

Summary of Verdict in Buyat Bay Case

NEWMONT EXONERATED. In 2005, Indonesian prosecutors brought criminal pollution charges against one of Newmont's Indonesian subsidiaries (PT Newmont Minahasa Raya or "NMR") and its president director, Richard Ness. In April 2007, after a twenty one month trial in which dozens of witnesses and thousands of pages of studies, reports and official documents were examined, the Manado District Court entered its 502 page Verdict. The Verdict explains in detail the reasons for the Court's ruling on each issue. The Court ruled that Newmont was "not guilty" on every charge and found the prosecutors to have failed to prove any of their allegations of company wrongdoing or environmental harm. The Verdict specifically states that the Defendants have the right to reclaim their "honor and dignity."

BUYAT BAY IS NOT POLLUTED. There were two fundamental rulings. The first was that Buyat Bay has never been polluted. This conclusion was based on extensive, intensive and consistent scientific studies on every component of the marine ecosystem. The many scientific studies proved that the marine ecosystem as a whole was normal and healthy, as were all its components, including metals concentrations in the sea water, metals levels in marine life, the abundance and health of the area's coral reef ecosystems, the robust local fishery, physical characteristics of the Bay and nearby ocean, water chemistry of local streams and the monitored discharges from the mine. On this basic and crucial issue the evidence was overwhelming and the ruling was emphatic: Buyat Bay is not and has never been polluted by Newmont's mine.

THE CRIMINAL PROSECUTION WAS ILLEGAL. The second fundamental ruling was that under Indonesia law the case should have never been brought. The sensational allegations which provoked the criminal prosecution were false and were made or provoked by biased special interest groups. The police and prosecutors used obviously incorrect and improperly obtained test results to bolster the indictment and had violated Indonesian law in not seeking confirmation or criticism of that evidence before issuing the Indictment. The indictment was also illegal because Newmont's mine, which was heavily regulated and monitored by government agencies, had an exemplary record, and had never been reprimanded. The prosecution, rather than use the regulatory enforcement procedures required by law, abruptly and illegally commenced this flawed criminal proceeding.

KEY FINDINGS. The following are some of the key claims and court findings:

1. **Pollution Claim:** Buyat Bay's waters were polluted by Newmont's operations.

Court's Finding: No Pollution.

"The Government,(in this case the Provincial Government of North Sulawesi, Regional Office of Mining and the Department of Mining), have often conducted studies on the environment around Buyat Bay, including receiving [Environmental Monitoring] reports and annual work plans from Newmont. Similarly, KLH [Indonesia's Ministry of Environment] had also conducted studies on Buyat Bay and never found pollution in excess of environmental quality standards. The results of KLH's Integrated Team study published on 14 October 2004 on KLH's site, www.klh.go.id, concluded that mercury and

arsenic levels in Buyat Bay were not in excess of the quality standards established by the Government.” [Verdict, Page 432]

“Whereas a number of national and international research institutions have conducted studies and assessments of water quality and heavy metal levels in the seawater and humans around Newmont’s operation. These include Sarpedal Laboratories, Sam Ratulangi University, Minamata Institute, WHO, ALS Indonesia Laboratories, and CSIRO, whose reports were entered as documentary evidence in this case. All arrived at the same basic conclusion, that, based on their own research, levels of heavy metals, including mercury and arsenic, in seawater and in humans are always lower than the quality standards [set by law].” [Verdict, Page 453]

“Whereas all the studies’ findings, research by various national and international institutions, fundamentally [concluding] that in Buyat Bay and surrounding areas the seawater and sediment, marine biota and humans are not contaminated by heavy metals and are lower than the quality standard limits established by the government. . . . This shows that the process of tailings waste processing performed by Newmont’s detoxification system, (the process of returning the minerals to their natural state, and to other stable compounds) has been well conducted.” [Verdict, Page 476]

2. Human Health Claim: Area residents suffered adverse health effects including skin conditions caused by mercury and arsenic from Newmont’s operations.

Court’s Finding: No Human Health Impacts.

