

# CRIMINAL TRIAL AGAINST NEWMONT MINAHASA RAYA AND RICHARD NESS—EVIDENCE SUMMARY

## I. NO EVIDENCE OF POLLUTION-RELATED DISEASE

Four doctors testified at trial:

1. Dr. Jane Pangemanan\*<sup>1</sup> (original complainant) Testified she did not diagnose any heavy metals related diseases. Stated, under oath, that she never told Jane Perlez of the NYT that Buyat villagers were suffering from arsenic and mercury poisoning (see attached unofficial transcript).

2. Dr. Sandra Rotty (head of local government medical clinic, treating physician for much of the population) No metals related symptoms. No diagnosis of metals related health problems. Compiled and analyzed local disease patterns and found nothing unusual in Buyat area.

3. Dr. Joy Rattu, Ph. D. (head of university health team that included 20 medical professionals who made four trips to examine and treat local population) No unusual diseases, no unusual levels of disease, no symptoms or diagnosis of metals contamination found in Buyat area.

4. Dr. Winsy Warouw, (senior leader of university hospital who concluded medical studies in the area before the controversy arose and treated people in the area.) Complaints of skin rashes and lumps were all found to be typical skin diseases (e.g. scabies and various kinds of common benign tumors).

Dr. Sandra Rotty and Dr. Winsy Warow both treated baby Andini who died of an infection secondary to malnutrition. Dr. Sandra Rotty testified that the parents did not give the baby the prescribed medicine, a fact she checked herself. Evidence indicated that the sick baby was to be used in anti-Newmont demonstrations.

Prosecutors presented no study by any group that found heavy metals related health problems in the area.

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<sup>1</sup> Witnesses marked with an asterisk were called by the Prosecution.

## **II. NO EVIDENCE OF UNUSUAL, HIGH OR DANGEROUS LEVELS OF MERCURY OR ARSENIC IN PEOPLE**

The Human Toxicology evidence was presented by three witnesses:

1. Budiawan, Ph.D.\* (University of Indonesia toxicologist) Only testified about tests performed on nine Buyat villagers. Admitted that mercury levels in blood depend on fish consumption and that 8<sup>2</sup> is average worldwide and 200 is the lower end of dangerous level that may indicate disease. Average of 16 villagers was 7.22.

2. Keith Bentley, Ph.D. (senior Australian toxicologist with long career with WHO in Asia and with Indonesian Ministry of Health) All studies show Buyat population low to normal in mercury and arsenic. Neither metal was shown to exist in those tested anywhere near the level of concern or of disease. (“Defense Counsel: With your explanation, can it be summarized that the Buyat Village people are not contaminated by arsenic and mercury? Keith Bentley: They are certainly not contaminated by arsenic and mercury. From all the data, of all studies conducted today, it is quite clear that the level of mercury and arsenic, in these communities is no different to other parts of Indonesia or the world.”)

3. Dr. Joy Rattu (described in Section 1 above) reported the results of the Ministry of Health survey on arsenic in the Buyat Population which found no high or dangerous levels.

## **III. NO EVIDENCE PRESENTED OF HIGH MERCURY OR ARSENIC LEVELS IN LOCAL FISH**

Three witnesses testified on mercury in fish

1. Rachmansyah\* (fish farming biologist) Did one study on mercury in fish and said that normal and safe for consumption is average value of 500<sup>3</sup>. He found 333<sup>3</sup> to be the average in Buyat Bay (and 335 in Totok Bay

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<sup>2</sup> These measurements are in ug/L (micrograms per liter) in blood.

<sup>3</sup> These measurements are in ppb (parts per million).

which is not affected by Newmont's mine). He did not review other studies. No other marine biologist testified for the prosecution.

2. Inneke Rumengan Ph.D. (Professor of Marine Biology, UNSRAT University, Manado) Summarizes several studies of metals in local fish. No study has ever found any unusual, high or dangerous levels.

3. Keith Bentley Ph. D. (described in section 2 above) All studies of area consistent in finding no high, unusual or dangerous levels of metals in fish.

