

VERITAS

**The Pursuit of Truth
and Justice
in
BUYAT BAY**

Response to Charges (Pledoi)

Case Number: PDM / TDANO / 05 / 2005

by: **Richard B. Ness**

Defendant II

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GLOSSARY OF TERMS USED IN MY DEFENSE

The terms used in this Glossary shall have the meaning as defined herein, and when used in any part of the Defense shall have the meaning prescribed herein.

Administrative Case: the administrative case submitted by NMR employees against the Directorate General of Immigration, Department of Law and Human Rights on the unlawful travel ban of NMR's executives and employees, registered under Case number 020/G.TUN/2005/PTUN.JKT dated 3 February 2005.

Administrative Court: the District State Administrative Court, located in the Capital City of the Special Region of Jakarta.

Administrative Court Decision: the decision of the Administrative Court on the Administrative Case in favor of the NMR employees which was final and binding.

ALS: P.T. Australian Laboratory Services, an independent laboratory accredited to conduct laboratory services, including review on environmental performance of mining companies.

ALS Resample Report: ALS report on the environmental condition of the Buyat Bay Waters, submitted by the Defendants as evidence in the Criminal Case and identified as evidence number T.1-109.

Alternative Environmental Dispute Settlement: a non-criminal settlement mechanism of environmental disputes required to be first implemented before a

criminal mechanism may be enforced, which includes administrative and/or civil settlement through mediation, conciliation or finally court proceeding, as required pursuant to the Subsidiary Principle under the Environmental Law.

Amdal NMR: the Environmental Impact Analysis for the mining operations and activities of NMR at the NMR Mining Sites as approved by the Indonesian Government pursuant to the Evaluation of Central Commission of AMDAL DPE, Department of Mines and Energy Number 4791/0115/SJ.T/1994 dated 17 November 1994, submitted by the Defendants as evidence in the Criminal Case and identified as evidence number T.1-47.

Arsenic: [As] A metal like element which can form organic and inorganic compounds. Most compounds of arsenic are *non-toxic*. The ionic form of arsenic can be toxic to organisms at high concentrations.

- **Arsenopyrite: [FeAsS]** A naturally occurring compound consisting of iron, arsenic, and sulfide. This compound is insoluble in sea water. If exposed to air over long periods, iron, arsenic and sulfate may be leached out.
- **Ferric Arsenate: [FeAsO₄]** A naturally occurring compound consisting of iron and arsenic which is chemically stable in sea water and even insoluble in fresh water.

ASEAN Marine Water Quality of 2004: the ASEAN Marine Water Quality of 2004 issued by ASEAN, pursuant to which there is no standard applied for arsenic.

Attachment B-60/2002: Letter Number B-60/E/Ejp/01/2002 of the Deputy Attorney General of General Crime on the Judicial Technical Guidance of Handling Environmental Criminal Case.

Average Daily Intake: In the context of this pledoi, a mathematical calculation to evaluate risk made by the Technical Team formed by the Ministry of the Environment in the November 2004 report. The formula for calculating the average daily intake of arsenic from fish consumption comes from the “Risk Assessment” guidelines developed by Chulaborn University in Thailand, however, the Technical Team mixed up the formula, its definitions and parameters and resulted in an overestimation of health risk by 4,500%.

Baby Andini: a baby, and the daughter of Masna Stirman who was used as a “poster child” by certain unscrupulous individuals and whose required medical care was interfered with by those same individuals, most probably being the indirect cause of her untimely death. The bay died on July 2, 2004 of an upper respiratory infection and malnutrition, not pollution, as testified by Professor dr. Winsy Warouw and dr. Sandra Rotty, witnesses in the Criminal Case in their respective testimony before the District Court of Manado on 14 October 2005.

BAPEDAL: the Board of the Environmental Impact Control.

Benthos / Benthic organisms: Marine organisms living on or below the sea bed.

Buyat Bay: the Buyat Bay, located in the southern part of Minahasa, the Province of North Sulawesi

Buyat Bay Seabed: the seabed of the Buyat Bay, where NMR disposed NMR Tailings pursuant to Amdal NMR, and then pursuant to the permit issued by the Minister of Environment

Buyat Bay Waters: the waters of the Buyat Bay.

Chief Technician: the chief technician as meant in the Decision of the Minister of Mines and Energy Number 555.K/26/M.PE/1995 on Work Safety and Health in General Mining in conjunction with the Decision of the Minister of Mines and Energy Number 1121.K/008/M/PE/1995 on the Prevention and Solution of the Environmental Pollution and Damage in the General Mining Business Activities.

Civil Case: the civil case on the claim of the Indonesian Government, represented by the Ministry of Environment against NMR and Richard Bruce Ness, registered under civil case number 94/Pdt.G/2005/PN.Jkt.Sel, the District Court of South Jakarta.

Civil Case Decision: the Decision of the District Court of South Jakarta number 94/Pdt.G/2005/PN.Jkt.Sel dated 9 March 2005 on the Civil Case.

Company Law: Law Number 1 of 1995 on Limited Liability Company.

Contract of Work: Contract of Work number B-43/Pres/11/1986 dated 6 November 1986 by and between NMR and the Indonesian Government, approved by DPR on 27 September 1996.

Coordinating Minister of People's Welfare: the Coordinating Minister of People's Welfare of the Republic of Indonesia.

Coordinating Minister of Economic Affairs: the Coordinating Minister of Economic Affairs of the Republic of Indonesia

Criminal Case: this Criminal Case registered as case number 284/Pid.B/2005/PN.Mdo of the District Court of Manado,

Criminal Procedural Law or CPL: Law of 1981 on Criminal Law Procedure.

CSIRO: Commonwealth Scientific and Industrial Research Organization, an independent internationally-accredited laboratory, duly established and existing under the laws of Australia.

CSIRO Report: CSIRO report number ET/IR729R dated October 2004, which in principle concludes that arsenic and mercury substances found in the samples of sea water taken from the Buyat Bay and fresh water samples taken from the Buyat River do not exceed the Quality Standard as required under the Indonesian Laws and Regulations and the Quality Standard applied in the United States of America by the United States Environmental Agency.

Cyanide: [CN] A compound consisting of one carbon atom and one nitrogen atom. Used in the extraction of gold. May be toxic to organisms at high concentrations.

Damage to the Environment: Is damage to the environment as defined in Article 1 section 14 of the Environmental Law.

Defendant I: PT Newmont Minahasa Raya or NMR, the defendant I in the Criminal Case.

Defendant II: Richard Bruce Ness, the defendant II in the Criminal Case.

Defendants: Defendant I and Defendant II

Defense Counsel for Defendant I: the defense counsels team for Defendant I.

Defense Counsel for Defendant II: the defense counsels team for Defendant II.

Defense: the Defense [document] or Pledoi of Defendant II submitted to the Panel Judges with respect of the Criminal Case.

Defense of Defendant I: the Defense or Pledoi of the Defendant I submitted to the Panel Judges with respect to the Criminal Case.

Defense of the Defense Counsel for Defendant I: the Defense or Pledoi of the Defense Counsel for Defendant I submitted to the Panel Judges with respect of the Criminal Case.

Defense of the Defense Counsel for Defendant II: the Defense or pledoi of the Defense Counsel for Defendant II submitted to the Panel Judges with respect of the Criminal Case.

Department of Energy and Mineral Resources or DEMR or Ministry of EMR: the Department of Energy and Mineral Resources of the Republic of Indonesia or Ministry of Energy and Mineral Resources of the Republic of Indonesia or Minister of Energy and Mineral Resources which also includes any and all names of the department, ministry or minister that may have been previously used.

Department of Health or Ministry of Health or Minister of Health: the Department of Health of the Republic of Indonesia or Ministry of Health of the Republic of Indonesia or Minister of Health of the Republic of Indonesia.

Directorate General of Immigration or Director General of Immigration: the Directorate General of Immigration or Director General of Immigration of the Republic of Indonesia.

Detoxification Process: Chemical process designed to convert dissolved mercury and arsenic to stable minerals which are non toxic and to destroy cyanide by breaking it down to carbon and nitrogen.

District Court of Manado: the District Court of Manado, located in Manado, the Province of North Sulawesi.

District Court of South Jakarta: the District Court of South Jakarta, located in South Jakarta, the Special Capital Region of Jakarta.

Document P-19: Document P-19 issued by the Public Prosecutor Office containing certain requirements to the Police Department to amend the Police Dossier.

Duminanga: a village located in the Kabupaten of Bolaang Mongondow where certain number of the people who lived in the village(s) around the Buyat Bay was relocated at the efforts of certain NGO.

DPR: the Peoples' Representative Council of the Republic of Indonesia.

Ecosystem: the ordering of an element of the environment which constitutes a whole and complete unit that interacts to produce environmental balance, stability and productivity

Environmental Law or EL: Law Number 23 of 1997 on Environmental Management.

Environment: Is a spatial unity of all materials, forces, situations, and living creatures, including humans and their behavior, which influences the continuance of life and welfare of humans and other living creatures.

Environmental Carrying Capacity: the capability of the environment to absorb substances, energy, and/or other components those enter or are discharged into it.

Environmental Damage: action that gives rise to direct or indirect changes in the physical and/or biological characteristics of the environment which causes the environment to no longer be able to function to support sustainable development as defined in the Environmental Law Article 1 paragraph 14.

Environmental Pollution: Is the entry or the entering into of living creatures, substances, energy, and/or other components into the environment by human activities with the result that its quality decreases to a certain level which causes the environment not to be able to function in accordance with its allocation as defined in Article 1 paragraph 14 of the Environmental Law. Quality decreases are measured by Quality Standard values set forth in Government Regulations (*see Environmental Quality Standards definition*).

Environmental Quality Standards: Are threshold limits or levels of living creatures, substances, energy, or components that exists or must exist and/or

polluting elements the existence of which in a certain resource as an element of the environment is set at a certain level. They are minimal values stipulated in regulations, below which –there is no harm to the environment is guaranteed. Values above these numbers do not necessarily result in environmental damage or pollution as safety factors are built into these values by regulators.

Environmental Management: Is an integrated effort to preserve environmental functions which covers planning policy, exploitation, development, maintenance, reparation, supervision and control of the environment.

Environmental supportive capacity: Is the capacity of the environment to support humans and other living creatures.

ERA; Ecological Risk Assessment, a tool, study or guideline requested by the Minister of Environment pursuant to the Minister of Environmental Permit and agreed to be prepared by NMR as per the outline dated 7 July 2000 as agreed to and submitted to the Ministry of Environment. The function of an ERA is a tool or study to assist companies and regulators in making informed management decisions when evaluating environmental risk of proposed or existing activities.

Experts: one or more persons who, as experts in their respective fields, have provided [expert] opinions before this court pursuant to the Code of Criminal Procedure.

Fisheries of Buyat Bay Waters: fishes and other marine life of the Buyat Bay Waters.

Goodwill Agreement: the Goodwill Agreement Regarding Post-Mining Monitoring And Sustainable Development Initiatives dated 16th February 2006 made and executed by and between NMR and the Indonesian Government, pursuant to which the parties agree to set up a foundation and appoint a panel of experts to monitor the environment condition of the Buyat Bay for the next 10 (ten) years, and assign the foundation to implement such program, provided that all such activities are financed by NMR.

Habeas Corpus Case: a complaint submitted by NMR before the District Court of South Jakarta against the Police Department for wrongful detention of the Suspects, registered as case number 21/PID/Prap/2004/PN.Jak.Sel of the District Court of South Jakarta.

Habeas Corpus Writ: a writ or court order issued by the District Court of South Jakarta number 21/PID/Prap/2004/PN.Jak.Sel in the Habeas Corpus Case that approves the complaint submitted by NMR.

Hazard Index: A mathematical calculation of the maximum likelihood or estimate of a chance or possibility of being harmed. In the case of KLH Technical Team Report of November, 2004, a hazard index value of less than one is considered safe. The Technical Teams misuse or mistakes in the application of the hazard index formula led to overestimations of health risk by more than 4,500%.

Human Rights Law: Law Number 39 of 1999 on Human Rights.

Independent scientific panel: Six scientists nominated by the Government of Indonesian and Newmont to design, interpret and communicate the results of the 10 year environmental monitoring program stipulated in the “Good Will Agreement”.

Indonesian Government: the Government of the Republic of Indonesia and any and all of its sub-political division(s).

Indictment: the Indictment of this case by the Prosecution read in the District Court of Manado at the hearing of 5th August 2006.

Indonesian Laws and Regulations: any and all laws, regulations, rulings, policies, directives, announcement in any forms whatsoever as from time to time prevailing in the Republic of Indonesia,

Insoluble: A substance that can not dissolve or change characteristics under given conditions. Example: Mercury sulfide or cinnabar [HgS], arsenopyrite: [FeAsS], or ferric arsenate: [FeAsO₄] ***can not change to, or release, arsenic or mercury into the environment in water or sea water.***

Joint Decree: Joint Decree of the Minister of Environment, the Attorney General of the Republic of Indonesia and the Chief of the Police Force of the Republic of Indonesia No. KEP-04/MENLH/04/2004, Number KEP-208/J.A./04/2004, Number Pol.: KEP-19/IV/2004, and Decree of the Minister of Environment Number 77A/2004.

Judiciary Law or JL: Law Number 4 of 2004 on Judicial Power.

KLH Integrated Technical Team: the team established by the Minister of Environment in 2004 to assist the Minister of Environment in the evaluation of Buyat Bay.

KLH Integrated Technical Team Report I: the Report dated 14 October 2004 issued by the Ministry of the Environment.

KLH Integrated Technical Team Report II: the Report dated 8 November 2004 issued by the KLH Integrated Technical Team and submitted to the Criminal Court as evidence P-4 by the prosecution.



Mer-C: Medical Emergency Rescue Committee Jl. Teuku Cik Ditro
No. 37 Menteng - Jakarta

Mercury: [Hg] An element classified as a heavy metal, which can form organic and inorganic compounds. Some of the compounds of mercury could be toxic to organisms at high concentrations, while others are non-toxic.

- **Cinnabar: [HgS]** An inorganic naturally occurring compound consisting of mercury and sulfide. Insoluble in sea water and non toxic to organisms.
- **Methyl Mercury Chloride: [CH₃HgCl]** An organic compound of mercury. Cause of Minamata Disease. Potentially toxic to humans at high doses and long periods of exposure.

Minamata Institute or Institute of Minamata diseases: Research Institute affiliated to Japanese Ministry for the Environment. Research focuses on Mercury in the environment and mercury impacts on human health.

Minamata Disease: Methyl Mercury poisoning, named after an incident in Japan in the 1950s resulting in neurological disorders such as spasms, loss of motor functions, and eventually possibly death.

Minister of Environment: the State Minister of the Management of Environment of the Republic of Indonesia or the State Ministry of the Management of Environment of the Republic of Indonesia.

Minister of Environment Permit: Letter Number B-1456/BAPEDAL/07/2000 dated 11 July 2000 of the Minister of Environment on the Disposal of Tailing Wastes in Buyat Bay, permitting NMR to dispose of its tailings on the Buyat Bay seabed.

Mixed layer: Surface layer of the ocean in which physical and chemical parameters are uniform with depth due to mixing by wave / current / wind.

NGO: non-government organization or organizations.

NMR: P T Newmont Minahasa Raya, a limited liability company duly established and existing under the laws of the Republic of Indonesia.

NMR Annual General Meeting of Shareholders: annual general meetings of the shareholders of NMR held pursuant to the NMR Articles of Association.

NMR Extraordinary Meeting of Shareholder: annual general meeting of extraordinary shareholder NMR, which held pursuant to the NMR Articles of Association

NMR Articles of Association: the Deed of Establishment of NMR that includes the Articles of Association of NMR, lastly published in the State Gazette of the Republic of Indonesia.

NMR Board of Directors: the board of directors of NMR as from time to time holding the office pursuant to NMR Articles of Association.

NMR Commissioners: the commissioners of NMR as from time to time hold such function pursuant to the NMR Articles of Association.

NMR General Meeting of Shareholders: annual and extraordinary general meeting(s) of shareholders of NMR held pursuant to the NMR Articles of Association and resolutions of the shareholders of NMR in lieu of general meeting of shareholders made pursuant to the NMR Articles of Association.

NMR Mine Closure Program: the mine closure program of NMR for the NMR Mining Sites approved by the Indonesian Government pursuant to 4274/84.01/FJG/2002 dated 31 December 2002.

NMR Mines: the mines operated by NMR at Mesel, South Minahasa, the Province of the North Sulawesi pursuant to the Contract of Work.

NMR Tailings: tailing wastes resulting from NMR's mining operations in the NMR Mining Sites disposed to the Buyat Bay Waters after being treated under the Detoxification Program in compliance with the NMR's Amdal and later with the permit issue by the Minister of Environment.

Panel of Judges: the panel of judges of the District Court of Manado assigned to adjudicate the Criminal Case.

Peer Review Team: a team established by Masnellyarti Hilman with the task of reviewing the KLH Integrated Team Report.

Police Department: the police department of the Republic of Indonesia, including the investigation team of the Police Department in-charge-of investigating the alleged environmental pollution and damage of the Buyat Bay.

Police Forensic Laboratory: PUSLABFOR or the center of forensic laboratory of the Police Department.

Police Forensic Laboratory Report: the report of the Police Forensic Laboratory submitted as evidence in the Criminal Case by the Public Prosecutor Team.

Police Dossier: The dossier of the Police Department containing the complete investigation reports by the Police Department on the alleged pollution of the Buyat Bay which was submitted to, and used by the Public Prosecutor Office for the Public Prosecutor Indictment.

Police Original Samples: samples taken by the Police Department together with NMR from the Buyat Bay Area in July,2004, which were then split with NMR, and the part taken by the Police Forensic Laboratory consisting to 24 (twenty four) packages which were then examined and used by the Police Forensic Laboratory to issue the Police Forensic Laboratory Report.

Police Samples for Court Purposes: The 34 samples which were received at the Police Laboratory, 29 of which were submitted by the Public Prosecutor Team in the Criminal Case as evidence according to the Public Prosecutor Team before the hearing of the Criminal Case were the Police Original Samples.

Pollution to the Environment: pollution to the environment as defined in Article 1 section 12 of the Environmental Law.

President Director of NMR: the President Director of NMR appointed pursuant to the NMR Articles of Association.

PROPER Program: [Program for Pollution Control, Evaluation and Rating]A widely accepted methodology to measure environmental performance and compliance, first adopted in Indonesia but currently being used by several nations environmental agencies to evaluate and rank companies environmental performance. The system uses colors to convey environmental performance; Blue = full compliance, Green = more then 50% better then full compliance, Gold = where a company only discharges 5% of the standard or allowable amount.

Public Prosecutor Charges: the charges of the Public Prosecutor Team which was read out with respect to the Criminal Case before the District Court of Manado on the 10th November 2006.

Public Prosecutor Indictment: the indictment of the Public Prosecutor Team which was read out with respect to the Criminal Case before the District Court of Manado on August 5th, 2005.

Public Prosecutor Office: the Offices of the Attorney General of the Republic of Indonesia and its public prosecutors including the Public Prosecutor Team.

Public Prosecutor Team: the public prosecutor team assigned by the Public Prosecutor Office to prosecute, indicts and charge the Defendant I and Defendant II in the Criminal Case.

RPL/RKL: the approval for the Environment Management Plan and Environment Monitoring Plan for the gold mining operations of PT Newmont Minahasa Raya at Bolaang Mongondow, the Province of North Sulawesi and its

attachment in relation to the Evaluation of Central Commission of AMDAL DPE, the Department of Mines and Energy Number 4792/0115/SJ.T/1994 dated 17 November 1994, submitted as evidence by the Defendants in the Criminal Case and identified as Evidence T.I-48.

Sarpedal: Laboratory of the Ministry of Environment for the Republic of Indonesia located in Serpong – Java.

Submarine Tailings Placement Systems: A scientifically engineered methodology to place non-toxic, inert, or detoxified mine tailings on the sea bed.

Subsidiary Principle: the principle adopted in the Environmental Law to require the Environmental Alternatives of Dispute Settlement prior to enforcing the criminal sanctions under the Environmental Law.

Supreme Court: the Supreme Court of the Republic of Indonesia.

Supreme Court Law or SCL: Law Number 5 of 2004 on Supreme Court,

Suspects: Richard Bruce Ness, Phil Turner, David Sompie, Putra Widjayatri, Jerry Konjansow, Bill Long.

TCLP (*Toxicity Characteristic Leaching Procedure Test*): Stringent laboratory test procedure to determine if a substance has the ability to release toxic elements under extreme conditions and/or a testing method used to determine if a substance is classified as a **Toxic and Hazardous Waste: (abbreviated as B3)**.

Technical Team: A team formed by the Minister of the Environment in August 2004 to **Assist the Minister** in the evaluation of Buyat Bay and the surrounding environment.

- **Peer Review Team:** A team of unknown origin consisting of NGO's and academics – more advocacies based and relatively non-scientific.

Thermocline: Zone below the mixed layer categorized by decreasing water temperature with depth.

Toxic and Hazardous Waste: (*abbreviated as B3*) is remaining of an effort and/or activity as set forth in the Environmental Law Article 1 paragraph 18 that due to its characteristic and/or concentration and/or amount, either direct or indirect, may pollute and/or may endanger living environment, sustainability of human health and other creatures. In reference to these documents – mine tailings (D-222) can only be classified or can only be declared as B3 after Toxicity Characteristic Leaching Procedure (TCLP) test and/or characteristic tests are conducted.

Toxic Substance: Is one that is capable of causing injury or damage to a living organism.

Travel Ban: a travel ban to the Suspects issued by the Directorate General of Immigration pursuant to the Decisions Number F4-IL-01-02-3-047 and Number F4-IL-01-02-3-048 dated 31st January 2005.

UUD 1945: the Constitution of the Republic of Indonesia being the Constitution of 1945 as amended from time to time.

Waste: Is the residue of a business and/or activity and has various classifications.

WHO: the World Health Organization, a part of the United Nations organizations in charge of world health issues.

WHO Report: The report commissioned by the WHO as requested by the Minister of Health for the Minamata Institute to evaluate the communities of Buyat and Totok Bay for contamination of heavy metals. The final report is dated 08 September 2004.

Witnesses: one or more persons witnesses to the facts who have testified on the facts and or events of the case as they knew them before this court pursuant to the Code of Criminal Procedure.

Yayasan Minahasa Raya: An endowed foundation founded by NMR to promote long term sustainable develops in the area of Minahasa with specific emphases to the communities adjacent to NMR's mine site.

1. OPENING REMARKS

Honorable Panel of Judges

Public Prosecutor,

Honorable members of this court:

First, I must ask the court's indulgence because Indonesian is not my first language and I have therefore elected to draft my own defense document, or Pledoi, in my native language which is English. And second, even though I am not a lawyer, over the last two years, I have found it in my personal interest to try and understand the legal aspects of this case. As a non-Indonesian citizen, I also find it exceptional that throughout the court process, I was given the opportunity to directly question the witnesses, to draw and express my own conclusions on testimony presented before this court, and now to write and present my own defense arguments. Unlike a professional lawyer, this is my first and hopefully last defense document I will ever have to write. I have to admit that I found writing this Pledoi a really challenging and difficult task and by far the most complicated document that I have ever written.

Throughout the drafting process, I have reviewed the Minutes of Investigation (BAP), the Indictment, the Charges and Evidence presented before this court. I would be less than honest if I did not admit that depending on which section of the document I was writing, my emotions altered depending on the allegation and the witnesses involved at that particular stage. I therefore beg the court's indulgence if at some points throughout this document that my writing depicts some anger, frustration, pity, and in some cases even contempt for some of the issues raised. I hope that the Honorable Panel of Judges can understand that these expressions of emotion are not directed at this court or the Honorable Panel of Judges, but rather at the subject matter or the individuals under discussion.

This Panel of Judges has been searching for the truth and I express my respect to the Honorable Panel for your patience and the work they have undertaken towards separating reality from pretense and facts from illusions. I have to

state that I have been treated very fairly before this court in an effort to find the real truth and while the trial can be deemed fair, the investigation, examination, indictment and the charges against me are certainly not fair or justified! The allegation that Buyat Bay is polluted is a sham, and only supported by falsehood and error. There were several opportunities to correct this travesty before the indictment was issued, but each time the opportunity was lost. If the law had been followed from the beginning, there would never have been an indictment; if the Prosecution had examined the evidence, there would have never been charges or a sentencing request and I would not have needed to write this pledoi. Although one can reflect back on what could have been but the reality is I am seated before this court, defending myself of a crime that never occurred.

At its essence, this proceeding is about one thing and one thing only: DID NMR POLLUTE BUYAT BAY? That is the single question that this Honorable Panel of Judges must answer to decide this case.

The issue of pollution is what started this whole debacle in July 2004. Certain NGO's asserted that NMR's tailings polluted Buyat Bay and caused health problems in area residents. The issue of pollution and health problems is what led Jane Pangemanan, in August 2004, to travel with local villagers, using funds supplied from a politician, to report NMR and six of its employees to the police. The issue of pollution is what led the New York Times to write a sensationalized article about NMR's operations in September 2004. The issue of pollution is what led the Police to jail five of my colleagues for 32 days in September and October of 2004. The issue of pollution is what motivated a deputy in the Ministry of Environment to twist facts in unprecedented ways to reach the conclusions in her November 2004 KLH report. The issue of pollution is what led to the indictment against me in this case.

DID NMR POLLUTE BUYAT BAY? No other allegations raised by the prosecutors in this case have any material relevance to this Honorable Panel of Judges in deciding whether I am a criminal who ha polluted the environment. Is there a thermocline in Buyat Bay? While of scientific interest to some people, this question is irrelevant in the context of whether a crime was

committed. Indeed, even if the prosecution were correct in asserting, without any credible evidence, that there is no thermocline that does not mean a crime was committed. ERAs do not matter. Sediment ponds do not matter.

DID NMR POLLUTE BUYAT BAY? My freedom and fate rests on this respected Panel's answer to this question. I humbly and respectfully ask that the Honorable Panel of Judges answer this question based on an objective review of the evidence and not relying on the perceptions and assumptions of others. I know without any doubt in my mind that the answer to this fundamental question – DID NMR POLLUTE BUYAT BAY -- is "no." The rest of this pledoi summarizes the evidence, providing this Honorable Panel of Judges with the basis to agree with me.

Therefore, please allow me to start this opening part of my defense by quoting two basic principles found in the Indonesian Constitution, known as Undang-undang Dasar 1945 or UUD 1945. Article 1 paragraph 3 of UUD 1945 (in an unofficial translation), states that *"the State of Indonesia is a state based on law"*. Further, Article 28D paragraph 1 of UUD 1945 guarantees, in an unofficial translation, that *"every person shall have the right to receive recognition, security, protection and legal certainty based on fair and equal treatment before the law"*.

For the last 2 years I, Richard Bruce Ness, along with PT Newmont Minahasa Raya (for convenience purpose I will use abbreviation of "NMR" throughout this defense document) have been indicted and prosecuted, and today I am sitting here before the Manado District Court on trial as Defendant II in conjunction with NMR as Defendant I, in a case that has no legal or factual basis. Sadly, I have to say that this is a gross violation of the two basic principles of the Indonesian Constitution as mentioned above. Let me explain why.

As the President Director of NMR and as such acting for and on behalf of NMR, I, alongside, the other members of the Board of Directors of NMR, have complied with all prevailing Indonesian laws and regulations imposed on NMR and/or me by, among others: (i) Contract of Work signed by and between NMR and the Indonesian Government for NMR's gold mining operations at Mesel, the Province of North Sulawesi, (ii) the laws and regulations on mining, (iii) the

laws and regulations on environmental protection, (iv) the laws and regulations that pertain to a limited liability company, (v) the laws and regulations on foreign capital investment, (vi) the laws and regulations on tax, duties, levies, and other payments to the Central and local governments, (vii) the regional laws and regulations of the Province of North Sulawesi, and (viii) the Articles of Association of NMR which were approved by the Indonesian Government.

Over the life of its operation, NMR, had obtained hundreds of licenses and permits from the Central and regional governments and during this period there were never any objections or accusations raised by any executive or other branches of the Indonesian Government, as a regulator and as a partner under the Contract of Work, which indicated that NMR is not fully licensed and permitted to carry out its business activities including its mining operations in the Republic of Indonesia. The operations of NMR in Indonesia are valid, legal and appropriately authorized by all legal and administrative standards imposed by the Indonesian Government and any and all its executive and other branches.

Furthermore, the discharge of tailing by NMR in Buyat Bay during the operations of NMR, which form the basis of the accusations of causing pollution leveled against me and NMR by the Police, Prosecution, certain people at the Ministry of Environment, and several NGOs was carried out strictly pursuant to the AMDAL study. The AMDAL was the environmental review of the project that was prepared based on the best scientific information available and was approved by the Indonesian Government before a single gram of tailings was placed into Buyat Bay. Moreover, after operations began and a new regulation required NMR to obtain a second approval from the Indonesian Government for the disposal of NMR's tailings, NMR applied for and was issued the KLH Minister's Permit in July 2000. The AMDAL of NMR was extensively discussed with the Indonesian Government and qualified experts for the purpose of maintaining sustainable environmental conditions and developments of the NMR Mine Site. Monitoring and sampling data required by the company's RKL and RPL was reported every quarter to the Indonesian Government since the start of NMR operations. Until NMR ceased its mining operations at the NMR Mine Site in 2004, there were never any complaints or claims from the

Indonesian Government on the environmental conditions of the Buyat Bay Area.

As the President Director of NMR, I and the other members of the Board of Directors of NMR, which was further approved and endorsed by the Board of Commissioners of NMR and shareholders of NMR, had continuously been assured that all regulatory and policy requirements of the Indonesian Government to operate the mines at Mesel, the Province of North Sulawesi, have been complied with to the full satisfaction of the Indonesian Government.

We at NMR are not only complying with the rules and regulations in operating our mines, but I as the President Director of NMR, together with my fellow directors and employees, have been committed to making sure that NMR performs in accordance with the best mining practices available in the mining industry not only in Indonesia, but also those applied by the most stringent jurisdictions in the world. It is in pursuance of this commitment that we chose to use the method of safely discharging the tailing to Buyat Bay.

We at NMR, went beyond the basic call of duty, to perform and are still performing well above the basic minimum that is expected of us and have always tried to be responsible and good citizens and neighbor to the people of Buyat and Ratatotok by undertaking several community development programs which have no doubt increased the quality of life for a substantial number of the people at Buyat and Ratatotok.

It is therefore ironic, that I, as a private individual, who in my official capacity as the President Director, had assisted NMR in complying with all the prevailing laws and regulations of the various branches of the Indonesian Government and am now being dragged through the process of being sued by the very same government for crimes that never occurred. And NMR, a responsible company that has complied with all the laws and regulations, which has performed admirably as a corporate citizen is being held responsible for acts that they did not commit. It is even more ironic if we compare that individuals and corporations that have complied with the laws and regulations are being prosecuted on false grounds, while a big number of individuals and corporations that have illegally been stealing billions of US\$ from the state-fund

in the framework of the Bank Indonesia Liquidity Assistance before and during the economic crisis in Indonesia continue to remain untouchable. Illegal mining and illegal logging activities that have caused great losses to the state's income, environment and morale are not considered a priority for legal action by the law enforcers. Many other violations of laws and regulations that we could read, hear and witness in the everyday life in Indonesia, including corruption cases that have caused a great deal of embarrassment to Indonesia, including the labeling of Indonesia by many international organizations as one of the most corrupt countries in the world, are not indicted, nor prosecuted, and now are even forgotten but instead NMR and I have been the focus of these law enforcers.

NMR and/or I have been accused and prosecuted for acts that the Prosecutors claim we have been involved in knowingly, willingly and/or purposely, such as the followings: (i) not making any effort to guarantee preservation of environment, (ii) discharging tailing as a B-3 waste to Buyat Bay without a valid permit, and as consequences thereof: (a) Buyat Bay is highly polluted with mercury and arsenic, (b) there exist no thermocline in the waters of Buyat Bay, (c) fishes are not safe for human consumption, (d) people have suffered illnesses and even died. These accusations are not just wrong and baseless, they are preposterous! If the Police and Prosecution's investigation was conducted using proper and correct scientific methods, they would have logically concluded that Buyat Bay was never in any way polluted by NMR, and as such there is no need to issue an indictment or pursue any prosecution against NMR and me.

As I testified in court, in order to guarantee the preservation of the environment at the mining site and surrounding areas, NMR had: (1) performed AMDAL studies pursuant to the requirements and parameters set forth in the prevailing laws and regulations, (2) conducted voluntary TCLP testing and monitoring to verify and ensure no adverse environmental impact occurred, (3) monitored detoxification systems every 2 hours on a voluntary basis, (4) reported daily averages to the Government above and beyond monthly requirements set forth in the RKL/RPL, (5) extensively utilized domestic academic institutions to strengthen quality assurance of the monitoring process, (6) used world

renowned experts from international firms such as Lorax, Sheppard Miller, Rescan, and others to conduct analyses of environmental performance and give advice on best practices , (7) operated responsibly to react to any upset conditions, and informed of any such disruption to the relevant authority, (8) placed occupational health, safety and environment ahead of production and profitability (9) extensively implemented training programs for employees to insure that only qualified personnel were in control of the process, (10) practiced a commitment to continual improvement in all areas, including health, safety and environmental performance, (11) maintained a commitment to health, education, infrastructure and economic growth of the region.

By doing this, it is evident and again amply demonstrated during the testimonies by NMR's personnel and expert witnesses who are independent scientists from domestic and international universities, research centers and organizations that the tailings discharged were not a B-3 waste, the levels of mercury and arsenic in the waters of the Buyat Bay are well below the standard parameters, thermocline does exist, the waters of Buyat Bay are clean and even cleaner than the Atlantic and the Pacific Oceans, fishes are safe for consumption, human health bio-markers are within normal range, and as a result the people in communities surrounding the mines are healthier than the national average (and this in a place where earlier no medical facilities were available). The fundamental fact remains, BUYAT BAY IS NOT POLLUTED. Without pollution there is no crime, and the charges, the consequent request by the Prosecution for a three year prison term for maintaining a perfectly clean bay is a despicable act!

I did not break any laws but I can go on with a long list of violations of laws and regulations that relate to the prosecution against NMR and me. These violations of the laws and regulations are a clear breach of human rights as set forth by any standard, whether under Indonesian laws or any international convention on human rights. These violations include: (a) wrongful allegations by the Police based on two different police reports registered under the same number submitted by Dr Jane Pangemanan (these reports were eventually revoked by Dr. Pangemanan on February 3, 2005), (b) wrongful detention of employees of NMR, (c) wrongful investigation process since the prevailing laws

and regulations clearly require the investigator of a potential environmental case to be a Task Force or a Legal Enforcement Team established by relevant institutions, and not the police force, (d) the police has breached the subsidiary principle adopted by the prevailing laws and regulations, as the subsidiary principle restricts the use of criminal law in environmental cases (such use is allowable only under certain specified conditions that must be supported with evidence that such principle can be waived or ignored) and clearly not appropriate in this case because criminal sanctions should only be applied as a last resort, (e) my right and the right of NMR to present evidence and call a *de charge* witness were denied by the police, (f) the police removed the testimony and evidence presented by a *de charge* witness that provided evidence favorable to NMR and me, (g) the police imposed illegal or irregular travel bans on my colleagues and me in this case, and continued to do so despite the writ of Habeas Corpus that was issued by the South Jakarta District Court, (h) the Prosecution continued to prosecute regardless of all these violations made by the police, (i) the annulment of the Habeas Corpus Writ by the Supreme Court despite the fact that such an act is prohibited by the Law on Judiciary, (j) the Court Order issued by the Panel of Judges of the District Court of Manado for re-sampling Buyat Bay was illegally challenged by the Prosecution. I will explain all such violations in more details in the other parts of my defense; I have listed only 10 violations of the law by the government in investigating the Buyat controversy as a few examples of such conduct. Clearly there have been other crimes committed during the process, but to my knowledge, none were committed by me or the company.

Having lived in Indonesia for more than 25 years, as an individual and now as an executive of an international company that has heavily invested in Indonesia, I have been following Indonesian politics with great interest; I have had a firm belief and high expectations that democratization processes and reform efforts in many aspects of government, business and society would rebuild Indonesia into a new Indonesia. I try to believe that a democratic society will achieve a legal and judicial system that will uphold and protect the principles of fairness and equal treatment before the law; a legal and judicial system that is free from political and other pressures and corrupt practices. I

also notice the importance of Non-Government Organizations (NGO) in shaping Indonesia into a desirable state for everyone. Their roles in fighting for the welfare of the people and public interests, and to act as an oversight body in the application of good governance principles and providing a just system of checks and balances must be supported. But I guess, the idealistic objectives of having a democratic society, an independent judiciary (in terms of increasing professionalism and integrity among the police, prosecution and the legal profession in general) and responsible NGOs do not always ensure the rule of law and equal justice for everyone. This case is obviously a clear example that regardless of the processes of reform, NMR and I have become victims of the wrongful application of law and justice, as well as unprofessional conduct and bad ethics of several individuals in the government agencies, police, prosecution and NGOs. Even some elements of the mass media have joined the bandwagon and have irresponsibly published incorrect, misleading and hateful comments, opinions and conclusions in various local and international forums.

If I contemplate the reason for my presence here in this court room as Defendant II, (as I had explained in my testimony before this court and also in my responses to the testimonies of the fact witnesses and experts), I cannot help but come to the conclusion that everything was initiated by the hateful efforts of certain individuals and/or organizations. These initial players were from some NGOs and others who work within the government system but the situation was then escalated by the unprofessional conduct/acts of the police. Their acts such as how they carried out their sampling and how these samples were then analyzed in their laboratory were clearly irregular. The last straw that has brought us to the climax of unfairness was perpetrated by wrongful accusations and charges being brought forth by the Prosecution. These efforts of fabrication were used by certain politicians for their own benefits and quite against their function as government officials in Indonesia to serve the public's interests. It is clear to me now, that this trial involving myself and NMR is a complete frame-up and is enmeshed with political interests; and based totally on perception, not fact or admissible evidence. This was further indicated by the testimony of the former Minister of environment, Nabel Makarim, who

stated that NMR and I became a target of certain people and was further emphasized in a press statement made by the Director General of the Department of Mines confirming that the case was the result of “hanky-panky” by NGOs.

It is unfortunate that the Indonesian Government has failed to see the real issues in this case and has failed to exercise any control over the various political factions that are rampant in its system. I have seen various laws and agreements which express that the republic of Indonesia is one Government, comprising of central and regional administrative branches, however, in reality this is not true. I have encountered many different and non-unified faces all claiming to represent the Government. This is obvious from the fact that the various ministries and departments of this government do not have any consensus over the issues involved in the Buyat case. Each of them has held a separate position on these issues which has led to compounding of the confusion that has resulted in this case. The Department of Mines and Mineral Resources as the technical department in-charge of the operations of NMR, as well as responsible for supervising NMR’s compliance with Environmental Regulations, has never found any problems with the operations of NMR including the way NMR has discharged and managed the wastes resulting from its operations. It has also been shown by the Minister of Coordination of Economic Affairs and the Minister of Coordination of People’s Welfare in their facilitation and signing of a Goodwill Agreement that it could be safely interpreted that Buyat Bay is not, nor proven to be, polluted, and as such a long term monitoring effort needs to be done to satisfy the outcry by certain NGOs and government officials. However, at the same time, the Ministry of Environment has proactively been involved in pushing the case forward, and has made all the efforts, including providing and guiding the Prosecution and some expert witnesses to testify so as to create a public perception, before the court as well as in the media that Buyat Bay is polluted and such pollution has adversely affected the health of the people in the Buyat Bay region. This creates confusion as to who is the real “Government”; hence despite the fact that it is within the power of the current administration to stop the indictment and act consistently with the prevailing laws and regulations and agreement

(Contract of Work) to which the Government and NMR are parties, the case against me and NMR continues.

However, like I stated earlier, one can reflect back on what has happened to bring this case to where it stands today, but the reality is that I am seated before this court defending myself of a crime that never occurred. I can not comprehend what mental gymnastics went on inside the heads of the Prosecution that led to the initial indictment and subsequently the charges being filed, followed by a request for a three-year jail term on such irrational and fictitious claims. Their persistence and failure to use common sense has lead the prosecution team into concluding that Buyat Bay is polluted and the means through which they have proven pollution beyond reasonable doubt defies all rational logic. After a reading of this Pledoi and then the arguments presented by the defense counsel for Defendant I and Defendant II, there should be no room left for any doubt that Buyat Bay is not polluted and that there has been a gross miscarriage of justice. During one of the breaks in this court session, I would ask if the Prosecution is willing to go talk to my wife who has sat through all the court sessions and explain to her how they manage to sleep at night. She has often wondered if the prosecutors have knowingly/consciously brought an innocent man to court for not following the rules of law when actually they have sworn to uphold the law and not surrender to political or other pressures to pursue this case. In most cases, these types of actions by the upholders of the law would be a cause of immense emotional turmoil.

Let me complete my opening statements by quoting from some recent statements from the President Susilo Bambang Yudhoyono before the DPR on the 16th of August 2006; I believe these are relevant to this case, and here is an unofficial translation of what he said: *“On the other hand, the law enforcers should be careful in receiving and reviewing any reports, so as to not create wrongful law enforcement measures. We have to be able to prevent slander, and defamation of character of individual that may detrimentally affect the pride and dignity of innocent people. I have also instructed that the coordination of law enforcement shall be done properly so that it won’t result in repeated*

investigation by various institutions, as this matter may affect effectiveness in our work and the business sector”.

Further: “Development in the field of law shall be in line with our joint commitment to honor fundamental human rights. We should be thankful that based on our joint efforts, the legal norms that relate to human rights have now been more complete. We had ratified the International Covenant on Civil and Political Rights and International Covenant on Economic, Social; and Cultural Rights. We have made genuine efforts to develop, protect and honor human rights. Praise be to Allah, during the last two years, there had never been any cases that may be classified as gross human rights violation. This good condition needs to be managed and maintained.”

I agree fully with what has been said by the President Yudhoyono before the DPR. I just hope that these statements shall eventually be applied to me and NMR in this case so that as the President desires, a “gross human rights violation” does not occur.

Thank you.

2. THE CHARACTER AND INTEGRITY OF RICHARD B NESS

I currently hold the position of President Director of NMR and Commissioner in other Newmont Indonesia companies. I am married to a lovely lady named Nova, and we have five sons, Eric, Bryan, Aaron, Patrick and Maesa.

