

Philippine Court Upholds Open-pit Mining Ban in Mindanao

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A court in the Philippines has dealt another setback to the company looking to mine Southeast Asia's largest untapped deposits of copper and gold, ruling to uphold a ban on the type of destructive mining being proposed.

In its Oct. 12 ruling, the court in South Cotabato province dismissed a petition for an injunction against the ban on open-pit mining that has been in effect in the province for the past 10 years. Sagittarius Mines, Inc. (SMI), the developer of the planned mine in the South Cotabato town of Tampakan, was not a petitioner in the case.

The ruling comes two months after councilors in Tampakan, where the deposits are located, [terminated](#) the town's municipal principal agreement (MPA) with SMI. The agreement, governing the development of the proposed mine, laid out the rental rates for the land under the Indigenous Blaan communities, among the company's other financial and social obligations.

In its Aug. 10 resolution, the municipal council announced it was no longer interested in reviewing or updating the 2009 MPA with the company, but was still open to creating or formulating a new agreement, which meant SMI could still pursue the \$5.9 billion Tampakan project under a new municipal agreement.

But the recent court ruling makes that prospect less likely. It comes in response to a petition lodged in January 2019 by pro-mining groups seeking to rescind the ban on open-pit mining that's been enshrined in South Cotabato's environmental code since 2010. SMI had acknowledged before the ban was imposed that the most viable way to get at the copper and gold reserves in Tampakan would be through open-pit mining. Despite being awarded its permit in 1995, the company but has never begun operations.



Power lines supply electricity to residents within the Tampakan project in this photo taken on January 16, 2020. Image by Bong S. Sarmiento

The dismissed petition was filed by the original Tampakan concession holders from the 1980s, SouthCot Mining Corp. and Tampakan Mining Corp., along with the government-recognized “Indigenous cultural communities” of Bongmal, Danlag and Fulo Bato. The latter are not necessarily the formal leadership structures as recognized by the Indigenous communities. Another petitioner is Kiblawan CADT-26, the titled holder of a certificate of ancestral domain for part of the land that the project would occupy.

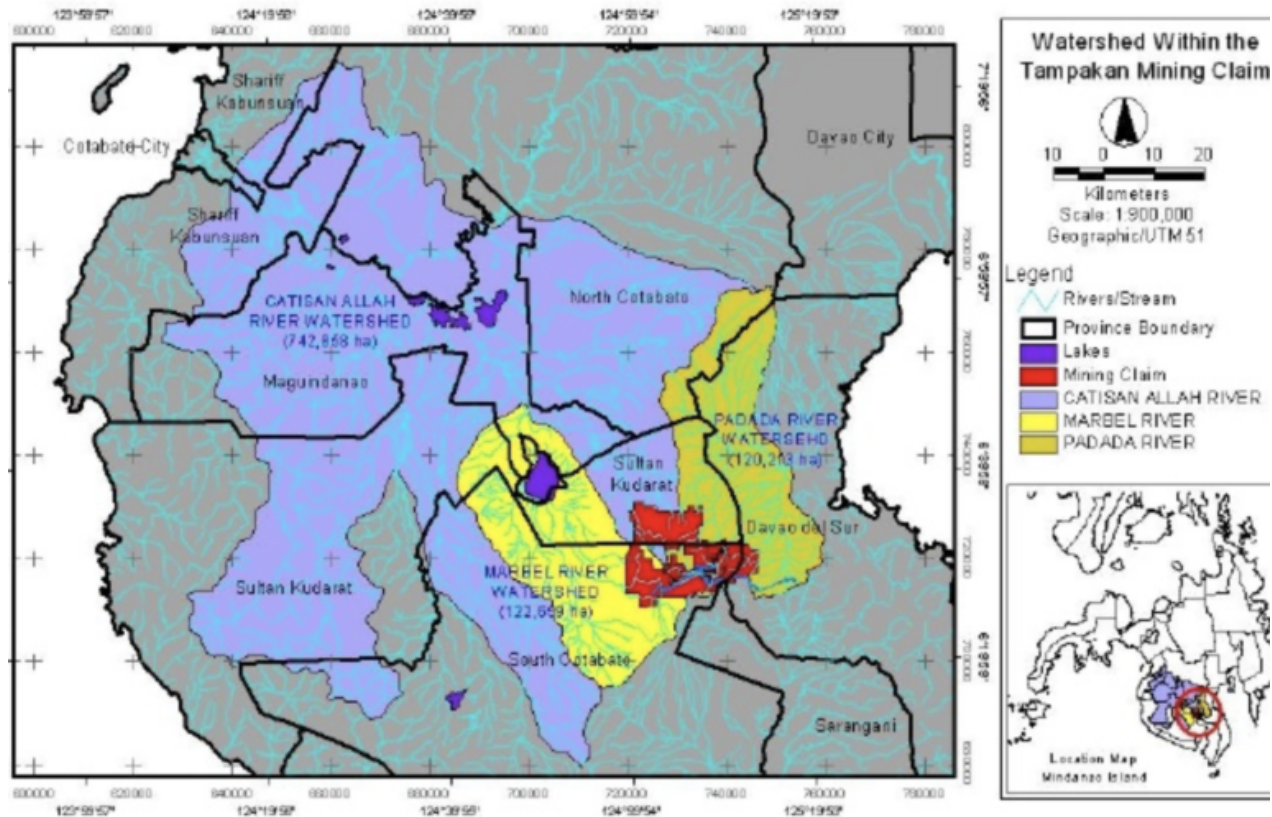
The Tampakan project has the potential to yield an average of 375,000 tons of copper and 360,000 ounces of gold in concentrate per annum over the proposed 17-year life of the mine. The site straddles the provinces of South Cotabato, where the bulk of deposits lie, and Sultan Kudarat and Davao del Sur, all on the southern island of Mindanao.