#### **IV. ALL STUDIES (EXCEPT POLICE LAB'S) FIND NORMAL AND SAFE LEVELS OF METALS IN SEAWATER - POLICE RESULTS DISCREDITED**

It was repeatedly shown that a number of studies, including some by the Indonesian government, have documented that the Buyat seawater does not have high or dangerous levels of mercury or arsenic. For almost all results, mercury levels are so low as to be undetectable. The Indonesian Police results on the seawater in and around Buyat Bay are wildly different from all other tests taken. Over the prosecutors' objections but with the judges' concurrence, Buyat Bay was resampled by an independent and internationally certified laboratory in July 2006. The results showed the water to be unpolluted, the same as all other tests ever done, except the police sampling. Some of the criticisms of the police sampling proven at trial are:

1. The police seawater samples were split, with one split going to the police and one to ALS, a well respected laboratory. The ALS test results showed no high levels and were radically different from the Police results.

2. The total number of Police samples changed in number from 24 taken in the field to 34 tested in the lab. No witness could give any explanation of what happened or where the new samples came from.

3. The police samples had no protected chain of custody or efforts to preserve sample integrity. The police sampling was done with the presence and involvement of Rignolda Djamaludin, a known anti-Newmont activist. A photo presented at trial showed Rignolda in the field with his hand in the sample container.

## **V. GOVERNMENT OFFICIALS MONITORED THE MESEL MINING OPERATIONS AND STATED THAT NEWMONT HAD A PERMIT**

Several witnesses testified to the regulation, monitoring and inspection of Newmont's operations. No one testified that during the period of operations (1996 to 2004) any government official had claimed Newmont did not have a permit. These are some of the witnesses:

1. Washington Tambunan\* (Ministry of Mines official, including head of Northern Sulawesi Regional Office). Newmont had all permits and passed all inspections. No violations were listed in the mine book. ("Chief Judge: So the permits needed for PT NMR to conduct exploitation operations, all of those were secured to your knowledge as the Head of the Regional Office for Mining at the time? Were they met at the time? Washington Tambunan: Yes, exactly, Your Honor. They have obtained all the approvals, permits that are required for them to conduct their activities in the field.")

2. Dibyo Kuntjoro\* (Head of Government's AMDAL commission). Newmont had permit to operate. Commission found sea floor placement of tailings to be best method.

3. Sony Keraf\* (former Minister of Environment) gave Newmont an additional permit for submarine tailings placement after the law was changed in 1999. He said it was a temporary permit, but admitted that nowhere on the permit did it say it was temporary. The permit had no expiration date and was not revoked to his knowledge.<sup>4</sup> In addition, while there was continual correspondence with the government, including the Ministry of Environment, during the operating period (1996-2004) no notice was ever sent to PT NMR indicating that PT NMR lacked necessary permits.

4. Witoro Soelarno\* (Ministry of Mines Inspector) Inspected and oversaw Newmont's operations. ("Chief Judge: Were you able to close

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<sup>4</sup> Prosecution legal expert witnesses Asep Walan Yusuf\* directly contradicted this, admitting Indonesian law does not provide for temporary permits.

temporarily [the operation] if at the time you found that the [discharge levels] at a dangerous or not dangerous level? Witoro Soelarno: We saw nothing dangerous in the field. Never for PT NMR [Newmont]. Chief Judge: Never? Witoro Soelarno: We did it many times for other mines.

5. Nabel Makarim (former Minister of Environment) Newmont had all the permits required by law and was not in violation of them. (“Prosecutor: ” . . . When you were in office as minister, did you issue permits to PT NMR to dispose of waste into the environment? . . . Nabel Makarim: The answer would be no, because there was no need. Why would they need a permit on top of a permit? It is impossible, right? This permit was already in effect [from the time of his predecessor] and is valid. Why must there be another?”)

6. Safri Nugraha (Law professor, expert on Administrative Law) Newmont had a valid legal permit according to the administrative laws of Indonesia.

7. Shakeb Afsah (expert in environmental governance) Newmont released less than 10% of the mercury and 7% of the arsenic it was legally permitted to release under the terms of the permit. (Shakeb lives in Washington D.C., he has done a lot of work for the Indonesia Environment Ministry and is extremely familiar with the case). (Full disclosure: After seeing the work he has done for the environment ministry, Newmont has also at times hired Shakeb to do analysis of scientific data).