I was born and raised on a farm in Northern Minnesota, very near the Canadian boarder in the center of the United States of America. After graduating from High School, I attended Moorhead Technical Institute, (part of the University of Minnesota education system), and upon graduation, I was employed and worked for the Caterpillar heavy equipment dealership for about seven years in Minnesota. In 1976, I made the decision to change career paths, acquired the necessary university credits in education to obtain a teaching certificate, and returned to teach at the same technical institute I had graduated from in Moorhead Minnesota. While teaching at the Technical Institute, I also attended classes towards an additional degree in the field of education.

It was in 1979 that I was approached by Dunwoody Technical Institute, a world renowned institution known for the development of technical programs and consulting activities in over 20 countries, and accepted a consulting assignment to design and develop a maintenance program in conjunction with an employee mechanical training curriculum. I then took an assignment to work in Indonesia and the rest, as they say, is history. My wife is from this country, hence I thought I would leverage my past experiences and try something different. Along with another mining executive, I started a consulting company specializing in natural resource investment and development. One of my clients was Flour Daniels, a large engineering firm which had just been awarded the contract to develop a mine, known as Batu Hijau for Newmont Mining Company. After a short period of consultancy, PT Newmont Nusa Tenggara hired me directly as Executive Director and General Manager to construct and develop the 2 billion dollar mine. At the time of construction, the Batu Hijau project was the world's largest "grass roots" mine development and

start-up in the world which employed over 14,000 people in construction and created over 7,000 direct jobs for decades to come, representing approximately 35% of the GDP of the province of West Nusa Tenggara.

Once the Batu Hijau mine was operational I relinquished the position of General Manager and *Kepala Teknik* and once again returned to Jakarta in late 1999. Initially, I had retained the position of Executive Director, PT Newmont Nusa Tenggara; however I also assumed the role of President Director, PT Newmont Pacific Nusantara which is a company providing services to all Newmont subsidiaries and at the time “green fields” exploration. At about the same time (in late 1999), I was appointed by the shareholders and took over the role of the President Director of NMR.

In addition, I assumed the position of President Director of PT Newmont Mongondow Mining, a company that undertakes advanced exploration Contract of Work, which later made a small gold discovery but the deposit was deemed too small for Newmont to operate and was later sold and is presently operated by Avocet Mining from the U.K. The Mongondow discovery did become an operational mine and is still continues to produce revenue for North Sulawesi.

After the Batu Hijau project became fully operational I stepped down as the Executive Director and assumed the role of the Commissioner at PT Newmont Nusa Tenggara, and later after the sale of PT Newmont Mongondow Mining, that Newmont purchased, I became the President Director of another advance exploration Contract of Work in North Sumatra named PT Newmont Horas Nauli. This company also made a reasonable discovery but still not of a size significant enough for Newmont to develop itself. This company has recently been sold to an Australian mining company and will also become another productive mine, providing jobs and added revenue for North Sumatra.

After the onset of the Buyat controversy in mid 2004, first being declared a suspect and then a defendant, the Buyat-hoax has become almost a full time job for me and many others. Therefore, the shareholders changed my positions from being the President Director to Commissioner of both Newmont Pacific Nusantara and PT Newmont Horas Nauli to dedicate full time to the case.

However, throughout my mining career in Indonesia, I can proudly state that I have been part of a team of people that has discovered and/or developed four mineral deposits and one copper refinery which has brought into Indonesia over 7 billion dollars of direct investment, in turn creating employment for tens of thousands of people, touching the lives of many thousands more, improving health care and education within the areas that we have touched and, creating several billion dollars of revenue for this Nation. This is a major achievement of which I am indeed very proud!

I have to state that overall, I have indeed been fortunate. My work here in Indonesia has provided countless blessings and my wife and I have tried to give something back. This effort may best be viewed in two parts and both are of equal relevance. The first is that I have tried to contribute to this nation's growth outside of my job with Newmont. I have been active in the Chamber of Commerce, actively encouraging economic development of Indonesia. I have been the Mining Chair of both the American Chamber of Commerce as well as the Mining Chair for the International Chamber for several years, promoting mining investment and legislative reform. I have also held the position of First Vice President of the American Chamber of Commerce, often traveling to Washington D.C. with others to lobby the US Government on behalf of Indonesia on an array of issues ranging from trade, investment and foreign policy. I am currently on the Executive Board and former Vice Chairman of the Indonesian Mining Association promoting mine development and legislative improvements that would benefit both the Nation and the investors.

On the international front, I have represented the International Chamber of Commerce as a United Nations delegate to both regional assemblies as well as a delegate representing business at the United Nations 10 year World Summit for Sustainable Development, helping to outline how governments and the private sector can work together to reduce poverty and set the 10 year millennium goals for the United Nations Assembly. I have worked and been a delegate representing this region to the World Bank, on their worldwide Extractive Industries Review, with a similar focus on how oil, gas and mining can reduce poverty and improve living standards of developing nations. I also help co-author the economic section of the plan for the Council of Foreign

Relations on how economic development can help reduce conflict in Papua. None of these activities were part of my formal job description, and they take precious time away from my family, however, I firmly believe that if one does not take the time to help change the world along with the environment that we live in, and fight to reduce poverty in an ever growing world population, conditions for the poor and underprivileged people will only get worse.

On a personal and family basis, we also have been fortunate, and through my work in different location, we have had the opportunity to spend time and develop association in various parts of Indonesia, which have become our primary focus. As an example: in Mataram, Jakarta, North Sumatra and North Sulawesi, my family continues to be involved in certain aspects of “giving something back” or *zakat*, as my religion dictates,. We are mainly targeting the poor, orphans, and needy. For this type of effort, I have to give almost all the credit to my wife. We support the education of several hundreds needy children, provide food and vital necessities to orphanages and in some cases medical assistance to those who cannot afford it. These assistance programs which are sometimes in cooperation with others, vary from something as simple as providing school uniforms and tuition, or covering a portion of an orphanages’ operating cost, to something as complicated as paying for someone’s brain surgery.

I will not elaborate further on these types of personal activities, and would not even be discussing them had it not been necessitated before this court in testimony; but I can assure this court that our personal commitment is one thing, but I demand or expect an equally high or even higher commitment from the company in which I work. This type of commitment is reflected in many aspects of the company’s activities as well. Newmont and its partners were some of the first to arrive on the ground with equipment and personnel in Aceh as part of the tsunami relief effort; we were among the first to bring the first medical relief efforts to Nias and our mine rescue teams were among the first on the ground in Yogyakarta after the devastating earthquake. Newmont spent and is spending in excess of four million dollars for the relief efforts of Aceh, and that does not include the personal money and material contributed by each and every one of us in the company.

On a local scale the presence of NMR may go unnoticed as we do not go out of our way to advertise our being a good neighbor. We do not seek publicity or acknowledgment, we are who we are, no more and no less. Nevertheless, I would not be surprised if the clean water many flood victims are drinking was supplied by our company, nor would I have been surprised if the backhoe that opened up the road after a landslide in this province was one supplied by NMR – always being a good neighbor in the time of need.

I take great satisfaction in NMR's achievements in the province of North Sulawesi. This satisfaction is not diminished by the fact that some silly lady, pressed onward by agitators and funded by a politician, filed criminal charges alleging that perfectly clean seas and fish have caused "Minamata disease". This satisfaction is not diminished by some government officials from KLH and some pretend-scientists that jumped on the bandwagon as they saw political and personal advantage in blaming a foreign company for acts that were not committed. This satisfaction is not reduced by the bias and unprofessional behavior of the Police and the Prosecution in this case. In fact, nothing will ever diminish the pride that I hold in looking at NMR's role as a member of the community of North Sulawesi over the past 20 years.

3. LEGAL ISSUES AND ANALYSIS

I would like to divide this section into 2 sub-parts, the first part will deal with the legal issues and analysis in connection with the Indictment and the Charges, and the second part will focus on the various instances of the successive violation of laws which occurred in connection with the process and substance of the investigation, indictment, charges and proceeding of this Criminal Case.

I. The Indictment and the Charges

As stated in my introduction, the Defense Counsel for Defendant I and the Defense Counsel for Defendant II in their respective Defense of Defendant I and Defense of the Defendant II, will provide a complete and comprehensive analysis of the Indictment and the Charges which will refute any and all parts of the Indictment and the Charges, and arrive at the following conclusions:

Conclusion of the Defense Counsel for Defendant I: *“In the absence of factual violation of law in the form of pollution and or damage to the environment resulting in the loss of persons or to the environment as an unlawful act of the defendant, and as a consequence there exist no environmental criminal act which should be held liable, therefore, in accordance with the provisions of Article 191 Paragraph (1) KUHAP which states: “In the event of from the court proceedings, the unlawful act of the defendant as indicated against him is not validly established and proven beyond reasonable doubts, then the defendants have to be acquitted by law.” Or at least as determined by the provisions of Article 191 Paragraph (2): “If the court should be of the opinion that the unlawful act as indicted against the defendant is indeed established, however such an act does not constitute as a criminal act, then the defendant has to be judged as being free from all charges.”*

“Defendant PTNMR is not proven to conduct any criminal activity and as such respectfully plea the Honorable Judges to decide that the

defendant is to be rendered a judgment of acquittal or at least free from all charges.”

Conclusion of Defense Counsel for Defendant II: *“In the absence of factual violation of law in the form of pollution and or damage to the environment resulting in the loss of persons or to the environment as an unlawful act of the defendant, and as a consequence there exist no environmental criminal act which should be held liable, therefore, in accordance with the provisions of Article 191 Paragraph (1) KUHAP which states: “In the event of from the court proceedings, the unlawful act of the defendant as indicted against him is not validly established and proven beyond reasonable doubts, then the defendants have to be acquitted by law.” Or at least as determined by the provisions of Article 191 Paragraph (2): “If the court should be of the opinion that the unlawful act as indicted against the defendant is indeed established, however such act does not constitute as a criminal act, then the defendant has to be judged freed from all charges.”*

“Defendant Richard Bruce Ness is not proven to conduct any criminal acts and as such respectfully plea the Honorable Judges to decide that the defendant is to be rendered a judgment of acquittal or at least free from all charges.”

1. The Indictment and the Charges among others in its primary, subsidiary and further more subsidiary indictments, indicted and charged me as the President Director of NMR *“intentionally or because of his negligence: (i) has unlawfully committed an action which has resulted in environmental pollution and/or environmental damage, (ii) did not carry out proper efforts to prevent the increase of any parameter which has exceeded the requisite Quality Standard, (iii) did not seriously pursue that NMR obtained the mandatory license to dispose its waste materials, (iv) that even after he has sufficient knowledge that NMR did not have the required license for the purpose of dumping its tailings to the sea, he continued to allow/did not order to discontinue the dumping of NMR tailing into the sea, (v) has*

violated the provisions of the prevailing laws by emitting or releasing hazardous or toxic substances, energy and/or other components to penetrate over or into the soil, air, or into surface water, despite his knowledge or he has sufficient reasons to assume that such actions can cause pollution and/or environmental damage or endangered public health or the well being of other people.”

Further the Indictment and the Charges stated that I, as the President Director of NMR, *“have the duty and responsibility to supervise, control and direct his subordinate staffs in order to ensure that such staffs performed their duties in accordance with the applicable laws, as stipulated by the company or the prevailing laws and regulations in Indonesia.”*

Each and every one of these indictments and charges will be refuted and proven to be inconclusive in each instance in the Defense of Defendant I , the Defense of Defendant II, and also in this Defense, and as such the foregoing parts will be integrated and therefore constitute an integral and inseparable part of this section, without any exceptions. I would like to once again expressly state that all elements in the Indictment and the Charges are untrue, and that during the proceeding the Public Prosecutor’s Team has failed to establish the truthfulness and validity of the Indictments and the Charges. The primary elements of the Indictment and the Charges, namely: (a) ***the existence of an unlawful act***, is untrue and incorrect by the reason that I have adhered to and have performed each and every applicable Indonesian Law and Regulation and under the NMR’s Articles of Association in my capacity as and in performing my duty as the President Director of NMR, (b) ***that there is negligence on my part in performing my duties*** is also untrue and has never been proven, because it is clearly established during the proceeding of this Criminal Case that NMR’s Board of Directors had caused NMR to have fulfilled all its obligations under the Indonesian Laws and Regulations, AMDAL, RKL and RPL, and has obtained a valid and in force license to carry out mining

activities and operations in Mesel, South Minahasa as evidenced by more than fifty licenses obtained by NMR from the central and local governments, including the license for the disposal of tailings to the Buyat Bay seabed in accordance with NMR's AMDAL and by the permit issued by the KLH Minister; (c) that it is also completely untrue **that NMR did not posses any license or permit to place NMR Tailings on the Buyat Bay Seabed** because NMR has obtained an AMDAL and the permit issued by the KLH Minister which clearly permit and allow the disposal of NMR's tailings to Buyat Bay as the most environmentally safe method of disposal, (d) **the act of not preventing toxic tailing disposal** is also completely untrue because it was established during the proceedings of this criminal case that NMR had all the requisite permits and licenses for such disposal, whether by virtue of the AMDAL which was approved by the Government of Indonesia, or the permit issued by the KLH Minister, and that NMR's tailings placed in Buyat Bay through the Submarine Tailings Placement Systems, after going through a detoxification process confirmed that they were not B-3 Waste; (e) and the statements in the Indictment and the Charges that **even that I already knew NMR did not have a permit to dispose tailing to the sea, however I did allow /did not give any instruction to stop the disposal of tailings to the sea by NMR are also wrong**. I always knew that NMR had obtained the permit or license to place tailings in Buyat Bay from the fact that NMR had obtained the permit through the AMDAL approval and the permit issued by the KLH Minister, and that therefore the disposal of tailings in Buyat Bay was always authorized or permitted by the Indonesian Government, and that according to article 28 paragraph 7 of the Contract of Work, NMR activities did not require any permit, and that the Contract of Work was a strong legal basis for NMR to conduct all its activities and that such legal basis binds the Indonesian Government from Central to Regional, from the President of Indonesia to his Bupatis and all staff. The disposal of tailings in Buyat Bay since the early stage of NMR operations in 1996 was legally and administratively permitted and authorized by the AMDAL and NMR's RKL/RPL, and the disposal of NMR's tailings on the Buyat Bay seabed

after the enactment of the Environmental Law was legally and administratively permitted and authorized by the permit issued by the KLH Minister.

Moreover, if tailings had been discharged without permit, the Indonesian Government, based on the Contract of Work, the Mining Law, and the Environmental Law, would have warned NMR to obtain the permit, or even stop operations pending the obtaining of the required permit. The Indonesian Government to-date, never issued such a warning, and never instructed NMR to stop its mining operations or to stop placing the tailings in Buyat Bay.

The disposal of NMR's tailings in Buyat Bay from its first time in 1996 until NMR stopped its operations and ceased to place tailings in Buyat Bay in 2004 in accordance to the NMR Mine Closure Program, had always been permitted, did not violate any laws, was not a crime, and consequently the disposal of tailings in Buyat Bay could not be indicted, charged and punished for any reasons whatsoever. For example: the Indonesian Government approval of the NMR's Mine Closure Program is clear evidence that NMR worked in accordance with Indonesian Laws and Regulations. It needs to be emphasized that the Indonesian Governments Approval of the NMR Closure Program was the result of an evaluation of NMR's overall performance from the beginning of the mine, and is therefore important to bear in mind that the Minister of the Environment was an integral part of the team that conducted the evaluation and approval.

I want to emphasize also here that I have been informed that as a general rule the Environmental Law is classified as and is by nature an administrative law. This leads to a concept generally acceptable, that any and all violations or breaches of the Environmental Law can only be administratively sanctioned. Criminal charges, if any, are only limited exceptions, and only to be used should the Pollution and/or Environmental

Damage be proven based on *prima facie* evidence after all efforts under the Alternative Environmental Dispute Resolutions have been exhausted.

Notwithstanding anything stated earlier, I would like to stress here that all the elements of the Indictment and the Charges are not worthy of discussion, analysis, and consideration since there has been no Pollution and/or Environmental Damage, and therefore, according to the Environmental Law, no crime has taken place. Allow me to quote the definition of “Environmental Damage” which was indicted against me and NMR by the Public Prosecutor’s Team, as defined under Article 1 (14) of the Environmental Law: “*Environmental Damage is an act which results in, directly or indirectly, alteration to the physical nature and/or biota which consequently caused the environment to be no longer able to function in supporting a sustainable development*”. From that definition alone it is evident that neither the Indictment nor the Charges can establish that there were any direct or indirect changes to the Buyat Bay area and/or the Buyat Bay waters causing the environment in the Buyat Bay area and/or the Buyat Bay waters to cease to function in support of sustainable development. A number of studies (several of which will be summarized and referenced later in this Pledoi) have been conducted by several independent scientific institutions and universities and have confirmed that from the start of NMR operations until the present day, Buyat Bay area and/or the Buyat Bay waters were in no way polluted. Buyat Bay fisheries are safe for consumption, and the health of the people living in the Buyat Bay area exceeds the average national health rate in Indonesia.

Furthermore, allow me to quote the Elucidation of Article 15 Paragraph (1) of the Environmental Law regarding Environmental Impact Analysis or *Analisis Dampak Lingkungan* (AMDAL) as follows: “*Environmental impact analysis in one hand is a part of an assessment study to carry out a certain operation and/or activities plan, on the other hand it also serves as a requirement which has to be fulfilled in order to obtained the license to conduct a certain operations and/or activities. Based on such analysis, the substantial and material impact, whether positive or negative impact,*

which results from the operations and/or activities can be determined, and therefore, proper efforts to manage the negative impact and enhance the positive impact can be developed. In order to control such substantial and material impact, certain criteria are used, among others: (a) the size of the human population which may be affected by the operation and/or activity plan; (b) the scope of the impact dispersion; (c) the intensity and period of the impact; (d) the number of other environmental component which may be affected by such impact; (e) the cumulative nature of the impact; and (f) whether the impact is reversible or irreversible.”

In relation to the above, my Legal Counsels have explained to me that it is clear that by virtue of the approval of the AMDAL as submitted by NMR for its mining operation, including the disposal of tailings in Buyat Bay, the AMDAL has fulfilled all elements in the Elucidation of Article 15 Paragraph 1 UUPLH (Environmental Law), and therefore it is untrue and completely mistaken to claim that the disposal of NMR’s tailings in Buyat Bay violated Indonesian Laws and Regulations and/or that it was unauthorized and/or caused Pollution or Environmental Damage, as indicted and charged by the Public Prosecutor’s Team.

2. What the Public Prosecutor’s Team did in their Indictment and Charges against me was in essence to conclude that I, in my capacity as the President Director of NMR, should be held liable, whether intentionally or because of my negligence, for the unauthorized disposal of NMR’s tailings which resulted in Pollution or Environmental Damage and threatened the livelihood and health of human beings. Such indictment and charges are unfounded and cannot be proven and I have been advised that I certainly cannot be indicted and charged, as the President Director of NMR or in my personal capacity, at least for the following reasons:

(a) **Wrong Legal Basis of the Indictment and Charges**

Indonesian Criminal Law also adopts the universal principle that states no one can be indicted and charged without a clear legal basis that has to be validly in existence before the crime is committed. Article 1, paragraph 1 of the Criminal Code follows the principle that

"Nullum Delictum Nulla Poena Sine Praevia Lega Poenali" or without criminal certainty, there is no crime. The Indictment states that the Defendants violated Law No. 5 of 1994 on Industry. The fact is that Law No. 5 of 1994 is on the legalization of the United Nations Convention on Biological Diversity. Defense Counsels had asked the Public Prosecutor's Team at the court hearing whether the Indictment would be revised or corrected. Until the date the Public Prosecutor's Team read out the Charges, and even until today, the Public Prosecutor's Team has made no revision or correction. This means the Public Prosecutor's Team believes that the Defendants violated the law on Biological Diversity. Simply based on this fact, the Indictment and the Charges pursuant to Article 143 Paragraph 2 (b) in conjunction with Article 143 Paragraph 3 of Criminal Procedural Law are legally void, and as such to be deemed to have been dropped.

- (b) **Board of Directors' Liabilities.** The representation and liability system of the Board of Directors in a limited liability company, including the NMR Board of Directors, is a system of collegial representation and liability (Article 83 of the Company Law), and as a general rule it is not meant as a means of inflicting personal liability, therefore, merely from the fact that I am holding the position of President Director of NMR, and the fact that the NMR Articles of Association state that I am authorized to represent NMR, it does not mean that I can be personally held liable in the Criminal Case indicted against NMR. The Public Prosecutor's Team has mixed up the concept of liability under the Company Law, on one side, and criminal law aspects of the Environmental Law on the other, and has wrongly applied one concept to the other in this Criminal Case. While as a general rule each of these concepts has its own independent law regime, character and consequence, this is not the manner in which they were meant to be used. The representation and liability systems of the NMR Board of Directors for corporate issues are clearly regulated in the Company Law and NMR Articles

of Association. The criminal liability of a corporation under the Environmental Law is governed by the Environmental Law.

Article 82 of the Company Law, governs the liabilities of the Board of Director for its management duties which have to be performed only for the interests and objectives of the company. Article 81 Paragraph 1 of the Company Law in turn governs the distribution of duties and authorities among and between each members of the Board of Directors as determined by the General Meeting of Shareholders. Article 83 Paragraph 2 of the Company Law regulates the limitation of the authorities of the Board of Directors. All the foregoing provisions in the Company Law regarding the Board of Directors are oriented towards a Board of Directors as an organ of the company (Article 1 Paragraph 4 of the Company Law), and in accordance with the concept of a company as a legal entity (Article 7 Paragraph 6 of the Company Law), and the concept of limited liability of the shareholders (Article 3 Paragraph 1 of the Company Law and its Elucidation of that provisions), then each and all actions of the limited liability company become the responsibility of the Board of Directors as an organ of the company, and because the Board of Directors performs corporate actions in the name and on behalf of the company then, in accordance with the foregoing concepts of a legal entity and limited liabilities, all outcome and consequences resulting from the acts of the Board of Directors become the liability of the company. The lawmakers had expressly intended to create the concept of a Board of Directors as a representative system of the company. This is due to the fact that the company as a legal entity requires a management board that actually manages and runs the company.

There are exceptions where the Board of Directors of a company is exempted from the liabilities of the company under the Company Law, and therefore personal liability can be invoked, however, these are the exceptions and not the norm, and I am advised that they are only limited to the following cases: (a) the legal actions of the

company during the period when the registration and announcement as meant in Articles 21 and 22 have not been made (Article 23 of the Company Law), (b) the loss incurred by a shareholder in good faith as a result of the repurchase of shares by the company being null and void as meant in Article 30 Paragraph 2 (Article 30 Paragraph 3 of the Company Law), (c) the annual accounts as made available by the Board of Directors and Commissioners are shown to be untrue and/or misleading (Article 60 Paragraph 3 of the Company Law), (d) a member of the Board of Directors is at fault or negligent in performing his duties in accordance with the provisions as stipulated in Article 85 Paragraph 1 (Article 85 Paragraph 2 of the Company Law), (e) in the case the bankruptcy of the company is caused by the mistake or negligence of the Board of Directors and the assets of the company are not sufficient to cover the losses resulting from such bankruptcy (Article 90 Paragraph 2 of the Company Law). Such personal liability has to be exercised as a joint and several liability except in certain circumstances as meant in the provisions of Article 85 Paragraph 2 of the Company Law.

The above provisions are specifically formulated by the lawmakers of Company Law to emphasize that the liabilities over the management of a company shall only end in the accountability of the Board of the Directors as an organ of such company except in the event of the above exemptions; And even in the event that any such exemptions exist, then the exercise of personal liability shall be treated as collegial responsibility (joint and several liability) from all members of the Board of Director. From what is being indicted and charged by the Public Prosecutor's Team in the Public Prosecutor Indictment and Public Prosecutor Charges, it is clear that none of the exemptions as provided in the Company Law is present or falls under the exemptions as provided in the Company Law, and as such there is no basis at all to indict and charge me, either as representative or as the President Director of NMR, or in my personal capacity.

As provided in the foregoing Article 82 of the Company Law, the duties and responsibilities of the Board of Directors are to manage the company in accordance with its interests, purposes and objectives. Provided that the NMR Board of Directors has performed and fulfilled all its duties and responsibilities in accordance with the interests, purposes and objectives of NMR, and such actions have been carried out by the NMR Board of Directors, then all consequences and liabilities resulting from the actions of the NMR Board of Directors shall be the responsibility of NMR as a legal entity.

While it is correct that the Environmental Law is a *lex specialis* regulation, and as such, despite the fact that it basically falls under the administrative law regime, it can contain and invoke criminal liability from those persons deemed to be leading a criminal action. However, it has been explained to me that the Environmental Law, which I shall elaborate below, cannot be used to invoke my personal criminal liability as President Director of NMR because: (a) the Subsidiary Principle is applicable in this Criminal Case, and therefore a criminal liability is not automatically enforceable until all efforts to seek an Alternative Environmental Dispute Resolutions as provided in the Environmental Law have been exhausted and (b) the Environmental Law does not state that the highest executive or leader in, or representative of the company shall be liable, the fact of the law is that it merely states that a leader of a criminal act shall be liable for the crime he or she commits. I have never been a leader and have never given any instruction in respect of the mining operations of NMR including the disposal of NMR's tailings in Buyat Bay. The foregoing is also in line with the internal regulations of NMR, in which my duties and responsibilities as President Director of NMR are limited to certain duties as I will elaborate later.

Therefore, indicting and charging me as Defendant II in this case is a gross mistake and negligence on the part of the Public Prosecutor's Team because it is directly in contravention with the primary

principles enshrined in the Company Law and the Environmental Law.

- (c) **NMR Board of Directors' Allocation of Duties.** In accordance to internal regulations commonly applied in NMR, and in accordance with the provisions of the NMR Articles of Association (Article 11 Paragraph 9), and as also permitted by the provisions of the Company Law (Article 81 Paragraph 1), there was a clear allocation of duties among the members of the NMR Board of Directors. Within that allocation, my duties and responsibilities as President Director were mainly focused on Government Relations with the Government of Indonesia, and coordination of management in general. In my day to day responsibilities as President Director of NMR, I was never instructed nor entrusted with the responsibility or put in charge of operational issues, NMR mining activities and its technicalities, nor was I instructed to be responsible for mining operations at the NMR mine site, and surely it was never my responsibility to monitor environmental management at NMR's mine site and its surroundings, and further I was never instructed that I should have been responsible for the planning and implementation of the mine waste-disposal system including the disposal of NMR's tailings in Buyat Bay, and all that it entails and its consequences to the environment in the proximity of NMR's mine site. Based on the DEMR Environmental Policies, KepMen 555K/26/M.PE/1995 and KepMen 1211.K/008/M.PE/1995 On Prevention and Mitigation of Environmental Damage and Pollution in General Mining Operations, all NMR technical environmental aspects of the mining operation and activities were the responsibility of the Chief Technical Manager, who in this case also served as General Manager and was a member of the Board of Directors of NMR.

NMR mine working, operation and activities plans, including the disposal of NMR's tailings which was carried out in accordance with the AMDAL as approved by the Government of Indonesia and permit issued by the KLH Minister, was the responsibility of the Chief

Technical Manager who also acted as General Manager of NMR, and it was not my responsibility as President Director of NMR. Since my duties and responsibilities as the President Director of NMR were focused on Government Relations between NMR and the Government of Indonesia, most of my time was spent in Jakarta where Indonesian Government policies on mining operation and activities are made. My duties had nothing to do or related to NMR mine and NMR mining operations and activities, including its environmental aspects. Therefore, it was only on very rare occasions that I carried out any activities at NMR's mine site, and on such rare occasions when I did visit the NMR mine site, it was mostly because I had to escort and accompany government officials on their visits to the site.

Each member of NMR's Board of Directors was responsible for his or her own designated area. Each member of NMR's Board of Directors prepared their own plans and programs in accordance with their respective area of responsibility in the interests, purposes and objectives of NMR, and such plans and programs were discussed in the Meetings of the NMR Board of Directors, NMR Commissioners' Meetings and NMR General Meeting of Shareholders. At each of those stages, plans and programs had been approved and were incorporated into NMR master program. As the President Director of NMR, I understood the whole plans and programs in general, however, the responsibility for planning, formulating and executing the program in details rested with the individual Directors and their divisions. As the President Director, I understood NMR financial plans and programs and all aspects of NMR financial management and accounting in general, however, I had no knowledge of the details of the plans and programs including their implementation, as that was the responsibility of NMR's Director of Finance. By the same token, I was also aware of the general information on planning and operational program with respect to NMR mining activities, and waste disposal, including NMR's tailings. However, I had no knowledge of

the details of such plans and programs including their implementation, since their detailed and in-depth understanding was the responsibility of the Chief Technical Manager or General Manager of NMR. What I was informed of in the report of the NMR Chief Technical Manager or General Manager was that the disposal of tailings in Buyat Bay in the program was consistent with the AMDAL and that a permit had been issued by the KLH Minister, and that every aspect of NMR's tailings placement on Buyat Bay seabed has fulfilled all the requirements of Indonesian Laws and Regulations. If an event that could be classified as Pollution and/or Environmental Damage has ever occurred, quad non, as testified by witnesses and experts before this court, the Chief Technical Manager or anyone under his responsibility would have had the authority to stop mining operations, or more specifically, the disposal of NMR's tailings in Buyat Bay, and they would not have had to wait for any directive from me to make the decision. The system was established to make sure that any disaster or serious incident caused by NMR mining operations could be prevented or stopped at once by NMR's technical people working at the NMR's mine site. As an example: before this court I used the example that the pilot of a airplane does not have to wait for instructions from the President Director of the airline to take corrective action during the flight; the same is applicable to the leadership at the mine site.

As a matter of law, therefore, it is wrong and contrary to facts that I, as the President Director of NMR, am being charged with intentionally or negligently having caused Pollution and Environmental Damage thus endangering human lives and health. Moreover, as it will be rightly elaborated in the Defense of Defendant I and the Defense of Defendant II respectively, as well as being further elaborated in this Defense, it is reiterated that NMR's operations and mining activities never resulted in Pollution and/or Environmental Damage of any kind or form, and therefore, I cannot

be indicted and charged for a fact or event **that never existed or occurred.**

- (d) ***Acquit et de Charge (Release and Discharge) for the Management and Supervision of NMR.*** Each financial year, after the closing of the company books for the relevant year, NMR must hold an Annual General Meeting of Shareholders pursuant to NMR's Articles of Association (Article 18). The NMR Board of Directors submits an NMR Annual Report, Balance Sheet and a Profit and Loss Financial Statement for the previous financial year. The Annual Report contains all conducts and activities related to the management actions of NMR's Board of Directors and the supervisory actions and activities of NMR's Commissioners. The approval of the Annual Report, Balance Sheet and Loss and Profit financial statement release and discharge the NMR Board of Directors from their managerial responsibilities for that financial year; they also release and discharge NMR's Commissioners from their supervisory actions for that financial year.

I was appointed President Director of NMR in 1999, more than three years since NMR started tailing placement in Buyat Bay, pursuant to the AMDAL, and since that date, NMR's AGMs were convened for the 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 financial years. At each of the foregoing NMR's Annual General Meetings, NMR shareholders approved to release and discharge (*acquit et de charge*) NMR's Board of Directors and NMR's Commissioners from their responsibilities in relation to the management of the NMR Board of Directors and supervision by NMR's Commissioners during each of the financial year. At the Annual Meeting of the Shareholders there is also a report submitted on the management of NMR relating to NMR operation and mining activities from the Chief Technical Manager or General Manager of NMR, including a report on the planning, programming and implementation of all Health Safety and Environmental aspects of the operation. By virtue of the Annual Reports having been approved in the AGMs, then, based on the

basic principles of Company Law, any corporate responsibility related thereto becomes accountable to NMR as a legal entity and not to the NMR Board of Directors or the NMR Commissioners. Even so, despite the foregoing, **it has been established in the court proceedings that the Pollution or Environmental Damage as indicted and charged by the Public Prosecutor's Team never happened**, therefore not only I, but any other members of the NMR Board of Directors and NMR Commissioners, in their respective position and/or personal capacity cannot be held liable for such indictment and charges, even NMR itself cannot be held liable for a **crime that never existed or happened.**

- (e) **Subsidiary Principle.** The Environmental Law expressly adopts the Subsidiary Principle in environmental dispute resolutions. The Subsidiary Principle is elaborated in detail in the Defense of Defendant I and the Defense of Defendant II. However, for the purpose of consistency and comprehensiveness of my own defense, I will incorporate those parts of the defenses into my own Defense as an integral and inseparable part of my Defense, without exception.

The elucidation, general provisions of the Environmental Law stipulates that: *“To complement the administrative law, the applicability of criminal law will take into account the subsidiary principle which acknowledges that criminal law shall be applied only if other legal sanctions such as, administrative sanctions and civil sanctions, and alternative environmental dispute resolution are not effective and/or the degree of wrongfulness of the actors are relatively high and/or the consequences of such conduct are relatively grave and/or such conduct results in public unrest.”*

Without a doubt, the investigation and prosecution process of the Police Department and the Public Prosecutor's Office against NMR and me have ignored the Subsidiary Principle and not only does this demonstrate a lack of understanding of the doctrines applied in the field of environmental law but also counts as a dangerous decision in

the context of a sustainable government administration and national economic development. If the Police Department and the Public Prosecutor's Office are assumed as representations of the Indonesian Government in the process of investigation and prosecution against NMR and me, then it can be argued that the Police Department and Public Prosecutor's Office have violated or purported to revise public policy as adopted in the Environmental Law, from an administrative system for a resolution of environmental issues to the criminal system. It is true that the Environmental Law in its final sections does include criminal provisions however, as highlighted by the Defense Counsel for Defendant I and Defense Counsel for Defendant II in their defenses, such provisions can only be applied as an *ultimum remedium* which is not the fundamental spirit of the Environmental Law.

In my understanding of this Criminal Case it is clear that the case concerns an environmental dispute, and as such, the Environmental Law and the dispute settlement mechanism adopted under this law should be applied, and should be addressed by conducting an Environmental Audit (see Article 29 of the Environmental Law). If the audit results find that there has been non-compliance, then sanctions may be applied by, among others, commencing administrative procedures and civil settlement out of court between the disputing parties. In this case, it is evident that there has been neither a violation of the law because there were never any warnings and more specifically no sanctions from the Indonesian Government against NMR in any form, nor any crimes were committed, therefore, if the Indonesian Government were to be consistent with the provisions and spirit of the Environmental Law, the mechanism under the criminal provisions of the Environmental Law as an *ultimum remedium* would not be implemented. This was very clearly pointed out by two expert witnesses in Criminal and Environmental Law, namely Prof. Dr. Andi Hamzah, SH and Prof. Dr. Daud Silalahi, SH. One can only imagine that if the criminal prosecution in this Criminal

Case is a new public policy, which obviously violates the existing principles of the Environmental Law, then all of us present in the court today can guess what effects this will have. The Indonesian Government would then have to implement this new public policy that criminalizes every single environmental dispute or issue without true and accurate scientific evidence! It is commonly known that almost every industry, particularly the mining industry, produces waste, the disposal of which has to be carried out in the most environmentally friendly way possible, and for that reason an environmental management system through the process of AMDAL, to be done consistent with the Environmental Law, is required. If every company which has already obtained AMDAL and license to dispose of its waste from the Ministry of Environment and has strictly adhered to all the requirements contained within the license can still be alleged to have polluted the environment and unfairly brought before the court for criminal charges against the environment then everybody in this court along with every domestic and foreign investor can only envision that indeed a reversal in public policy determination has occurred within Indonesia, and that legal certainty and justice as the cornerstone of all business and investments is a falsehood, is non-existent, or at least not uniformly applied! This would indeed have a very widespread effect on the Indonesian economy.

Based on my understanding of this case, the investigation of the Police Department was also an unlawful investigation process, and therefore, must be declared null and void. The Joint Decree provides that the authorized party to conduct an investigation for any potential crime against the environment is the Task Force consisting of the Civil Servant Investigator and investigators from relevant institutions or bodies, and for that reason the Police Department is not authorized to carry out any investigation in this Criminal Case without involving the other institutions. It is my understanding that the Police may be involved in such investigations only in the event that the Task Force is experiencing difficulties in the investigation process and in

turn has invited the participation of the Police Department to assist in such investigation.

The policy to establish a Task Force is a one-roof-policy based on my understanding of the spirit of the Environmental Law and the enforcement of the Environmental Law by way of the Subsidiary Principle. Logically if such policy was upheld by the Police as one of the participating parties in the formulation of such policy, then the investigation carried out by the Police in this Criminal Case should never have happened. In addition, as part of the Task Force of the One-Roof-Enforcement-System, the Attorney General has issued applicable guidelines for the handling of all environmental crimes, that is, Attachment B-60/E/EX/01/2002 (Technical and Judicial Guidelines for Handling Environmental Crimes) which basically stipulates that charges of environmental crimes can only be carried out when: (a) the authorized official has imposed administrative sanctions to punish such violation, but such sanction does not stop the violation, (b) failure to reach a settlement despite attempts to settle the dispute through the following mechanism: (i) out-of-court mechanism (consolidation/ negotiation/ mediation) by and between the company and the affected parties, or (ii) court settlement.

It is clear to me that, in this case, law enforcement through an investigation conducted by the Police is in fact unlawful. Unlawful law enforcement will in essence create legal uncertainty, unrest and chaos in society, and of course violations of the principles of justice and human rights of those who are unfortunate enough to have been affected by such wrongful investigations - of this, I believe, I am a prime example!

Like in every part of the world, a violation of human rights constitutes a violation of the constitutional rights of the individual. From this point of view alone, it is obvious that such violation of the Subsidiary Principle violates Indonesian Laws and Regulations, human rights,

and creates a condition not conducive to the Indonesian investment climate, and becomes an appalling precedent for law enforcement in Indonesia. This is why the international and national Press and investors are closely monitoring this trial. As an example; one quote from the Wall Street Journal in March of this year states: *“A review of the evidence raises serious questions about the case and the fairness of the legal proceedings -- as well as the potential impact of this dispute on the economic future of the world's fourth-most populous country.”*

- (f) **Criminal Liability under the Environmental Law.** As my Legal Counsel explained to me, article 46 Paragraphs 1 and 2 state that if a crime pursuant to Chapter IX of the Environmental Law was committed by or in the name of a legal entity, company, association, foundation or other organization, then the criminal charge and criminal penalty as well as the law-order action shall be imposed against such legal entity, company, association, foundation or other organization or to the person who gives the order to carry out that criminal offense or to the leader or to both of them. In the event that such criminal offense occurred, *quad non*, then in addition to the company committing such criminal offence, a criminal charge may be, but is not necessarily, brought against the person who gave the instructions or to the leader of that criminal offense. It is not mentioned anywhere in the criminal provisions of the Environmental Law that the criminal charges should be brought against the highest principal in the management of a company. In connection with NMR, then the highest principal in the management of the company in accordance with the provisions of the Company Law and NMR's Articles of Association would be me, as President Director. If Article 46 Paragraphs 1 or 2 is to be implemented correctly, then it is clear that the criminal charge against me was a caused by either a gross mistake, or negligence or incompetence on the part of those applying the law. I never gave an instruction, or took a leading position, or was ever assigned to disposal of NMR's tailings in Buyat Bay. The

instruction to dispose of NMR's tailings in Buyat Bay was given by the Chief Technical Manager or General Manager of NMR based on the AMDAL approved by the Indonesian Government even before my employment with the company and, additionally, by the permit issued by the KLH Minister. Similarly, the leader in such acts in accordance with the distribution of duties between NMR's members of the Board of Directors as described above is not me as the President Director of NMR, but the Chief Technical Manager or General Manager because it is within his duties and responsibilities. Since that order is based on the AMDAL and the permit issued by the KLH Minister, therefore, there are no unlawful acts by the person giving the order, and all his liabilities, either pursuant to the Indonesian Laws and Regulations and NMR's Articles of Association, has been transferred to be the liabilities of NMR as a legal entity. Since there is no violation of laws by NMR in relation to the disposal of the tailings to the Buyat Bay seabed, and because such disposal as validly established in the proceeding of this Criminal Case did not result in any Pollution or Environmental Damage defined in the Environmental Law (specifically, the definition that regulates marine pollution and degradation see Article 1.2 Government Regulation No. 19-1999 Management and Control of Marine Pollution). Then **NMR also does not have to be held liable for an event or a fact which never existed nor happened.**

- (g) **The Signing of the Goodwill Agreement and Revocation of the Civil Case.** Still related to the principle and application of the Subsidiary Principle as described in part I.3 (d) above, the KLH Minister who represented the Indonesian Government had acknowledged from the very beginning that this issue is in fact an environmental dispute by submitting a civil law suit against NMR before the District Court of South Jakarta in the Civil Case. The civil suit was dismissed by the District Court of South Jakarta pursuant to its Decision of the District Court of South Jakarta, and subsequently the KLH Minister representing the Indonesian Government submitted

an appeal to the High Court in Jakarta. The Indonesian Government which in this case is represented by the Coordinating Minister for People's Welfare, and with the continued initiative from the Coordinating Minister of Economic Affairs has signed a Good Will Agreement with NMR, to which both the Government and NMR agreed to, among others, monitor the environmental condition of the Buyat Bay for the next 10 years to be conducted by an independent panel of experts with gradual financing from NMR amounting to a total of US\$ 30,000,000 (thirty million US Dollar)] which shall be managed by a foundation jointly established by the Indonesian Government, NMR and certain stakeholders. The substance of this Goodwill Agreement clearly is an acknowledgement and recognition that the issue arising from the allegations of pollution or environmental damage of the Buyat Bay is, in fact, an environmental dispute. The execution of the Goodwill Agreement was also witnessed by the KLH Minister, and therefore as the minister in charge of overseeing all environmental issues, the KLH Minister should have understood the spirit and provisions of the Goodwill Agreement.

