is difficult to think of nature’s own rights without people – whose interests are many and varied.” ←