“Skin conditions suffered by a number of residents of Buyat [Beach Village] are the same as skin conditions in other areas, that is, dermatitis, scabs and eczema. Skin diseases suffered by Buyat [Bay Village] residents are not related to heavy metal poisoning.” [Verdict, Page 434]

“Baby Andini suffered an illness due to lack of nutrition and was examined by a doctor and given medication, but because her parents never went back to the doctor, and apparently because the medication prescribed by the doctor was never taken, her condition deteriorated, causing her eventual death. Whereas recommendations to conduct an autopsy on her body to determine the cause of death with more certainty was refused by Andini’s parents.” [Verdict, Page 438]

“Whereas Dr. Jane Pangemanan, who had once said that Buyat Beach Village residents suffered illnesses caused by Newmont’s tailings, testified in Court that, actually, up to the present time, the exact cause of those diseases is not known. Because of that error Dr. Jane Pangemanan retracted her complaint to the Police and settled the civil case against Newmont. Whereas Dr. Sandra Rotty, Dr. Joy Rattu, Professor and Dr. Winsy Warouw, who had directly conducted studies and assessments of the health conditions of Buyat Beach Village residents, have all explained and concluded in court that the illnesses suffered by Buyat Beach community and in the surrounding area are common illnesses suffered by coastal communities and have no connection with Newmont’s tailings.” [Verdict, Page 455]

3. Permit Violations Claim: Newmont’s operation exceeded permitted mercury and arsenic amounts in its discharges and so violated its environmental permits.

Court's Finding: No Permit Violations.

“Whereas, as expressed in court by Witness/Expert Nabel Makarim, the former Minister of Environment for the period of 2001-2004, who explained in essence that while serving as the Minister of Environment, KLH never reprimanded Newmont, either verbally or in writing, because, according to the Witness/Expert, Newmont fulfilled all its permit requirements applicable in Indonesia, including management and placement of [its] tailings.” [Verdict, Page 450]

4. No Permit Claim: Newmont did not have the proper permits to operate or dispose of processed waste rock (“tailings”) through Submarine Tailings Placement (“STP”).

Court's Finding: All Permits Obtained.

“Newmont did secure a complete permit to carry out its mining operations, including the permit to store and manage B3 [waste], including STP, Newmont has been permitted [to operate] since the AMDAL [Environmental Impact Analysis] was approved by the Government.” [Verdict, Page 429]

PROSECUTION WAS ILLEGAL. If Newmont’s mining operation was violating its permits and causing environmental damage before it shut down in 2004, the legal enforcement mechanism should have been contemporaneous regulatory enforcement, not a surprise criminal prosecution after the mine closed. [Verdict, Pages 439 to 457]

“Newmont has proven that it has abided by the law, and, even if Newmont were to be considered to have no permit to conducting its mining activities and placing tailings in Buyat Bay, administrative measures should have been taken. However, throughout the activity of tailings placement by PT NMR, it has been proven that there has never been any reprimands or sanctions from the regulatory authority. This is consistent with the testimony of expert and witness Nabel Makarim, that the Ministry of Environment has never reprimanded or warned Newmont [of permit violations].” [Verdict, Page 450]

A CREATED CONTROVERSY. After 21 months of observing the prosecution’s case, the Manado District Court had this to say about the source of the Buyat Bay pollution claims:

“Whereas, as explained by Witness/Expert Nabel Makarim, the former Minister of Environment, it seems that from the outset Newmont has been made a target by certain parties who promoted the issue of pollution in Buyat Bay, Minahasa. This was evident from the shifting of issues that were brought up. Beginning from Minamata [mercury poisoning] issue, and after that was not proven, then it shifted to polluted water, then to polluted fish, and after all these were disproved, then the issue of sediments were brought up.” [Verdict, Page 454]

“Whereas according to testimony of witnesses [Buyat Beach Villagers], who all basically stated that their relocation from Buyat to Dominanga was their own decision because of the claim of strange diseases in Buyat Beach Village being caused by Newmont’s tailings. But after the civil suit against Newmont ended in a goodwill agreement, they realized that they had been provoked by a group of people or non-governmental organizations who spread the rumor of strange illnesses without accurate data or evidence.” [Verdict, Page 455]