By implementing the Goodwill Agreement at least the following can be concluded: (a) that at the time of the execution of the Goodwill Agreement, there was no proof or evidence of Pollution or Environmental Damage as a result of NMR's tailings disposal on the Buyat Bay seabed, because the Goodwill Agreement was made to facilitate the panel of independent experts to carry out studies and observations to determine whether there was any Pollution or Environmental Damage in the Buyat Bay as a result of NMR's tailings disposal; (b) that the dispute between the Indonesian Government and NMR regarding alleged Pollution or Environmental Damage in Buyat Bay as the result of NMR's tailings disposal is in fact a form of environmental dispute. Based on constitutional principles, the provisions executed and agreed by the Coordinating Minister for People's Welfare in the Goodwill Agreement on behalf of the

Indonesian Government should also be binding on the KLH Minister, Police Department, the Attorney General and his subordinate prosecutors, including the Public Prosecutor's Team. This would be because, one would assume, they are an integral part of the Indonesia Government. Based on the aforementioned facts alone, the Public Prosecutor's Team which represents the Republic of Indonesia should proactively be obliged to revoke or to discontinue the prosecution process against NMR and me in this Criminal Case, or at least delay the criminal charges in this Criminal Case upon the findings of the independent expertise panel discovering conclusive and scientifically reliable fact and evidence that the Buyat Bay was obviously polluted or damaged due to the heavy metal in NMR's tailings placed in Buyat Bay.

This double-standard policy certainly causes confusion to anyone who correctly understands this issue, and at the same time it sadly proves that the legal uncertainty and unjust enforcement of law by law enforcers that are frequently attributed to Indonesian legal system are in fact true, which in turn will directly reflect and adversely affect the credibility of the Indonesian Government

- (h) **Exemption of the Subsidiary Principle Is Not Applicable.** It has been explained to me that the Elucidations of the Environmental Law expressly stipulate that criminal provisions in the Environmental Law shall be applicable only in the event of: (a) administrative and civil sanctions and the environmental alternative dispute resolution are ineffective and/or; (b) the level of the perpetrator's offense is relatively grave, and/or; (c) the impact or effect of such offense is relatively grave and/or; (d) the effect of such offense has created public unrest. I certainly believe, and as established during the proceeding of this Criminal Case, that none of such exemptions is applicable in this Criminal Case. The Environmental Alternatives of Disputes Settlement that includes administrative and civil sanctions have never been discussed and applied in this case. The KLH Minister moved straight into filing the Civil Case to seek damages

over Pollution and Environmental Damage which was never proven, and eventually the KLH Minister revoked its civil claim in the appeal. The Pollution of and/or Environmental Damage as defined in the Environmental Law was never established. And credible international independent science institutions, including WHO and CSIRO, all pointed out during the proceeding of this Criminal Case that NMR's tailings are not B-3 Waste, that the Buyat Bay Waters is clean, that the level of heavy metal is far below the normal Quality Standard, that the Buyat Bay Fisheries is safe to be consumed, and the health rate of the people living in the Buyat Bay Area is above the average national health rate. Moreover, no public unrest occurred due to the actions of either NMR or myself, simply because there was no Pollution or Environmental Damages as alleged. What was clear to me was recklessness of several NGO(s), politicians and other irresponsible people, which were then published by certain mass media that were equally irresponsible, without any reliable scientific evidences to support their claims. The people of the Buyat Bay area themselves remained calm, and some people who were relocated to Duminanga confessed that they left the Buyat Bay Area because of false promises by several NGO(s) and consequently some of them have moved back to the Buyat Bay area and still fish in Buyat Bay because they realized that the alleged charges of Pollution and Environmental Damage to the Buyat Bay were untrue and had mislead them in their decisions to agree to such relocation.

- d. **The Contract of Work.** The Contract of Work signed by the Indonesian Government and NMR, endorsed by the DPR, and approved by the President shall constitute a law that binds and is enforceable against the Indonesian Government and NMR.

Article 2 paragraph 3 of the Contract of Work in setting out the responsibilities of NMR states in part that: "... *the Company (NMR) shall conduct all such operations and activities in a good technical manner in accordance with good and acceptable international mining engineering standards and practices and in accordance with modern*

and accepted scientific and technical principles using appropriate modern and effective techniques, materials and methods to achieve minimum wastage and maximum safety as provided in the applicable laws and regulations of Indonesia. All operations and activities under this Agreement shall be conducted so as to avoid waste or loss of natural resources, to protect natural resources against unnecessary damage...”

Article 2 Paragraph 4 of the Contract of Work states that: *“The Company shall conduct its operations under this Agreement in such a manner as to minimize harm to the Environment and shall utilize recognized modern mining industry practices to protect natural resources against unnecessary damage, to minimize Pollution and harmful emissions into the Environment in its operations and to dispose of waste materials in a manner consistent with good waste disposal practices. The Company shall otherwise conform to the relevant environmental protection laws and regulations of Indonesia.”*

Article 2 Paragraph 9 of the Contract of Work further states that: *“The Company shall likewise observe internationally recognized modern measures for the protection of the general health and safety of its employees and of all other persons having legal access to the area covered by this Agreement. The Company shall comply with the relevant health, safety and sanitary laws and regulations of Indonesia and comply with such instructions as may be given in writing by the appropriate authorities in accordance with such laws and regulations.”*

The above provisions of Article 2 Paragraphs 3, 4 and 9 of the Contract of Work underline all the obligations of NMR in environmental, safety and health aspects of its mining operations at NMR’s mine site. The plans and designs for such programs were reported to the Indonesian Government as a party to the Contract of Work and as a regulator. More specifically, NMR’s AMDAL was basically a plan and design for the environmental aspects of its

mining operations that had been approved by the Indonesian Government. In fact, the Indonesian Government agency that had approved the AMDAL was the central AMDAL committee of the Department of Energy and Mineral Resources, the department within the Indonesian Government that has the authority to supervise and control the mining operations of all mining companies in Indonesia.

Article 16 Paragraph 2 of the Contract of Work further states: *“The Minister (Minister of Energy and Mineral Resources) may make known to the Company with regard to the Company’s plan or designs and the Government reserves the right to withhold its approval from plans and designs relating to construction, operation, expansion, modification and replacement of facilities of the Enterprise which may disproportionately and unreasonably damage the surrounding Environment or limit its further development potential or significantly disrupt the sociopolitical stability in the area. Such approval shall not be unreasonably withheld or delayed; and if within three (3) months after submission of such plans or designs the Government does not raise any objection, then such plans or designs will be considered approved.”*

NMR has never received any objection or warning from the Indonesian Government on the plans, designs or programs developed for its mining operations, including the environmental aspects of such operations. Connecting the provisions of Article 2 Paragraphs 3, 4 and 9 with Article 16 Paragraph 2, anyone could have a very clear idea that all plans and designs of NMR for its mining operations were approved by the Indonesian Government as one of the parties to the Contract of Work, and to the extent it involves the role of the Indonesian Government as regulator, all such requirements to comply with the environmental aspects of the mining operations of NMR, including how the tailings have to be disposed safely to the environment; Clearly, the Indonesian Government through the central AMDAL committee of the Department of Energy and Mineral Resources and further through the Minister of

Environment had respectively issued such approvals in the form of the AMDAL and the permit issued by the KLH Minister.

The Minister of Environment and the Public Prosecutor Office, as part of the Indonesian Government, shall be bound also by the Contract of Work, AMDAL and the permit issued by the KLH Minister, and only if they would observe their constitutional obligations and commitment to build up good governance, and not using double standard policy, NMR and I would never been here to face the Indictment, Charges and these criminal proceedings.

- (i) **No Pollution and Environmental Damage – No Crime.** The Defense of Defendant I combined with Defense of Defendant II, will clearly describe in a very detail fashion that from the facts, testimonies and documents presented to the Panel Judges during the proceeding of the Criminal Case, that there is no Pollution and/or Environmental Damage in the Buyat Bay Waters caused by the disposal of NMR's tailings in Buyat Bay. All fabricated facts and documents, misleading testimonies, and baseless arguments made and/or presented by the Police Department and/or the Public Prosecutor's Team and/or their witnesses have been refuted by the facts, documents, testimonies and arguments presented by the Defendant I, Defendant II, their respective Defense Counsels and me. **I would just like to say one more time, that if there is no Pollution and/or Environmental Damage, then there is no crime, and if there is no crime there is no liability.**

In the midst of Indonesia's multi-dimensional crisis, I would sadly say that this fabricated Criminal Case has wrongly misused enormous resources, costs and expenses that resulted in a heavy financial and emotional burden for all the people involved. And that it has been nothing but a waste of time and effort for the Indonesian Government, NMR, myself and a lot of people involved in this Criminal Case, the Civil Case, the Administrative Case and related activities. And was it all for? The water in Buyat Bay is still safe and

clean, ready for sustainable development, and is even being promoted by the government as a diver's paradise with a vibrant ecosystem, with gorgeous coral reefs, including a widely diversified fish population. It is ironic, that while we sit here in court, an investor is currently building a huge cold storage and fish processing plant that will supply fish to both the domestic and the export markets at the very location that the Prosecution is charging me of polluting. This is worth repeating: the people from the area are still fishing in the bay, an investor is spending millions of dollars to expand the domestic and international market of the fish from that location, the Government of North Sulawesi and Minahasa is promoting Buyat Bay as a tourist and recreational dive location, thousands of local residents go to this location to swim and dive in its clean and pristine waters. Yet the Prosecution stubbornly insists on continuing to try to convict and imprison me for polluting a bay which in reality has clear and pristine waters that the province and this nation should be proud of! Furthermore, the people of Buyat are healthy and eager to go forward with their bright future. One does not need a legal or scientific degree to see that something is fundamentally wrong here.

II. Violation of the Constitution, Indonesian Laws and Regulations and Human Rights

The violation of the UUD 1945 and Indonesian Laws and Regulations during the investigation process and prosecution against NMR, me and several members of the Board of Directors and employees of NMR, will be meticulously and firmly described in the Defense of Defendant I and Defense of Defendant II. However, for the purpose of consistency and completeness of my own defense, and since this issue relates to my personal rights that have been violated and that those violations have had a severe impact on my family, I will incorporate such parts of the defense as an integral and inseparable part of my own defense, without any exceptions.

In this section, I would like to highlight the following issues. The order of the following violations does not indicate their degree of severity.

(1) The Investigation and Prosecution Violate the Subsidiary Principle

As I have asserted in point 1.3(d) above, this case is clearly a case of environmental dispute, therefore, the investigation and prosecution on this Criminal Case shall not be carried out before all efforts toward civil and administrative settlements and or alternative dispute resolution as provided in the Environmental Law have been exhausted. The investigation and prosecution that were conducted by the Police Department and Public Prosecutor Office have caused the detention, examination and also the imposition of a travel ban on several members of the NMR Board of Directors and employees of NMR, including myself, except that I was detained and later released due to medical reasons as supported by valid medical records. The investigation and prosecution are vested in the authority of the law enforcers pursuant to the Indonesian Laws and Regulations which is applicable generally, and this could be accepted, however, the investigation and prosecution that were carried out by violating a *lex specialis* regulation, (in this case is the Environmental Law) on one hand constitute a violation of the law and as a result render such a process to be illegitimate, and on the other hand violate the human rights of those who were unfortunate enough to have been affected by such unlawful investigation and prosecution.

The personal rights which were violated by such unlawful processes not only constitute a defamation of those persons who were the objects of the investigation and prosecution, but also adversely affect their careers and employment prospects, not to mention the immeasurable intangible and material damages suffered by them, their families and the community they live in, as well as the losses suffered by NMR as a company that has had to sustain and continues to sustain all the losses caused by negative publicity, costs and expenses during the process, and damage to its cherished reputation, all simply because of a wrong and unlawful process.

(2) Criminalization Based on the ERA Requirements Which Have Not Yet Been Enacted

The Public Prosecutor's Team has wrongly applied the law by indicting that NMR shall fulfill the requirements of ERA study prior to disposing NMR's tailings to Buyat Bay. Before I start a more detailed argument, I will start by stating that the ERA, that according to the Indictment is a prerequisite for obtaining a permit, is a charge unsupported by the facts. However, even if it was right, *quad non*, the possession of a permit is an administrative matter and not a crime of pollution or degradation of the environment. The mistake is undoubtedly proven because: (a) ERA study is not a legal requirement that has to be complied with by anyone, but is merely used as a parameter, and even the Indonesian Government has not yet been able to determine such parameter and its application; (b) the permit issued by the KLH Minister only required NMR to conduct an ERA study, and it was accomplished by NMR as confirmed in the Indictment. There was no requirement whatsoever set forth in the Permit that required that the ERA Study should obtain prior approval from the KLH Minister. To the best of my knowledge, until this moment, the KLH Minister has not yet issued a regulation or any public policy which requires the ERA study to be carried out by any kind of industry, complete with its parameter and technical guidance, nor do I know of any jurisdiction in any nation which requires an "approval" of an ERA and in this court, both the prosecution witnesses and experts admitted that there was no legal bases for the ERA.. My understanding is that after the receipt of the ERA, the government could have increased or decreased discharge standards, depending on the results of the study, or they could have revoked the permit, however, I had never even contemplated that some misguided regulator would consider that he or she should "approve" such a document. If those involved had even read the study, they would have known that pollution and "Minamata" disease was technically impossible in the given circumstances.

(3) Unlawful Detention and a Violation of Human Rights

It will be mentioned in the defenses by both the Defense Counsel to Defendant I and Defense Counsel to Defendant II, that during the investigation process of this Criminal Case, the Police detained members of the Board of Directors and employees of NMR for over a month. They were Bill Long, Phil Turner, David Sompie, Jerry Kojansow and Putra Widjayantri. The process and execution of such detention violates the procedures and requirements of detention as stipulated in the Criminal Procedural Law. Article 21 paragraph (1) of the Criminal Procedural Law requires the following in the case of detention is necessary for the purpose of examination: (a) the criminal action shall be supported with strong evidence; (b) there is concern that the suspect or defendant might escape; (c) there is concern that the suspect or defendant might intentionally eliminate or destroy the evidence, or (d) there is concern that the suspect or defendant might repeat his criminal action.

There are two main reasons that were explained to me as to why the detention by the Police against several members of the Board of Directors and employees of NMR should be deemed wrong, and therefore unlawful and illegitimate:

Firstly, in accordance with the Police Dossier on the investigation of the Suspects, the articles used to charge the Suspects are Article 43 or Article 44 in conjunction with Article 46 of the Environmental Law. Although in the Police Report from Dr. Jane Pangemanan M. Kes addressed to the Police Department, the indictment was charged to NMR and the Department of Health of the Republic of Indonesia which were alleged to have violated Article 359 and Article 356 of Indonesian Criminal Code in conjunction with Article 8 and Article 9 of the Law on Health. If the grounds used by the Police Department to conduct investigation are the provisions as stipulated under the Environmental Law, then such investigation should be subject to the Subsidiary Principle as enshrined in the Environmental Law. In this Criminal Case, the investigation should not have been carried out

prior to the completion of the Alternative Environmental Disputes Resolution as stipulated under the Environmental Law, and further, in the event that it is necessary to carry out an investigation, then that shall comply with the provisions of the Joint Decree which require the Task Force to uphold the Subsidiary Principle.

Second, the detention as mentioned above did not meet the requirements as stipulated by Article 21 of KUHAP, for the following reasons, that: (1) there is no strong evidence that can be used as the grounds of the Indictment and the Charges with regard to the alleged Pollution and Environmental Damage of Buyat Bay by NMR, on the contrary, the evidence submitted in this Criminal Case, including from the independent international institution, WHO, CSIRO and others, have shown that Buyat Bay and the Buyat Bay Waters are not polluted nor damaged; (2) there should be no concern that during the investigation process of the Police that the Suspects might escape, since all of the Suspects have always demonstrated and acted cooperatively in every investigation session conducted by the Police, besides, in accordance with the requirements set forth under the Criminal Procedural Law, guarantees have been provided by the families of the Suspects, NMR, Department of Mining and Mineral Resources, the Embassy of Australia and Embassy of the United States of America; (3) there should be no concern that the Suspects might intentionally eliminate or destroy the evidence, because if Buyat Bay or the Buyat Bay Waters is indeed polluted or damaged, these are conditions which cannot simply be eliminated or destroyed by any party for a long period of time. Besides, when the detention was being conducted, the Police Dossier had been entirely completed and all of the evidences had been collected by the Police Department; and (4) there should be no concern that the Suspects might repeat the criminal action charged against them, because at the time of the investigation, if the allegation is causing the pollution or damaging the environment in Buyat Bay or the Buyat Bay Waters, all of the operational and mining activities of NMR, have been ceased by NMR due to economic reasons on 31 August 2004 with the approval of Department of Energy and Mineral Resources, thus

NMR's tailings disposal to Buyat Bay would be impossible. The word "concern" in the provision of the Criminal Procedural Law, should not be presumed or assumed, but it should be proven that the suspect or defendant has taken concrete steps which would lead one to reasonably believe that the effects concerned had in fact occurred.

The wrongful, unlawful and illegitimate detention violated my human rights and the freedom of the Suspects as guaranteed in the UUD 1945 as amended.

(4) Denial of the Suspect's Right to Submit Witnesses and Evidence

As articulated to me, the universal maxim of law states: "*Audi alterum partem, hear the other side. No one should be condemned unheard.*"

Article 17 of the Human Rights Law states: "*every person without any discrimination, is entitled to justice by the right to submit proposal, complaint and claim, whether in criminal, civil or administrative case and can be put on trial through a fair and free trial procedures, in accordance with the procedural law which guarantees the objective investigation by judges who are honest and fair to render a just and right verdict.*"

In this Criminal Case proceeding, Defendant I and Defendant II have submitted witnesses and experts to provide explanation with regard to the false indictment charged by the Public Prosecutor's Team. It was established in the court proceeding that the Indictment and the Charges are completely untrue, and it was also established that NMR has the requisite license to dispose of tailings in Buyat Bay, the tailings disposed by NMR are not categorized as B-3 Waste, Buyat Bay Waters are clean and even based on the applicable Quality Standard Buyat Bay Waters are by far cleaner compared to the waters of the Pacific Ocean and Atlantic Ocean, and Buyat Bay fisheries are safe to consume, also the health rate of the people living in the Buyat Bay area exceeds the average Indonesian national health rate. Most of the witnesses and experts as mentioned above were submitted by Defendant I and Defendant II to be examined by

the Police Department as requested in letter from NMR's attorneys No. 72/NMR/PID/X/Ip dated 18 October 2004 to the Police Department, which was then followed by letter No.92/NMR-PID/XI/Tim dated 1 November 2004, letter No.99/NMR-PID/XI/Tim dated 8 November 2004 and letter No.102/NMR-PID/XI/Tim dated 23 November 2004, all of which were for the purpose of seeking the material truth in this case. Nevertheless, without any valid grounds nor reasons, such proposals were never addressed by the Police. In addition, when I was later examined as a suspect representing the company, on 21st of December, 2004 the police investigator completely ignored my repeated requests for submitting additional evidence and witnesses in favour of the suspects in this case. The examination lasted until 3 pm, however, I was adamant that reports such as the one compiled by the WHO, CSIRO, the October 14th 2004 report from the Minister of Environment be admitted as evidence, plus a list of witnesses and expert that should be called and who would clarify all the allegations regarding pollution of Buyat Bay. The investigator blatantly refused my request. I placed the reports and list of names of witnesses on his desk and we argued about the inclusion of this evidence until approximately 9 pm. In the end, the investigator did agree for me to include the following in my minutes of examination, as can be seen in item 17 of the BAP which quotes:

"17. Do you have any other information in connection with your examination as the person acting for and on behalf of corporation PT NEWMONT MINAHASA RAYA that you wish to add?"

17. Yes, I do, namely:

a. Whereas in order to support the statements and information or the examination of this case, P.T. NEWMONT MINAHASA RAYA requests that witnesses and experts in favor of the company be examined in this investigation in accordance with the list I have prepared and submitted, including the letters that I have prepared and submitted ."

At the end of the night, I left all the reports as evidence and the list of witnesses that I wished to be called on the investigator's desk. However, when the BAP and evidence was presented before this court, none of the evidence I submitted was included and none of the witnesses I had requested to be examined were called to give testimony, in fact, the minutes of the testimony by the Minister of Environment, Nabel Makarim who was examined by the police, was removed from the BAP. This proves without any doubt whatsoever that the denial to have evidence and witnesses was not a oversight by the investigator and the Police Headquarters, but a deliberate and intentional act to violate my basic right to have evidence, witnesses and experts presented that would support my position. In this occasion I wish to reiterate my position that the I consider the investigation against me in this case illegal, discriminative, and a violation of my human rights which are protected by the laws and regulations of Indonesia and I refute all charges that have been brought against me as I was denied my fundamental right to defend myself.

It further has to be noted that during the proceeding of this Criminal Case, there have been 46 fact witnesses, 26 experts and 207 written evidence presented to the Panel Judges. The Charges unfairly considers the testimony of 21 fact witness and 9 experts, and 7 written documents as evidence. The testimony of 25 fact witnesses and 19 experts, and 200 written documents of evidence which would prove that the Indictment and Charges are baseless, were not considered, and these obviously make this Criminal Case a model of repression and ignorance of human rights by the Public Prosecutor's Team.

If only Defendant I and Defendant II had been afforded the opportunity by the Police to examine the witnesses and experts that were proposed by Defendant I and Defendant II and if only the investigating officers of the Public Prosecutor's Office had been willing to look further by cross examining Defendant I and Defendant II as well as the factual witnesses and experts as proposed by Defendant I and Defendant II, this case should have never been advanced from the investigation level to be prosecuted in this Manado District Court. This is so because it was

apparent that there was no unlawful act committed by either Defendant I or by me, as Defendant II: not to mention that there **was no Pollution nor Environmental Damage whatsoever caused by the Defendant I or by me as the Defendant II.**

The rights of Defendant I and/or me as the Defendant II to propose factual witnesses and experts are rights guaranteed by UUD 1945 and the Indonesian Laws and Regulations. The denial and refusal of such inalienable rights as described above clearly suggest deliberate attempts to fabricate a situation in which an investigation should never have taken place to become an actual on-going court proceeding. Obviously, such is a blatant and serious violation of the UUD 1945 and the Indonesian Laws and Regulations, and should be one of the primary considerations of the Honorable Judges in their deliberations to render its judgment.

Article 6 Paragraph 1 of the Judiciary Law stipulates that: *“no person can be imposed with criminal sanction, except if the Court, by virtue of valid evidence presented in accordance with the prevailing laws, is of the opinion that such a person can be considered as liable, is guilty of the crime being charged against such person.”*

Such a principle certainly endorsed the notion that in rendering its verdict on a criminal case, there should not be a shred of doubt on the part of the judges, and that in addition to the evidences in the form of material facts and truth as the basis of their decisions, there should be an indisputable conviction and belief on the part of the judges to form such opinions. In this Criminal Case, if only the information from the factual and expert witnesses from Defendant I and Defendant II was cross-examined during the investigation process by the Police Department, then there should not be any doubts for the investigators to conclude that this Criminal Case should ever be processed from an investigation into an indictment.

Even in this proceeding, after everything had finally come to light, there could have been a corrective action taken to rectify the serious violations of the UUD 1945, Indonesian Laws and Regulations, and human rights by

the Police Department and the Public Prosecutor Office. Now at this stage all this can only be remedied by the acquittal of or at least the release of the Defendant I and myself as Defendant II from the Charges and an investigation launched to determine why my basic rights were ignored and violated in the investigation of this case.

(5) The Application of an Unlawful and Inhuman Travel Ban

During the Habeas Corpus hearings, which the Suspects (including myself) submitted a motion to revoke the illegal detention of the Suspects in the allegation of pollution and damage to the Buyat Bay, the District Court of South Jakarta in the Habeas Corpus Writ granted the motion and ordered the Police Department to cease the detention. The Police Department, however, chose to disregard the Habeas Corpus Writ, and continue to detain the Suspects, and even imposed a Travel Ban on the Suspects based on the Decree of the Director General of Immigration. The Suspects had filed an administrative suit against the Director General of Immigration in the Administrative Court for the Travel Ban. Pursuant to the Administrative Court Decision that granted the motion by the Suspects, the Director General of Immigration appealed the Decision of the Administrative Court, but then withdrew his appeal without any clear reason.

The attitude of the Police Department and the Director General of Immigration, which in this case represent the Indonesian Government, is clearly disappointing, and such attitude can be deemed as an obstruction of a Court order or disobedience or interference against a Court order, which under the provisions of Article 4 Paragraph 3 in conjunction with Paragraph 4 of the Judiciary Law constitutes a criminal act.

It pains me to say that such an absurd and harsh attitude of the Police Department and the Director General of Immigration is inconceivably inhuman and blatantly violates any ethical standards and my human rights as protected by the Human Rights Law, because as a result of such denial

and refusal, I could not attend the funeral of my 20 month old only grandchild in the United States.

(6) Some Unusual Procedures and Attitude of the Law Enforcers

The reasonable and strong assumption that NMR and I are both targeted by certain parties, and not because of the existence of any unlawful act or Pollution or Environmental Damage, which was supported by the witness from the former KLH Minister, DR. Nabel Makarim in this trial, can also be evidenced by, among others, the many unusual procedures and display of attitude by the Police Department and Public Prosecutor's Team in the investigation process and during the Criminal Case proceeding. The unusual procedures or attitude, among others, can be evidenced by the followings:

(a) Public Prosecutor's Team Prosecutes Based on a One Sided Police Dossier. Even with the knowledge that the investigation process by the Police Department directly violates the Subsidiary Principle and it violates the criminal processes applicable in a case of an environmental crime and the denial of the Suspects' rights to propose factual and expert witnesses, the Public Prosecutor Team (which is also bound by the same legal principles), continued to process this Criminal Case and advancing it to the level of prosecution.. At this stage, NMR's Attorneys by Letter No.10/NMR-PID/I/05/Tim dated 13 January 2005 had submitted a request to the Public Prosecutor Office that the witnesses submitted by NMR should be examined. However, without any clear reason and legal basis, this request was disregarded by the Public Prosecutor's Team, and as a result, once again, the denial of the Suspects' right, including NMR's and mine, occurred by violating the Indonesian Laws and Regulations, justice and the basic principles of humanity.

(b) The Police Did Not Fulfill the Investigation Process

Pursuant to Document P-19, the Public Prosecutor's Office requested the Police Department to: (i) determine the status of the Suspects which cannot be liable for corporate environmental crime, (ii) examine the samples of evidence in an internationally or nationally certified chemical laboratory, (iii) inquire of all the Suspects on whether or not they want to have their witnesses to be examined by the investigators. Not a single one of the requirements required by the Public Prosecutor's Office was fulfilled by the Police Department. Even though the Police Department did not fulfill the requirements as requested, the Public Prosecutor Office still decided to continue with the prosecution by naming NMR and I as defendants. The other five suspects, who are also NMR employees, are not prosecuted, but on the other hand, they were also not released from the investigation by the Public Prosecutor Office. Such inconsistency on the part of the Public Prosecutor Office clearly violates the principle contained in Article 140 paragraph 2(a) of the Criminal Procedural Law.

(c) Cancellation of the Habeas Corpus Writ

As explained above, NMR has submitted a habeas corpus claim against the Police Department of the Republic of Indonesia. The District Court of South Jakarta in its judgment had granted NMR's motion as follows: (i) granting the motion in part, (ii) declare that the detention, extension of the detention and restraining order against the employees of NMR, including the investigation process itself, to be illegal. Contrary to this Habeas Corpus Writ, the Police Department continued to hold the Suspects in detention and continued to hand over the processing of the case to the Public Prosecutor Office. It was also in contravention with the of Supreme Court Law in conjunction with Circular Letter of Supreme Court No.7 Year 2005 regarding the Elucidation of Article 45A of Law No. 5 Year 2004 which prohibits appeal to the Supreme Court against motion judgments, the Police Department had actually submitted an appeal to the Supreme Court in this case. In a tragic turn of events, the Supreme Court, the supreme judicial body which issued the

foregoing rules itself, accepted and granted such appeal. NMR had submitted a civil review to the Supreme Court against such judgment; however, the Supreme Court has yet to render its judgment. I could only conclude that the laws can contain universal, certain and just legal principles, but used by and in the wrong hands, such laws can function as the means to legitimize illegal conducts, a tool for repression, and a support system to corroborate an attempt of certain parties to discredit a person or an institution for wicked purposes.

(d) Indictment Based on Illegal and Unlawful Evidence

During the proceeding of this Criminal Case, from the witnesses of the expert and factual witnesses, it was established that the split samples of water taken from the Buyat Bay Waters by the Police Department jointly with NMR, have gone through certain incidents which render the said samples to be inadmissible as evidence, namely: (i) from the collection and storage prior to such samples being delivered and given to Police Criminal Laboratory, and during the journey to the Police Criminal Laboratory, the samples were not treated in the manner which is supposed to maintain the authenticity of the samples' conditions, and as a consequence the result of the Police Criminal Laboratory is not scientifically reliable While in fact, the result of the Police Criminal Laboratory is the only evidence used by the Police Department to transfer the case to the Public Prosecutor Office to be prosecuted, and is eventually used as the only evidence in the Indictment to charge NMR and myself with the Pollution and/or Environmental Damage; (ii) the water samples taken in the field consist of 24 (twenty four) bottles, while during the proceeding of this Criminal Case, the Public Prosecutor Team presented 29 (twenty nine) bottles of water samples before the hearing of the District Court of Manado, while in the BAP, the Police laboratory indicated that they received 34 (thirty four) and therefore there was an additional quantity of water samples which were added by some one and not a single member of the Public Prosecutor Team can explain where they came from, and which by their

presence alone can sufficiently prove that certain alterations were made to the evidence used during the course of the investigation and/or the proceeding of this Criminal Case, and as a result render such samples as inadmissible as evidence in this Criminal Case. Moreover, it was discovered in the proceeding that the Police Forensic Laboratory has never received any accreditation from any institution, which can only strengthen my conviction quality and integrity of the results produced by the Police Forensic I Laboratory are unreliable and spurious. Even stranger is that the prosecution submitted the Police Laboratory results that were vastly different from the results of the Integrated Technical Team, that were also by prosecution as evidence number P-4. The results of the Police Laboratory were also vastly different from the split samples that the police investigator gave to NMR for testing in ALS, an accredited laboratory. If there is a difference between the police and other laboratories, then the National Referral Laboratory should have been appointed to retest the samples as regulated in Government Decree No-82-2001. Once again, there were rules and regulations that could have prevented this *sandiwara* (farce or comedy), but they were not followed in this case.

(e) The Public Prosecutor Team Denies a Court Order

It is the obligation of each party in a proceeding of a criminal case to seek and obtain material truth of the facts relevant to the criminal act at hand or the criminal act being charged against the defendant. While interpretations may differ, the fundamental procedures may not be compromised, because, if they are, truth and justice will never be obtained. Everyone involved in this Criminal Case has an equal duty to search such material truth. The evidence as submitted by the Public Prosecutor Team in the proceeding of this Criminal Case, particularly the result of the Police Forensic Laboratory's examination, raised not only reasonable but also substantial doubts about the validity of those results, because they are virtually useless in terms of evidence, and scientifically defy all logic, especially when

compared to the result of the examinations of other independent and accredited laboratories, including WHO and CSIRO, all of which have produced the same results which were starkly different from that of the Police Forensic Laboratory. On that basis, the Defense Counsel for Defendant I and Defense Counsel for Defendant II filed a petition to the Panel of Judges of this Criminal Case for a resampling in Buyat Bay to be retested by independent and accredited laboratories. Such petition was granted by the Panel of Judges by its Ruling No. 284/Pen.Pid/2006/PN.MDO dated 14 of July 2006.

One of the members of the Public Prosecutor's Team then expressed his objection to this court order by its letter No. B 1464/R.1.12/Ep.1/07/2006 dated 18 July 2006 addressed to the High Prosecutor Office in Manado. Such an objection by such a person can be concluded to at least prove: (i) that the Public Prosecutor's Team did not perform its legal duty as entrusted by Public Prosecutor Law to obtain material truth in a criminal indictment, and (ii) that the Public Prosecutor's Team had disobeyed a Court Order which was an apparent disregard of the provision of Article 4, paragraphs 3 and 4 of the Judiciary Law. Such disobedience can also be considered as circumventing or interference with the independence of the judiciary (as governed under the Judiciary Law which imposes a criminal sanction against its offenders). From what I can find the law is very clear in this regard. Article 4 (3) states: "any interference to the judiciary by any parties outside the judiciary shall be prohibited, except for reasons stated in the UUD 1945 Constitution." Article 4 (4) states: "anyone who intentionally breaches such provision of paragraph 3 shall be penalized."

Conclusions:

1. Each and every element in the Indictment and Charges asserting that NMR and I have intentionally or due to negligent behavior and unlawfully and without due authorization polluted or damaged the environment in Buyat Bay has never been conclusively established. On the contrary, NMR and I, along with a number of expert and factual witnesses during the proceeding of this Criminal Case were able to conclusively establish

that the disposal of tailings to Buyat Bay was in fact carried out in accordance with Indonesian Laws and Regulations, based on a valid license as required under the Indonesian Laws and Regulations in the form of AMDAL and Permit issued by the KLH Minister. Therefore there is no unlawful act at hand, and there is no Pollution or Environmental Damage to the environment, because all evidence and information from the expert and factual witnesses clearly demonstrated otherwise, that NMR's tailings disposed to the Buyat Bay seabed is not a B-3 Waste, Buyat Bay Waters are clean and the environment therein is unpolluted or not damaged, *thermocline* is found in the Buyat Bay Waters, Buyat Bay fisheries are safe for consumption, and the health of the population living within the Buyat Bay area is better compared to the national health rate and they do not suffer any medical problems which are specifically related to the mining operations of NMR.

2. The legal basis used by the Public Prosecutor Team against the Defendants is wrong, and has never been revised or corrected until today. Law number 5 of 1994 on the Rectification of the United Nations Conventions on Biological Diversity which is used as the basis of the Indictment and the Charges has no relevance to this case, and as such the Indictment and Charges are void by law and have to be deemed to have been dropped.

3. As the President Director of NMR, I am not responsible for any technical aspects of the mining operation and activities of NMR including the disposal of tailings to Buyat Bay, because of the following: (a) the Board of Directors of NMR functions and is responsible as a collegial representation as an organ of a limited liability company, (b) the duties and responsibilities of the President Director of NMR are focused on government relations and coordinating management functions in general, (c) the technical aspects of the mining operation and activities of NMR including the disposal of the tailings to Buyat Bay is the responsibility of

the Chief Technician or General Manager of NMR, (d) all consequences arising from and my responsibilities as a member of the Board of Directors of NMR for the management duties performed by me have been approved and assumed by NMR through the approvals of the relevant AGMs; (e) the Environmental Law never states that the ultimate leader of a limited liability company should be responsible for an environmental criminal act, but merely states that the leader of the relevant criminal act should be held responsible, and I have never been assigned or acted as the leader or the one who gives instruction within the meaning of the Environmental Law, and the prosecution has not proven it.

4. The Public Prosecutor Team has mixed up the concept of liabilities of the Board of Directors under the Indonesian Laws and Regulations. The concept of liabilities of the Board of Directors is based on joint or collegial liabilities except in certain limited exceptions that are clearly not applicable to this Criminal case. Provided, the Board of Directors have performed the duties assigned to it pursuant to the Indonesian Laws and Regulations and the articles of association, the liabilities arising from the management shall be assumed by the company as a legal entity. The criminal liability in the Environmental Law also refers to the liabilities of a legal entity, and to the person who directly leads a criminal act or gives instruction to commit the criminal act. I do not fall under any of these categories.

5. The investigation and indictment against NMR and me in this Criminal Case is a violation of the Subsidiary Principle adopted by the Environmental Law and its implementing regulations, and as such the entire process of investigation and indictment against NMR and me in this Criminal Case is a violation of the Indonesian Laws and Regulations and therefore unlawful. The exemptions to the Subsidiary Principle, namely: (a) the Environmental Alternatives of Disputes Resolution has been exhausted but was ineffective and/or; (b) the level of the perpetrator's offense is relatively grave, and/or; (c) the impact or effect of such offense

is relatively grave and/or; (d) the effect of such offense has created public unrest, are not applicable in this Criminal Case because each and every one of those elements were conclusively established in the proceeding of this Criminal Case as never have existed or occurred.

6. The execution of the Goodwill Agreement by and between the Indonesian Government and NMR is unmistakable evidence that the Indonesian Government had actually expressly acknowledged that the issues arising from tailings disposal to Buyat Bay is an environmental dispute which requires further monitoring and research by independent panel of experts for a period of the next 10 years, and is not an environmental criminal act. The Goodwill Agreement further reinstates that at this time it has not yet been established that the Pollution and Environmental Damage have indeed occurred in Buyat Bay or Buyat Bay Waters.
7. During the proceeding of this Criminal Case the Public Prosecutor's Team has gone against its conscience and logic by trying to apply a provision which is not yet enforceable, in this case the ERA study requirement, to NMR in connection with the tailings disposal to the Buyat Bay, however, it was also discovered during the proceeding of this Criminal Case that the ERA study is not a legal requirement applicable in Indonesia, and that the permit issued by the KLH Minister actually had not required an approval by the Indonesian Government of the ERA study carried out by NMR, and therefore, the arguments of the Public Prosecutor Team of the applicability of the ERA study and the requirement of an Indonesian Government approval of such study is untrue and as such has to be dismissed.
8. The Contract of Work shall constitute a, be binding, and enforceable against the Indonesian Government and NMR as, the law since it fulfils all elements of a legal, binding and enforceable contract, endorsed by the DPR and approved by the President of the Republic of Indonesia. All

plans, designs and programs in respect of the mining operations of NMR including the disposal of NMR's tailings in Buyat Bay were pursuant to the Contract of Work approved or deemed to have been approved by the Indonesian Government, and more specifically tailings disposal to Buyat Bay was approved by the Indonesian Government pursuant to the AMDAL and later by the permit issued by the KLH Minister. According to the Contract of Work, the Indonesian Government shall notify NMR if there are any issues with the plans, designs or programs including those that relate to the environmental issues, and has the right as a contract signatory, and even as a regulator to refuse the plans, designs and programs, and furthermore has the right to issue a warning or even to instruct the stoppage of NMR's mining operations of NMR including the disposal of the NMR's tailings in Buyat Bay. The Indonesian Government, as a party to the Contract of Work, and as regulator, until today, never issued such notice, refusal, warning or instruction to stop operation or tailing disposal, and as such, as a matter of contract and as well as law, the mining operations of NMR including NMR's tailing disposal to Buyat Bay shall be deemed legal, accepted and approved by the Indonesian Government.

9. The detention of the Suspects in this case is wrongful and therefore, constitutes an illegal act, considering that none of the requirements for a legal detention as provided in Article 21 Paragraph (1) of the Criminal Procedural Law is fulfilled by the investigators.

10. The refusal of the Police and the Public Prosecutor Office to grant NMR's request to examine *a de charge* witnesses as submitted by NMR is a violation of the Suspects' rights as provided in the Criminal Procedural Law and the Human Rights Law. If only such request to examine *a de charge* witnesses as submitted by NMR was granted, material and important facts which demonstrate that NMR did not carry out any of the Pollution and Environmental Damage as charged against it should have

been discovered during the investigation, and the Police Department did not have to continue to increase it into the examination process and the Public Prosecutor Team did not have to continue the indictment and charges of this Criminal Case.

11. The Travel Ban imposed to the Suspects in this case including to me not only violates the Indonesian Laws and Regulations, which was confirmed by the Decision of the Administrative Court which decided in favor of the claims submitted by the Suspects against the Travel Ban, but also constitutes as a violation of my human rights as an individual whose freedom was denied even to visit and attend the funeral of my only grandchild who died in the United States.

12. The Police Department and the Public Prosecutor Team have violated multiple and numerous provisions and procedures of laws which are applicable in the investigation and indictment processes of this Criminal Case, including: (a) indictment on the basis of the Police Dossier which was one sided and prepared based on partial investigation because of the refusal to examine *a de charge* witnesses, (b) the Police Department failed to fulfill the requirements as required by the Public Prosecutor Office in a number of P-19 Documents, (c) the Police Department appealed to the Supreme Court a court decision which granted the motion filed by the suspects despite its knowledge that such appeal is prohibited by the Indonesian Laws and Regulations, (d) the Indictment and Charges were based on inadmissible evidence because the Police Department failed to maintain the authenticity of the Police Samples, (e) the Public Prosecutor Team had provocatively refused the order of the District Court of Manado to carry out a re-sampling of the waters in the Buyat Bay in pursuit of material truth related to this Criminal Case, which was an intervention of the independency and supremacy of the judiciary and constitutes as a criminal act based on the Judiciary Law.

4. RESPONSE TO CHARGES OF THE PROSECUTION – TESTIMONY

Your Honorable Panel of Judges:

This trial has been in process for over a year and even when drafting this Pledoi, I found it difficult to recall the testimony of all witnesses that have testified before this court. In this section of my Pledoi I will attempt to address many of the Charges as raised by the Prosecution, with actual court testimony to prove the charges as indicated in the Requisitor, are not only baseless but factually are not supported by the witnesses and experts' testimony.

I ask the court's indulgence as I address several topics raised by the Prosecution with actual quotes from sworn testimony.

Issue of Permit

The Requisitor states:

- **That letter B-1456/2000 issued on 11th July 2000 was not a permit to dispose of tailings into the sea but it was a letter [of instruction] to conduct an ERA using the method of joint sampling (taking samples together with relevant agencies).**

If one reads the Minutes of the Police Investigation (BAP) question number 4 on Sony Keraf's testimony to the police on August 25th, 2004 it reads as follows:

4. *Is it true that when you served as the Minister for Environment/ Bapedal Head you issued a permit to PT. Newmont Minahasa Raya to dispose of waste to Buyat Bay?*

4. *Yes, it is. When I served as the Minister for Environment/ Bapedal Head, I once issued a temporary tailing waste disposal permit to PT.*

Newmont Minahasa Raya to dispose of wastes to Buyat Bay pursuant to the Letter I issued as the Minister for Environment/ Bapedal Head to the President Director of PT. Newmont Minahasa Raya Number: B-1456/BAPELDA/07/2000 dated July 11, 2000 concerning tailing waste disposal to Buyat Bay.

It seems that individuals outside of the normal Prosecution team drafted the charges with a request for a three year jail term, did not read the Police Investigative report carefully but also must have been absent from the court during the former Minister's testimony. Because according to the court transcript of the court hearing of 27th January, 2006 Former Minister Sony Keraf and the Prosecutor called letter B-1456/2000 issued on 11th July 2000 a permit, in fact even the Honorable panel of Judges called the letter a permit:

- quote – page 577 of the English transcript (volume II) of Minister Sony Keraf (SK) being questioned by the Honorable Panel of Judges (J)

J III: In what form was PT NMR's obligation to conduct an ERA study?



SK: Pardon?

J III: To do this Ecological Risk Assessment (ERA), after a complaint was made, after a waste dumped into the sea then there were complaints or, whatisit called, it caused a reaction, then the MoE Minister issued a temporary permit while examining if it was true, right? And obligating PT NMR to conduct an Ecological Risk Assessment, right?