In the South Cotabato court’s 31-page ruling, a copy of which Mongabay obtained on Oct. 16, Judge Vicente Peña ruled that the provincial ban on open-pit mining “is not invalid,” as the petitioners had argued, and is in fact consistent with higher laws and regulations, including the Philippine Constitution. He added it’s also in line with a 2017 order from the Department of Environment and Natural Resources, “Banning the Open-pit Method of Mining for Copper, Gold, Silver and Complex Ores in the Country.”

Peña noted the ban is also part of “a global trend, with governments across the globe asserting domestic environmental regimes to stall or stop open-pit mining.”

In Central America, Costa Rica and El Salvador have imposed restrictions on future mining in their territories, with the former imposing a nationwide ban on open-pit gold mining while the latter was the first country to impose a blanket ban on all forms of metal mining, Peña wrote.

The history of mining in the Philippines “shows that most, if not all, open pits have ended up as perpetual liabilities, causing adverse impacts to the environment,” the judge added, “particularly due to the generation of acidic and/or heavy metal-laden water, erosion of mine waste dumps and/or vulnerability of tailings dams to geological hazards.”



Map of Tampakan's mining claim and the watersheds. Image courtesy of CCCP

He also chided the petitioners for failing to submit certified copies of documents and other exhibits during the hearing. In his final ruling, he denied the petitioners' bid for an injunction against the ban.

The decision comes days after the revival of the Tampakan Forum, a coalition of various organizations, including the local diocese of the Catholic Church, that are staunchly opposed to the mining project. Bishop Cirilo Casicas, who heads the Diocese of Marbel, said the coalition has been revived to “ignite a systematic and sustained opposition” to the project.

SMI has not issued a response to the court ruling or the revival of the Tampakan Forum. It also didn't respond to the termination of its MPA by the Tampakan municipal council. Bae Dalena Samling, chieftain of the Danlag tribal council, which supports SMI's venture, said they were perplexed to learn that the court had rejected their petition.

“We are talking with our lawyers to appeal the case,” she told Mongabay by phone.

Jerome Millan, director of the diocese's Social Action Center, welcomed the court's decision as “an answered prayer.”

“The decision comes at a propitious time when our natural resources need the most protection, when the natural environment is threatened by human actions,” he said, adding that the ruling coincides with the Catholic

Church's "Season of Creation," in which Pope Francis has called on the faithful the world over to pray and care for nature.

"The Church remains steadfast in its mission to safeguard nature and to oppose projects which desecrate what God created," Millan said.

Maya Quirino, advocacy coordinator of the Legal Rights and Natural Resources Center-Friends of the Earth Philippines, said the ruling "is heartening and gives courage to other local governments to follow suit."

"The court decision affirms the autonomy of local governments over the stewardship and protection of the environment as enshrined in the law," she said.



Site of the SMI's Tampakan mining operation in Mindanao. Image courtesy of SMI

According to Quirino, the Tampakan project "threatens a critical biodiversity area and could displace communities."

Also welcoming the decision is the Philippine Misereor Partnership, Inc. (PMPI), a network of some 250 civil society organizations advocating for the protection of people's rights, especially in small communities, and the rights of nature. PMPI said in a statement that South Cotabato's ban on open-pit mining "has for many years protected the community from being fully plundered by SMI."

It added, "this victory will help efforts to save Mindanao biodiversity of both land and water resources, the very source of life and culture for the Blaan ethnic tribe, Muslims and Christians, and the source of livelihood for South Cotabato farmers and fishers."

A risk-mapping assessment by the Jesuit Institute of Environmental Science for Social

Change (ESSC) and World Resources Institute (WRI) found that the Tampakan project site “belongs to an area of high ecological values, high groundwater vulnerability, medium-high vulnerability to watershed stress, medium social vulnerability, and high seismic risk.”

It said the mining project, which would cover around 10,000 hectares (24,700 acres), “will remove topsoil and destroy wildlife in an area with high unique biodiversity, with over 1,000 floral species and 280 recorded fauna species, of which 30% are endemic to the Philippines, and over 50 species are already under threat of extinction. The excavation itself will break into, disrupt, de-water and degrade the aquifer in the area.”

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