SK: Yes.

J III: At that time, that order, uh, in what form was it?

SK: In a letter.

J III: A letter, yeah?

SK: A letter from the Minister of Environment, sorry, as the Head of Bapedal.

J III: You could show the temporary disposal permit later, right? Is there a copy there...

SK: *There is.*

In Sony Keraf and the Judges own conversation they are calling the letter a permit (however the word temporary is used).

- quote - Page 9 of English transcrip of Minister Sony Keraf (SK) being questioned by the Prosecution (PP)

PP3: *So there's none. So a permanent permit to dispose of tailings in the sea was never issued by your ministry?*

SK: *No.*

PP3: *Yes, and you said with a letter... According to your earlier statement, with that letter of yours, it was a permit temporary in nature. Whether the tailings disposal can be continued or not would depend on the ERA study conducted?*

SK: *Correct*

PP3: *Yes. Until you finished your tenure... but before we go there, what was the date that letter issued?*

SK: *The letter was issued on 11 July, year 2000.*

PP3: *11 July 2000, and you were held the minister's office until August 2001, right Sir?*

SK: *Yes.*

Unquote.....

During the expert's examination, the Presiding Judge questioned Administrative Law expert for the Prosecution, Yusuf Warlan, when he stated that letter from Sony Keraf No. 1456/BAPEDAL/07/2000 of 11th July 2000 was a 'ijin" not a izin (permit). The Judge informed the witness that the person who had issued the letter, Minister Sony Keraf, had actually stated before this court that the letter was a permit.

Under oath, it does not sound like the Minister, the Prosecution and the Honorable Panel of Judges thought that the letter B-1456/2000 issued on 11th July 2000, was a mere letter, and that the letter was in reply to my permit

application, and in that application letter, the word “izin” (permit) was used, and in reply to my letter, the Minister of Environment issued permit No 1456/BAPEDAL/07/2000 that stated NMR was permitted to discharge tailings. I can only conclude that 1456/BAPEDAL/07/2000 was the permit I had applied for.

All other witnesses used the word “a permit”, even though the word “temporary” was sometimes used. But the word, temporary was clarified under cross examination of Minister Sony Keraf by defense lawyer Palmer Situmorang (PS).

Quote court transcript 27 January 2006

PS: In this letter, you can read it too because this is the same as the one you have, is there the word “temporary” mentioned? Do you find the word “temporary”?

SK: Well, true, that there is no word “temporary”...

Even when I (RBN) cross examined Minister Sony Keraf (SK) the court transcript reads

Quote court transcript in English volume II (page 603)

RBN: I can conclude that I accept the Witness’ testimony that he has a minister issue develop permit to disposal tailings to Buyat Bay.

SK: I allowed temporarily, as I have said earlier in...

RBN: And as the Minister you never revoked that permit.

SK: That permit, there was no letter about revoking, or whatever, because [we were] still waiting for the results.

- unquote

It is therefore easy to understand from the actual court transcripts that there was a permit, I repeat, there was a permit. Some thought it may be temporary in nature, but even Minister Sony Keraf stated that it did not state “temporary”

on the permit, that he never revoked it and therefore it was valid and never withdrawn.

From the court transcripts of 14 July 2006 it is also easy to see the State Minister of Environment, Nabel Makarim (NM) and the Prosecution (PP) also were stating that the letter B-1456/2000 issued on 11th July 2000 was a permit.

- Quote English Court Transcript of 14 July 2006

Note: J2 is the abbreviation for Judge2, NM stands for Nabel Makarim

PP2: Yes, alright. And then what I wanted to ask, still concerning that. Was PT NMR... when you were in office as minister, have you issued permits to PT NMR to dispose of waste into the environment? Have you [done that] in a written letter to PT NMR?



NM: The answer would be no, because there is no need. Why need a permit on top of a permit? It's impossible, right? This permit was already in effect, and it is valid. Why must there be another permit?

PP2: The permit which you say is valid was which one?

NM: The one dated 11 July from Pak Sony. It must be...

PP2: That letter number 1456?

NM: I must follow the existing policy first. The office decision must have consistency. Just because I was in office, do I have to issue new permits in place of all existing permits? No, right? Or else... so this is consistent, following what already exists here.

PP2: Yes.

NM: Yes, alright.

PP2: Alright. And then, when you were the State Minister of Environment, have you issued permits to PT NMR?

NM: Sir, again, this is the permit, Sir. Here, the permit already exists, the decision of my predecessor. How is it going to be if I were to issue permits again? How many dozens more would we need?

-unquote

According to the testimony of witness, Safri Nugraha (SN) in his testimony on 30 June 2006 (English transcript volume III page 1823) before this court when examined by the defense lawyer (LMPP) the testimony reads:

-quote

LMPP: Expert, please read the first page, which starts with “regarding your letter No.1221” and so on dated 17 April 2000. So this is what you meant by a request... so beginning from a request. And this letter is from PT NMR, therefore this letter was addressed to the President Director of PT NMR. My question, after looking at this letter... please look at it more closely... according to the state administrative law that you, that is your expertise, is this considered a permit or no? Looking at its format?



SN: Okay. I see this is a valid letter from an authorized public official. So this is from the Minister of Environment, the Head of Bapedal, Mister Sony Keraf. And he was appointed by the President. There is a Presidential Decree. So this is an official decision by a public official. Secondly, this is in response to a request from PT NMR. Therefore it was concluded, allowed... ‘allowed’ is another word for giving permission to PT NMR to dispose of tailings waste. And then this is a permit because an allowance means that, since disposing of waste into the sea is actually prohibited, but with this permit, PT NMR was allowed to dispose of tailings waste into the sea.

LMPP: So according to the discipline of state administrative law, is this a permit?

SN: Yes, a permit, according to state administrative law.

-unquote

According to Prosecution witness Asep Warlan Yusuf (AW) before this court on 25 August 2006 (English transcript volume IV page 2123) when questioned by the defense counsel (LMPP):

-quote

LMPP: Alright. In this indictment... this is the indictment, the letter of indictment, let me read it... it's called letter of indictment. In here this letter is cited here, the quality standard for tailings based on the letter of Minister of Environment/Head of Bapedal 1456. Meaning this letter. So then it goes on to say that it has exceeded that. Now, to be consistent with your statements, does that mean that the Prosecutors are making their accusations based on future law?



AW: Yes.

LMPP: Alright. Enough, Your Honor

-unquote

I think it is safe to conclude that letter B-1456/2000 issued on 11th July 2000 was a permit to dispose of tailing and that it was not temporary in nature because it does not state anything about being temporary. Irrespective of the form of the letter and the formulation of its sentences, what is clear is that my letter was a permit application to place tailings on Buyat Bay's seabed and Minister for the Environment/Head of Bapedal replied by letter which stated that I was permitted to place tailings in the Buyat Bay sea, so in terms of its essence, the letter was a permit.

When I write a discharge permit application letter to a government agency and that agency responds to and references my letter stating it is okay to discharge a specific quantity at a certain concentration then one would assume that is a permit to discharge. No one thought otherwise, it is only six years later that the Prosecution says it is not a permit. The quantity and concentration amounts that can be safely discharged can be changed at any time by the regulatory body and the ERA was to confirm that those volumes and concentrations were

acceptable to the government or not. The government could have changed them any time they liked. The government had the option to do one of three things, increase the standard, decrease the standard, or revoke the permit. They did none of the above so one would assume that the permit is valid.

If the Prosecution wants to debate the form of the permit, then, in my opinion, the Prosecution should move this case to an administrative tribunal and out of criminal court.

Issue of Thermocline

The Requesitor states:

- **That the waste in the form of tailings from mining activities of PT Newmont Minahasa Raya was not placed below the thermocline layer.....**

In question 12 of the Minutes of Investigation (BAP) of 2 September 2004 Expert Witness DR. ABDUL GANI ILAHUDE stated:

11. *The data in ANDAL (Environmental Impact Study) document of PT. NEWMONT MINAHASA RAYA state that thermocline layer in Buyat bay (the position of which directly faces Maluku sea) exists at the depth of 50 up to 80 meters. What do you think as an oceanography physics expert?*

11. *I think the statement that thermocline exists at the depth of 50 up to 80 meters is erroneous and impossible because based on recent research, thermocline layer in Maluku sea exists at the depth of 100 up to 300 or 350 meters.*

Under sworn testimony, did this witness use the word recent? The following is a direct quote from the court transcript of 17 February 2006 of Abdul Gani Ilahude (AGI) and the Prosecution (PP) when asking about his recent research:

Most people would not consider or accept that measurements taken 34 years previously as a recent study.

However in the same hearing when question by the Honorable Panel of Judges (J) regarding the existence of a thermocline in Buyat, the witness stated:

-quote

AHI: It simply doesn't exist in Buyat Bay, or in Totok Bay. It will never exist.



J III: So at 100 meters it doesn't exist, even at 300 thermocline would never be found, like that?

AHI: Oh, actually thermocline is not found in Buyat Bay because the depth of the sea there doesn't get to 300 meters, there is no depth between 100 and 300 meters. If Buyat Bay were 500 meters deep, there would be a good thermocline profile there.

-unquote

But under cross examination by the Defense Counsel (LMPP):

LMPP: I want to ask. It was asked before, but not focus, concerning Buyat Bay. There was a slide there, we still need it. You did research yourself in Buyat Bay?

AGI: In Maluku Sea ?.

LMPP: Oh, so it was in Maluku Sea? So you never did it in Buyat Bay?

-unquote

Now I wonder why the Prosecution feels the need to charge me with a crime and request a prison sentence based on a 34 year old measurement at a different location?

However, the Prosecution used the AMDAL as evidence. The AMDAL states that in Buyat Bay the thermocline is at a depth of 50 meter. The testimony of witness and expert Witness Andoyo Wurjanto (AW) on 16 June 2006, under examination of the Honorable Panel of Judges (J) stated:

-quote

J III: Have you conducted research in Buyat Bay?



AW: I've been to Buyat Bay to take measurements and I also did a lot of analysis with data from Buyat Bay.

AW: Based on my analysis, the thermocline is found on average at a depth of 43 meters and below. This was our finding for Buyat Bay waters based on data that I have.

J III: So the pipe's end is located in the mixed layer or thermocline?

AW: The pipe's is located in the thermocline layer, not in the mixed layer

J II: We had a witness who stated that in Buyat area here, in Buyat Beach, no thermocline layer was found below 82 meters. How do you respond to that, to such a statement?

AW: Yeah, so in a scientific or technical forum a statement must always be supported by facts, by data. So that depends on how this expert or this person stated it. My comment for that would be, what am presenting here is 100 percent based on facts, Sir. There is a large body of facts, and the definition I adopted is used by many experts in this profession. I say that the thermocline exists based on my analysis. As for other analyses, certainly we must look at them first. If [a person] says there is no [thermocline] below 82 meters, what is the data used? What I like to stress here is that this is based on data directly from Buyat Bay itself.

-unquote

One can safely assume that testimony based on recent and actual measurements from Buyat Bay itself would be more accurate than 34 year old data from another location and that a thermocline did and still exists in Buyat Bay.

Issue of Health

The Requesitor states:

- **Buyat Pante community members experiencing health problems such as lumps, cramps, and rashes.**

This case first started with a report to the National Police by Dr JANE M. PANGEMANAN, who later withdrew her complaint. However, the initial report charged The Minister of Health and NMR of impacting the health of the community. The original complaint stated that:

-quote

On June 19, 2004, the Reporting Party conducted medical examination on around 100 persons living in Pantai Buyat and the results revealed that 80% of them suffered from health problems with similar symptoms, such as sharp pain, cramps, skin disease, and lumps on body parts. The problems were assumed to be caused by intoxication of heavy metals (Mercury, Arsenic, Antimony, Etc.) from the waste of PT Newmont Minahasa Raya.

As the cause is the negligence of PT Newmont Minahasa Raya, and also the Ministry of Health, which failed to perform its function properly, the Reporting Party requested the Police to conduct examination and investigation in accordance with applicable legal procedures.

-unquote

There was a lot of discussion relating to symptoms of lumps, cramps and rashes in the one and half years of court sessions. The most tragic result from the NGOs, involvement, including the medical doctors of Mer-C in the court transcripts, was revealed in the 2nd of June, 2006 hearing starting with the testimony of Dr Sandra Rotty (SR) followed by Dr Joy Rattu (JR) and Dr Winsy Warouw (WW) when examined by the Honorable Panel of Judges (J), the Prosecution (P) and Counsel for the Defense.

-quote

J II: *Alright. We heard in the mass media the issue about Andini. You were the doctor there. Can you tell us about Andini? Did you treat her or what? Can you explain that?*



SR: *I can tell you in my capacity as the Head of the Community Clinic, the first time Andini sought treatment at the Community Clinic was in February, She came there with complaints first around the navel. There was an infection on the navel, and we treated her, yeah...*

J II: *What was your diagnosis?*

SR: *Infection on the navel.*

J II: *That's right. And then you took medical action?*

SR: *Medical...and then the patient was cured.*

J II: *Cured. After that?*

SR: *And then in March – we happened to have [another] doctor with my staff – Andini was brought by her parents to the Community Clinic with complaints of itchiness and then the doctor said it was probably fungal infection, [and] the doctor advised the mother, according to our standard procedure. The standard procedure in the Community Clinic is if there is no improvement the patient must be brought back to the Community Clinic, yes? But the patient was not brought back by the parents, well [Andini] was taking part in demonstrations at the Governor's office, everywhere. And even in Manado too, the patient...*

J II: *That... that was after treatment?*

SR: *Yes, because there was improvement indeed.*

J II: *There was improvement?*

SR: *There was improvement, true. And then when my doctor conducted therapy we also told the mother, gave her advice, that if in two or three days she does not recover, please bring her back to the Community Clinic. If the patient is not brought [to the Clinic] well, we would consider that the patient had recovered. Because that is the procedure that we use at the Clinic. And the patient was not brought indeed, yeah? And*

suddenly we heard that around 3rd of July the patient had deceased. And after we checked to the field, turns out the medication was not taken.

J II: The medication that you prescribed?

SR: The medication prescribed by the Community Clinic.

J II: So then, to your knowledge, did Andini die at home or in the hospital?

SR: At home.

J II: Have you ever recommended that Andini – because you were the one who handled her from the beginning, right – to refer her further to a larger hospital, have you?

SR: Yes, we have prepared a referral, but from the family's side, they already refused to...

J II: How did you know that the medication was not taken, did you see it personally?

SR: We saw it personally on the field.

J II: Okay, yes, my last question. Those lumps like the ones you mentioned earlier, could other people outside of Pantai Buyat have these?

SR: Yes...

J II: Let's say in coastal areas, let's say in Manado, or some place else, can this condition be found in other regions?

SR: Yes, it can.

-unquote

Then Winsy Warouw under examination by the Defense (HT) stated:

-quote

HT: Just one. Witness, have you heard about a baby named Andini?



WW: I have. I have examined her too.

HT: *Examined her too?*

WW: *Personally.*

HT: *Could you explain, Witness?*

WW: *I was informed by an expert staff, a consultant specialist, about a case of a baby diagnosed with severe malnutrition, symptoms of seborrheic dermatitis.*

HT: *What is 'seborrheic'?*

WW: *Like itchiness, oily skin, like an allergy. Now, it's also possible that it was fungi, please have a look. When I looked at her, examined her, I immediately told the mother, "ma'am, let's just check her in to the hospital because you said this is intoxication. Last news I received was that she was about to be referred to us again, [but they] refused again saying" no need to treat" [the baby]. Last I hear she died due to URI. The skin had recovered, but her immunity had not fully recovered. So this*

HT: *When you saw the baby back then, were there symptoms of intoxication to your observations. You did see her eyes, right? What are the eyes like in an intoxicated person?*

WW: *I dare to say no, because I still played with her. Her expression was good, still had a good laugh. If [a person] is intoxicated we do this to her and she'd only look back. Not even cry. She was still kidding around with me. I got pictures if you want to see in the part... she still laughed like this, cannot yet talk.*

HT: *I see. Enough from me.*

-unquote

How people manipulated and used the community and the news was appalling, and people advising a mother not to have her baby treated or follow doctor's recommendations in my opinion is criminal. Those people are the ones that need to be sitting in the defendant's chair.

Buyat Bay Fish

The Prosecutions Charges state:

- **That in addition to these anomalous black spots on spotted groper, lumps on the fish were also found**

However many of the witnesses testified the fish at Buyat was fine.

-quote

Madjid Essing (ME) (the first inhabitant of Buyat Pante/Lakban)



J II: Have you ever caught fish, and then that fish had abnormalities, unlike other fish?

ME: Never, Sir. Never.

J II: What about those fish with lumps, have you ever seen those?

ME: I never have seen those, Sir.

J II: But previous witnesses have said there were fish with lumps?

ME: Never, Sir.

Hj. Dahlan Ibrahim (HDI)



J III: For as long as you have been a fisherman, or now that you're a boat owner, have you ever found fish with lumps, y'know, with lumps?

HDI: While I was a fisherman, ever since I was young, I never found fish with lumps.

Jantje Aring (JA)



HM: Do people in South Ratatotok consume fish caught by these fishermen?

JA: *Yes, to this day people are still eating fish*

HM: *Do you and your family eat fish?*

JA: *Yes, [we] eat fish to this day.*

HM: *Are there any complaints from eating fish, Sir?*

JA: *No, Sir.*

Madjid Andaria (MA)

J III: *When you caught the fish, have you ever come across those fish with lumps? Have you ever found lumps?*



MA: *Never.*

Salam Ani (SA)

J III: *But there's an issue that there's pollution in Buyat Bay, why aren't people affected, why don't they eat... er, why won't they stop eating the fish from there?*



SA: *Because it's just hearsay, Sir, so people don't listen to that.*

-unquote

Seems like the fish was fine, the people did not believe Buyat Bay was polluted and fish did not have lumps after all.

Lumps, cramps and rashes.

The Prosecutions Charges state:

- **That the people of Buyat Pante experienced health problems such as the appearance of lumps, cramps and rashes.**

-quote

Dr. Joy Rattu (JR)

LMPP: *Good. So in concrete terms, there is no Minamata there?*

JR: *None.*

LMPP: *So there is no Minamata in Buyat Bay?*

JR: *None.*

PS: *Did they say that there was a correlation between the illnesses found, or the symptoms of illnesses or complaints from Buyat Pantai residents with the effects of poisoning of heavy metal victims?*

JR: *To our knowledge, no.*



Winsy Warouw (WW)

J III: *So there is no skin condition that is specific only to Buyat Bay, like that?*

WW: *No.*

J IV: *with the mine there and with the disposal of waste, is the quality of health around Pantai Buyat affected?*

WW: *To my knowledge there's been no effect.*

J IV: *Both before there was a mine and after?*

WW: *None to this day.*

LMPP: *Alright. So based on the research that Witness, or Expert, conducted, can it be concluded that based on the findings of the research, that none of the rashes there were caused by heavy metals?*

WW: *A bit of explanation to you, Sir. Dermatology depends highly on the ability to see. If we study dermatology we are taught that 90% of it must be [determined] by sight, with bare eyes. With that ability I can say that I found nothing.*

MK: *So no clinical symptoms of heavy metal intoxication at all were found in Buyat Bay or in Ratatotok and surrounding areas?*



WW: *There was none indeed.*

-unquote

It is clear from these witnesses' testimonies that there were no unusual illnesses found and no correlation between health and heavy metals from the mine tailings.

The Issue of Permits and Reporting

The Prosecutions Charges state:

- **That PTNMR and Richard Bruce Ness did not report the PTNMR pipe leak to the witness [Washington Tambunan]**

This is one thing that the Prosecution got correct in the charges, there was a pipe leak which was reported to various offices of the Department of Mines in 1998, but the Prosecution failed to mention the reason it was not reported to Mr. Tambunan (WT). This is because Mr. Tambunan did not take his position at the Department of Mines until 1999, one year after the leak occurred. All one would need to do is to review the court transcript of Washington Tambunan's testimony on June 9th, 2006 when the Honorable Panel of Judges (J) asked Mr. Tambunan his work experience. Mr. Tambunan testimony was as follows:

-quote

WT: *Presently at the Mining and Energy Services of North Sumatra Province.*

J III: *Mining [and Energy] Services of North Sumatra. Since when have you worked there?*

WT: *I have worked since late 2001 until present. But, Your Honor, I would also like to inform that I had worked in North Sulawesi, in Manado, as the Head of the Regional Office of the Department of Mining and Energy in late 1999 until early 2001.*

-unquote

Incidentally, I also was not working for NMR at the time of the leak. Does the Prosecution expect someone who did not work for NMR to report a leak to someone who did not work at the North Sulawesi Department of Mines? But Mr. Tambunan did testify that:

-quote

Washington Tambunan (WT)

J III: 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 that time? Have they been met at that time?



WT: Yes, exactly, Your Honor. They have obtained all the approvals, permits that are required for them to conduct their activities in the field.

-unquote

Detoxification

The Prosecutions Charges state:

- **Because it has to be established that pollution has occurred, RKL-RPL of PT Newmont Minahasa Raya shows that the detoxification process performed by Defendant PT Newmont Minahasa Raya sometimes did not work as intended producing tailings exceeding the established quality standards.**

Witness David Sompie further went on to state that the detoxification system performed as designed.

-quote

David Sompie (DS)

X1: Continuing. Have you ever seen or witnessed or known the



Technical Chief to stop factory activities because of a detoxification failure or deviation in the detoxification process?

DS: Yes, according to the goals. We never experienced what's call a detoxification failure.

-unquote

It seems that the Prosecution was mistaken, in fact several witnesses testified before this court that NMR only discharged less then 10% of the permitted environmental loading for the permit period and detoxification, and if evaluated under PROPER, would have received a "GREEN" environmental rating.

Function of the ecosystem

The Prosecutions Charges state:

- **Because it has to be established that pollution has occurred, the measure and the level of quality and quantity of the pollutant contained, can be considered to have endangered the health, environment and the function of the ecosystem.**

However, these charges are not supported by the testimony before the court, L.T.X. Lalamentik (LL) with over 10 years experience in studying the Buyat Bay ecosystem along with other witnesses stated:

-quote

L.T.X Lalamentik (LL)

J III: Oh, I see. When PT NMR was operating did the coral fish decline, stay normal or perhaps even increase?



LL: My research results showed that they were in a stable or normal condition

PP2: when you were diving, did you also see fish?

LL: Yes.

PP2: *How many times did you see fish?*

LL: *Many times.*

PP2: *Yes. Have you ever seen fish that changed shape?*

LL: *No.*

PP2: *Never. Have you ever seen fish that have lumps?*

LL: *No.*

LMPP: *I see. And then was there any conclusion made when... was the a conclusion of what happened in Buyat Bay in this review?*

JP: *So that writing illustrates that there was no change to the condition of the environment in Buyat Bay. So it was still in natural condition, in healthy condition.*

Jerry Kojansouw (JK)

LMPP: *So could you perhaps show this court the results of your observations of the coral reefs?*



JK: *Yes, the coral reefs there are still good, even better compared to what was observed, studied during the time when the AMDAL was made.*

Ricky Telleng (RT)

PP 3: *Can you explain briefly to the PoJ what the result was during the research, what was the result?*



RT: *In brief I can say there are still many [fish] catches there. During my research this year, on my latest research I had obtained 72 types of many economical fish, which are the most important fish.*

Shakeb Afsah (SA)

HS: *Do you see cause for concern in these samples and would you please state for the record if this large sample size*



significant to determine the condition of fish in Buyat Bay?

SA: *the conclusion would be that the fish are safe.*

Keith Bentley (KB)

RS: *With your explanation. Can it be summarized that the Buyat Village people are not contaminated by arsenic and mercury?*



KB: *They are certainly not contaminated by arsenic and mercury. From all of 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.*

Subsidiary principle not being applied

The Prosecutions Charges state:

- **In relation to Law No.23 of 1997, then articles 41 and 42 are independent crimes.**

However, Expert Witness Daud Silalahi (MSD) does not agree, he stated in testimony before the court on July 14th, 2006 that:

-quote

M. Daud Silalahi (MDS)

PS: *Thank you, Your Honor, for your permission... for us to continue asking questions to the Expert. Expert, earlier you have touched on matters of subsidiary principle, and also have explained that a criminal sanction is an ultimum remedium. For administrative sanctions, what are the criteria used for a company to be imposed administrative sanctions based on provisions of the Environmental Law? Please.*



MDS: *First, in the Environmental Law in general, it is systematically explained that there is a monitoring process through administrative sanctions as provided in Article 25 through Article 27. If an*

investigation has not yet been conducted to prove such a thing, then this would have already violated Article 40 of the Law, which governs the special investigations of environmental disputes, or environmental cases. That's how it's supposed to be actually.

PS: The Public Prosecutor's indictment in this case clearly refers to the Minister of Environment Decree No.51 of 1995 about industrial liquid waste. The standard quality in this Ministerial Decree is used to measure or justify the indictment that PT NMR, PT NMR's tailings have violated the established quality standards. The question... in the elaboration, yeah,... the application of quality standards for liquid waste per Ministerial Decree No.55... can that be applied to tailings as solid waste? Please.

MDS: if a company had already secured the AMDAL, it is said that if based on that AMDAL study, the quality standards are more stringent. So it is AMDAL that is used. Now, when AMDAL has been secured, I assume that all provisions and requirements in the licensing system have been met.

PP2: Then, do you think that the subsidiary principle must indeed be applied in this case, and that it is no longer possible to have or to apply the principle of ultimum remedium?

MDS: In law there is always what's called an escape clause. Meaning, exceptions whenever certain conditions are met. But the principle, the doctrine, is still the subsidiary principle. Because, and I have said this before, [based on] the doctrine of primary jurisdiction, the ones who can tell if there is pollution, technically speaking, are only experts which have been legally appointed by authorized officials. Therefore, the subsidiary principle always applies, meaning that it always provides the opportunity, because it serves to seek certainty about facts and certainty about relevant laws. That is what I can explain.

-unquote

After hearing the testimony of this renowned expert, one must believe that Article 41 of Law 23 cannot be read independently of the remainder of the law and related regulations, and that the Prosecution has incorrectly interpreted and applied the law.

NMR Compliances (RKL/RPL, AMDAL & Permit)

The Prosecutions Charges state:

- **PT Newmont Minahasa Raya's AMDAL described that disposing of tailing waste containing Hazardous and Toxic Waste (B3) into Buyat bay as done by PT Newmont Minahasa Raya without a permit was an action in violation of the law or the regulations and that therefore PT Newmont Minahasa Raya was liable for that action.**

And

- **That as of 2002 no RKL/RPL implementation reports were received from PT Newmont.**

Honorable Panel of Judges, please allows me to address the second point first. Even in the Indictment and Charges include reported RKL/RPL daily average numbers from the year 2004 and mistakenly call them exceedences. If KLH never received reports after 2002, one would have to ask where these numbers came from. The following are quotes from the Charges themselves.

- *“15 January 2004, Cu exceeded the quality standard (measurement result: 2.42 mg/l).*
- *19 January 2004, Cu exceeded the quality standard (measurement result: 2.16 mg/l).”*

Secondly, NMR has always and continues to report its environmental data on a quarterly basis, and I have included transmittal receipts confirming that the document were delivered to and signed for by the Ministry of the Environment as attachments to this Pledoi and have included photos of example of the signed receipts following this paragraph as an example.

TANDA TERIMA TRANSMITTAL ADVISE		TANDA TERIMA TRANSMITTAL ADVISE	
Kepada Yth : To	Bpk. Sabar Ginting	Kepada Yth : To	Deputi IV Bidang Pengendalian Dampak Lingkungan Sumber Instansi
Mohon diterima pengiriman berikut : Kindly accept delivery of the item(s) specified below	Kementerian Lingkungan Hidup Gedung Otorita Batam, A-5 Jl. DI Panjaitan Kav. 24 Jakarta.	Mohon diterima pengiriman berikut : Kindly accept delivery of the item (s) specified below	Kementerian Lingkungan Hidup Gedung Otorita Batam, A-5 Jl. DI Panjaitan Kav. 24 Jakarta.
1 env. AMDAL PT NMR RKL/RPL Triwulan Tahun 2003 Oceanographic Data		1 env. Laporan RKL/RPL Kuartal IV (PTNMR)	
Pengirim : Tati Surbakti Tanggal : 16 Agustus 2004	Diterima oleh : Festi Tanggal:	Tanggal: 24 Februari 2005 No. Surat: HR-PS/101/017/II/2005/sc	Diterima oleh: Romy Tanggal: 9 APR 2006 RECEIVED Cap: 9 APR 2006 SEKRETARIA

Several witnesses throughout the court sessions testified in relation to AMDAL, reporting and permitting and their testimonies clarify the regulatory process and requirements:

-quote

Diby Kuncoro (DK)

LMPP: So to discuss the PT NMR AMDAL, there were 12 agencies?



DK: Yes.

LMPP: They all joined in the process of assessment and agreement?

DK: Yes

LMPP: The government agencies, the permanent ones yes,

LMPP: Earlier if I am not mistaken, you mentioned there were also members of the community

DK: Community members and NGOs

J1: Yes, I am asking is that what was agreed to in the AMDAL...

DK: Yes

J1: Concerning what was mentioned earlier, it is possible to simply dump waste directly into the environment?

DK: It is, because after the environmental feasibility has been consented to, there is a business license, so the operation can be carried out because the AMDAL has already been agreed to.

J1: Already ratified?

DK: Yes, so it is allowed

J1: Allowed?

DK: Allowed

LMPP: My question is that during the time you stood as the head of the AMDAL Commission, was an AMDAL ever denied?

DK: I guess...

LMPP: Were they always approved?

DK: There were those that were denied

LMPP: So you mean it is not certain that it would be approved if it didn't conform with the feasibility standards?

DK: Yes

J3: Now to your testimony before, that if the AMDAL was agreed to, this is the license?

DK: Yes, the environmental feasibility license.

Siegfried Lesiasel (SL)

HT: My question is, can PT NMR carry out the tailings placement at Buyat Bay without the AMDAL Commission's approval?



SL: Not possible, Sir, because as I have explained earlier, a mining industry is an industry of many regulations, Sir, moreover it relates to the environment or safety, Sir. The book was this thick a long time ago, Sir, so PT NMR was not possible to carry out anything relating to its mining activity without it being known by the Department of Mining, it is not possible, Sir.

Dibyو Kuntjoro (DK)

LMPP: *So it is consented to because of its environmental suitability, maybe you can expand on the meaning of this?*



DK: *So the environmental suitability doesn't mean that there is no environmental impact, but that the impact can be managed and reduced, so even where the environment is affected, the project can still be viable.*

Washington Tambunan (WT)

J III: *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 that time? Have they been met at that time?*



WT: *Yes, exactly, Your Honor. They have obtained all the approvals, permits that are required for them to conduct their activities in the field.*

J III *with AMDAL approval and the fact that the AMDAL mentions submarine tailings placement, then automatically they can already place tailings at sea, right?*

WT: *That's right...*

J III: *Without having to file for further special permits for submarine tailings placement and so forth, how's it?*

WT: *Correct, correct.*

J III: *Correct, yes. I think that's enough for me.*

Isa Karnisa (IK)

LMPP: *So if an activity initiator who already had AMDAL, ANDAL, then RKL/RPL, in an active period, then how does one tell*



that the environment management has been well conducted? Maybe like that.

IK: If it has been approved and then it becomes a part of those three advisabilities, then it becomes a part of the permit

David Sompie (DS)

J III: When was the AMDAL approved? From when was it approved? In what year?



DS: The AMDAL, PT NMR's AMDAL was approved in November 1994.

J III: Was that approved before or after operations had begun?

DS: We began operations in 1996, so before operations.

DS: Actually, PT NMR's goal, which we always report in RLK/RPL documents about detoxification, was the monthly quality, the average over a month. But – and we say that in the RKL/RPL documents each time we report

J III: Was there ever a reprimand/warning from, of course, the Ministry of Environment or ESDM [Energy and Mineral Resources], or whoever else monitors this, I don't know? Was there ever a reprimand/warning about this?

DS: As far as we know, we never received what you call a reprimand or warning.

Witoto Soelarno (WS)

J III: within a year how many times does your institution carry out the monitoring, or is it only incidental so that monitoring is only done when there is a complaint?



WS: so at least we do monitoring for the general issues, which is performed by the regional office, and then the second are environmental problems

and third are occupational health and safety issues. Communication [of the results] to the local office is always carried out at least three times,

J III: you were able to close temporarily, if at that time you found that the level was within the dangerous or not dangerous level?

WS: We saw nothing dangerous in the field

WS: Never for PT NMR.

J III: Never.

WS: We did it many times for other mines.

Washington Tambunan (WT)



J III: So from a number of these inspections, was there ever a strong warning from the Tax Inspector , Mining Inspector], resulting in the suspension of PT NMR operations? Was it ever done?

WT: Never, Your Honor.

J III: Why was it never done?

WT: Because based on our evaluations, evaluations conducted by our colleagues who monitored in the field, there was never a strong enough reason to impose such warnings, much less to temporarily suspend.

Sigit Reliantoro (SR)



J III: Actually, it is not necessary to be read, to the extent of your knowledge, do you know if the RKL/RPL of PT NMR was rejected?

SR: Ee...

J III: No, meaning, your agency, the SMoE, did it ever reject?

SR: No.

J III: Or viewed that the RKL/RPL were inaccurate. Did it ever, to the extent of your knowledge? if you do not know please say you do not know.

SR: *I do not know.*

Isa Karnisa (IK)



LMPP: *Earlier you confirmed that PT NMR always submitted its RKL/RPL?*

IK: *Yes.*

LMPP: *What does KLH do after receiving the RKL/RPL?*

IK: *Yes, we would do an evaluation...*

HK III: *Has Bapedal ever received or obtained a copy that there was a warning issued to PT NMR?*

IK: *No.*

HK III: *So it means there was no warning?*

IK: *No, not yet.*

HT: *My question is, what was the letter of 22 March 2002 about, a warning, a reprimand, a sanction or what?*

IK: *Yes, can be warning.*

HT: *Would you examine the letter?*

IK: *Yes.*

HT: *Is there a letter there that stated a warning, reprimand or any such thing? I'm only asking, is there anything, uh, just the subject?*

IK: *Yes, the results of the evaluation on the periodic report.*

HT: *Results of evaluation, not a reprimand, right?*

IK: *No.*

Ngadja Ginting Soeka (NGS)



PS: *has the department where you worked ever written a letter to*

PT NMR saying that “your RKL/RPL” is wrongly compiled, used a wrong system and whatever other reasons? Has that ever happened?

NGS: As far as I know, never, Sir.

PS: So does that mean that as the Mining Inspector you can accept the RKL/RPL as being environmentally feasible?

NGS: Yes, correct, Sir.

-unquote

After hearing from this group of witnesses, it seems that the prosecutor has once again, misinterpreted the testimony and that NMR was in compliance with the rules and regulations.

ERA Study

The prosecution's charges states:

- **Results of the ERA study carried out by Defendant I PT Newmont Minahasa Raya as required in the letter of the State Minister of Environment / Head of Bapedal Number: B-1456/BAPEDAL/07/2000, dated 11 July 2000 Regarding the Disposal of tailings waste into Buyat Bay addressed to the Chief Director of PT Newmont Minahasa Raya or Defendant II RICHARD BRUCE NESS has never been approved by the State Minister of Environment**

However, in court several witnesses testified that the ERA study was completed and submitted on time and the government never did reject the study. The following testimony from various witnesses confirms this fact:

-quote

Sigit Reliantoro (SR)

PS: My question was there a letter from the SMOE which



rejected the ERA study or which declared that it was not acceptable?

SR: I do not know.

PS: That is right, so please do not say rejected, you mentioned earlier there was a statement letter of rejection, do you want to revise that to I do not know?

SR: Yes, I do not know.

Isa Karnisa (IK)

PS: Oh, so you have done an ERA study overseas?

IK: No, but I saw the implementation of ERA study.



PS: Oh, you saw the implementation of ERA Study. Whose ERA study?

IK: ERA Study from the Municipal Governments in Toronto and Salt Lake City.

PS: Do you have a good knowledge on ERA study?

IK: Yes. I learned that it is called ERA so I can.....

PS: Oh, only as an observer.

IK: Yes.

PS: How many days did you attend, or saw the ERA study there?

IK: Only 3-4 days there.

PS: Was there any letter issued by KLH, that said "your ERA study was unacceptable, in quotes, "unacceptable".

IK: There was none

PS: You acknowledged that you saw people conduct ERA studies overseas. To do it right, an ERA study must represent all seasons or just a short period?

IK: Over there an ERA study is conducted over several years even, Sir.

PS: *Because you did an ERA [comparative] study overseas, about how long would it take to conduct an ERA study in Indonesia?*

IK: *I don't think we can determine the time accurately.*

PS: *That's enough, Witness.*

M. Daud Silalahi (MDS)



LMPP: *Does the ERA study... yeah, AMDAL, has a basis... is there a legal basis for it in the Environmental Law so it must be conducted, and PT NMR already has AMDAL and received approval. All of a sudden they say there has to be ERA? Have you heard about ERA, the ERA study, I mean?*

MDS: *So ERA to this day is not yet a policy. There is no basis in terms of legal policy to this day. Why? Going back again to the environmental law system. If we look at Article 25 through Article 29, when Article 25 is not, is not effective, in Article 28, 29 it is said that an environmental audit is needed. There is still an opportunity before ERA.*

Isa Karnisa (IK)



LMPP: *I have actually asked the previous witness before, if there is a legal basis for RKL/RPL?*

IK: *There is a Government Regulation on AMDAL.*

LMPP: *What about ERA?*

IK: *None yet for ERA in Indonesia.*

LMPP: *So there is no legal basis for ERA?*

IK: *Not yet.*

-unquote

As the ERA is an evaluation or risk assessment “instrument”, to help people make informed decision, I never expected formal approval of the ERA document.

Rignolda Djamaluddin – Super Expert

In the charges of the Prosecution, a great deal of emphasis is placed on the testimony and evidence provided by Expert Witness Rignolda Djamaluddin (RD): The charges include the following:

Expert Dr. Rignolda Djamaluddin, before this court under oath in essence testified the following:

- **That the Expert is an expert in the field of Dynamic Systems and had conducted studies in Buyat Bay in 2002 continually to this day.**
- **That tailings discharged into Buyat Bay could be found at a depth of 20 meters below the surface to the sea bottom, this was proven when a fishing line was cast and some time later it was found that tailings stuck to the fishing line.**
- **That the presence of tailings there was due to effects of currents, wind and tides causing the tailings to be distributed vertically.**
- **That there has been a decline in the physical quality of marine life such as abnormalities in the growth of sea grass, the death of coral reefs and sea grass and the death and migration of fish. This can be described as there having been Damage in the Sea.**
- **That the damage and death of marine corals could also be observed due to being covered by tailings sediment, physically this condition is very different from the condition when coral is damaged or has died as a result of poisoning or bombing.**
- **That analysis results on several types of fish that died in 1998 can be explained that the fish was initially dizzy from eating or absorbing certain materials therefore causing death and that the physical condition of that fish is different from fish dead as a result of bombing or poison**

- **That the migration of certain reef fish could also be proven by the fact fish usually caught in certain locations (*napo*) where fishermen usually fished was no longer there.**

Since Rignolda's testimony was given on March 3rd of last year, I would like to remind the Prosecution of the other aspects of Rignolda's testimony.

-quote

Rignolda Djamaluddin (RD)

HK III: It's like this, I mean, an Expert, such as the one to explain about the health of Buyat Bay community, I think should be a doctor, a specialist or whatever doctor. So what's your expertise. You limit yourself to what you study, you, yourself. So not by a doctor, such as a doctor there. You summarized the results of research of another doctor, I mean, you're here as an Expert. That is why we say your expertise, focus on your expertise. If you summarized the results of Mer-C doctors yourself, examinations from which you conclude yourself, that will not fit your expertise. That's just supposing, that's what it is. Yes indeed, that's what I mean. That is why from the onset I asked that. What is your real expertise, and let's focus on that.



HK III: Actually, what you study, your actual expertise, in what field is it actually? Is it fisheries, marine or what?

RD: Actually in general terms I specialize in what is called dynamic system of coastal environment... I study how a coastal environment in its dynamic context...

HK III: No, I mean like this, alright... if he is a fish expert, we ask him about fish. If he is an expert in... what was it again?

LMPP: Mangroves.

HK III: Mangroves yes, about mangroves. Unless he is an expert in the whole discipline, then it's alright.

RD: May I, Sir, respond?

HK III: Yeah, so if [it is] about fish, yes, then let's ask about fish then.

RD: *May I proceed?*

HK III: *No I mean... it's like this... you are also an expert in corals, if you are fish expert then be fish expert... what's going on here?*

J1: *This has to do with... the Expert said that he had research about the system.*

HK III: *Do you have the expertise to study corals?*

RD: *About corals...*

HK III: *No, do you have the expertise to study corals, I'm asking?*

RD: *Fisheries people must know, Sir.*

HK III: *Yes, [you] have coral expertise?*

RD: *We definitely know.*

HK III: *No, it's this... if it's knowledge, then it could be... but expertise is another thing.*

J1: *Yeah, someone can be called an expert...*

HK III: *That is why I asked before, is [he] a fish expert, mangrove expert... but then he said he covered everything, mangrove expert, fish expert, then coral expert too, right?*

RD: *if I may clarify in this court about my expertise, it is in a branch of science called ecology. Ecology is a relation between humans, organisms or the life of those organisms with the environment. How they, then, this interaction, which I said earlier the dynamics of a system, which is this bay that I chose.*

HK III: *So you specialize in ecology?*

RD: *Yes, that is why I was called by friends in KLH to handle marine ecology.*

PS: *You were talking about the....,whatever wind directions, do you have the expertise about wind directions?*

RD: *Oh yes, I'm a staff at oceanography lab, hydro oceanography.*

PS: *Have you ever conducted any research on wind directions?*

RD: *As for wind directions, I studied it in my thesis, even 50 years worth of seasons in the North Sulawesi.*

PS: *Was it the subject of your research, the wind directions?*

RD: *For measuring the wind directions, there are measuring centers.*

PS: *Okay, that means it wasn't you, right? You just grab, get the data.*

LMPP: *In short, your expertise... doesn't say "so"... what is your expertise?*

RD: *So maybe, simply, so we can find it in the common dictionary, it's coastal ecology or marine. But I focus more on the coastal.*

LMPP: *Say it in Bahasa Indonesia.*

RD: *So it's ecology of coastal waters.*

LMPP: *Ecology of coastal water and it exists in the world, this expertise, yes?*

RD: *Oh yes, ecology experts...*

PS: *Are you a physicist in oceanography?*

RD: *I am the person in charge, enough since I came back I was put in charge of physical oceanography.*

PS: *So you are an oceanography expert, physical oceanography.*

RD: *You don't need to ask me, inquire from the SK where I was appointed for this.*

LMPP: *Fine, fine, hear me out. You wanted a medical record, or how to make a medical record?*

RD: *Yes.*

LMPP: *That's not research.*

PS: *You were saying about the potential of arsenic being released into the nature, you also have the expertise in the field of the procedure of the release of arsenic into nature?*

RD: *Yes.*

PS: *So you are still saying that you are an expert in that field, huh?*

RD: *Oh, I can, I can uphold.*

PS: *We have recorded many of your expertise, what we actually want is to focus on your expertise, where it's valuable, right?*

RD: *Yes.*

LMPP: *Alright, I'm holding a letter here.*

RD: *Yes.*

LMPP: *It says that your expertise or specialization is in mangrove forestry.*

RD: *Signed by?*

LMPP: *This is signed by Prof. Ir. Prof. Ir. KWA Masengi M.Sc. PhD.*

RD: *Dean.*

LMPP: *Dean, yeah?*

LMPP: *No, no... so my question, is it... this is an official letter from the university addressed to the Minister of the Environment. So it says that your specialization is in mangrove forestry. Meaning, is this true what this letter says about you expertise?*

RD: *Not true.*

LMPP: *But this letter is true, right?*

RD: *I don't know... I don't.*

LMPP: *May I show it, so he can...*

RD: *Yes.*

[Letter is shown to the witness]

LMPP: *Have you published?*

RD: *Yes.*

LMPP: *As a book?*

RD: *As a book... [trying to remember]*

LMPP: *Forgot?*

RD: If it's part of a book or... I can't recall as a book, but most are as journals or reports.

LMPP: So you can't recall if it was a book yes? Amazing! You can't remember if you wrote a book or didn't write a book.

HK III: Yeah, that is what I meant indeed... I mean how is it... I asked his Expertise, that's why I said if [he is] an expert, moreover a super specialist... there are super specialists, an S3 is a super specialist, right? So, what is his specialization? But if he has general knowledge, fisheries he knows, mangrove he knows, corals he knows, I said go on, right? I think I did say it like that, yes?

-unquote

One must also remember that this case originally started with allegations of Minamata disease and later shifted to mercury contamination and then to arsenic and then again in the Indictment, it was an issue of rashes. To assist the court to recollect this witness' testimony, the following is an additional part of the transcript of the hearing of March 3rd:

-quote

Rignolda Djamaluddin (RD)

RD: Alright, my question, my question is, didn't you from the start of this Buyat issue you were more predisposed or stressed that this Buyat Bay is contaminated or much buried by or exposed to Mercury, so why is it that now it's the As that's high?

RD: There's nothing in my scientific document data where I spoke of Mercury.

PS: Nothing, huh?

RD: None at all.

PS: Alright.

HK III: Alright, anymore. Oh yes, we give a chance for the Defendant to ask questions or give comments on the witness' testimony.

RBN: *I would like to know if these your voices in radio interview?*

[The recording tape of the Voice of America is played]

Anchor: Mr. Ness says the company monitoring of the water is not turn any rise not level of heavy metals but Indonesian doctor living in the areas say that the test of people living in near Buyat Bay shows high levels of heavy metal and arsenic in their blood and hair. Indonesian Doctor Medical Indonesia, DR. Rignolda has done extensive work with local villagers and was [unclear] public attraction the problems.

RD: *I found that because of tailing that 4 people already died with indication like [unclear] and also [unclear]. Others have problem in the village they have a very bad habit and some of the people have no feeling, they lose their control on some of the bodies.*

RBN: *Was that you on VoA?*

RD: *That last one, yes, the last one yes.*

RBN: *Cause you said back here that you aint said anything about mercury...*

RD: *OK. Can be clarified because you asked, I argued earlier just because it was said that you were always this way you said that I.*

HK III: *No, you said it can be proved that I never talked about mercury it was just Richard Bruce Ness who proved that you [unclear]*

HK III: *Indonesian Medical Doctor, Dr. Rignolda Djamaludin. What does that mean Indonesian Medical Doctor?*

RD: *I don't know the voice is from them not me.*

HK III: *This.*

RBN: *This is the translation of the tape from our official translator.*

HK III: *Did you ever say that?*

RD: *I forgot, if that is what was indeed mentioned this is that result which I said earlier the medical report which I held the seminar on.*

HS: Yes yes he said that

RD: Yes.

HS: Well that's why the one which Mr. Rignolda Lubis was the one speaking on the VoA, whose voice was recorded?

RD: Yes what I thought was this point that was being...

RBN: This ok, this our best effort to translate what you stated in English to Indonesian.

-unqote

This expert witness has represented himself in court as a medical expert, a toxicologist, a marine, fishery and coral expert, a geochemist, a biochemist, a oceanographer and a sociologist. His testimony showed that the only expertise this witness has is to make anecdotal information, misrepresent science and confused the general public.

In fact this witness along with few others, misrepresented facts and made outrages claims without evidence to support those claims which started a national sensation in the press. This witness misrepresentation of the truth and his allegations have disrupted lives and caused hardship to the community around the mine, including fear and confusion as well as losses to the local economy and damaging the wellbeing of the communities.

In conclusion, the Prosecution Charges, for the most part, ignore the facts, testimonies and witnessess presented during the trial. While the charges did not correctly address the substance of the case, the reading of the charges was repetitive, and included quoting David Sompie 8 times that "waste coming out of the pipe was clear and could be drank, just like *Aqua* water" which is firstly untrue and secondly totally irrelevant to the primary issue of pollution. The Prosecution totally failed to prove pollution in this case

5. COMPARATIVE TABLE ON WITNESS TESTIMONY

The following section features the highlights of each witness's testimony by subject. These tables were compiled in an effort to assist the Honorable Panel of Judges to compare the statements of both fact and expert witness presented by the Prosecution and the Defense.

At the end of each segment I have included my own comments, observations and conclusions in summary. I have grouped the witnesses' testimony into fifteen subjects as follows:

- 1. Testimonies of Villagers**
- 2. Regulatory Compliance and Enforcement**
- 3. Sampling**
- 4. AMDAL**
- 5. Permit**
- 6. Perjury**
- 7. Toxic and Hazardous Waste (B-3)**
- 8. Fish**
- 9. Surface Water**
- 10. Thermocline**
- 11. Marine Ecology**
- 12. Legal Experts**
- 13. Metals in Blood**
- 14. Errors in Police Data**
- 15. Health Issues**

I hope the Honorable Panel of Judges find this section of my Pledoi helpful.

Thank You.

1. Testimonies of Villagers

Prosecutor's Witness



Rasit Rahmat: He moved from Buyat and now lives in Dominanga. Witness stated that his income and the fish have decreased, and that he must move 5 miles into the sea before he can catch fish. Witness stated that strange diseases in Pantai Buyat appeared after PTNMR began its operation e.g. itchiness, headaches, lumps. He traveled to Jakarta with Dr. Jane for medical treatment but had never visited the local Dr. for medical treatment.



Juhria Ratunbahe: The Witness stated that prior to the presence of PTNMR, there were no diseases, and however after the presence of PTNMR, the diseases began to appear. The Witness suffered from seasonal itchiness, it was healed at one point in time but it reappeared at other times. The Witness was examined at RSCM and MMC. The Witness did not know what disease she suffered from, but she knows that her body contained arsenic and mercury. Since the Witness is moved to Dominanga, she has completely healed.



Ahyani Lombonaung: The Witness stated that apart from suffering headaches, cramps, paralysis since 1999, her illness became worse and aggravated into what called as hematuria. Doctors who examined her gave different diagnosis. Some doctors informed her that it was kidney stone, others said that it was a tumor. Dr. Jane Pangemanan and, whom the witness referred to as "Savior Gods", brought the Witness to Cikini Hospital in Jakarta. The Witness did not know the result of her examination. The Witness revoked statement No.5 she made that was recorded in the dossier/BAP. The Witness stated that she ate vegetables and meat. This contradicts statement No.12 in her dossier/BAP.



Masna Stirman: Baby Andini was the Witness' daughter. Dr. Sandra Rotty, Dr. Winsy Waraouw and Dr. Feny (or Pedi) examined baby Andini but Andini died at the age of 5 months because her skin was scaly and blackish. The Witness said that she herself was examined at RSCM and MMC, the results of her blood examination indicated the presence of mercury and arsenic. The Witness was told that Andini should not take the medicine given by the doctor, because she could get poisoned. The doctor who advised her on the matter was Dr. Beny or Dr. Deny Up to now she never received information on what she has been diagnosed with.



Marjan Ismail: The Witness suffered dizziness, cramps and headaches. The Witness felt this illness after he moved to Buyat Pantai. The Witness' wife (Jane Rorong) also suffered from the same disease and she was subsequently brought to Jakarta. After the doctor in Jakarta gave her an injection, she immediately felt better. The Witness did not know the place where his wife was examined and did not know his wife's disease. The Witness said that PTNMR disposed waste to the Buyat River.



Mansur Lombonaung: The Witness stated that after PTNMR disposed of its waste, many fish died and the residents begun to suffer from itchiness (since 1998), paralysis, headaches, and cramps. The Witness [however] did not suffer from itchiness. The Witness stated that many doctors examined the Buyat residents, among others, doctors from WALHI. The Witness stated that the doctors did not mention the cause of the

Defense Witness



Madjid Essing: The Witness is a resident of Buyat Pantai since 1989 is a fisherman and he has never ever experienced health problems for as long as he lived in Buyat Pante. When he had itchiness, it was caused while catching nener (small young milkfish).

The Witness stated that he never ever saw a fish with lumps or any dead fishes floating on the sea surface. The Witness also knows Rasit Rahmat, since them both originated from Bitung. According to the witness, Rasit Rahmat had his lump prior to moving to Buyat. The Witness stated that the LBH once brought him together with Mansyur, Anwar, Boni and Anton Pateda to Jakarta for 20 days to demand compensation of IDR 50,000 per day from PTNMR for each family.

The Witness mentioned that in his visit to Jakarta, he took part in signing the demand letter, because he was afraid of being left in Jakarta. The Witness stated that in Buyat Pante a fishing competition was once held, where more than 300 kg almost 400 kg of fish were caught, and he did not find any fish with lumps.



Robert Sasuhane: The Witness is a fisherman who has lived in Rataotok Timur, Jaga 6, Pante Lakban since 1999. The Witness holds the position of Buyat Pante Village Head since March 2005. In March 2004, the Witness was invited by an NGO member by the name of Budi to attend a meeting at the house of Mansur Lombonaung. In that meeting the NGO representative explained that the Buyat

Pante area has been polluted by mercury and that symptoms of the Minamata disease were present. Besides that announcement, there was discussion regarding compensation for the Buyat Pante community. The Witness was then included in one team with Mansur Lombonaung, Surtini Paputungan and Anwar Stirman to establish the Coordination of Mining Community Victims.

The Witness then took part in the demonstration to Manado, where the Witness was appointed to be field coordinator. The Witness stated that in that demonstration, he was asked by Rignolda Djamaludin not to mention the name of the NGO, or KELOLA.

The Witness stated that the baby Andini was included in that demonstration and when the Governor saw the baby Andini, the Governor asked for the baby Andini to be brought to the hospital and that an amount of IDR 300,000.- was given to the mother of the baby Andini to be used as transportation costs. However, after the demonstration was accomplished and they returned to the KELOLA office, the mother of baby Andini did not bring her baby to the hospital, and not until the Governor rang was the baby Andini brought to the hospital. The Witness stated that even though the issue of polluted fish or fishes with lumps existed, his family and he himself continued to consume fish and continued to sell fish at the Buyat Kampung as well as Rataotok markets. Moreover still, many fishermen from other villages are fishing in the Buyat Bay.



Rahima Jumaidi: The Witness is a resident of Buyat Pante since 1980. The Witness stated that everyday her family consumed fish from the Buyat Bay and had never experienced any illness. The Witness also stated that the fish in Buyat Bay did not diminish, but only fluctuated according season. The witness also corroborated the other witnesses who said that itchiness was caused during the season of milkfish seedlings because she had to stay in the seawater for long periods. The Witness also stated that many mothers of the Buyat community pretended to be ill when journalists were visiting the area. According to the Witness, Rignolda

itchiness. According to the Witness, the Independent Team had stated that Buyat Bay was polluted and the residents must be removed, but the Government did not provide any facilities to move. In 2000, the Witness visited Jakarta for a seminar. During this visit, the Witness met with an American citizen named Kevin Dixon. Kevin Dixon was among the people in Anwar Stirman's photograph taken in the United States.



Surtini Paputungan: The Witness stated that she suffered paralysis (in 1998) and there is no information from doctors stating the cause of her paralysis. The Witness, her husband and her child did not suffer from itchiness. The Witness consumes medicine. The doctors from Mer-C provide the medicine. The Witness was examined at Cikini Hospital and St. Carolus Hospital. Dr. Jane Pangemanan accompanied the Witness. The Witness heard from doctors of Mer-C that the residents of Ratatotok village also suffered from the same diseases as those of Buyat residents.



Nurbaya Pateda: Many doctors had examined the residents but there had not been any conclusion with regard to the cause of the diseases in Pantai Buyat. The Witness stated that she suffered from headache and stomach ulcer but she did not suffer from itchiness. Doctors have different diagnosis on the Witness' disease. Other than this, a doctor assigned by Ariyanti Baramuli had examined the Witness. However, the doctor did not inform the Witness about the disease.



Juhra Lombonaung: The Witness had examined her disease to the local Puskesmas. The Witness was hospitalized once at Bethesda hospital. The Witness had suffered from rheumatism of the joints until she could not move. The diagnosis from a doctor stated that the Witness suffered an infection. The Witness also suffered from a lump on her head. The Witness was examined once in Cikini Hospital, but the disease could not be diagnosed. The Witness's disease was seasonal.



Sul Manoppo: The Witness lived in Dominanga since 26 June 2005. The Witness stated that since Newmont disposed of the waste, her income decreased and [she] suffered from itchiness, cramps in the left leg. The Witness had gone to a doctor in Buyat Pantai [for a health examination], however the doctors could not provide diagnosis or the cause of the Witness' disease. The Witness' disease became healed when she took in medication.



Herson Bawole: The Witness currently lives in Dominanga. The Witness is a fisherman. The Witness stated that since Newmont disposed of the waste, his income decreased and the Witness suffered from itchiness and lumps. Both descendants of the Witness were ill too (they are 20 and 15 years of age). The Witness ate part of the fish catch and sold the remaining fish catch to Kampung Buyat.

Djamaludin often came to Pante Buyat to visit Mansur Lombonaung, have meetings regarding moving the inhabitants of Buyat Pante to the region of Toli-Toli, for reasons that the Buyat Bay was polluted.



Hj. Dahlan Ibrahim: The Witness is the Village Head of East Ratatotok since 1997. The witness stated that there was never an announcement from the District Head, Sub-district Head, or from the Village Head that prohibited members of the community not to consume fish or drink water from their water source (well).

The witness explained that information about fish having lumps was a rumor. The witness also stated that: (1) it is only the family of Pak Mansyur that had caught the fish with lump, (2) he and other Village Elders from Ratatotok have been to Jakarta and visited the Ministry of Environment (KLH) with the intention to clarify the rumors whether the fish from Buyat Bay may be eaten, (3) he is also a signatory to the open letter—signed by the Sub-district Heads, the Traditional Heads, Chairman of the Belang Community Communication Forum, Chairman of the HNSI, Ratatotok District community leaders and members—containing the declaration that the rumors of pollution in Buyat Bay were untrue, (4) the presence of PT NMR in Buyat and Ratatotok has brought added value into the community, and (5) beside PT NMR, there exist a number of traditional miners that conduct illegal activity in South Ratatotok, whereby these miners would dump their waste into the river side, and to this day these miners are still in operation.



Jantje Aring: The witness is a Traditional Head of South Ratatotok Area. In his knowledge and to this day the community of South Ratatotok Area is not suffering an increase in health problems. Witness stated that the presence of PT NMR has brought many benefit for his village, and he emphasized that the traditional miners dispose their waste straight into the river, and these traditional miners still exists to this day.



Madjid Andaria: The witness is a fisherman and former Traditional Head from 1973 until 1979. The witness stated that: (1) not a single of his family member is suffering from lumps, (2) the causes of itchiness are scabies or fungi, (3) the causes of cramps to some member of his community are those who utilize ice to store their fish, (4) the activity of PT NMR has not caused any changes to the fish population in Buyat Bay—this conclusion is based on the witness's experience that he has always been able to catch fish in Buyat Bay. The witness stated that he has accompanied other Elders to Jakarta to explain to the Minister (Central Government) that the news in regards to the pollution is untrue.



Salam Ani: The witness is a former Sangadi Interim Official since the 22 June 2004 until the 22 November 2005. The witness stated that even though there are rumors that the fish is polluted, he continue to consume fish. The witness stated that the community was not influenced by the rumors and the community continued to eat the fish from Buyat Bay. The witness expressed the attention of PT NMR towards to Buyat community in the areas of business development, road maintenance, Public Works Reconstruction, Village Hall, repair of water pipes, drainage, field sanitation facilities and waste disposal.

Conclusions: I found the testimonies of the prosecution's fact witnesses from Buyat well rehearsed. For instance all these witnesses stated they went out exactly five miles to sea to catch fish; all knew that the tailings pipeline was 82 meters below the sea; all had "symptoms" that were similar, and all their "symptoms" started with NMR starting operations. The full of extent of theatrics became obvious through the testimonies of respected village elders like Hadji Dahlan, Robert Sasuhane, Jante Aring and others. It is clear that the prosecutors' witnesses were coached, and their answers were well orchestrated and rehearsed. However under cross examination before the court their testimonies revealed significant inconsistencies. The accuracy of their testimonies was often in question and on more than one occasion the panel of judges had to remind the prosecution's witnesses that they were testifying under oath before God. It is clear that the poor villagers were used as a tool by NGO's, international activists and politicians like Aryanti Baramuli to promote their personal interests. I find it appalling that people like Rignolda Djamaludin would manipulate his own people. The role of NGO's that advised the poor villagers to discard proper medical treatment is contemptuous.

2. Regulatory Compliance and Enforcement

Prosecutor's Witness



Witoro Soelarno: The Witness had been assigned as the Mine Inspector for PT Newmont Minahasa Raya (PTNMR), as a member of PTNMR's AMDAL technical team commission and as a member of PTNMR's mines closure. From his inspection, as a mine inspector he did not find anything which violated the regulations that could temporarily close down PTNMR's operation.

The Witness stated that the tailings' concentrate is not very different from those of natural rocks in the mountain. The Witness also stated that there is no quality standard on heavy metal in respect of tailings before 11 July 2000.

The Witness stated that the subject of his review is the monthly average of the detoxification performance as reported in the RKL/RPL. The monthly average figures come from the daily outcome of the detoxification performance.

Sigit Reliantoro: The Witness is a staff of the Assistant Deputy at the environmental impact review unit-KLH. One of the Witness' duties is to evaluate the report of RKL/RPL performance. The Witness stated that at that time Masnellyarti Hilman established a team to handle PTNMR and requested the evaluation result of the RKL/RPL, so the Witness gave the evaluation result to Masnellyarti Hilman.



The Witness admitted that he made errors in quoting the effluent result that exceeded the quality standard which was reported in the RKL/RPL, which quotation was need in the indictment. The Witness admitted that Attachment C to Kepmen 51/1995 does not regulate tailings parameters. There is not a single mine company in Indonesia which applies Kepmen 51/1995 as a standard. He also stated that there were no warnings to PTNMR with regard to the result of effluent evaluation that exceeded the quality standard. The letter of Deputy IV No. 533/Deputi LH/2002 dated 22 March 2002 was a recommendation.

Isa Karnisa: Witness was Deputy VII of KLH in 1999-2001 the Witness's position was the Head of Air Pollution Directorate, which meant that during that period of time the Witness had no authority to conduct evaluations of RKL/RPLs as referred to in the Witness's letter No.B-533/Dep.IV LH/3/2002 dated 22 March 2002.



The Witness stated that he had sent a reprimand letter No.B-533/Dep.IV LH/3/2002 dated 22 March 2002 to PT NMR concerning periodic evaluations of PT NMR's RKL/RPL reports between 1999 and 2001 which indicated that some sample measurements exceeded the quality standard. The Witness under cross examination acknowledged that the letter was in the form of a "recommendation" and not that of an official warning.

Defense Witness



Washington Tambunan: The Expert Witness works as an employee at the Department of Mining and Energy of North Sumatra and once held the position of Regional Office Head of the Department of Mining and Energy of North Sulawesi.

The Expert Witness explained about the Mining Log Book, which is a book that contains instructions from the Mining Inspector who came from the central government (Jakarta) and one who came from the North Sulawesi Regional Office. Never ever was there in PT NMR's Mining Log Book any reprimands or warnings to the company. Based on the evaluation performed by the Department of Mining and Energy, there were no sufficiently strong reasons to issue a reprimand, what more the temporarily closing of PT NMR.

PT NMR already obtained permit to perform activities of construction, exploitation, or production, and as such, the placement of tailing on the sea bottom like was noted in the AMDAL. PT NMR also obtains approval for the implementation since it would be impossible to perform construction activities and production activities without any approval on said AMDAL



Ngadja Ginting Soeka: The Witness is a Mines Inspector for the Department of Energy and Mineral Resources. The Expert Witness explained that inspection of the mine was performed by the Mining Inspector, any findings encountered by the Mining Inspector is reported to the Kepala Teknik Tambang to be followed-up and to implement any improvements if deemed necessary.

The Expert Witness reiterated that the Chief Mining Inspector in accordance with Article 22 of the Decree of the Minister of Mining and Energy no. 1211/1995 is obliged to examine the tailings every 6 months while as concerned the RKL/RPL the monitoring is performed once in a three months.

The Expert Witness also confirmed that as with regards to the RKL/RPL reports that are produced by Freeport, Arutmin and also Kelian Equatorial Mining, all used the monthly average values. The Expert Witness performed inspection of PT NMR's mining activity performance.

The Expert Witness stated that during inspection of mining performance never found any conditions to be apprehensive about that needed to be followed-up and corrected by PT NMR. Should there be anything observed, during the implementation of the mining inspection, which was of danger, then the Expert Witness as Mining Inspector would have the authority to instruct the temporarily closing down of PT NMR's mine.

The Expert Witness acknowledged taking samples of the tailings to be sent to Jakarta and analyzed at an independent laboratory, and from the results of the analyses it was found that this sediment sample never exceeded the standards set by the government.

Conclusions: The defense witness confirmed earlier testimonies that the person in charge and responsible for daily environmental management for the company was the "Technical Mine Manager" or the Kepala Teknik Tambang and that monthly averages were the correct regulatory reporting and evaluating measurement.

With the Persecutions witness confirmed that Masnellyarti was the one who orchestrated the evaluation of the RKL-RPL reporting, even though it was not her primary area of responsibility and that Sigit had made mistakes in his evaluation of the RKL/RPL as listed in the indictment. The Prosecutions Witness admitted that Attachment C to Kepmen 51/1995 does not regulate tailings parameters for any mine as well as the infamous letter No.B-533/Dep.IV LH/3/2002 that Isa sent to Newmont was a letter of recommendation and not a warning letter. It can be also concluded from the Defense Witnesses testimony that the Government never found any significant issues during inspections and that the Government did act as a responsible regulator.

3. Sampling Issue

Prosecutor's Witness



Ricky Telleng: The Witness's research showed that there are many fish in Buyat Bay. The Witness recorded around 72 species of fish found in Buyat Bay, comprising of surface and seabed living fish. The fish catch are [found] within a distance of 1 mile from the shore.

The Witness once saw a fish with lumps, which according to rumor was caught by Yahya Lombonaung. According to the Witness the lumps probably occurred because the fish reef unintentionally scraped and the skin got infected. According to the Witness, the definition of a fisherman is a person who for 60% of his activity goes to sea. [By this definition] the Witness knew of only 3 people who are fisherman in Buyat Bay. The Witness knew that there were also many fishermen from Ratatotok Timur that went fishing in Buyat Bay. Witness stated that he was able to catch 200 fish in 2 hours in Buyat Bay.



Steven Kaunang: The Witness accompanied 4 divers to take sediment and seawater samples. Of the four divers 2 were from NDC and the other two from UNSRAT (including Lalamentik). The Witness went diving twice. The Witness stated there were four plastic bags taken from a depth of 30, 20, 10 m. The Witness confirmed that it was Rignolda who took the samples. The Witness knew that the samples are divided into two: one for the police and another for PTNMR.



Yahya Lombonaung: In August, Mabes Polri requested the Witness to take fish samples. The Witness was able to see the fish clearly from above the surface of the water and he confirmed that the seawater was clear. The Witness took the fish at the edge of a reef.



Yogie Chrisswasono: The Witness went diving to take samples of seawater. The Witness recalled that the sample taking was done only once. The Witness later corrected his statement and said that it was done two times (Note: His BAP/dossier stated that he went sample taking four times).

The Witness went diving to take sediment samples. The Witness did not know the coordinates of the place where the samples were taken. The Witness was only told to swim to a place directed by Rignolda. The Witness admitted that the samples were handed over to Rignolda, who at that time was onboard. The Witness stated that he was requested by Rignolda (as a personal favor) to take samples. Other than this, [according to the Witness], Rignolda did not explain further with regard to the sample taking



Dolfi Nicolaas: The Witness stated that the Witness knew Rignolda only after taking the samples after he landed [on the beach] because someone informed him and referred him to Rignolda [as the person who ordered him to dive] (Note: The BAP/dossier states that the Witness stated that Rignolda requested him to take the water samples).

Defense Witness



Jerry Kojansow: As concerned the collection of samples by the Police in the Buyat Bay, the Witness stated following:

1. That the sampling was performed during 4 days, from the 28th to 31st of July, and consisting of (i) taking of samples (28th – 30th July) and (ii) separation of samples (31st July).
2. The samples were separated in 2, one for the forensic lab and the other for PT NMR. The Witness explained that PT NMR used sealed bottles to store the split samples, while the police did not. The samples taken were kept in a room at the local police station and were left on the floor without putting it a cooling box.
3. The Witness explained that water / sediment samples taken, were directly separated and divided between the police and PT NMR on the boat, while those taken on the second day were divided at the Buyat Beach.
4. To the samples that are taken on the first day were added drops of HNO₃ before performing filtration, while to this was not performed to the samples taken on the second day. According to the Witness, if dissolved metal was going to be measured, then the sample should actually first be filtered before the addition of HNO₃.
5. The Witness explained that there were 2 boats that were collecting the samples and that the Witness was only in one boat.
6. The Witness explained that on the 28th of July, the Witness also accompanied the police to perform sampling of sea-water using the boat Nemira II. Then on the 29th of July, there were 2 boats that performed sampling, namely (i) Nemira II, and (ii) a tuna fishing boat. The Witness took part in the Nemira II and instructed other PT NMR's employees to take part on the tuna catcher boat, since the Witness could not be on 2 locations at the same time.
7. The Witness that he was not aware of any reasons why two boats were used for sampling on the second day. The sampling done using the tuna fishing boat, was not performed using the go-flow instrument but by diving into the Buyat Bay. Diving is not the common method of taking such samples.

The Witness provided information that a difference existed in the number/volume of samples taken between those reported in the Puslabfor report and the official report (BAP) signed by the Witness.

Conclusions: These prosecutions witnesses seem to be telling the truth. Ricky recorded 72 fish species in Buyat Bay with is similar to the National Geographic publication of August 2006 which recorded 84 species. One can only agree with the persecution witnesses statements that the water is clear with a visibility of several meters and that fish were abundant. This was proven by several of the prosecutions and defense witnesses, the results of a major fishing competition and the fact that it only took about 45 minutes for the prosecutions witness to catch all the fish samples used by the police.

What is unclear is why was Rignolda involved in sampling? I thought that this was a police investigation. Also why were divers and plastic bags used to collect police evidence when modern sampling equipment and proper containers were available? Placing nitric acid (HNO₃) into the sea water samples prior to filtering totally destroyed the validity of the evidence as samples must be filtered PRIOR to preservation with acid. A clear breach of sampling protocol and procedure. Nor has any one ever explained where the 10 extra samples came from.

4. AMDAL Issue

Prosecutor's Witness



Siegfried Lesiasel: The Witness is the Chairman of PT NMR's AMDAL Drafting Team, the Witness supervised 16 people comprising experts in the relevant fields required for an AMDAL. The AMDAL was prepared from in 1992 to 1994. The Witness emphasized that without an AMDAL approval, it is impossible for PTNMR to place the tailings in the seabed of Buyat Bay. The tailings placed in the seabed of Buyat Bay would be a new habitat for benthos. A new colony of Benthos may appear after disposal of tailings ceases. The Witness stated that his findings showed that there is thermocline in the STP location. According to the Witness, tailings are not included in [the category of] B3 waste.



Witoro Soelarno: The Witness was a member of PTNMR's AMDAL technical team commission. The Witness stated that the AMDAL approval means that it is proper to carry out mining operation particularly from an environmental aspect.



Masnellyarti Hilman: Witness was Deputy IV Bapedal, Deputy for Legal Affairs and Environmental Management. The Witness stated that an activity which impacts the environment cannot be given a permit before its AMDAL is approved. The Witness stated that based on AMDAL, tailings can be disposed of at the depth of 82 meters, a zone below the thermocline.

Defense Witness



David Sompie: The witness stated that PT NMR was obliged to perform an Environmental Impact Study – AMDAL, and it obtained a permit to perform production activities as well as construction activities. As concerned the AMDAL document, the Witness explained the following:

1. The AMDAL document was preceded by a Feasibility study, AMDAL Term of References (1993) and the entire AMDAL document should obtain approval.
2. The government requires that the party which performs the AMDAL, the AMDAL Terms of References, should possess an AMDAL certificate and being registered at the Department of Mining. To this purpose, PT NMR used the services of PT Dames & Moore Indonesia, an AMDAL consultant possessing the certification and being registered at the Department of Mining.
3. The AMDAL study that has been prepared by the AMDAL consultant should be presented by PT NMR at the AMDAL Commission of the North Sulawesi Provincial Government, comprising of the Department of Mining, NGO's, Community Representatives..
4. The AMDAL document contains issues regarding environmental factors and the system for the placement of tailings. PT NMR is in possession of the permit for the placement tailing in the sea from the AMDAL document that has been approved. Further, since 1999 another Government Regulation (PP) number 19 of 1999 was issued that required a permit, PT NMR applied for a permit.
5. AMDAL approved the placement of tailings in the sea over the land disposal.
6. The AMDAL document also contains details regarding the treatment of the tailings before its placement in the sea, which is called the detoxification system.
7. PT NMR is aware that the material mined by PT NMR is naturally rich in mineral elements such as mercury, arsenic and antimony. The detoxification process returns these minerals back into their natural form and other chemically stable compounds.

With regards to the placement of tailing in the sea, the Witness explained a summary of considerations why it is more advantageous to place tailing on the bottom of the sea; PT NMR's tailing possesses a complex mineral composition which if placed on land may be easily undergo reduction reactions due to contact with the air, heat and acid. While on the seabed, the amount of air is small, no heat is available and the possibility of acidic reaction is impossible.

Conclusions: It is my basic conclusion that the prosecutions witness confirmed the defense witness David Sompie's own testimony that Newmont had all completed all the necessary steps to evaluate the project and had the feasibility study, AMDAL, RKL-RPL, construction and operating permits necessary to operate the mine which includes the discharge of mine tailings into the sea at the location and depth specified in the AMDAL. If the government did not believe it was safe – the government would not have granted such approvals.

5. Permit

Prosecutor's Witness



Sonny Keraf: The Witness is a (former) Minister of Environment and Head of Bapedal. The witness stated that when he was the Minister of Environment he heard of many claims, among others from NGOs, concerning the placement of tailings. In order to know for certain whether PT NMR tailings have polluted the sea or not, KLH asked PT NMR to conduct an Ecological Risk Assessment (ERA). While the ERA study was being conducted, the Witness stated there has to be a basis for PT NMR to be able to place tailings in the sea in that period of time. For that purpose, the Witness issued letter No.B-1456/Bapedal/07/2000 dated 11 July 2000, which, according to the Witness, was a temporary permit for PT NMR to place tailings in the sea. However, the Witness acknowledged that the letter No.B-1456/Bapedal/07/2000 did not say "temporary." The Witness also stated that the letter No. B-1456/Bapedal/07/2000 does not stipulate that after the ERA study is completed a new permit would be issued. Furthermore, the Witness stated the quality standards for tailings will be determined after the ERA study is completed.

The Witness stated that there is no regulatory basis for ERA study. Nonetheless, the Witness stated that PT NMR has conducted the ERA study. The Witness stated that the ERA study was not yet acceptable, but he also stated that the ERA study was never rejected. The Witness has never issued a letter rejecting the ERA study. Afterwards PT NMR was asked to conduct joint sampling. Until the end of the Witness's term as Minister of Environment/Head of Bapedal, according to the Witness, that joint sampling was never conducted. PT NMR had a commitment to conduct the joint sampling. However, due to technical issues it was always postponed.



Masnellyarti Hilman: In 2000 – 2002, the Witness was Deputy IV Bapedal, Deputy for Legal Affairs and Environmental Management. According to the Witness, the letter from Sonny Keraf No.B-1456/Bapedal/07/2000 dated 11 July 2000 was not a permit and automatically will not be valid after 6 months. But the Witness could not explain why after 6 months and with PT NMR still continuing to dispose of tailings there was no action at all from KLH.



Asep Warlan Yusuf: The Expert Witness explained that the Letter of the Minister of Environment Number 1456 was not a permit but only an ordinary letter sent by the Minister of Environment to PT NMR.

The Judge questioned the Expert Witness as whether the information provided by Witness Sonny Keraf, stating that the Minister's Letter Number 1456 is a temporary permit. Responding to this question, the Expert Witness explained that in the administrative law concept no provision for temporary permit exists. The Expert Witness explained that if the government did not respond through Minister's Letter Number 1456, and does not issue a permit in a certain time, then this would not mean that the government permits however, since based on Article 3 of Law Number 5 of 1986 regarding State Administrative Court Procedures, the government on the contrary rejects the application.

Defense Witness



Nabel Makarim: The Witness is a former Environmental Minister for the period of 2001 – 2004. The witness clarified to the court that PTNMR had a permit, and it didn't need a permit on top of a permit.

The Witness also stated he verified the conclusions of the ERA as Minister of the Environment by sending a team in cooperation with the Baruna Technical Implementation Unit, BPPT to conduct sampling in Buyat Bay in 2003. The Witness explained that the examination conducted by KLH in 2003 found that As and Hg does not exceed the standard. The KLH 2003 report is published for the general public.

The Witness explained that in 2004, KLH conducted examination in Buyat Bay, in cooperation with 14 other agencies. The 2004 study was approved during cabinet session of Coordinating Ministry for People's Welfare.

The Witness Explained the final result of the 2004 report, which included 14 agencies and 7 Laboratories has shown that (i) The water in Buyat Bay is not polluted (ii) Hg contents on fish sample is below the standard set by the WHO. This reported in KLH report dated 14 October 2004.

In relation to the Letter by Isa Karmisa, the Witness stated that the letter is a form of recommendation. The Witness stated that during his position as the Minister of Environment, he has never sent a caution / notice to PT NMR.

The Expert Witness explained that exceedances were measured based on monthly averages. The Witness also confirmed that he had been examined by the Police in relation to this case, gave testimony that Buyat Bay was not polluted and that he had signed the minutes of examination.



Safri Nugraha: The Expert Witness is an expert in the area of Government Administration Law. The expert witness has been a Lecturer in the Faculty of Law at The University of Indonesia. The Expert Witness was of the opinion that Letter No.B-1456/Bapedal/2000 dated 11 July 2000 as an official judgment made by the appointed public official, Mr. Sonny Keraf, The Minister of Environment, The Head of Indonesian Environmental Impact Management Agency (Bapedal). The Expert Witness also believed that Letter No. B-1456/Bapedal/2000 dated 11 July 2000 also acts as reply to the request made by PT NMR to dispose tailing waste, and was a permit to dispose tailing waste into the sea.

Regarding the request made by PT NMR that was forwarded earlier than the specified time in Law No. 23 of 1997 regarding Environmental Management, the Expert Witness was of the opinion that PT NMR has shown good will in fulfilling its legal obligations in the new law by carrying out its legal obligation earlier than expected. The Expert Witness is of the opinion that in the article of the Environmental Management Act, the Government specifies 75 days in which one may respond whether or not one agree or disagree. However if the Government does not respond, then it will considered as an agreement.

The expert witness is of the opinion that Letter No. B-1456/Bapedal/2000 is not a temporary permit, because it does not specify a temporary amount of time, or other clauses that specify it being a temporary permit, therefore the Expert Witness is of the opinion that the permit has a permanent characteristic.

Conclusions: Ministers Sonny Keraf and Nabel Makarim stated that PTNMR had the tailings permit. Minister sonny Keraf stated that the permit was temporary but agreed that the word temporary is not stated in the permit. However Mr. Makarim stated that the permit was permanent. The only outstanding issue at the end of Sonny Keraf's term was re-sampling that could not be completed during his term because the BPPT equipment was defective. Nabel Makarim did resample Buyat Bay in 2003 and found no evidence of pollution. The Minister also re-sampled Buyat Bay 2004 and again found no evidence of pollution. Minister Makarim also testified that he had given a sworn signed testimony to the Police. However, his testimony was later removed from the BAP by the Police. Both the Ministers agreed that the ERA study is not a legal requirement.

6. Perjury by Masnellyarti Hilman

Prosecutor's Witness



Masnellyarti Hilman: The witness, when shown the Minister of Environment's October 2004 report on Buyat Bay she stated she had never seen the report.

The Witness presented a slide in which she acknowledged that the data was taken from the 2004 Integrated Team Report however, the basis for that slide was the October 2004 report which she had not seen.

Conclusions: Masnellyarti Hilman committed perjury in court because she lied under oath that she has never seen the Buyat Bay report issued by KLH on 14 October 2004. Two witnesses testified that they received a copy of this report from Masnellyarti Hilman. Further Masnellyarti Hilman acknowledged that she used the data from this report that she denied having seen at all, as well as commented on the report she testified she never seen in Tempo on 31 October 2004 (see attachment 12-E). Her not acknowledging that report denied me the right to cross examine here on the difference between the KLH October and November reports, which are material to the case.

Defense Witness



James Paulus: The Witness is an expert in the field of environmental toxicology and has performed more than 50 studies in the field of environmental toxicology and a member of the KLH Integrated Team producing the Environmental Quality Data Analysis Report of the Buyat Bay and Totok Bay of the Ministry of Environment, 14 October 2004. The Witness acknowledged that the previous witness of the General Prosecution, namely Masnellyarti Hilman was the person who gave the KLH October 2004 report to him at a meeting in Jakarta.



Inneke Rumengan: The Expert Witness is Lecturer at the Faculty of Fisheries and Marine Sciences of the UNSRAT and also Head of the Laboratory of the Faculty of Fisheries and Marine Sciences of the UNSRAT and a member of the Integrated Team. The Expert Witness acknowledged the slide that was shown was contained in the Report of the Ministry of Environment dated 14 October 2004 and compared that with the slide which was shown by the Expert Masnellyarti Hilman

The Expert Witness acknowledged that the evidence, the Minister of the Environment report dated 14 October 2004 were obtained at the Technical Team meeting in Jakarta chaired by Masnellyarti Hilman.

7. B-3 Waste

Prosecutor's Witness



Sulistiowati: In 2001-2004 the Witness was the Head of the Sub-Directorate for Environmentally Friendly Technologies and her expertise is not related to mining B3 waste. The Witness had never published writings or scientific works related to B3 waste. Her S2 (graduate level) education was not related to B3 waste. The Witness explained that to determine if a certain waste is B3 waste can be done by checking (1) whether that waste is listed in Appendix I of PP No.85/1999, (2) the characteristics of that waste, whether it is explosive, flammable, infectious, reactive or corrosive; (3) whether the waste is toxic using a Toxicity Criteria Leaching Procedure (TCLP) test, where the TCLP must be below the quality standard according to the table in PP No.85/1999. In that case the waste is not considered B3 waste. If the TCLP is above the quality standard, then:

- i. A characteristics test is performed using a lethal dosage 50 test. If the results is below 50 mg per kg of body weight then that waste is not considered B3 waste. If the Lethal Dosage is above 50 mg per kg body weight, then;
- ii. The chronic or acute toxic characteristics of that B3 waste must be checked.

The Witness furthermore stated that based on regulations it could be either TCLP or characteristics test that is conducted.

The Witness stated that B3 waste cannot be disposed directly into the environment without first processing it, such as disposing of it in the landfills. The B3 elements must first be stabilized until they meet TCLP quality standards.

Witness also stated that metals could be released from tailings in ACIDIC sea water.

Defense Witness



James Paulus: The Witness worked as a lecturer at the Faculty of Fisheries and Marine Sciences of the Sam Ratulangi University. The Witness is an expert in the field of environmental toxicology and has performed more than 50 studies in the field of environmental toxicology.

The Witness stated that he studied the composition of tailings in the Buyat Bay. The Witness explained that the Integrated Team tested the sediments and tailings by applying the TCLP test to check arsenic, and found that arsenic concentration in the Buyat Bay varies from below the detection limit up until 2.9 ppm, which is far below the allowable limit of 5 ppm allowed by Government Regulation (PP) No. 18 of 1999. While mercury was below the detection limit of the equipment used in the study.

The Witness stated, that he concluded that tailings were not Toxic and Hazardous Wastes since he performed the TCLP testing. The Witness explained that TCLP or toxicity testing is performed to test stability of the material.

The TCLP test done on PT NMR's tailing was performed by applying shaking for 18 -20 hours using a pH of 4.5 which is the most extreme toxicity test. The condition of the shaking was performed in an extreme rigorous manner to test for the stability of the tailing, should there occur extreme conditions.

Results from the test showed that arsenic, mercury and iron in the tailing did not undergo reaction that would prove that tailings were a Toxic and Hazardous Waste, hence if placed on the bottom of the Buyat Bay, the tailings would not disturb benthos organisms, and could even be used as a place for benthos organisms.

Conclusions: Prosecution witness had no expertise on B-3 waste yet she testified on behalf of the government. In addition to the lack of expertise, Sulistiowati had never reviewed the data on TCLP tests conducted by academic researchers and the North Sulawesi Governor's team that had conclusively established that tailings are not B-3 waste. I have struggled as to why, 10 years after the AMDAL was approved which incorporated a toxic analysis of mine tailings - with the determination that PT NMR's mine tailings were inert and would not release metals into the environment. After years of TCLP testing by the company some one from KLH would now question if tailings were a toxic and hazardous substance is outrageous. KLH had the TCLP results from the North Sulawesi Governors team from 2000 which classified tailings as a non-B-3 substance. In fact the compliance of TCLP test with the standard was the basis for issuing the tailings permit on 11-July-2000.

8. Fish Issue

Prosecutor's Witness



Rachmansyah: Witness is an expert in fish cultivation and Researcher at the Research Center for Brackish Water Fisheries. For certain types of fish, such as selar, swangi, kerapu, kuwe (that are demersal fish) from Buyat Bay, the concentration of Hg was higher than that in the same type of fish from Ratatotok Bay. But there are certain types of fish, such as tetengke from Ratatotok that has a higher level of Hg compared to similar fish from Buyat Bay.

For the MPC value, most fish samples, both from Ratatotok Bay (335) or Buyat Bay (333.5) were below the maximum allowable concentration criterion (based on standard reference issued by WHO for FAO), which is 500 ppb. Therefore, if the average concentration for Hg in Totok Bay and Buyat Bay is taken, it would still be within the safe limits. The Hg concentration for water samples in Ratatotok Bay and Buyat Bay was above 0.01 ppb.

The Witness confirmed that the seawater samples were filtered and preserved in acidic conditions. The Witness did not know whether the AAS instrument used to analyze seawater samples has cold vapor. The Witness acknowledged that when the result of that research was presented in a seminar in UNSRAT there were people who disagreed about the results of that research. The Witness reaffirmed that the pH for seawater in Buyat Bay was above 8.

Conclusions: First, the Prosecutions witness was from my perspective an honest man trying to do his job but without adequate experience and expertise. His experience and laboratory are established for fresh water research and not salt water. His laboratory was not equipped with proper equipment. Nor was he familiar with the details of the WHO guidelines which are to be applied as the mean or average from a sampling of a group of fish – not to each and every fish. The prosecution witness agreed that his own AVERAGE VALUE of 334 ppb is well below the guideline limits which prove the fish in Buyat Bay are fine. The one thing that this witness did was confirm that the sea is basic and that the testimony of Sulistiowati which referred to acidic sea water conditions as impossible. The Defense witnesses confirmed that based on several studies through out the life of the mine, Buyat Bay remained a vibrant ecosystem with no significant impacts. The witness also showed a video before the court that the coral reefs even near the tailings remained un-impacted by mining activities

Defense Witness



L.T.X. Lalamentik: The Expert Witness is a lecturer at the Faculty for Fisheries of the Sam Ratulangi University, and the Expert Witness together with his team performed research and monitoring of coral reefs. The Expert Witness performed research at one site in the Buyat some time before the issues raised about pollution of the Buyat Bay.

The Expert Witness performed research to obtain base line data in 1992 for the AMDAL, and further during the years 1996-2005 the Expert Witness performed monitoring. The Expert Witness stated that the monitoring of the coral reefs that were performed before PT NMR was in operation until 2006 showed that these were in stable condition.

The Expert Witness showed a video clip that contained views from coral reefs living in the Buyat Bay for 20 years, where the condition of those coral reefs were still stable and did not experience any changes that were drastic in nature. The Expert Witness also showed the existence of sea biota in particular fishes that were still available in the Buyat Bay.

The Expert Witness found that the coral reefs in the Buyat Bay lived at a depth of 3 down to 12-15 m, and that during the monitoring that was performed by the Expert Witness during the years PT NMR was in operation, the Expert Witness never encountered any tailings at the coral reef monitoring location.



James Paulus: The Witness is an expert in the field of environmental toxicology and has performed more than 50 studies in the field of environmental toxicology. Results from the test showed that arsenic, mercury and iron in the tailing did not undergo reaction that would prove that tailings were a Toxic and Hazardous Waste, hence if placed on the bottom of the Buyat Bay, the tailings would not disturb benthos organisms, and could even be used as a place for benthos organisms.

9. Surface Water

Prosecutors' Witness



Yudi Prabangkara: The Witness is the Head of Mining Environmental Management Technology at BPPT since 2001 and was a member of the KLH Peer Review Team. The Witness has never been to Buyat Bay or Buyat Village. The Witness stated that hydrological research conducted in Buyat Village was not thorough and must be followed with continued, deeper research involving drilling process.

The Witness acknowledged that the detoxification technique employed by PT NMR is modern technology and is usually safe for the environment. The success of the detoxification process is evident from the waste produced, that is, tailings. If the process is good then the tailings produced will meet the standards required.

Conclusions: The prosecutions witness was a reasonable professional who had never been at the mine location. He stated that more research that was recommended by the defense witness needed to be conducted involving additional drilling and field work. The defense witness testified that he had conducted a full hydrogeology testing and determined that arsenic originates from natural rocks and is very localized with no connection to PTNMR's mining operation.

10. Thermocline

Prosecutor's Witness



Abdul Ganie Ilahude: The Witness stated that he had never dived or conducted research in Buyat Bay. But the Witness insisted that around 1972 he conducted research in Maluku Sea and found that the thermocline was at the depth of between 100 to 350 meters.

The Witness stated that by using his own techniques and interpolating the temperature readings and by looking at the depth of the sea, drawing a straight line to the point in question, the result is that there is no thermocline in Buyat Bay. In other words, the basis for the Witness stating that there is no thermocline in Buyat Bay was interpolation and was not based on research.

Defense Witness



Rudy Sagoya: The Expert Witness is a lecturer at Bandung Institute of Technology (ITB) and an expert in the field of Hydrogeology. It is a field that tests water contents in soil or water below the surface, with background knowledge in geology and hydrology. The field of Hydrogeology conducts numerous tests in relation to water contents in soil.

The Expert Witness visited Buyat Village with LPPM ITB and Technical Faculty of the Gajah Mada University (UGM) to conduct Hydrogeology test and examination at Buyat Village. The objective of conducting these tests was to assess the hydrogeology condition in the Buyat Village, which includes water quality and groundwater flow patterns in the soil at Buyat Bay.

The Expert Witness stated that according to the results of this examination, mercury was not detected in the flow of water in the soil. Based on the analysis of 29 water wells, the study concluded that arsenic originates from natural rocks and is localized with no connection to PT NMR's mining operation.

This team also delivered the result of these examinations at a meeting with Local Governments of North Sulawesi, Bolaang Mongondow District and South Minahasa District as well as presented at the UNSRAT international seminar in the month of June (2005) in Manado.

Defense Witness



Andoyo Wurjanto (ITB): The witness is a Marine Expert and a lecturer at the Marine Engineering Study Program of the Bandung Institute of Technology. He is member of the Association of Hydraulic Engineering Experts and Coastal Engineering Experts.

The Witness performed the measurement of temperature and the assessment of Buyat Bay data. The Witness stated that he performed the temperature measurements to assess the existence of a thermocline using equipment called CTD or Conductivity Temperature and Depth. The Witness explained that he already made a presentation of his measurements in front of the Special Team of the Ministry for Research and Technology.

The Witness stated that the position of disposal was in the thermocline, since the mixed layer was found to be at a

Conclusions: This particular segment is very straight forward. A thermocline has been measured in Buyat Bay during base line and for the next 12 years thereafter.

The prosecutions witness never measured for a thermocline in Buyat Bay but merely did an extrapolation from some of his measurements in the Maluku Sea in 1972 or 14 years prior to the mine even starting and his testimony was virtually destroyed by the Defense witness who had examined about 10,000 measurements in Buyat Bay which indicated the presence of a thermocline at an average depth of 43 meters or 39 meters above the tailings discharge depth of 82 meters. Real data means real conclusions, and this means that the thermocline is around 43 meters.

depth of 43 meters while tailings were place at a depth of 82 meters.

The witness explained that up-welling is form of buoyancy and is process in sea-water where lower layers are going up.

The Witness explained that up-welling is only capable to lift sediments with a velocity of one over ten thousand centimeters per second. And as such, theoretically it may be able to lift something however since its velocity is so small, practically the particles will not be lifted, as before they are lifted they sink again due to gravitational force. Based on the monitoring and profile measuring, the Witness came to the conclusion that tailings were stable on the bottom of the Buyat Bay sea.

The Witness underlines that sediments that are near the tailing placement pipe are stable tailings. The Witness added that the season, currents and waves that occur near the tailings mound are similar to those that have been going on for the past 10 years, and then in the future the tailings mound will be stable as well.

11. Marine Ecology

Prosecutor's Witness



Rignolda Djamaludin: In response to the Legal Counsel's question, the Witness stated his thesis and dissertation to earn his S2 and S3 [graduate and doctorate] degrees were about mangrove. The Witness even went on to say that the letter from the Dean at UNSRAT, which stated that the Witness's expertise was in the field of mangrove forestry, as wrong. The Witness has never published his writings in a book.

The Witness acknowledges of being associated with the group of individuals calling themselves Mangrove Action Project. The Witness also stated that the studies he conducted himself included scoping and the geomorphology of Buyat and Rataatok, health, fisheries, sea grass fields and tailings. In conducting that research the Witness was assisted by nine individuals and it was conducted in six months. The Witness refused to tell what the source of funds to conduct that research was. For the health aspect, the Witness received data from Mer-C doctors, and the activity which the Witness refers to as health "research" was how to make a medical record based on people's complaints.

The Witness could not explain who took the pictures of the sea grass field, which according to the Witness is found in the waters of Buyat Bay. The Witness also could not explain when and where that picture of the sea grass field was taken.

The Witness could not tell at which coordinate and at what depth the pictures of sediment coral reefs were taken. In that picture there was only information that the coral reef image was from WALHI documentation and a Swiss television. The Witness also did not take part in the dive to record the image of those coral reefs. The Witness stated that the images of damaged coral reefs were taken from a book. So those were not original images of coral reef conditions in Buyat Bay. Note: In previous explanations, the Witness very clearly explained that those damaged coral reefs came from Buyat, and not just images taken from a book.

The Witness could not explain with certainty where the studied fish were taken from. The Witness did say that there were a number of fish taken from Buyat Bay by Buyat residents at his request. But the Witness could not explain where and when exactly the fish were taken. Several photographs of fish turned out to be from WALHI and not from his field research.

The Witness confirmed a photograph which showed the Witness on the boat receiving police seawater samples as evidence, and closing the plastic containers containing seawater samples. The Witness stated that with the presence of Rataatok Peninsula, the water from Rataatok Bay cannot enter or mix with the water in Buyat Bay.

The Witness acknowledges that the method used in the mapping of species and fish migration was his own method, and not following literature. The Witness in his testimony stated that he had never made statements regarding mercury content. And then the Witness acknowledged that the voice in a Voice of America (VoA) interview played for the court by the defense which he claimed to be a medical doctor and he accepted under cross-examination that he made statements regarding mercury in the VoA interview.

Defense Witness



L.T.X. Lamentik: The Expert Witness is a lecturer at the Faculty for Fisheries at Sam Ratulangi University, and the Expert Witness together with his team performed research and monitoring of coral reefs. The Expert Witness performed research at one site in the Buyat some time before the Buyat Bay pollution issue started.

The Expert Witness found that the coral reefs in the Buyat Bay lived at a depth of 3 down to 12-15 m, and that during the monitoring that was performed by the Expert Witness during the years PT NMR was in operation, the Expert Witness never encountered any tailings at the coral reef monitoring location.



James Paulus: Witness stated that results from the test showed that arsenic, mercury and iron in the tailing did not undergo reaction that would prove that tailings were a Toxic and Hazardous Waste, hence if placed on the bottom of the Buyat Bay, the tailings would not disturb benthos organisms, and could even be used as a place for benthos organisms.

Conclusions: The Prosecution's expert witness Rignolda Djamaludin represented himself as a medical expert, a toxicologist, a marine fishery and coral expert, a geo chemist, a bio chemist and an oceanographer, a sociologist and a medical doctor. In short he represented himself as a super expert. In reality the only expertise this witness showed before the court was to misrepresent science and confuse the general public. This witness, along with a few others, made outrageous claims without any evidence that fueled the media frenzy in Jakarta in 2004. This witness has continually lied and has disrupted lives and caused hardship to the community around our mine including fear, confusion and economic losses.

The witness testified that he was working with the medical doctors from Mer-C which aided his research in the determination that people were contaminated with heavy metals. I have struggled to understand the research association between Mer-C and Rignolda because Mer-C has the dubious record of making presentation to the Parliament where they claimed that 80% of Buyat Bay community is sick when in the reality medical expert Dr Sandra explained that people of Buyat are normally healthy. It was further proven in court that Rignolda misrepresented himself as a medical doctor and aided by his Mer-C counterparts spread the misinformation that 30 persons had died of Minamata Disease.

The outrageous allegations by Rignolda fell apart under cross-examination and it became clear that Rignolda's only goal is create a conflict in Buyat. The Defense witnesses who were experts in the field of toxicology and marine sciences decisively countered every of the Prosecutions witnesses absurd allegations. At the end of the day, Rignolda only discredited himself and groups he is associated with. It is not a surprise that Rignolda completely humiliated himself during his testimony.

12. Legal Experts

Prosecutor's Witness



Muladi: The Witness, prior to testifying in court, has spoken on local television about this case. This was brought up by the Legal Counsel pointing to Article 221 of KUHP. Subsidiary Principle cannot be applied to the category of independent crime, or in other words, the law enforcement towards independent crime is premium remedium by nature. The subsidiary principle only applies to dependent crime.

The Witness stated that there is a certain measure to judge whether an act of crime is an independent crime, which is by the presence of public unrest. The measuring stick for that public unrest is by looking at the social reaction and public focus on that case, the number of reports that are filed, public debate and the intense attention from the press, and everything that pertains to social and psychological characteristics.

The Judges asked the Expert's opinion about the background to the use of the words "environmental dispute" in Environmental Law, and that the Environmental Law does not use the term crime of environmental pollution. In response to the Judge's question, the Witness explained that disputes, as referred to in the Environmental Law tend to be of civil and administrative nature. But as far as Articles 44 and regarding corporate criminal responsibility, Articles 46 and 47 of the Environmental Law, the Witness provided the following explanation:

The requirements for a corporation to be held accountable are: (1) There is an official with a leading position; (2) It has committed an act or a crime; and (3) That act or that crime has benefited the corporation.

A leading position in a corporation is reflected in three instances: (i) power of representation; (ii) authority to make decision; (iii) authority to exercise control. Therefore, corporate accountability lies with the corporation itself and the officials in it. In addition, there has to be other elements, such as intent, negligence, and knowledge of wrongdoing. The conscience lies with the officials. The punishment of the corporation and its officials is called punishment provision.

While environmental destruction is an act that can cause the environment to stop functioning. The measure for environmental quality standard, besides referring to existing regulations, could also adopt international standards. The Witness explained that the "element of intent" as referred to in Article 41 paragraph 1 of the Environmental Law is to be aware or at least to have the reason to be aware. The Witness stated that the purpose of criminal law in the Environmental Law is to back up the administrative law.

The Witness could not answer with certainty why investigative institution of environmental crimes did not refer to the KUHP, but rather to PPNS Public Officials. The Witness stated that Faure said that Article 41 and Article 42 of the Environmental Law are about dependent crimes. Therefore, for the law enforcement there's no need to have violations of other laws and that the crime is relatively severe. But when he was shown Faure's paper which stated that "Article 41 of Environmental Law depends on administrative law" the Witness provided no answer. The Witness opined that a regulation of law applies the moment it is promulgated, even though there is an article of transition that provides a 5 year's time to adjust.

Defense Witness



Daud Silalahi: The Witness is a Doctor of Philosophy (DR) and Senior Lecturer (Professor) in the field of Environmental Law, a former expert staff secretary at the Justice Department, as well as former head of an expert team of Law experts in KLH who designed the framework of Environmental Law No. 23 of 1997.

Relating to Law No. 23 - the management of environment must be first and foremost placed as an administrative problem, such as the issuance of a permit. Legal Action is only a last resort, once all attempts of Administrative Law have been exhausted. In other words, the terminology of "Environmental Action" would not be used, because in reference to the philosophy, Environmental Law is a part of development, and is not directly connected to individuals, but the environment itself.

The Witness stated that the principle of Environmental Law are polluter pays principle and polluter preventive principle, what is referred to here is, in the event of a pollution, there is compensation in relation to the preservation of the environment, and will be dealt with according in a legal settlement, through civil recourse and not criminal action. The civil recourse must be of the highest priority, commonly referred to as "the principle of subsidiary".

The Witness explained that what is termed by "creating public unrest" must always be based on the basis of the amount of damage to the environment. The statements that were publicized in the media (television or newspapers) must not be taken as an "actual unrest", this unrest/problem" must relate to the conservation of environment.

The Witness stated that the Government must also take responsibility in order to make companies conduct their business responsibly. Therefore, the Government must be able to lead by utilizing the tools to guide, improve, and motivate that company. This is an instrument of administrative law

The Witness stated there are 3 things that must be noted on any environmental case; (i) The doctrine of prime major jurisdiction, that it must be submitted to the agency which issued the permit, (ii) there must be facts that indicate the destruction of the environment before it reaches criminal action. Facts of destruction / pollution to the environment must be issued by the official agency, (iii) the Environmental Law clearly stressed that subsidiary principle must be a majority, before other factors before it reaches criminal action.

The Witness explained there are three types or methods to prove corporate crime according to the government administration Act: (i) there is a cause and effect relationship by obtaining legal sample according to regulations; (ii) utilizing legal laboratory for analysis, officially authorized laboratory appointed by the government to conduct analysis; (iii) all analysis must be interpreted by the respective experts.



Andi Hamzah: The Witness is an expert in criminal law.

The Witness stated that he was indirectly involved in the formulation of Draft Environmental Law No. 23 of 1997 (UULH) According to the Witness, subsidiary principle in relation to criminal law, is the last application of criminal law [it acts as a last resort in enforcing environmental law] where as the application of administrative law, must firstly



Asep Warlan Yusuf: The Expert Witness explained that the content of Ministerial Letter Number 1456 is an answer to the application submitted by PT NMR's President Director to the Minister of Environment, and that PT NMR was allowed to dispose its wastes provided it fulfilled the provisions set in said Minister of Environment's Letter.

The Expert Witness explained that the Letter of the Minister of Environment Number 1456 was not a permit but only an ordinary letter sent by the Minister of Environment to PT NMR.

The Judge questioned the Expert Witness as whether the information provided by Witness Sonny Keraf, stating that the Minister's Letter Number 1456 is a temporary permit. Responding to this question, the Expert Witness explained that in the administrative law concept no provision for temporary permit exists.

The Expert Witness explained that if the government did not respond through Minister's Letter Number 1456, and does not issue a permit in a certain time, then this would not mean that the government permits however, since based on Article 3 of Law Number 5 of 1986 regarding State Administrative Court Procedures, the government on the contrary rejects [the application].

The Expert Witness explained that the Indonesian Law provides the standard spelling of the [Indonesian] word permit using the letter z. The reason for this, is according to the Expert Witness, that the use of the word i-z-i-n provides for a legal meaning, [the word] izin is valid as a governmental instrument, and hence the understanding of "izin" should be distinguished from the word izin that we daily use.

Conclusions: The prosecution witness Muladi was most impressive by his flamboyant arrival with a police escort, a full motorcade and the Minister of the Environment – The Governor of North Sulawesi – People of the Attorney Generals Office – and General Suharto of the Police all in his procession.

His testimony was less impressive and the witness had to catch an airplane and therefore the defense did not have the opportunity to complete their cross examination as well as myself as a defendant was denied the right of cross examination. The witness testified under oath that he would return the following week to complete the examination; however he failed to do so – and never even notified the Judges or the Prosecutors Office -therefore Dr. Muladi did not live up to his commitment to this court. Therefore I request that this witness's testimony be removed from the court record, thus there is no need for further comment on my Part.

As it seems both the Prosecution and Defense witnesses agree on the point that law 23 is indeed an administrative law with criminal provisions if the administrative efforts or even alternative dispute resolution efforts fail to resolve or mitigate the environmental issue.

be done. The Witness explained that if the application of civil action does not have any "effect" then the application of criminal law may be taken.

The Witness explained the exceptions to the validation of subsidiary are as follows:

If (the accused) is a repeat / habitual offender.

If the administrative instrument and / or civil law is not effective, such as the collusion between the accused and the Minister of Environment;

If there is a serious intentional mistake such as what happened in Bhopal, India, there was a chemical leak at a factory, resulting in death, injuries and damage to the environment.

In relation to the Buyat Bay case, the Witness believes that if there is an individual that claims he/she has itches or lumps, then a cause and effect relationship must first be proven and it must be examined by a qualified expert, only then it may be declared that there is a pollution and its cause. In other words, it may not be looked at individually, but other elements in the ecosystem / environment also.

In other words, exception to the principle of subsidiary may not be used as a justification when an individual claims that he or she has itches or lumps.

The Witness emphasized his belief that in order to prove corporate crime, it must be proven that an order from a superior exists, and that the contents of the order result in a benefit for the company, then the corporation would be the subject of a criminal investigation.

The Witness explained that "with intent" in the contents of Section 41 of the Environmental Law (UULH), it is related with corporate responsibility and the core of Section 41 of the Environmental Law, and must be interpreted as an Act to Actively carry out an Action with intent (willful Act) or in other words it cannot be interpreted as an omission or an intentional oversight.

The Witness added that when a director is unaware that pollution has been committed by someone else (subordinates), and as a result he has not done anything about it, then the director is not liable to criminal prosecution, as stated in Section 41, because it does not fulfill the element of "unintentional intent" and also the "Act of carrying out Action Actively" (willful Act).

13. Metals in Blood

Prosecutor's Witness



Dr. Budiawan: The Witness stated that he is an expert in toxicology at the University of Indonesia. The Witness stated that in October 2004 he conducted an examination of the blood of four Buyat Bay residents (Rasit Rahmat, Juhria, Masna Stirman and Srifika). The Witness stated that the study analyzed only for total mercury. The Witness stated that based on the reference used by WHO, IPCS (International Program on Chemical Safety), mercury level that could be tolerated by human body is 8 ppb

The Witness confirmed that the mercury level of 8 ppb is an average number for communities that eat fish less than once per week. The Witness rejected the procedure for sampling as provided by the California Poison Action Line of 22 January 2002 which states that before conducting examinations for mercury levels in blood, it is important to note that the subjects do not consume seafood for at least 30 hours prior to testing. Witness's statements in the BAP that mercury levels of between 200 to 500 micrograms per liter of blood could potentially cause indications of neurological disease. Regarding the report from Minamata Institute and CSIRO, the Witness agrees that there is no Minamata disease in Buyat Bay. The Witness had difficulties to respond to a statement by the Legal Counsel that Minamata Institute concluded that the total concentrations of mercury in the hair samples of Buyat and Ratatotok residents was not sufficient to cause poisoning.

Conclusions: The prosecutions witness Dr. Budiawan's sworn testimony both in the BAP and before the court were deceptive and misleading. Under cross examination he admitted that the average of 8 ppb of mercury in blood applied to people who consume less than one fish meal per week. Therefore this reference does not apply to the Buyat community because they consume more than one fish meal per week. How a toxicologist could cite such a wrong reference to the public both in the press and on televisions is beyond my understating.

The defense witness Keith Bentley had a much higher understanding of the subject matter, as he was a member of the supervisory board of the who issued the IPCS reference the prosecutions witness was quoting. The defense witness testified that *the levels of the people in Buyat had results a 100 times below the levels required to have the most sensitive clinical effects of arsenic intoxication.* When asked about metals contamination of the people from Buyat he stated *"They are certainly not contaminated by arsenic and mercury."* The defense witness commented that the scientific quality of the KLH Tech Team Report published in November 2004 is the poorest piece of scientific work product he had seen. The Technical Team report contained data manipulations, misapplication of scientific formulas, ridiculous assumptions such as Buyat Bay people eating 10 meals a day, consuming one half kilo of fish per meal (15kg/Day), resulting in estimations of over 4,500%

Defense Witness



Keith Bentley: The Expert Witness is an expert in the field of environmental toxicology, who performs examination and studies on the effects of heavy metals on the human body. Member of the supervisory board for the IPCS or International Program on Chemical Safety (documents that have been issued by the IPCS have become part of the information referred to in the court session of the criminal case No. 284/Pid.B/PN.MDO/2005, i.e. IPCS of year 1990 and 1996)

The Witness was also a consultant to institutions on the United Nations, World Health Organization, International Labor Organization, Environmental Programs of the United Nations and Technical Expert for the WHO.

The Expert Witness acknowledged the information presented in the International Conference Seminar Report on "Mining Environment and sustainable development, A lesson from Gold Mining Company in Buyat Bay, North Sulawesi, Indonesia UNSRAT 2005", and stated that the average concentration of all heavy metals studied, in this case mercury in blood, hair, body of the inhabitants around the Ratotok Village, Buyat Pante and Belang, is lower than the concentration tolerated by the IPCS.

There is no significant relation between heavy metals concentration Hg & As in the body and the diseases suffered by the community, in particular as concerned Neuropathy, Lumps, Fungi, Lymphoma, Cysts, Vibroma, Papyroma, and Neurofibratosis

The Expert Witness is of the opinion the mercury concentration value in normal human blood does not apply the value of 8 as an IPCS 1990 standard, since this value is an average value. However with the published revision of the 1996 IPCS document, the normal mercury concentration in humans with a low fish consumption rate ranges between 2 and 20 and hence the digit 8 does not show any peculiarity and does not have any relation to human health for which the concentration that has is 20. For communities that consume fish in large quantities the mercury concentration would be 50 micrograms/L.

The Expert Witness is of the opinion that concentration levels of mercury and arsenic of the Buyat community does not differ with those of communities in other regions in Indonesia and even in the world. The level of mercury and arsenic concentration in fish and other sea-food in the Buyat Bay are not different with those in other controlled places of Sulawesi or at the Jakarta market

14. Errors in Police Data

Prosecutor's Witness



Munawardin: The Witness had never been to Buyat Bay. According to the Witness's testimony, sampling in Buyat Bay was conducted by a team from the Forensic Laboratory along with the investigative team.

Based on that sampling, the Witness stated that he has conducted examinations on water samples, sediments (tailings), four types of fish, nails and hair from 12 residents of Buyat Hamlet [Dusun Buyat].

With regards to the difference in the number and volume of samples between the table of data in the BAP with the results produced by the Forensic Laboratory, the Witness said he didn't know how that could happen because he did not do the typing.

The Witness could not explain the why the police results for Totok Bay were higher than Buyat nor could he explain the high variability between the various samples.

He also had no explanation for why the police results for sea water were high and the fish were low to normal.

In commenting about the great difference between the results of the Forensics Laboratory and the findings of the KLH 2004 Integrated Team, The North Sulawesi Provincial Government's 2004 Independent Team and results from other accredited research institutions (such as ALS Bogor, CSIRO and WHO-Minamata Institute), the Witness commented that based on his experience that could be due to the fact that the studies by those institutions were conducted in 2004 when PT NMR's operations have stopped, while Police samples were taken in July 2004 when PT NMR was still in operation.

Conclusions: The prosecutions witness Munawardin from the National Police Laboratory did not add clarity to the case. He did not know why there were more samples received in the laboratory than taken in the field, and he could not explain why the average value for mercury in water was higher for the Totok Bay reference sampling site than in Buyat. Also he could not explain why his fish results were normal when their results showed that metals in water was high. He also could not explain why his water results were different from the split samples and every one else's samplings. The prosecutions witness from the police also testified that he was also part of the Integrated Technical Team which sampled the first part of September 2004 and that the water was fine. When asked to explain why the Police July -2004 samples were high and the Integrated Technical Teams results were normal, the witness offered the following: "I was also with the Integrated Team, and the samples were taken by the Integrated Team in September between the 6th and 12th of September, at the time PTNMR was no longer operational, tailings were no longer released at the time." But this argument is wrong because PT NMR did not stop discharging tailings until October 2004. Clearly the police water results are still unexplainable.

The defense witnesses from the certified ALS laboratory testified that they used proper care

Defense Witness



Sri Bimo Andi Putro: The Expert Witness is a Senior Supervisor ant the ALS (Australian Laboratory Service) Laboratory.

The Expert Witness confirmed that PT NMR has sent material in the form of liquid, water as well as solids in the form of soil to be analyzed or examined by the ALS laboratory (split samples from the July 2004 police sampling).

The Expert Witness stated that as regarding sampling there were guidelines available to conduct good sampling, including guidelines on sealing of bottles containing sampling material that were to be used for analysis, which states that the bottle that were received should be properly closed, since if a seal is broken, then it would be possible that the bottle is opened/spill occurs, and hence a possibility of contamination exists. The Expert Witness stated that PT NMR always delivered bottled samples that were sealed in accordance with ALS' protocol.



Dr. Mun'im Idris: The Witness is an Expert in the field of forensic medicine and has experienced in many high profile cases such as the Poso case, the Dilli case, the Pontianak rampage, the Mei riots, the Tommy Suharto case, the Tommy Winata case, and the Marsinah case. The Expert Witness stated that the

laboratory (including the Police laboratory) does not have the authority to draw a conclusion form its analysis results

The Expert Witness was informed that there existed a difference in the number of samples as compared to the moment the sampling was performed, then the analysis at the forensic laboratory, up to the court proves, and there even occurred a time lag between the time of sampling and the time of laboratory analysis of those samples. The Expert Witness stated that to achieve success in revealing the truth in a case, 4 aspects should be fulfilled. These are (1) Investigation, (2) Authenticity of evidence material, (3) Techniques used, and (4) Examination and Reconstruction.

According the Expert Witness as concerned the change in the number of samples and the existing time lag between the moments the sampling was done until the samples were sealed as evidence material, then the validity of the evidence material used in the criminal reports could be disregarded.

Shakeb Afsah: The Expert Witness has 15 years of experience in performing environmental data analysis in 12 countries including Indonesia, and has been lecturing in various prestige universities around the world.



According to the Expert Witness, the examination of 12 Buyat Pante inhabitants can not be categorized as representing the whole Buyat Pante community, since the examination should actually be done on minimally 30 members of the Buyat Pante community to be statistically confident about the result.

The Expert Witness read and performed an analysis of the mercury and arsenic content as stated in various study reports, including the report of the POLRI HEADQUARTERS Criminal Forensic laboratory that was performed in the Buyat Bay. From the statistical viewpoint, the Expert Witness stated that there was strong consensus in the findings of all the studies, however the results from the POLRI HEADQUARTERS Forensic Laboratory produced results that were very different.

The Expert Witness explained that based on the RKL/RPL data and the WHO data, the content of mercury in the

custody and control procedures, along with replicate and duplicate samples plus certified reference material for rigorous quality control. Mun'im Idris testified the collection and handling of evidence was flawed and should be disregarded as invalid, he said that the laboratory people within the police were not qualified to render an opinion of health or cause and effect, as that should be left to a qualified expert, such as a medical doctor. Defense expert witness Afsah showed that the Police results for mercury when compared to WHO water sample data two week later were off by a factor of two million percent.

Buyat Bay is quantitatively 3.66 grams /day, while the data from the Forensic showed that the quantity of mercury is around 77,000.00 grams on the day of Police sampling. The Expert Witness explained that the Police results were not in accordance with the mercury balance principle, and was difficult to explain in a quantitative manner.

15. Health Issues

Prosecutor's Witness: Dr. Jane Pangemanan



The Witness stated that the people of Buyat Pantai suffered from neurological disturbances, but she could not come up with a diagnosis because there additional examination was needed cause and effect symptom between the tailings and the people's disease could not be concluded. The Witness did not carry out any laboratory examination. The Witness accompanied the people (at different times) to Jakarta. The person who funded the trip was Aryanti Baramuli. The Witness stated she did not see any relation between the tailings and the disease suffered by the community because there was no research that could come to such conclusion.

Defense Witness: Dr. Joy Rattu



The Expert Witness worked as Lecturer at the Faculty of Medicine of the Sam Ratulangi University and has performed services and studies in Buyat Pante in 2004

The Expert Witness explained that after the study was performed, the doctors' team issued referrals to have the benign tumors suffered by the inhabitants operated on. But when the surgeons were prepared to do the operations the Buyat Bay community members provided arguments that they did not want the tumors to be operated on, because these were going to be used as evidence at the court. And as such the people who came for treatment were not inhabitants of Buyat Pante but from the Ratotok Village and Buyat Village.

The Expert Witness stated that the diseases found in Buyat Pante were similar to diseases found during other social services they performed such as in the coastal areas of Tuminting, Bori or Amurang.

The Expert Witness stated that the last time he performed a study in Buyat was in the year 2005. The purpose of the study was to see whether the arsenic concentration in general was still under the stipulated standard limit. The result of that study was also presented at an international seminar in the year 2006 in Manado and in Maastricht, the Netherlands.

Defense Witness: Dr. Winsy Warouw



The Expert Witness is a Professor at the Sam Ratulangi University in the field of Skin and Venereal Diseases and was involved in continuous studies in Buyat Bay since 1991 until to-date. The Expert Witness acknowledges his two working papers titled "Survey of Skin Diseases Among the People of the Villages in the Bay of Ratatotok and the Bay of Buyat" and "Skin Disease Patterns of the Inhabitants around Buyat Bay, East Ratatotok, Minahasa", produced as a report on his research that concluded that skin diseases experienced by those inhabitants are common skin diseases such as dermatitis, scabies and eczema.

The Expert Witness stated that he never encountered any heavy metals poisoning at the people of Buyat Bay, what more the Minamata disease. The Witness also informed the court that he had examined baby Andini and had offered to have her admitted to the hospital for medial treatment for dermatitis and malnutrition. He could tell from his preliminary examination that the baby was alert and happy with bright eyes. But that an NGO recommended to the mother of the baby not to get treated.

Defense Witness: Dr. Sandra Rotty



The Expert Witness works as a government's doctor and holds the position as Head of the Ratatotok Community Health Centre. In 1999, it was reported to the Expert Witness about a strange skin disease occurring in the Buyat Pante area. However, after performing a field examination, it became clear that this skin disease was scabies locally known as kudis. And after the patients were given treatment all patients were healed.

The Expert Witness stated that she also performed routine health examination and found that the disease most suffered was upper respiratory tract infections, skin diseases and gastro intestinal tract disturbances.

As far as the Expert Witness was aware of, is that the skin disease was caused due to lack of hygiene and public sanitation, as well as an unhealthy life-style.

Witness also testified that patients from Buyat Pante explained to the Expert Witness that they have to obtain approval from the NGO to utilize the facility at the PUSKESMAS.

As with regards to Andini, the Expert Witness explained that in February 2004 Andini was brought by her mother for the first time to the PUSKESMAS with complaints of infection at the navel. The Expert Witness then performed medical actions and the infection was healed.

Then in March 2004 Andini came to the clinic with fungi infection. After prescribing the medicine, the parents of Andini were asked to bring her back if Andini did not recover. However, then the Expert Witness and her staff saw on TV that Andini was brought to Manado by her parents to be taken as part in the demonstrations. After Andini came back from Manado, the Expert Witness asked her staff to take Andini to be examined again, however Andini's family refused to comply. Finally the Expert Witness herself came to Andini's house and performed examination at place from the health examination there the Expert Witness diagnosed Andini of suffering ichtiosis, which is disease causing dry and scaled skin. The Expert Witness advised Andini's mother to return to Manado to obtain further medication, but Andini's mother did not want to because she did not believe the doctors in Manado anymore. After this event, the Expert Witness asked her staff to do a field trip to monitor Andini's health condition.

On the 19th of June 2004, the Expert Witness and her staff performed integrated health post services for immunization at Buyat Beach. At that time immunization was also done on Andini. The Expert Witness explained that immunization was only performed on healthy babies.

On the 26th of June 2004, Andini again was brought to the Community Health Centre with complaints of fever, cough and cold. The Expert Witness diagnosed that Andini at that time suffered severe URTI – Upper Respiratory Tract Infection and that she was still under nourished. However, in general Andini's appearance was very good and her skin had improved. After providing treatment, the Expert Witness asked Andini's mother to bring Andini back to the PUSKESMAS should there be no improvement in 2-3 days, if the patient did not return, it was taken that she had recovered.

On the 3rd of July 2004, the Expert Witness received the news that baby Andini passed away. The Expert Witness and her staff made a field visit and came to know that Andini did not take the medicines given by the Expert Witness.

Conclusions: Under cross examination Dr. Jane Pangemanan retracted her statement about metal poisoning in Buyat. She agreed that she had not conducted adequate tests or consultations with specialists to conclude that Buyat residents had metal poisoning.

Dr. Sandra informed the court and the whole world that Baby Andini died due to the lack of timely medical attention because several activists from NGOs stopped the baby from receiving proper medicine and health care. Dr. Sandra showed conclusively that the ailments in the community of Buyat Bay were similar to that of any coastal village within Indonesia. It became clear that the so called doctors and NGO's operating outside the public health system had been spreading misinformation about the health situation. It was also testified that when professional medical services were offered free of charge to baby Andini, the parents were advised not to have the baby admitted and treated in a hospital in Manado, in addition the medicines prescribed to Baby Andini were never administered. Dr. Joy Rattu stated that the medical condition of the Buyat community is about the same as anywhere else. Actual medical records presented by the doctors confirmed this and were presented to the court. The Defense witnesses confirmed that there was no evidence of strange diseases, that all medical conditions were able to be diagnosed in proper clinical procedures were used, and there was no association between the illnesses suffered and that of mine tailings and mine operations.

6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

Manipulations of the Press and the Public 1995-2003

As stated in the testimony I gave in court and presented into evidence [*Manado Post 11 August 1995 Evidence Number T.II-1*], an article which appeared in the Manado Post On 11 August 1995, eight complete months before NMR started its operations or had even installed the tailings pipeline, NGOs had started to spread misinformation about Buyat Bay. This misinformation campaign was headed by two organizations, these were: LBH (Legal Aid Society) and WALHI.

The headlines in 1995 read “***Alleged for Waste Disposal, PTNMR is sued by 32 families to LBH***” and the story stated that “*PTNMR, a gold mining company, was protested by 32 families of Buyat village, Kotabunan, Bolaang Mongondow. They claimed to suffer from loss due to NMR waste since two years ago; even they are now threatened for removal.*” The story continued to quote a villager who stated that “*We used to catch approximately 10,000 nener per day, yet, since the tailings are disposed to the sea, we no longer catch it every day. We are lucky if in a month one of us is able to catch 100 nener,*” said Rudy.

Again, for emphasis, this was stated in August 1995 and their fishing output had already decreased two years prior to this date. This logically means that such reduced fishing output must have resulted from tailings being disposed of in 1993. I find this most interesting, if not down right amusing, since the AMDAL and Feasibility studies were not completed and approved until 1994, and operations for PTNMR did not start until March, 1996. How could these individuals state that submarine tailings were causing their fish to disappear when tailings had not been discharged yet? Actually at this time, not even a pipeline had been installed yet!

Any reasonable person would sit back and wonder what is going on here. But the local chapter of Friends of the Earth International took this allegation seriously and quickly responded in their normal political manner; quite in

defiance of the facts on the ground. The Manado Post went on to report, and I quote “the report was seriously responded by Executive Secretary of WALHI North Sulawesi, Suwiryo Ismail”. If members of WALHI had actually been to the field, they would have noticed that tailings were not being discharged in Buyat Bay at that time.

One only needs to know how international “anti-globalization” NGOs and their “anti-mining NGO” counterparts operate and misrepresent the truth to understand what is really going on. Simply stated, international anti-globalization NGOs wants to stop international trade and investment; likewise, they are against international investors coming to Indonesia. Their agenda includes deterring nations from conducting free trade with each other and they want each economy isolated from others. They tend not to believe in government structures, are highly socialistic and some groups border on attempting to create anarchy. These groups may use environmental or community issues as their banner but their primary goal is to stop the flow of investment.

One may ask - what advantage does an international NGO gain from having anti-mining articles published in a local, national or international publication? The answer is very simple - it allows these organizations to quote from such publication on their websites and to request donations to promote their agenda further. They claim that they use the funds to help the residents of those communities which they call “impacted”. Such organizations post anything they wish as long as they are quoting a local publication or local individuals

accurately without violating any liable laws in their respective countries.

As an example: The following web page [http://media.earthworksaction.org Attachment 2] from a United States NGO, Earth Works shows a picture of a Buyat Villager with a request for donations on the top of the page.

How much of the foreign donations



actually go to help the fictitious “impacted” communities like Buyat? I do not know the answer to this question but my guess is that not much of any of the money collected actually goes to support the community. These organizations need so-called “victims” to collect money and there are millions of people with money in the world to solicit money from and no one has broken any laws in their home country of domicile.

In 1999, Anwar Stirman, who described himself as a local fisherman, traveled to California along with others, including Chalid Mohamad of JATAM, Yani Sagaroa of LOH-Sumbawa, Fuji Halim of LBH from Manado. This trip was facilitated by Kevin Dixon of Project Underground. My understanding is that during a portion of their trip, they received activist training while in the USA (see photo – the left is at airport in Los Angeles, Ca. – USA The group photo on the right is dated 3-6-99 on the same trip but at an unknown location).



Anwar Stirman then showed up at Newmont Mining Company’s Annual General Meeting of Shareholders, Anwar, describing himself as a local fisherman, claimed that the people in Buyat no longer eat fish. So officially this is the point in time when the targeting of NMR had begun.

With the groundwork laid, events started to unfold in the provincial capital of Manado in 2001. In April 2001 all the major international anti-globalization/anti-mining landed in Indonesia and held an “International Conference on Submarine Tailings Disposal”. The fact that no mining companies, academics or technical experts on the subject of mine tailings attended the forum did not seem relevant to the group because they had come with their preconceived conclusions. Why was this conference held in Manado? Could it be that they were focused on an orchestrated campaign against NMR?

Supported by the anti-globalization/anti-mining NGOs, it was also at this conference that WALHI and JATAM launched their new campaign booklet, "Minamata to Minahasa". It is pertinent to note here that this booklet incorrectly compared the effects of cinnabar in mine tailings (HgS or mercury sulfide which is a mercury compound naturally occurring in rock and which is non-toxic and insoluble in water) to that of methyl mercury (which is a toxic organic compound of mercury that was the cause of Minamata disease).

Let me highlight how ridiculous this comparison is - Minamata disease relates to an incident of industrial pollution in Japan in 1956 that was caused by a chemical plant (not mine tailings) which released methyl mercury to the sea. This toxic form of mercury was transferred up the food chain through fish to humans, and approximately 3,000 people died or were disabled as a result of methyl mercury poisoning. The symptoms of Minamata disease are neurological. In the Minamata case there were no symptoms of skin itchiness, lumps or bumps on the victims' skin surfaces. The fish from Minamata Bay were declared safe in 1997 - several years after the pollution incident had occurred. [[http://www.nimmd.go.jp/english/-National Institute for Minamata Disease Attachment 16](http://www.nimmd.go.jp/english/-National_Institute_for_Minamata_Disease_Attachment_16)] But focusing on facts and science are not the strengths of WALHI, JATAM and the other anti-globalization NGOs. However, this group of international NGOs achieved their objective of gaining some publicity through the Buyat Bay case but the scientific and technical community also got a good laugh, as the "Minamata to Minahasa" booklet read like the Indonesian comic book "BoBo" to anyone who understood basic principles of chemistry. As one unnamed person commented - "If these guys are serious, they need to go back to school; if these guys are trying to deceive the public, they need to go to jail". But, why spend money on the book and what was the real purpose of the declaration from the conference? The answer came a year later.

The 10 year United Nations World Summit on Sustainable Development was scheduled to be hosted in Johannesburg, South Africa in August and September 2002. It was at this summit that all the leaders of the world gathered to develop a plan to help reduce poverty and to review the UN policies which were then to be implemented by the international community and the UN

member nations. As in any United Nations activity, this is a long drawn out process with every nation's involvement in trying to build a consensus on a 10 year plan. A lot of special interest groups were also involved in trying to lobby the respective governments to include their own agenda in the development plan.

As a lead up to the world assembly, the world was divided into 4 parts to receive each region's input. Bali, Indonesia was the site selected for the Asia Pacific region for a United Nations preparatory meeting or PrepCom-4. From May 27th to June 7th, 2002 the United Nations flag was raised and Bali fell temporarily under United Nations territory where Presidents and Ministers with their delegations from many nations in this part of the world arrived to work on developing a plan to be ratified at Johannesburg in September.

[\http://www.un.org/jsummit/html/documents/prepcom4 Attachment 3]

It should come as no surprise that the anti-globalization/anti-mining NGOs were out in full force to push their agenda. This particular group had two objectives - one was to ban the use of cyanide and the other to ban disposal of mine tailings in oceans. The international group with the help of their local puppets, WALHI and JATAM needed an "affected community" to give testimonials and to hand out some of their propaganda literature. By this point it should not come as a surprise to anyone that the literature included the "Minamata to Minahasa" story and the people trained to give "testimonials" at the conference were none other than Anwar Stirman and Mansur's extended family. Most of the names giving testimonials at that UN conference are the "Who's Who" of the police and the Prosecution's witness list from Buyat Pantai Village.

By the end of Prep Com IV, Down To Earth and other international anti-globalization/anti-development NGOs in Bali demanded the following:

- a moratorium on all new mines;
- an immediate shutdown of all existing mines where communities demand it;
- a ban on mining, oil and gas activities in sensitive ecological and cultural areas including protected areas, small islands;

- an end to financial support for projects related to the mining sector by the World Bank, regional development banks, Export Credit Agencies, and other financial institutions whether it be in the form of loans, guarantees, and/or insurance;
- an immediate ban on destructive mining technologies, specifically open-pit mining, block-caving, cyanide heap-leaching, riverine tailing dumping, and submarine tailings disposal. [unquote <http://dte.gn.apc.org> Attachment 4]

Obviously these demands were rejected as it would have been the end of mining anywhere in the world and it would have enabled them to hold all mining companies hostage. At the conclusion of the Johannesburg Summit, all the money invested in flying “Buyat villagers” to the USA and Bali along with the creation and publications of the Minamata to Minahasa story proved ineffective - as no sane government would endorse their demands. If anyone is wondering how I know Anwar and Mansur’s extended family were in Bali at PrepCom-4, the answer is quite simple - I saw them there. I was at the conference representing the International Chamber of Commerce as an official United Nations Delegate.

However, the international anti-globalization/ anti-mining NGOs along with their local Indonesian puppets, namely WALHI and JATAM, got one more opportunity to achieve their goals to block mining investment around the world and prohibit the use of certain technologies such as the use of cyanide and submarine tailings placement. The World Bank Group and The International Finance Corporation which are subsidiaries under the United Nations announced that they would conduct a comprehensive review of their activities in the extractive industries sector – [the Extractive Industries Review \(EIR\)](http://www.worldbank.org/).”[://www.worldbank.org/ Attachment 5] WALHI, JATAM and the Buyat Pante group were in “business” again. The last regional review for the Extractive Industries Review consultation for the Asia-Pacific region took place in Bali, Indonesia on March 24-29, 2003. This conference did not go so well for these NGOs because in this setting, the primary delegates were professionals (environmentalists, professional mining, oil & gas personnel, economists from governments, the World Bank and civil society) who could

recognize the difference between factual information and people who used pseudo-science for propaganda purposes.[By Indonesian NGOs: The Indonesian Forum for the Environment (WALHI), the Indonesian Mining Advocacy Network (JATAM) and Indigenous Peoples' Alliance of the Archipelago (AMAN) and Australian NGO: the Mineral Policy Institute, Friends of the Earth Australia, and The Asia-Pacific Unit, Australian Conservation Foundation- Nusa Dua, Bali-Indonesia, April 26-30, 2003]

In short, no one believed the “testimonials” and BoBo science fiction type comic books as real scientific evidence. In the end, the anarchist group walked out of the conference. And again, for the record and to answer the question, how do I know for sure that the major players of the Buyat group were in Bali at the time? The answer is simple - I saw them there. I was there as a delegate nominated by the International Congress of Mining and Metals (the primary world mining association) to the World Bank's Reviews for the Asian Pacific Region as well as supporting the final report in Washington (USA.)

In the end, the anti-globalization/anti-mining anarchists were marginalized; the international groups had very little use for their local puppets WALHI and JATAM and their 5-year campaign trail was over. WALHI and JATAM in turn had no need for a community group of actors so it was back to their usual activity of fishing and farming for the actors of Buyat Pante.

For those who have studied the Police Minutes of Investigation (BAP) it may now be a clearer picture as to why all the villagers who provided testimony to the police and for the Prosecution before the court had exactly (and I mean, word-for-word) the same answers. These villagers had received years of training, practice and experience on how to act and respond to questions. For example, to the question: how far do you have to go out to catch fish? The answer was always: five miles. But Indonesia uses the metric system and it is in the US that people measure distance in miles; so how the locals of Buyat were measuring their distance in the sea in terms of miles? It is clear that they were coached to give this answer. This extensive training by the local and international NGOs had to make it easy for the investigative officer who had a standard set of questions when drafting up the Minutes of Investigation for this

case. It is disappointing that an experienced police officer did not take note of this significant fact!

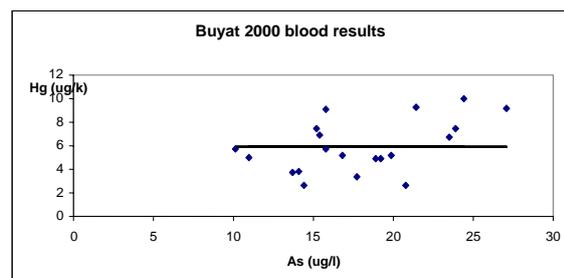
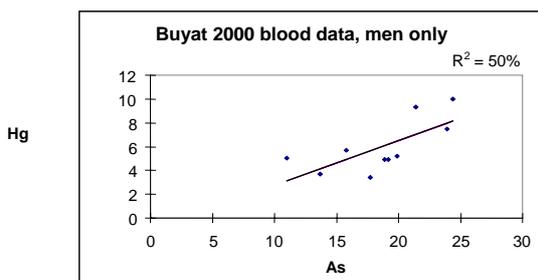
Manipulations of the Press and the Public 2004 – 2006

Basically the Buyat Bay actors were discarded by the international and national NGOs; as their agenda and work was completed, they found that they had limited need for a group of people who had been pretending to be “impacted” by the mining operation at Buyat. But local employment opportunities for the Buyat Pante villagers were just around the corner. In early 2004, Rignolda and “friends”, including a man by the name of Raja Siregar from WALHI, and with the help of a Canadian activist called Evan Edinger, embarked on a new mission. Rignolda had just successfully completed his campaign in Arakan by driving out the USAID-funded NGO, NRM (Natural Resource Management) who had a program to do spatial planning for Bunaken National Park. What ever occurred in Arakan caused a conflict and several people were charged, found guilty and sentenced to jail terms and NRM abandoned the project.

Rignolda’s focus then turned to Buyat and he and his friends were part of a non-published paper with Evan Edinger listed as the primary author. This document was placed into evidence during the final submission by the Prosecution. The details of this paper will be addressed separately, however, to keep the timeline in context, the paper and presentation was the one used by Rignolda in his testimony – in which they take mine tailings and subject them to an extreme acidic condition to break down the compounds such as cinnabar (HgS), thus separating the mercury and sulfur elements and then drew the conclusions that free mercury and arsenic compounds are bio-available in the marine environment. “Rignolda and friends”, including Mer-C further conclude that the members of the Buyat Bay community have these elements in their blood and therefore must be suffering from a consistent exposure to mercury and arsenic. Their presentation and report are a uniquely crafted piece of science fiction to create an illusion.

This science fiction authorship has two major fatal flaws: first is that the sea is not acidic, it is basic, the presentation fails to mention that subjecting tailings in a laboratory to an extreme acidic condition similar to that used to melt or liquefy fish tissue for laboratory analysis would also kill and dissolve any human swimming in the ocean, would dissolve the coral, would remove not just the paint but the entire bottom of a ship sailing in the sea. The laboratory technicians conducting this work would have had to be wearing full protective gear, rubber gloves, and protective clothing. The laboratory would also have had to be equipped with an emergency shower, should something go wrong. This methodology is not based in sound scientific analysis. It does not even have a touch of reality attached to it.

The second flaw is that they selectively use data from the 2001 WALHI report "Minamata to Minahasa". There are 20 blood sample results in that report and yet, Rignolda and friends use only 10 in the graph. One would think that if you were attempting to evaluate the health of a population they would use the full data set. Yet this group of activists was very picky in selecting the data they used. Their conclusions as presented at UNSRAT were as follows: [Quote-2004 power point presentation]: "*Neurological complaints consistent with mercury poisoning. Blood sampling (2000) showed, elevated blood [As, Hg], [As] positively correlated to [Hg], neither [As] nor [Hg] correlated to age*". Let's take a closer look at this. First, the level at which mercury contamination is of concern 200 and not 8! Second, for arsenic the level of concern is 100, not 15 or whatever their reference point was, and last, if the full sample data set is used to calculate the figures, it shows that there is no correlation at all (see comparative graphs below) - **EVERYONE IN THIS DATA SHOWS CHEMICAL LEVELS LOWER THAN THE NORMAL.!**



The other activity that created confusion for the community was the development and distribution of a video that both Raja Siregar and Rignolda (Kelola) were associated with. This video was produced under the banner of WALHI and it was used to add to the confusion as well as to mislead the public. According to the film's trailer, it was filmed in April 2003 but it made its way to prominence as part of their 2004 campaign to deceive the community. This film was widely distributed and it showed a woman with breast cancer attributed to tailings, fish with lumps, and some people with skin bumps - all baselessly blaming NMR as the cause of these illnesses.

Film clips from WALHI 2003 film production



As a result of that video, on June 18th, 2004 I sent PT NMR a letter to the Executive Director of WALHI, Mr, Longgena Ginting.

In conjunction with the release of this video, on the 29th of February 2004, Rignolda and his cohorts conducted a major demonstration in which they paraded a baby named Andini around Manado; first targeting the NMR office and subsequently at other locations, finally ending up at the Governor's office. Their storyline fit with that of the video, that NMR should be held responsible for the health of the community, that the people of Buyat are unable to fish because there is no fish, that people can not eat the fish, and that they have suffered a total loss of livelihood. What is amazing here is that they carried on with their demonstration with the 2-3 month old Baby Andini (who had been suffering from acute dermatitis) among their midst on an extremely hot day in

Manado as evidence that the mine tailings had impacted the health of the people!

Pictures of March 30, 2004 organized by Kelola and WALHI.



Photograph taken on March 30, 04 in front of PT NMR's office.



However, the Manado Post reported [Manado Post, page 12 1 April 2004 Attachment 7] the Government's response to the allegations of pollution by NMR as follows: "Bonny Sompie from Environment Department and Pak Mamesah from DoME explained that there was no evidence found so far regarding the tailing impacts". Jeanette Siby from Health Department also stated that the baby's condition could be the result of an un-hygienic environment in which she was being raised. David Sompie, Manager External Relations of NMR explained that he was concerned with the complaints. But he went on to state further that all independent laboratories that had conducting research - i.e. Komnas HAM, LIPI, Medical Faculty, KLH-Baruna Jaya etc. had shown no indication of any environmental pollution.

The Government's response created further reaction from the anti-mining NGO, JATAM. The next day JATAM requested support for the "victims" of Buyat Bay. The request called for *"Support the victims of Newmont's Gold Mining and Submarine Tailings Disposal only three months remain until the closure of the Newmont Minahasa Raya gold mining operations in North Sulawesi, an*

operation that has left local communities facing a poverty and health crisis”.[JATAM “webmaster” Fri, April 2, 2004 Attachment 8]

Shortly after the meeting between Kelola and the Governor, a letter was sent by this same group to the Governor, (date-copy) demanding NMR to pay Rp18,500,000,000,-

At the request of Rignolda and Jul Takaliuang, on June 19th, 2004 Dr Jean Pangemanan and her group travelled to Buyat to examine 100 patients in a single day, the examination was superficial at best and discussed in more detail elsewhere in the Pledoi, however, it is relevant that no laboratory tests or medical specialist were part of the examination.

On June 21st, 2004 Rignolda planned to host a seminar relating to Buyat and further made allegations of pollution. At this point in time, Rignolda and friends' (including Raja Siregar and Evan Edinger) papers (which had been presented at an earlier seminar) were sent out for technical third-party analysis. NMR sent Rignolda Djamaluddin a letter on June 18th, 2004 [021/RBN-rv/NMR/VI/2004 Attachment 9] which quoted from the executive summary of Lorax Environmental (Canada) that stated *“Collectively, there is no scientific evidence to suggest that mining activity at Minahasa has resulted in arsenic contamination of Buyat Bay. Freshwater monitoring data clearly demonstrates that arsenic concentrations in the Totok River and Buyat River, which discharge directly into Buyat Bay, remain at concentrations well below internationally accepted criteria for the protection of human health and aquatic life. Direct measurements of tailings reactivity has also demonstrated that arsenic is not being released from tailings deposits, but does undergo natural cycling in the marine sediments in the bay. Measured arsenic concentrations in the water column of Buyat Bay are similarly well below accepted international criteria for the protection of aquatic life. In the absence of any evidence suggesting that important vectors to humans are contaminated, the conclusion that human health is suffering in Buyat Bay as a result of PTNMR activity is highly tenuous.”*[Lorax Environmental – Technical Memorandum Project Number 377-1 June 11, 2004 Attachment 9]

Shortly after the seminar, baby Andini unfortunately and probably unnecessarily passed away. Rignolda Djamaluddin under the banner of Kelompok Kelola quickly took advantage of the human tragedy by issuing a press release which stated *“Baby Andini has died; the area of Buyat Bay must be closed.”* The press release indicated that the baby had been contaminated by heavy metals, that this condition has been brought to the notice of the Governor of North Sulawesi, has been exposed in a seminar at UNSRAT and that a doctor from UNSRAT had also examined almost a 100 patents and found almost all had symptoms of *“Minamata Disease”*[22/KLA-MDO/VII/04 dated Manado, 5 July, 2004 Attachment 10]

Before long another meeting was held at the Governor’s office relating to Buyat Pantai in the late afternoon of the 13th of July, 2004. During this meeting, Rignolda stated that the latest research had indicated that 95% of blood samples contained high arsenic and 65% blood sample, of the male population in particular contained high mercury. He further went on to state that health conditions in Buyat had become horrible and he further added that it had not been easy to find a doctor to take care of Andini. He did not know why, but the [doctors] declined Andini every time they recognized [she was] from Buyat Pantai. [Minutes of COORDINATION MEETING ON BUYAT PANTE ISSUE – Governors office – Mapaluse Room – Tuesday, 13 July 2004, 14 - 16:00 hrs Attachment 17].

In the same meeting, Dr. Jane Pangemanan stated that she had conducted a health evaluation in Buyat Pante and that “80 out of 100 of my patients complained of lumps, cramps, headaches and hearing problem.” She further went on to state that she had examined Andini and noted that she had a hyper-pigmented skin and wondered if it was caused by heavy metal intoxication. She also stated she had attended Rignolda’s June 21st seminar and it was there that she realized that the Buyat Pantai community had been poisoned by heavy metals.

The Chairman Dr. Kaloh, Secretary of the North Sulawesi region, made the following conclusion from the meeting:

A comprehensive study by an independent team is needed. The study should be preceded with a technical study on the previous studies conducted by Newmont or other parties.

Action Plan included:

- *Establish an independent team consisting/involving such parties as universities, religious groups, etc.*
- *The regional government will conduct a “Crash Program” to do review.*
- *Provincial government of NS orders the Health Office of South Minahasa to conduct a health program at Buyat Pante. This program is not to find out the correlation, rather it is only a health assistance program (regardless the diseases found there).*
- *A correlation should be made based on an in depth research. A correlation cannot be made based on one particular event.*

On 17th July, just four days after the meeting with the Governor’s office and the development of an action plan, some of people from Buyat Pantai and their lawyer, Sitorus SH (LBH-K Agency for Health Law) complained against the Provincial and Regional Health Departments to the Police office of North Sulawesi. The “community” accused the Government of being negligent. Dr. Jane Pangemanan added that her research in Buyat Pantai, revealed that 80% of the patients had uncommon health problem.

Some where starting between 2002 and 2004 nevertheless concurrent with other activities, a new group emerged and was involved in the ongoing Buyat hoax. The Islamic Medical Emergency Rescue Committee commonly know as Mer-C which was established in Jakarta in August 14, 1999, [www.mer-c.org]



with offices in Manado, Ambon, Maluku, Poso, Afghanistan and Iraq. Its website states that MER-C provides medical assistance to the victims of disaster, conflicts and wars all over the world and their Afghanistan mission was in association with the Taliban rulers. Mer-C also produced two quasi jihad

videos during the Ambon and Poso conflict linked to Laskar Jihad. The most pertinent question here is - what is this group doing in Buyat? [http://web.archive.org/web/20050306063728 Reference 18]

Minister of Health & NMR are reported to the Police – the investigation begins

Just two days later, on July 19th, totally disregarding the agreed upon action plan of the provincial government and the Provincial Police that they would investigate their complaint, Dr Jane Pangemanan, funded by Aryanti Baramuli, transported 4 “members” of the Buyat Pantai community to Jakarta where they filed a Criminal Complaint with the National Police on July 20th. The report number LP/247/VII/2004/AIAGA-1 was filed by Dr Jane Pangemanan against both PT Newmont Minahasa Raya and The Department of Health as represented by the Minister of Health. Interestingly, in the BAP put forth by the Police to this court, the Minister of Health’s name has mysteriously disappeared from the document. [Police complaint number LP/247/VII/2004/AIAGA-1, one is a copy served to PTNMR listing two parties, while the other is a copy from the BAP listing only PT NMR. Reference BAP]. The signature of Dr. Jane does



not appear to be the same but the report numbers while the same, have been written differently. I find this surprising because I have been informed that it

was a requirement that the original police complaint be used in the indictment (that the use of a forged or altered document in a criminal trial would have been against the law).

In a matter of only 4 days, Dr Jane and friends had managed to file a criminal complaint against the Doctor at the local clinic in Ratatotok, the Minister of Health and PT Newmont Minahasa Raya. The “Buyat” group expanded their effort, and reported three Ministers; in response the Polri Head of Public Relations of Indonesian Police (Polri), Insp Gen Paiman said that the police planned to call the Minister of Health, the Minister of Environment and the Minister of Energy and Mineral Resources. *[July 31, 2004 Media Indonesia Page 1 “Indonesian Police to Call Three Ministers Related with Buyat” Reference 19]*

As an individual, I was having a hard time trying to determine, whether these individuals were attacking NMR or were they a part of a political group using NMR to attack the government, during the presidential election campaign. The media went wild, the Buyat story of Minamata disease rocked the nation and it was not the type of publicity one would desire. Clearly the allegations against myself and the company that we had made people sick, we had damaged the environment, and that we had killed people were reckless and irresponsible. Such malicious statements were made to deceive the general public and to capture media attention. National and local media also picked up on the story and consequently Buyat was featured on television, radio and various print media.





However, what is most interesting is that the story kept changing; first it was Minamata disease, then Mercury contamination, then arsenic and so on.

The National Police acted quickly. They flew to Manado and then further on to Buyat/ Ratatotok to conduct sampling. I was told that the national investigative team members were met at the airport by Rignolda and Dr. Jane and they were seen on many occasions to be providing assistance and transportation to the team. Samples (including split samples for independent analysis) were collected over a 4 day period. The inconsistencies in sampling protocols, chain of care and custody, as well as analysis results will be discussed in detailing in a separate section of the Pledoi. All this activity made Buyat Bay a very busy place, where two days later a separate team created by the Governor of North Sulawesi arrived and conducted sampling. The National Department of Health sent in a team from WHO - Minamata Institute that arrived in Buyat the following week. Four days later along came the CSIRO team and at the end of the month the Ministry of Environment teams also arrived and collected samples.

As far as I was concerned I welcomed the various teams who wished to take samples from Buyat Bay, since I had no fear that anyone would find any problems with seawater, fish or health impacts from mine tailings. I was

confident what the results would be that Buyat Bay was not polluted and the health issues faced by the residents of the area were not related to PTNMR's mine operations.

So I was obviously shocked when on August 13th, General Suyitno Landung made a statement that the police laboratory results indicated that Buyat Bay was polluted. How could this be? Levels of mercury in the seawater of Buyat Bay should have been the same as they had always been, that is below the detection limits of the laboratory equipment. We had the results of the split sample taken with the police and they had turned out to indicate normal clean seawater. The Governor of North Sulawesi results were also normal and below all standards set by the government.

UNSRAT conducted a seminar on August 21, 2004, in which various individuals who had conducted research or were part of the Governor's Team to evaluate both the environmental and health conditions in and adjacent to Buyat Bay, presented their results. The presenters aired both sides of the allegations with Rignolda and Raja Siregar presenting their papers as well as those from UNSRAT medical and marine-science departments and from various sections of the government. The seminar's conclusion was consistent with NMR's findings that there was no scientific evidence of pollution.

On September 3rd, the Minister of Environment made his position clear on the subject. The press release stated that *"It is important to note that the study conducted from July to August 2004 shows the same conclusion as that conducted by the Ministry of Environment and BPPT, namely the quality of water in Buyat Bay is still below the quality standard threshold (not contaminated)."* To date, the Ministry of Environment's position still refers to the results of the study conducted by the Ministry of Environment and BPPT in August and September, 2004.

Yet, the Press continued to follow this sensational story including a biased article by Jane Perlez of the New York Times on September 8th. The content of this article and its biased nature is discussed in another section of this Pledoi.

The World Health Organization's final report on Buyat and Totok bays which was prepared by the world-renowned Institute for Minamata Disease (which is

part of the Ministry of Environment of Japan) was completed on September 8, 2004. The WHO/ Minamata Institute report will be discussed in greater detail in another section of this Pledoi, however, in summary, the report concluded that the environment in Buyat and Totok Bays were not contaminated with mercury, that the people were not suffering from mercury contamination and that all metals measures, which included arsenic in local residents were at normal levels.

In spite of all this, the Police questioning of NMR Staff and Management started on September 6th and concluded with the arrest and detention of 5 innocent individuals in late September. I was questioned, detained, and subsequently released due to health reasons and placed on bi-weekly reporting. My fellow colleagues remained in custody for 32 days. They had the distinction of being incarcerated alongside those arrested for the Australian Embassy bombing! These are people that had not only done no wrong, but who had been running a good mining operation - they had not caused any pollution, nor adversely impacted anyone's health.

In early October CSIRO released the findings of their August sampling survey which found the sea and fish in Buyat Bay to be clean and conforming to normal standards. In addition, the Minister of Environment on October 14, 2004, released his report on KLH's sampling and investigation of Buyat Bay carried out in August/September 2004. The results were again similar to the Ministry of Environment's 2003 sample results, and deemed Buyat Bay to be clean and not polluted.

Meanwhile, the police had sent the Case Dossiers (on October 5) to the Manado Prosecutors. The Prosecutors in Manado were not very impressed with the Police investigation. The Prosecutors reviewed the BAP and sent it straight back to Jakarta with the following recommendations and questions: *[P-19 The High Prosecutor of North Sulawesi - Manado B/R 1.4/Epp 1/ 10 /2004 Evidence T.1-95a idem T.ii-22a]*

1. *Law No.23 of 1997 states that the enforcement of penal law provisions shall continue to observe the subsidiary principle, namely that the penal law should be used if other legal penalties such as administrative*

- penalties and civil penalties as well as environmental alternative dispute resolution are not effective. Please explain or investigate.*
- 2. From the Prosecutors perspective, the criminal offence in this case was in fact carried out by or on behalf of a legal entity/company (environmental corporate crime) as meant in Articles 45 and 46 of Law 23 of 1997.*
 - 3. The laboratory that analyses the samples does not have the capacity to make a conclusion whether the result of its analysis constitutes a criminal offence. The laboratory can only provide a report of the result of the lab's analysis*
 - 4. Article 116 paragraph (3) CCP states in the examination of a suspect, he is to be asked whether he wishes to have witnesses in his favor to be heard, and if there are, this must be recorded in the minutes. Furthermore Article 116 paragraph (4) CCP states that if what is mentioned in paragraph (3) occurs, the investigator must summon and examine the witnesses.*

The Police re-sent the BAP to the Prosecution in Manado once again on November 22, 2004. The Prosecution was still not happy as little had been done to improve the document or to grant the suspects the right to have witnesses and evidence in our favor to be heard, the Prosecution issued another P-19 rejection notice. [P-19 The High Prosecutor of North Sulawesi - Manado B-1879/R.1.4/Epp/1/11/2004 dated Nov.30 /04 Evidence T.1-95b idem T.ii-22b]

The Prosecution did note the following:

- 1. Based on the evaluation, the crime in this case is classified as an environmental corporate crime. To classify Buyat as a corporate crime, the police need to interview a member of the board of directors to represent the entity as a suspect.*
- 2. Samples should be analyzed in a laboratory having an accreditation in the field of chemistry. If the Police forensic laboratory has such an*

accreditation, evidence of such accreditation should be enclosed in the BAP.

- 3. Reminds the Police that the suspects' rights to have witnesses and evidence presented have not been fulfilled.*

But the Police were indeed a very determined group; they sent the file back again to the Prosecutor on 6th of December 2004. The Prosecution noticed that they still had not examined a member of the directors of the company to represent the entity. The Police had also not followed the other recommendations such as granting the rights to the suspects to have witnesses and evidence presented that would support the suspects' position. The case file was once again returned to the Police with yet another P-19 rejection note. *[P-19 The High Prosecutor of North Sulawesi - Manado B-1941 /R.1.4/Epp. 1/12/2004 dated 14 December 2004 Evidence T.1-95c idem T.ii-22c]*

On 7th December, it was obvious that our wishes for a fair and reasonable investigation were only to remain a dream; for example, the police had locked up 5 of my colleagues for over a month for questioning and then subsequently had forgotten to ask them any questions. These irregularities continued despite our repeated requests to have some real experts be called as witnesses and to have real evidence such as the Minister of Environment's, 2004 report, CSIRO and WHO reports. All would have confirmed that the health of the marine environment was not polluted and the people's health status was not related to NMR operations. By this time it was obvious that our rights to call witnesses and have evidence presented on our behalf was just something written in laws books and something not practiced or respected by the Police investigators. Even the prosecution had instructed the Police to grant us our rights, but in reality and in Jakarta Police Headquarters, it is the law of those that rule and not the rule of law.

It was obvious that we needed to uphold our rights by other means and thus on December 8, as individuals we filed a Petition of a Writ of Habeas Corpus in the South Jakarta District Court against the national Police. On December 23, 2004, my colleagues and I won the Habeas Corpus appeal and the Jakarta District Court ruled and declared the arrest, arrest extension and city arrest and

mandatory reporting as illegal. We were happy that the legal system had finally worked and that justice had prevailed. But again, we had been naïve and believed in the law and had overlooked a simple but important fact - that being that the Police would refuse to follow the Habeas Corpus decision.

Ironically the same day, 23rd December, the Prosecution accepted the results of the Police investigation report as complete. What is most significant here is that not only were these two things happening on the same date but that all the original deficiencies in the police investigation report (such as my being denied the basic right to have witnesses and evidence being presented on my behalf) which were included in the Prosecutors' prior rejection notices (P-19's), still existed in the documents.

After several visits by General Soeharto, who had personally been traveling back and forth between Jakarta and Manado lobbying the Prosecution to accept the minutes of investigation, the Prosecution accepted the Police report. Whatever may have been the Prosecutors reasoning in accepting the document, it was definitely not based on the fact that the investigative report was complete and any person reviewing the document could have seen that. I did find it strange however that a General in the National Police, would continually be the courier for such an incomplete document. Because of my twice-a-week mandatory reporting to the police, I had the chance to observe other investigative reports being delivered to other prosecutors, ranging from illegal logging to other special crimes. In all the cases I witnessed in my months of reporting to the police, it was a low level staff or the investigator that delivered the investigative reports to the Prosecutors' office, and certainly never a General! Maybe the less-than-complete files require a high ranking delivery service!

On December 24th, I received a police summon to appear before Polda North Sulawesi to be delivered to the Prosecutor. This was another strange action, considering that the investigation had been declared to be illegal by the South Jakarta District Court. Clearly the law enforcement agencies were not communicating with each other. Under advice of legal counsel, I did not appear

in Manado. *[Surat Panggilan (summons) No. Pol: SP/800/XII/2004/Tipiter Dated 24 December 2004]*

It seems someone did not get the message in my first attempt regarding summons to appear before the Prosecutors, on January 7, so I received second summons to appear before Polda in Manado on December 10th, 2005, once again to be handed over to the Prosecutor. Clearly, the Police were ignoring or could not care any less about the decision handed down by the South Jakarta District Court. Needless to say, I did not travel to Manado on the 10th of January. *[Surat Panggilan ke II No Pol: SP/800-2/1/2005 Tipiter]*

While in theory, there is supposed to be a separation between the Administrative and the Judicial branches of the government, this was not the way things worked in reality in the continuing saga of the Buyat case. On January 4, 2005 under letter number B-14/MENLH/01/2005 classified as “Very Urgent”, the Minister of Environment made a Request for Legal Consideration to the Chairman of the Supreme Court for the Republic of Indonesia. In other words, he requested the Supreme Court to review and overturn the decision in the writ of Habeas Corpus rendered by the South Jakarta District Court. *[letter B-14/MENLH/01/2005 dated 4 January 2005 Attachment 20]*

On 17 January 2005 The National Police filed an appeal to the writ of Habeas Corpus to the Chief of the Supreme Court of the Republic of Indonesia. This highly unusual action was taken in complete disregard of the fact that a ruling in such a writ of Habeas Corpus, (which declared the investigation illegal) is FINAL and BINDING on both parties and is legally considered non-appealable. Again, the authorities ignored the fact that the laws governing the Supreme Court prohibit that court from hearing an appeal against a Habeas Corpus decision. Once again, this proved to be a case of the law of those that ruled and not that of rule of law. *[Memorandum of Cassation SJDC # 21?/pid/Prap/2004/PN.Jak.Sel]*

Also even though the travel ban imposed on all parties had long expired but in reality it continued to be enforced without any legal basis whatsoever. Not only had the time limit of the travel ban expired, but the case and investigation had

been declared illegal to start with. There was no legal basis to maintain a travel ban other than arrogance and disrespect. During this period the police also unlawfully served notice that the “suspects” were to appear in Manado to be “handed over to the Prosecution”. This was another unusual action, considering the investigation was held to be illegal by the South Jakarta District Court.

On January 24th, I received the distressing news that my only grandchild had died suddenly and I urgently needed to travel back to the United States for the funeral and to lend support to my son and his family. But Indonesian immigration authorities would not allow me to leave the country and I was forced to send my wife, who herself had been devastated by our family’s tragedy, to get on a plane to take care of a distraught and grieving family.

Myself, and others made urgent appeals to the Director General of Immigration and other government officials. My attorneys advised the officials that what they were doing was illegal and fundamentally against my rights as an individual. But in the end, doing what was right was deemed irrelevant and there was no one in authority with the courage or capability to take the decision to follow the law. In the end, my wife helped my son bury my granddaughter in cold frozen ground and I went to the mosque at 2 AM, the time of her burial to pray alone and to be by myself. I am still haunted by the question - what recourse does one have when the very institutions that are entrusted to uphold the nation’s laws violate or ignore these very rules?

Well, enough was enough. On January 31st, 2005, I myself, along with the others who were being denied our basic rights filed a law suit against the Director General of Immigration and the Minister of Justice at the State Administrative Court in Jakarta. We were all adamant that we would continue to fight for our rights within the legal framework afforded us even though that legal framework had been bent, twisted and deformed. Does it not seem ironic that I had to resort to filing a law suit against the Ministry of Justice in order to attempt to have justice prevail? It was an act of sheer desperation but the simple fact remains that no one in authority had the courage to take a just decision. One can only assume that the norm in certain government agencies

is to play safe, and to avoid criticism the officials maintain the status-quo and this tendency takes precedence over doing what is legally and morally right!

On 3 February 2005, Dr. Jane Pangemanan sent a letter to General Suyitno Landung revoking the Police Report that she had originally made. Now the Police and the Prosecution were faced with the predicament of having an active case-file on Buyat but the Minister of Health had distanced himself from the case and they also had lost the basis of the original criminal complaint. *[Letter from Dr. Jane Pangemanan dated 3 February 2005 regarding the revocation of the police report No. Pol.: LP/247/VII/2004/ Siaga-I dated 20 July 2004 Evidence T.I-2 idem T.II-1.]*

In what one would assume to be a long-awaited response to the Minister of Environment's "Very Urgent" request for legal consideration, the Vice Chairman of the Supreme Court replied to the State Minister for Environment under letter number WKMA/YUD/05/III/2005, dated March 10, that the Relevant Investigating Authority, the Indonesian National Police has already filed an appeal against the District Court's decision [Attachment 21].

Five days later the Supreme Court issued their ruling on the Police appeal. On March 15, 2005 came another landmark event in defiance of the rule of law in the continuing Buyat saga. The Supreme Court reviewed and overturned the Habeas Corpus decision despite Indonesian law barring its appeal. The Supreme Court Chief Justice said: "Sometimes when handing down judgments we must refer only to the law. However, at other times we must evaluate the law based on social interests," he said to the Press." *[TEMPO March 18, 2005 "Supreme Court Decision on Newmont Not Just a Legal Matter" Attachment 18]*

As if being declared a suspect in a criminal proceeding was not enough, the Indonesian Ministry of Environment (on March 9th, 2005) also filed what amounted to a \$133 million civil suit against the company and me, as an individual. What was interesting if not downright humorous in this particular action was the method in which they stated they had derived the \$133 million value; the suit stated that the methodology applied was the "back of the envelope" calculation method which simply put indicates those involved did not

know how to make such calculations, so they just took a guess and wrote something down.

On March 22nd of 2005, the rule of law finally prevailed and the Panel of Judges of the State Administrative Court had the courage to approve and sustain the lawsuit filed by the Plaintiffs in its entirety. They declared all the decisions and actions of the Ministry of Justice and the Director General of Immigration regarding Overseas Travel Ban against us as individuals to be illegal. I was ecstatic that the legal system had worked; albeit two months too late for me to attend my granddaughter's funeral. But it was finally a consolation that some one had made a decision according to prevailing law!

Our joy and relief over the re-institution of our right to travel was short-lived as the very next day (March 23rd), I received another summons to appear before the North Sulawesi Police on Tuesday, March 29th, 2005 at 10:00 AM. The consequence of this was that one type of mandatory reporting was replaced by another.

Handover of the "suspects' to the Prosecution

My lawyers advised me that they had received information that Public Prosecutor in Manado planed to detain all the suspects, unless:

1. An immediate request was made to the High Prosecutor of North Sulawesi not to make the detention;
2. A letter of guarantee was furnished by the U.S. Embassy (in respect of Rick Ness and Bill Long), and another by the Australian Embassy (in respect of Phil Turner);
3. Bail in the amount of US \$1,000,000 was set; and
4. Photocopies of the passports of all the suspects were submitted to them.

My legal defense team wasted no time and on March 24th, 2005 filed a Deed of application for Judicial Review against the judgment of the Supreme Court dated 15 March 2005 along with the following of our objections: that the Applicants object to the Cessation Judgment because we found (1) confusion

and (2) error as stipulated in Article 263 paragraph (2) letter c of the LCP which read “if the judgment clearly shows Judge’s confusion or obvious error” in conjunction with Article 23 paragraph (2) of Law No.4 of 2004 regarding the Judiciary, and its elucidation. [*# 01/Akta Pid/2005/PN. Jak Sel*]

On April 5th, 2005, my lawyers presented a letter to the Head of High Prosecutor of North Sulawesi which in essence requested to reconsider the examination of witness(s) who would be beneficial to the Accused and the termination of prosecution in respect of the individual suspects in the alleged environmental pollution crime at Buyat Bay. The reply was quick and concise, the answer was unequivocally – NO; accompanied with the reasoning that the investigation results were complete so how could there be any further examination of witnesses? This response raised a few eyebrows since all his other P-19’s chastised the National Police for not granting me my basic right afforded under law. So much for consistency in the application of the law! [*R- /R.1.Epp/04/2005 - The high prosecutor of North Sulawesi – Manado – April 2005*]

I felt I had exhausted all reasonable means to have justice served and to have my basic rights upheld. By now it was very obvious that I, along with the company, was going to be indicted for a crime that had not even occurred.

So on April 19th, 2005, one of my personal lawyers, T. Mulya Lubis sent a personal letter to the President of Indonesia to also advise him that is incredible wrong-doings were taking place in the process of handling the Buyat case.

I must add here that not everything was going wrong; the Ministry of Health had been conducting a detailed and comprehensive testing of Buyat Pantai villagers. The results were released on May 6, 2005 which concluded that there was no evidence of health problems being caused by heavy metals in the villagers of the Buyat area. The results of this study did not come as a surprise to me because the study had merely confirmed what I had known all along – that there had been no negative health impacts on the villagers as a result of mine tailings.

On the 9th and 10th of May, 2005 prominent scientists of national as well as international eminence attended and presented research findings at the

“International Seminar on Mining, Environment and Sustainable Development” that was held in Manado. The conference was organized by the Sam Ratulangi University and it focused on all the research and scientific information available about Buyat Bay including topics such as health, marine environment, mine tailings, including social issues and impacts. The conference was attended by more than 300 participants, which included members of government and the parliament of the Republic of Indonesia, mining executives, representatives from NGOs, academics and scientists from top universities and research institutes, as well as members of the national and local press. Thirty four scientific papers were presented and debated which proved to be valuable and constructive input for the Government and all the other parties related to the so-called Buyat controversy. While being discussed in detailed in subsequent sections of this Pledoi, a summary of the seminar’s main conclusions are as follows: *[Proceedings – International Seminar of Mining, Environment, and Sustainable Development Evidence T.I-61]*

Manado 9 - 10 May 2005

1. The status of the Buyat Bay Ecosystem shows:

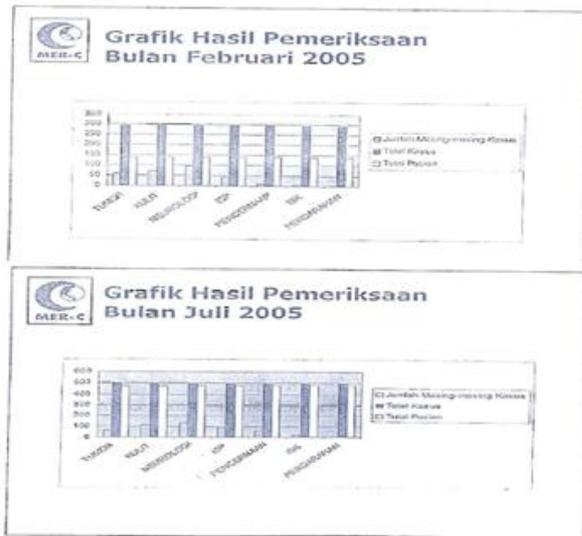
- a) There has never been any scientific evidence showing that environmental pollution has occurred.*
- b) The quality/condition of seawater in Buyat Bays, when linked with the contents of heavy metals, does not show any indication/level that harms marine biota.*
- c) Coral reefs in Buyat Bay waters have grown normally.*
- d) Concentrations of heavy metals (Hg and As) in fish in Buyat Bay waters are below the WHO standard guidelines, which means that the fish are safe to be consumed by the community.*

2. With regard to impacts of contaminants on public/community health

- a) That average concentrations of all heavy metals examined in the bodies of the residents of Ratatotok, Buyat Pante, Buyat and Belang are well below the tolerable concentration values/ limits (WHO-IPCS).*

b) There is no statistically significant correlation between the concentrations of heavy metals in residents and diseases suffer, particularly lumps and skin diseases.

3. Direct correlation between arsenic content in ground water in Buyat and mining is not scientifically proven.



Even after the court proceedings for the Buyat Case were underway, groups like Dr. Zakiyah (MER-C), Chalid Muhammad (WALHI), Siti Maimunah (JATAM), Jull Takaliuang (YSN) and Raja Siregar (WALHI) brought the Buyat case before commission IX of the National Parliament on December 5, 2005, explaining that the Buyat Pante as well as the residents of

the Buyat village was falling sick. Mer-C showed graphs that indicated that incidence of illnesses were on the rise; presuming of course that all this was caused by NMR. [See Commission IX transcript, Kasus Buyat dated 5 December 2005 Attachment 23]

With misinformation being circulated, it was little wonder that the Head of Buyat Village expelled Dr. Harry Iskanar from Buyat on May 19, 2005, representatives of Mer-C were so angry that they issued a press release 2 days later threatening that they had the support of Majelis Mujahideen Indonesia (MMI) to offer protection to their fellow crusaders. What is going on with all these medical experts? Are they trying to create issues or solve them? [Mer-C Press Release: Jakarta 27 Mei 2005 Attachment 24]

My efforts to rectify the misrepresentation that Buyat Bay is polluted and the village needed to be relocated as indicated in the KLH Technical Team report and others has not and never will cease until the truth is revealed to the general public. As late as September 19, 2006, in my letter No. 055/RBN-js/NMR/IX/2006, I requested the State Minister of the Environment to conduct

an internal review of the 8 November 2004 Technical Team's Report on Buyat Bay. In this letter I state *"First, the report concludes that the sediment quality in Buyat Bay is polluted because it exceeds the ASEAN Standards for Water Quality-2004. We contacted the ASEAN office to obtain this standard cited in the Technical Team's report, but we were informed that ASEAN Water Quality Standard of 2004 does not contain any standard for marine sediment. This information can easily be verified, and I have attached a copy of the ASEAN standard as an attachment for your easy reference.*

It is clear that the Technical Team has used a non-existent reference and has characterized it as ASEAN Water Quality Standard to give false legitimacy to their conclusions. By inventing such a reference to justify their conclusions, they have breached the most basic code of professionalism and ethics. This situation demands an investigation of the motives of the primary authors of the Technical Team's report because their wrong conclusions have led to serious economic, social and emotional costs for the people."

The letter further states *"Second, the formula used to calculate Average Daily Intake (ADI) is correct; however, the units of measure which are the underlying foundation of the formula are incorrectly applied. Those manipulations change the meaning from the original reference to the body of the report and then mutate further into table 3.8 of the report.*

The formula's mutation, deliberate or unintentional, combined with misapplication of inappropriate concentrations, quantities and an even basic mathematical mistake creates errors in the risk calculation ranging in excess of 4,500%. If left unchallenged, this formula and report takes fish that is perfectly safe to eat, (that are now being sold domestically and exported from Indonesia to other countries) and documents the first case of arsenic exposure risk from fish IN THE WORLD.

Highlighting just these two fatal flaws alone totally discredits the conclusions of the report. It is only logical that if the standards do not exist, and the formula is misapplied, with erroneous quantities and magnified by mathematical errors, then the conclusions of the report are also incorrect.

The request concludes with “PTNMR and I have no problem defending ourselves, our actions, our operational performance, and care for the Environment before the court. Both have no problem addressing allegations, and if necessary, embarrassing some of the NGOs and individuals who perpetrated this pollution hoax before this nation and the international community. However, neither PTNMR nor I will take any pleasure in having to discredit a report developed by specific individuals under the name of your Ministry.

All that we seek is fairness. I view it in both our interests to uphold the credibility of this administration’s institution. Should you need further clarification on the numerous errors contained within the Technical Teams Report, I am more than willing to provide that clarification.”

Your Honorable Panel of Judges, this concludes my basic chronology of events that brings us here today. My public statements from the first allegations that Buyat Bay was polluted have not varied – I am 100% confident that Buyat Bay is clean, the fish are safe and the mining operations of NMR have not caused heavy metal contamination of the communities. Additionally, I stand by my statement in my letter to the Minister of the Environment that “PTNMR and I have no problem defending ourselves, our actions, our operational performance, and care for the environment before this court.” This case from the beginning has been driven by misinformation and politics and is not about facts or science, which could provide the true measures of pollution. I am here to be judged on the facts and not on the political agendas of certain individuals, who appear to be the main drivers in this case. All I seek before this court is fairness based on the truth, facts, which are free from political agendas.

7. DISREPUTABLE REACTIONS OF CERTAIN NATIONAL & INTERNATIONAL MEDIA

The allegations of Minamata Disease in Buyat Bay caught the country by storm, given it surfaced during an election period. Sensational allegations were made by Rignolda to the international media, such as: *"I found data in the village that four people already died with indications like feeling very hot in their body before they were dying. And, also skin disease that's very common in the village. Other health problems in the village are they have a very bad headache and some of the people have no feeling, they lose control over part of their bodies."* At the same time Dr Jane Pangemanan's exploits of dragging the villagers from hospital to hospital, to the police headquarters, the filing of criminal complaints and civil law suits against both the Minister of Health and NMR grabbed national and regional print and broadcast media's attention. As the President Director of NMR, my photo was splashed on the front pages of newspapers for several weeks. These stories in the media further perpetrated the Buyat pollution hoax and influenced the stance and rhetoric adopted by politicians running for political office.

Most of the media reports focused on the lumps and bumps and comments by Dr. Jane Pangemanan and Dr. Budiawan without much investigative journalism, which if conducted properly, should have asked questions such as:

- The Minamata Disease Institute Web Site states that Minamata disease is a neurological disorder, what does this have to do with lumps and skin rash?
- Why this now coming to light after the mine is closed?
- Why file a civil suit and criminal complaint against the Minister of Health, does this have something to do with the elections?

Minamata like symptoms dominated the headlines and the nightly news, but the story kept shifting. At the beginning it was Minamata Disease, which is mercury poisoning, then it was mercury contamination. When these were

disproved by Minamata Institute/WHO study in mid-2004, it was suddenly arsenic poisoning and when that was shown to be false by the Ministry of Health's Audit, it ended with itchiness in the Indictment. If one just stops and thinks that the original issue has digressed from a serious and often fatal neurological disease to common dermatitis, then one also needs to question what went wrong from a media and government perspective.

One needs to ask where objective journalism was when it was needed most. If the allegations were wrong about Minamata, then maybe they are wrong about mercury or arsenic contamination. How many times do Dr. Rignolda and Dr. Jane Pangemanan have to be caught telling lies before the media question their actions and motivations?

Most of the local and national press in Indonesia tried to provide a relatively balanced perspective, however this same press has been suppressed and lied to in the past, plus allegations such as those relating to Buyat are not easy to investigate. I am not being critical of the national press coverage, without question, most media covered the story to the best of their ability with the limited resources available to them. To conduct in-depth and extensive investigative journalism requires not only experienced journalists but also a large budget for travel, access to technical staff for research, and sufficient time allocated by the editors. But what probably perpetrated the Buyat Bay hoax and provided the most serious misinformation was when Jane Perlez of the NEW YORK TIMES wrote a story on September 8, 2004 with the headlines "*Spurred by Illness, Indonesians Lash Out at U.S. Mining Giant*". This story opened with: "*First the fish began to disappear. Then villagers began developing strange rashes and bumps. Finally in January, Masna Stirman, aided by a \$1.50 wet nurse, gave birth to a tiny, **shriveled girl with small lumps and wrinkled skin.** "The nurse said: 'Ma'am, the baby has deformities,' " Mrs. Stirman, 39, recalled in an interview. Unable to get any meaningful medical help in this remote fishing village of about 300 people, she watched as her fourth child suffered for months and then died in July.*"[Evidence T,I-9 a & b idem T.II-2 a & b]

Did this one-sided story have an impact on the actions of a newly-elected Government? It is safe to assume that they most certainly did. The New York Times is perceived, rightly or wrongly, as one of the United States' major publications. I received calls from Ministerial level government officials as to the content of article published in the New York Times, my response was what I know to be true, that being: Buyat Bay is not polluted and that no one has been harmed by NMR's mine tailings. The September 8th Times article when on to state, "About 120 villagers were waiting to be examined in June in the ad hoc clinic set up in three local homes. Thirty of the villagers had tumor-like growths, said one of the doctors, Jane Pangemanan. "I was shocked by what I saw," she said in an interview. Of the 60 people she examined, about 80 percent showed symptoms of poisoning by mercury and arsenic, she said."

When Dr Jane Pangemanan was asked by the Defense before this court on October 7, 2004 if she had stated this to Jane Perlez of the New York Times, she stated under sworn testimony that "***I did not say that.***" Either Dr. Jane Pangemanan lied on the stand or Jane Perlez fabricated this quote to support her one-sided story. Either way, someone needs to answer for their actions.

The miss reporting of the facts and unfounded allegations of pollution at Buyat Bay continued during the early stages of this controversy. However it is safe to suggest that more recently many people have questioned those early reports. The truth will always win at the end and I believe in the clear light of day, the majority of Indonesians now know that the Buyat case was not about pollution or people's health. This is shown in a later article by the Wall Street Journal, an International publication read by global decision makers and of the highest reputation, entitled: "*Welcome to Indonesia*" by Stephen Moore and Jonathon Burns that was published on March 15, 2006 (Page A22). This article states:

"The story began in September 2004 with allegations by a group of villagers in Buyat and various NGOs that Newmont Minahasa Raya, a subsidiary of Newmont, had polluted nearby Buyat Bay, causing numerous villagers to become sick with mercury poisoning and one baby girl to die. The mine, having yielded up its riches, was in the process of closing. Newmont had invested upwards of \$135 million in the mine and related infrastructure, and been

regarded as something of an economic savior in the impoverished region. Yet overnight, it became a pariah; and publication of the claims in the New York Times appears to have been a major factor in instigating the criminal proceedings.” [Attachment 25]

It goes on to say:

“Press coverage has reported Newmont’s denials mostly as an afterthought, if it has reported them at all. A review of the evidence raises serious questions about the case and the fairness of the legal proceedings -- as well as the potential impact of this dispute on the economic future of the world’s fourth-most populous country.”

On the pretrial legal process, the article states:

“The conduct of Indonesia’s legal system during the case has also been disturbing. During the police investigation, for example, Mr. Ness and Newmont were denied their legal right to present evidence. In December 2004, a Jakarta district court ruled in favor of Newmont’s habeas corpus appeal and declared the police investigation to be illegal. The police appealed the habeas corpus decision and the Supreme Court accepted the appeal, in spite of a law which clearly states that habeas corpus decisions cannot be appealed.”

So although major international publications such as the Wall Street Journal have provided balanced reporting, I am totally convinced that irresponsible and erroneous reporting by the New York Times is at least partly responsible for misleading the public which in turn created public pressure to detain 5 of my colleagues without any real legal basis. I also believe this type of reporting put pressure on the legal system to accept a one-sided BAP and resulted in a Supreme Court ruling to overturn a Writ of Habeas Corpus, which they had no legal basis to do. There were governance and legal system failures along the way as well that should have prevented us from being here today, but the creation of a public perception in the early stages of this case by irresponsible journalists such as Jane Perlez have certainly played their part.

To prove the fact that journalist and Jane Perlez have had an impact on this case, one only has to look at the Requisitor (Charges) of the prosecution which

concludes that I should be imprisoned for three years. The Requisitor references an article in the Indonesian newspaper, dated 24 December 2004, saying NMR discharged 16 tons of mercury; their source of information is none other than Jane Perlez of the New York Times. An investigative journalist with full information on the process already provided to that journalist by NMR, would know, should know, have the mental ability, or have the resources to determine the difference between various compounds of mercury. Some are toxic and some are not. The fillings in our mouths are a compound of mercury, those are obviously non-toxic. The compound of mercury in NMR's tailings is cinnabar. One only needs about 5 minutes of research on the web to determine cinnabar is insoluble in water, non-toxic and could not release mercury into the environment. This reporter not only had all the disclosure information provided by NMR on the process and the various forms of non-toxic mercury in the discharges, but all the reports of CSIRO, WHO, the October 2004 Ministry of Environment report which all show that the environment is not polluted by mercury, arsenic or any other metals. But she went ahead with the story trying to provide the impression that somehow NMR was polluting the environment when she should have known that it was not true.

From my perspective, one can not call the articles written by Jane Perlez on the Buyat hoax professional investigative journalism, but merely a sloppy work product to support a preconceived concept or bias towards pollution. The Code of Ethics adopted by the Society of Professional Journalists, states that journalists should "Seek Truth and Report It". The Code of Ethics further elaborates that a journalist should "Test the accuracy of information from all sources and exercise care to avoid inadvertent error." It is clear that Perlez did not rigorously scrutinize Dr. Jane Pangemanan's or others' comments to assess their worthiness for publication. As the Buyat Bay case has progressed, it has become clear that several individuals, including certain media and the New York Times specifically have misrepresented the illness of the villagers and the pollution in Buyat Bay to the public and the Government. This significant journalistic failure by Jane Perlez of the New York Times greatly contributed to the perpetration of the Buyat hoax and my presence before this court today.

Without doubt, Jane Perlez's biased reporting have damaged a lot of people, including impacting my family's reputation, the communities around Newmont's Mine in North Sulawesi and the employees of Newmont,. Furthermore it has have influenced Indonesian public policy, undermined the trust and inflicted great pain on me.

AP Associated Press

**Indonesia seeking jail
for Newmont exec**



One thing is for certain, the eyes of the world are on this landmark case here in Manado, as I estimate that there are in excess of 100,000 stories published on this controversy and the story of the Buyat Case is covered and followed by virtually every major publication and news service in the world. Quotes from Associated press as an example state after the charges at the last hearing ...*"Anything short of total innocence is excessive," Ness told reporters when asked to respond to the sentence recommendations. "There is no pollution and there has been no crime."*

Some villagers claimed that they became sick as result of pollution, but the prosecution has not presented anyone with serious skin disorders or other illnesses..... The 15-month trial has been complicated by conflicting test results on water near Newmont's now-defunct mine on Sulawesi Island.

A police report showed that mercury and arsenic levels in nearby Buyat Bay were well beyond national standards, but tests by the World Health Organization, government agencies and several independent groups found that pollutants in the water were within normal limits. [Attachment 26]

As recent as December 18, 2006 The Australian Financial Review ran the story entitled **"Newmont pollution is all 'hanky-panky'"** [copy of the article is attached to this pledoi]. The article starts out by stating *"An expatriate mining executive on trial in Indonesia for causing serious pollution appears to be innocent, according to a senior Jakarta official. A director-general at the Mining and Energy Ministry, Simon Sembiring said Newmont and its local head, Richard Ness were being wrongly tried for polluting a bay near one of the company's goldmines.*

Mr. Sembiring, who was part of a government committee that investigated the issue, said the high-profile case was a result of “politics” and “hanky-panky” by non-government organizations”

*“For me, it’s very clear” Mr. Sembiring told **The Australian Financial Review** “Buyat Bay is not polluted”.*

The article quoted others: *“One thing you don’t do... is bringing court cases against somebody where you don’t have any evidence. This is exactly what has happened in the Ness Case.”*

Mr. Sembiring also stated he disagreed with the findings because the committee’s decision was based on politics, not science.

“I have read the report from the CSIRO and the Minamata Institute in Japan” he said.” A certain level is the standard. If more than that, it’s polluted, if less it’s unpolluted. There is no pollution”

The article also quoted the head of the US Chamber of Commerce, Thomas Donohue, who said the outcome [of the trial] could affect foreign investment in Indonesia.

“Nothing is more fundamental to a good investment climate than the rule of law, sanctity of contracts and protection of individual rights in the legal system,” Mr. Donohue said. [Attachment 27]

As one noted observer stated, *“I have never seen media coverage on a case as exhaustive as the Buyat case in the history of Indonesian judiciary.”* and one can assume that this will continue for the remainder of the trial. Thankfully, most media coverage is balanced and questioning the real motives behind such a controversial trial or even why this case is in court.

8. SCIENTIFIC AND TECHNICAL ARGUMENTS

Your Honorable Panel of Judges:

The underlying fact in this case is that Buyat Bay is NOT POLLUTED, its waters are pristine and clean, the fish and coral reefs are healthy, there is a thermocline in Buyat Bay, NMR did have a permit to discharge tailings, and its mining activity and process plant performance was exemplary throughout its operations. As proof, the waters of Buyat have remained clean with abundant aquatic life. The people from the community do not suffer from strange diseases; they are normal people living normal lives.

Unlike many court trials, an environmental allegation must not only be answered legally, but also scientifically. At the end of the day, it is not unscrupulous NGO's, political will or verbal debate in the press that determines pollution. Science and technical analysis is what will make the final determination on the condition of Buyat Bay.

An Independent Scientific Panel of National and international experts has been formed as part of the "Goodwill Agreement" that will continue to monitor and evaluate the true condition of Buyat Bay. That panel will report each year to the Government and public for the next 10 years the factual status of Buyat Bay. In simple terms, I will not only be judged by this court and Your Honorable Panel of Judges, but I will also be judged by scientists for the next 10 years. I have no problem with being judged based on science. I welcome it, because I am confident the long term results will show that the Prosecution has been trying to prosecute, convict a jail and innocent man.

In this section of my Pledoi, I will address the technical and scientific facts relating to the case and prove beyond any doubt that Buyat Bay is not polluted based on scientific and facts. I will discuss interesting and technical subjects like thermocline, tailings detoxification, sea water, marine biota, and human health as well as regulatory compliances issues such as permitting and reporting. I hope you find it written in a way that captures the reader's attention.

Thermocline

In reference to the thermocline, the Prosecution has charged that NMR did not place its tailings into the sea below the thermocline and that the liquid and solids part of the tailings became directly diffused by waves, currents, and tides, such that the heavy metal content of the tailings also spread vertically and horizontally.

It is difficult for me to respond to this charge as I am not sure what crime I have been accused of in relation to the thermocline. Irrespective of the vague charge against me, this allegation that tailings were discharged into the mixed layer rather than below the thermocline was simply not proven by the Prosecution. The expert witness they produced to support this charge, Dr. Abdul Gani Ilahude, had never been to Buyat Bay, had not conducted research in Buyat Bay and was guessing about the presence of the thermocline and the depth of the mixed layer based on research he had conducted approximately 35 years ago at some distance away from Buyat Bay (that he could not even remember). He could not say how many measurements he had made and exactly where he had made those measurements other than to say that it was in the Maluku Sea.

Does the Prosecution want this court to use 35 years old data from the Maluku Sea to send me to jail? Or should the court base its decision about the existence of thermocline using the empirical data from Buyat Bay as presented by the ITB lecturer Dr. Andoyo Wurjanto? The answer is self-evident—only real data should result in real conclusions.

The evidence provided by two fact-witnesses and an expert oceanography expert, Dr. Andoyo Wurjanto, as well as oceanographic data entered into evidence and discussed below clearly prove that all the above allegations are untrue. The evidence clearly demonstrates that:

1. There is a thermocline layer in Buyat Bay.
2. The average depth of this thermocline layer is at 43m, well-above the tailings discharge depth of 82 meters.

3. Since the thermocline sits below the mixed layer, the mixed layer stretches from the surface of the ocean down to an average depth of 43 meters.
4. Tailings have been discharged below and not within the mixed layer.
5. Dissolved mercury and arsenic concentrations in the mixed layer are at normal concentrations and the same as anywhere else in the ocean and therefore the liquid fraction of the tailings has not been diffused by waves, currents, tides or through any other natural processes occurring at that depth.
6. Total suspended solids concentrations of the mixed layer are at normal concentrations and the same as anywhere else in the ocean and therefore the tailings solids have not been diffused by waves, currents, tides or in fact by any other processes.
7. The submarine tailings system of NMR has operated exactly as designed and permitted under the AMDAL and has not negatively impacted the marine ecosystem or endangered public safety and people's lives.

In reality the debate about the thermocline need not have taken place. It was more than thirteen years ago in 1993 when independent consultants first evaluated that the thermocline in Buyat Bay is at the depth of around 50 meters. This study was part of NMR's AMDAL. This finding formed the basis for the placing of the tailings at the depth of 82 meters. Between 1996 and 2004, eight years of continual monitoring showed that tailings are well below the thermocline.

Two fact witnesses interviewed by the police referenced the thermocline analysis from the AMDAL. These were in the BAPS for Siegfried Louis Lesiasel and Ir. Dibyo Kuntjoro who were interviewed on 7 September 2004. In response to a question on the thermocline, both witnesses cited the following reference from NMR's ANDAL:

"Disposing of the tailing with the solid content of 45% up to 55% to the seabed at the depth of 82 meters, 900 meters away from the beach. This system is designed to guarantee that the tailing solidity settles on the seabed near the

disposal pipe. Some tailing solidity will remain in the suspension form for a longer time, especially during high sea current. However, the suspended sediment is limited only to the ground layer of the water. The existing "thermocline" at varied depths between 50 meters to 80 meters will prevent the tailing solidity from entering higher water columns."

Ir. Dibyo Kuntjoro stated that this conclusion was based upon the result of the oceanographic survey conducted in 1993 by the AMDAL consultant. This shows that the presence of the thermocline was established by an independent consultant in 1993 and not NMR. This was six years before I joined NMR as the President Director.

It was indeed extremely surprising to find that the allegations in the indictment regarding the thermocline were based on statements from the expert (Oceanography Physics) witness, Dr. Abdul Gani Ilahude taken on September 2, 2004 who has never visited or conducted any study in Buyat Bay. He provided further testimony in court on February 17, 2006 in support of these allegations. However, it became obvious during the cross examination that Dr. Abdul Gani Ilahude's had a very weak understanding of the Submarine Tailings System of NMR because he had never conducted any field research in Buyat.

The claims of Dr. Ilahude were strongly refuted by all the experts who found that the thermocline in Buyat Bay is at the depth of 40 to 50 meters because they had applied the empirical data from Buyat Bay itself to arrive at their conclusions. The only expert who differs from the other experts is Dr. Abdul Gani Ilahude who, as stated above – did not ever visit Buyat Bay or conduct his research using the Buyat data. He has simply developed an opinion about Buyat Bay by extrapolating from his 1972 research in Maluku Sea. What is simply outrageous is that the prosecution has relied on such an inappropriate material fact as the basis of their charge against me and NMR.

Dr. Abdul Gani Ilahude claimed that he arrived at this conclusion based on interpolation, as he admitted under cross-examination that he had not conducted any research in Buyat Bay. This means that Dr. Ilahude is making an uneducated guess about the thermocline. Such a guess has no validity

compared to the conclusions of Dr. Wurjanto, whose research is based on the analysis of more than 11,000 data points from Buyat Bay.

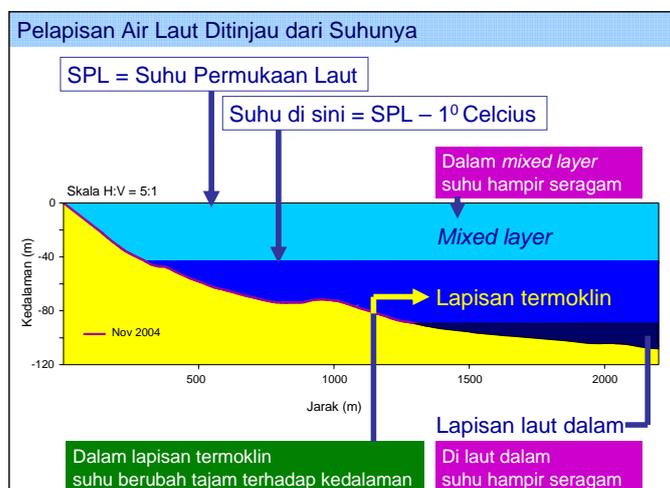
As explained by Dr. Andojo Wurjanto of ITB, the depth of the thermocline and therefore the mixed layer varies depending on their location. He explained that the depth of the mixed layer and therefore thermocline is less in waters close to the coast than in the open ocean due to physical oceanographic processes. Dr. Wurjanto provided a reference (scientific article by de Boyer Montegut, 2004) from academic literature as an example that showed the average-depth of the mixed layer in coastal waters in Indonesia is approximately 50 meters or less.

Dr. Wurjanto also provided a quantitative definition of the mixed layer that can actually be measured. This definition states that the base or bottom depth of the mixed layer is defined by 1°C change in temperature compared to the temperature of the water at the surface of the sea. Dr. Wurjanto provided three scientific references in court to support this definition.

Using this quantification methodology described in scientific journals, Dr. Andojo Wurjanto analyzed over 11,000 temperature data points of the water column in Buyat Bay itself to identify the depth of the thermocline. In court he stated the following findings:

- *“Based on my analysis, the thermocline is found on average at a depth of 43 meters and below. This was our finding for Buyat Bay waters based on data that I have.”*
- *“The pipe is located in the thermocline layer, not in the mixed layer.*
- *“Yeah, so in a scientific or technical forum a statement must always be supported by facts, by data. So that depends on how this expert or this person stated it. My comment for that would be, what I am presenting here is 100 percent based on facts, Sir. There is a large body of facts, and the definition I adopted is used by many experts in this profession. I say that the thermocline exists based on my analysis. As for other analyses, certainly we must look at them first. If [a person] says there is no [thermocline] below 82 meters, what is the data used? What I like to stress here is that this is based on data directly from Buyat Bay itself.*

Dr. Wurjanto also provided the slide below to visually summarize his conclusions. This slide shows the tailings of NMR below the mixed layer and the top of the thermocline layer.



In response to the theoretical situation of the heavy metals in the liquid part of the tailings being mixed by waves, currents and tides, it is clear from 8 years of water quality data documents in NMR's RKL/RPSs, the Ministry of Environment surveys and surveys by North Sulawesi Provincial Government and academic institutions such as CSIRO, that arsenic and mercury content of seawater in the top 50 meters (in the mixed layer) are all below Indonesian regulations and at normal levels for seawater. These actual data from Buyat Bay decisively disprove Dr. Abdul Gani Ilahude's hypothesis that heavy metals in the liquid part of the tailings had spread.

Secondly, there has been over 8 years of environmental monitoring data that have measured and recorded levels of turbidity in Buyat Bay waters. Turbidity is measured in a laboratory as a parameter called **total suspended solids**, which is reported in units of milligrams per litre. These data have been regularly reported to the Ministry of Environment in NMR's RKL/RPL reports and are consistent with KLH's own surveys. These results all show that the mixed layer in Buyat bay is not turbid; consequently proving that tailings solids are not occurring in the mixed layer.

In addition, responding to a question from the Panel of Judges on whether the solids tailings rose to the mixed layer and were mixed by waves, currents or tides, Dr Wurjanto stated in court:

“So, let me go through each, one by one. Wind can affect seas only up to several meters below the surface, because by nature it is in friction with the sea. Waves are also surface dynamics. At depths over 50 meters in the waters of Indonesia, effects of waves can almost no longer be felt. It heaves on the surface but it cannot stir things below 50 meters deep. Currents theoretically can, because currents can occur on the surface or on the bottom. But currents are also generated by other forces, for example, by winds, by waves and by tides. Now, the fact that this mound is retained – because I have another profile from a different year – that it holds there, only the depth changes, it shows that even the currents there cannot move the tailings mound there.

And responding to a question from the Counsel for the Defence on whether the tailings rose to the mixed layer and were mixed, Dr Wurjanto stated in court:

“Alright, Counsel. So if it is said that the tailings are mixed, based on facts, I can point out, I can say no. But the answer actually lies more here, in the results of 8 years of monitoring, from the implementation of RKL/RPL itself. At depths 0 until 50 meters my calculations show that –this is in the mixed layer – the levels of suspended solids in the water never exceeded the levels of Indonesian quality standards, even if most stringent quality standards are applied, the marine biota quality standard, which states that it can never exceed 20 milligrams per liter. That’s my statement.”

Dr. Wurjanto also presented a graph to demonstrate that suspended solids in the mixed layer were low, proving that tailings solids have not been mixed by waves, currents or tides.

In comparison, it is important to note that the Prosecution witness, Dr. Ilahude, himself admitted that he had never seen NMR’s tailings, had never looked at any of the monitoring data from Buyat Bay, had never been to Buyat Bay and had never conducted his own research in Buyat Bay.

All monitoring data and scientific analysis of the data by Dr. Wurjanto proves that Mesel Mine tailings are placed below the mixed layer and below the top of the thermocline and that due to their size and density they do not rise after

being deposited on the seabed in Buyat Bay. The tailings placed in Buyat Bay are physically and chemically stable as predicted in NMR's AMDAL.

In addition to the technical arguments stated above that conclusively prove the presence of the thermocline in Buyat Bay, an issue regarding POLRI investigation and the case as presented by the Prosecution causes grave concern for me.

Let me share with the court some dubious facts about Dr. Ilahude's involvement in the Buyat case. In addition to being the witnesses for the POLRI and the Prosecution, Dr. Abdul Gani Ilahude was also the thermocline expert on NMR's ERA Review Team (as outlined in Drs. Masnellyarti Hilman's BAP), the thermocline expert on KLH's Peer Review Team and the Ocean Physics expert on KLH's Integrated Team that produced the November 8, Revised Report.

It is also important to note that on all the above cases he was appointed by Drs. Masnellyarti Hilman of KLH. Drs. Masnellyarti Hilman never attempted to seek the truth through a second expert opinion. The fact that Drs. Masnellyarti Hilman always decided to appoint Dr. Ilahude even when the thermocline had become such a contentious issue, shows that Dr. Ilahude and Ms. Masnellyarti were colluding to hide the facts from the public.

It was finally in the court that the full truth about a specialized subject matter such as the thermocline finally came out. A leading national expert from ITB, Dr. Andojo Wurjanto decisively showed that the thermocline in Buyat Bay is at the depth of around 43 meters.

Issue of Detoxification and Alleged Exceedances

Your Honor, it shocks me to see that the indictment is accusing me of exceedances when the data shows that the performance of NMR's detoxification plant is more than 50% better than what is expected according to the regulatory standards. Moreover, how is it possible to have any exceedance if NMR released less than 10% of the total pollution load allowed by the Government?

In reality if the compliance analysis is conducted **honestly** and **truthfully**, NMR would receive a **GREEN** rating in KLH's PROPER program—a color symbol for “excellent” environmental performance. Hard data show that NMR's detoxification plant would have easily qualified as one of the best performing treatment systems in the world.

The irony of the situation is unexplainable—instead of receiving a reward for exemplary environmental performance, the prosecution has dragged me to the court and wants to sentence me to three years of imprisonment. This is grossly unfair and a blatant mockery of responsible environmental behavior.

Without any doubt, the citations of exceedances in the indictment are baseless, legally unfounded and they represent a deliberate attempt to distort the facts. In short, the accusations of exceedances are simply outrageous.

The exceedances listed in the indictment are incorrect from legal as well as environmental science perspectives. There are several reasons why the citations of exceedances in the indictment are wrong.

First, the Prosecution has applied an incorrect regulation to evaluate the effluent quality of the tailings. For the period prior to 11-Jul-00, the prosecution has applied the standards listed in Appendix-C of KEP51/MENLH/10/1995. These standards are general standards that do not automatically apply to a mining operation. The standards listed in APPENDIX-C of KEP51/MENLH/10/1995 are discretionary standards that could be applicable to a mining operation only if the Governor designates it as the effluent standards after consultations with the Ministry of Environment. This condition is clearly stated in Article 3(2) of KEP51/MENLH/10/1995.

However, the Governor of North Sulawesi **never** issued such a requirement for NMR during the entire period of mine operation. Therefore, KEP51/MENLH/10/1995 simply does not apply to NMR.

It is clear that the Prosecution has failed to read the applicable regulations carefully. Instead, the Prosecutors have recklessly listed the effluent values reported in the RKL/RPL as exceedances to create a wrong perception about the true effluent quality. Therefore, all the exceedances cited in the Requisitor should be discarded by the court.

Second, the Prosecution has applied a wrong methodology to evaluate the incidence of exceedances. According to established KLH's methodology, a **monthly average** is the correct basis for measuring exceedances and not the daily values as has been used in the indictment.

I would like to present four facts to establish that exceedances are based on monthly averages and not the daily values. **First**, for more than ten years KLH has consistently used monthly averages as the basis for evaluating exceedances of various companies. This rule for evaluating exceedances and compliance by factories is very clearly stated in a 1996 technical document co-authored by the PROPER Team-BAPEDAL and researchers of the World Bank. As stated on page 11 of this report, a monthly average of effluent concentration is the measure that should be used for evaluating compliance or non-compliance with the applicable standards.

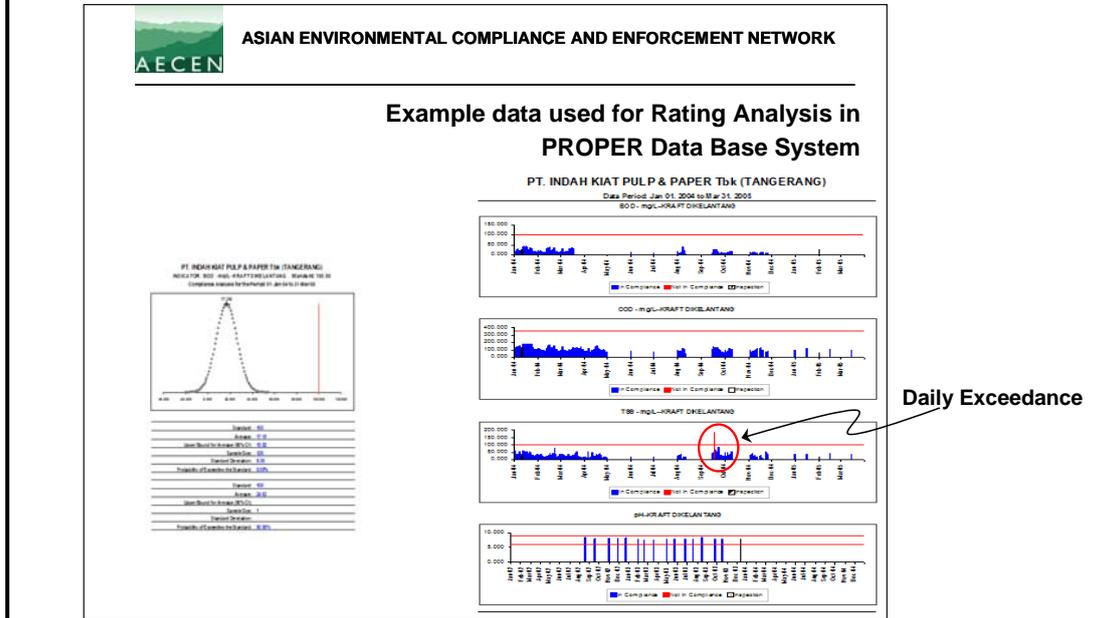
PROPER: TECHNICAL DOCUMENTATION Page 11 of 19

Key Questions	Information Needs	Nature of Information
1. Does the plant meet the effluent standards as specified in Appendix I to IV of the regulation KEP/MEN/03/1991 ?	1. What is pollution per unit output of the plant? 2. What is the standard applicable to the plant?	1. Average monthly pollution concentration 1. Average monthly flow rate 1. Monthly output in units specified in KEP-03/MENKLH/II/1991 1. KEP-03/MENKLH/II/1991 standard

http://www.worldbank.org/nipr/work_paper/propwhat/index.htm

The second evidence for the use monthly average comes from a recent presentation about the PROPER program by a senior KLH staff. On 6 April 2006 in Beijing-China, Mr. Rasio Sani, Assistant Deputy Minister for Hazardous Materials and Wastes Management at KLH made a presentation on the PROPER program. In this presentation, Mr. Sani showed a chart with the daily data on four environmental parameters reported by the company PT Indah Kiat located in Tangerang. This chart shows that PT Indah Kiat exceeded the value of the standard for the parameter of total suspended solids. But according to KLH's website, PT Indah Kiat, Tangerang received a BLUE rating for the period 2004-05. This evidence confirms that even today, KLH applies monthly averages to calculate exceedances, and NOT the daily values.

KLH's PROPER Presentation in Beijing on 6-7 Apr 2006



The company PT Indah Kiat received a BLUE rating for the period 2004-05 because the basis for assessing an exceedance is the monthly average. Even though Indah Kiat has an exceedance on the daily basis, there is no exceedance when a monthly average is used. Therefore KLH has correctly assigned it a BLUE rating.

Further the effluent regulations of Indonesia require companies to report only one effluent result per month. It is simple logic that if exceedances were evaluated on the basis of daily values of effluent quality, the environmental regulations would have required companies to report effluent values for each day of the month in the quarterly reports they submit to KLH, and not just one sample per month.

This aspect is adequately clear in the case of PT Indah Kiat, a company that did not report their daily data for several months. Yet KLH assigned this company a BLUE rating, meaning thereby that reporting one data per environmental parameter per month is adequate for compliance with the standard.

When companies report effluent samples for more than one day in any given month, KLH converts those daily values into a monthly average to evaluate whether or not there is any exceedance. It is obvious that the indictment did not bother to conduct a thorough review of the exceedance rule applied by KLH, and instead they hastily listed the daily values to build a false justification for charge of exceedance.

The third evidence of the use of monthly average is NMR's quarterly RKL/RPL report itself. Each RKL/RPL report clearly states that a **monthly average** is the primary basis for measuring exceedances. But the indictment failed to review the RKL/RPL reports carefully, and instead chose to apply an invalid methodology to evaluate exceedances.

NMR was not required to report the daily data on effluent quality. But NMR voluntarily chose to report the daily values to ensure full transparency in the calculations of the monthly averages. Instead of praising NMR for their honesty in their data reporting, KLH and the Prosecution have deceptively used the daily values for erroneous assessment of exceedances.

Further, KLH had been receiving these RKL/RPL reports since 1996 and they had enough opportunity to correct NMR if the monthly average was the wrong measure to be used. But during the entire eight years of the mine's operations (1996-2004) KLH accepted the monthly average as the basis for measuring exceedances. To suggest that the daily value is the basis for calculating exceedances **after** the mine has ceased its operation is not only shocking and unbelievable to me, but it is also very suspicious and clearly irresponsible regulatory behavior.

It is preposterous for KLH to suddenly claim that exceedances are evaluated on the basis of daily values, when for eight years they accepted the use of monthly averages in the RKL/RPL reports. If anything, it is the regulators who should be scrutinized for their discriminatory and unfair behavior.

Further, it is simply against the law to use the data that are more than three years old in any indictment, especially when these data have been available for more than eight years to the Regulators. To sit over the data for so long

and then suddenly wake up and claim exceedances on the part of NMR is not acceptable legally, ethically or professionally.

The fourth evidence that further clarifies the use of monthly average is based on the testimonies of five fact-witnesses including one from the Prosecutor's side. These witnesses are (1) Mr. Nabel Makarim, (2) Witoro Soelarno, (3) Mr. Ginting Soeka, (4) Mr. David Sompie and (5) Mr. Shakeb Afsah. I will now discuss their testimonies related to the issue of using the monthly average and my arguments are presented below.

1. **Minister Nabel Makarim:** Mr. Makarim, the former Minister of Environment testified on 14 July 2005 that KLH uses monthly averages to evaluate exceedance of environmental parameters. This has been the practice since 1995 when the PROPER program was first launched by BAPEDAL and later incorporated into KLH after 2001. He explained that while daily data are collected and reviewed from time to time, the main indicator for measuring exceedance is the monthly average.

Defense:So to measure the performance it's done every month. So if we are to look at this number in simple terms, this Proper is more strict, why a monthly number is used? Why not follow the monthly RKL/RPL?
Nabel:	It's like this, Sir, it's not just that it's taken once a month. I mean, to get into that data, the monthly average is taken. That is a decision, and why so? We might as well use hourly or daily or weekly, yes? But that will also make it more complicated for us, too detailed, yes, the cost will be too high. But we also look at it from time to time. The quality standard for waste could just be violated. For example, in a factory, if we make eyeglasses, an eyeglasses factory, three thousand pairs a day. Not all become eyeglasses, some will be rejected. Now, this rejected product will also be in the waste. <u>So we look at it monthly</u> , not daily, hourly or weekly, you see.

2. **Witoro Soelarno:** He was the Prosecutor's witness who testified on 2 December 2005. He served as the Mine Inspector for NMR, and he told the court that a monthly average is indeed the legal basis for evaluating exceedances. He also clarified to the court that monthly averages are calculated based on the daily values.

Defense: This is the RKL regarding the detoxification of tailings. I have highlighted it, indicating the quality standard for a monthly average. This is the quality standard for a monthly average. In the police minutes of examination it is mentioned also for the months of December, September, October, Your Honour, in here...

Defense: Yes. This is February, March, April, May. So the average is monthly. Actually, what is the legal basis for being monthly?

Witoro: That is the average, the legal basis.

Defense: Legal basis?

Witoro: Yes because it was monthly, averaged monthly. In fact in the RKL/RPL, it is also mentioned monthly. The question here is also to clarify in court. That is the average, actually the legal basis is monthly average. Yes. We record daily then we take the average.

Defense: So the average is monthly?

Witoro: Right, monthly.

Defense: Not daily. So it is not daily. Okay, thank you, Your Honour.

- 3 Ginting Soeka:** He is the Mine Inspector who testified as a fact witness on 9 June 2005. He also clarified to the court that a monthly average is the right legal basis for evaluating exceedances. He confirmed that other mining companies like Freeport, Arutmin and Kelian Equatorial Mining also use monthly average to evaluate exceedances. I have attached the transcripts of Mr. Ginting's testimony to further show the clarity and certainty with which Mr. Ginting told the court about the use of monthly averages by regulators.

Defense:My question is not about PT NMR, actually in your experience inspecting mines and receiving RKL/RPL reports from mining companies other than PT NMR, how do they report their monitoring? Do they take the daily monitoring average, or do they take the monthly monitoring average or quarterly or bi-annually? What criteria do you apply as a Mining Inspector?

Ginting: Yes, we...

Defense: In mining practice?

Ginting: Well, in mining practice what we, what we do is evaluate their monthly results of monitoring, Sir. The monthly average based on the monitoring results is what we would evaluate later and entered into what is called a quarterly report, Sir.

Defense: So it is the monthly average that is used as the point for evaluation?

Ginting: Correct, Sir.

- 4. David Sompie:** He is a fact witness who worked for NMR as the Environmental Superintendent. On 5 May 2006 he testified and under

oath stated that the monthly average, as reported in the RKL/RPL was the basis for evaluating exceedance. Therefore, the limit specified in the permit had to be maintained on a monthly basis, and was accordingly reported in the RKL/RPL data.

Sompie: In the RKL/RPL report since year... since the month of July year 2000, the third quarter of 2001 we have been reporting that the goal was the monthly average.

Prosecutor: So monthly average, yea, so the average was taken from the daily data.

Sompie: Correct.

- 5. Shakeb Afsah:** An international expert who testified as an expert and a fact witness on 7 July 2006. Under oath, he stated, that during the period he served as the quantification expert for the PROPER program at KLH (earlier at BAPEDAL), the computer tools and methodologies KLH asked him to develop to evaluate exceedance of companies were based on monthly average. The computer models developed by this expert witness continue to be applied today to evaluate exceedances and assign compliance color codes to companies all over Indonesia. According to Mr. Afsah, there are many companies that regularly receive a GREEN rating by KLH even though these companies have exceedances on a daily basis.

It is clear from the indictment that there is a double standard when it comes to evaluating exceedances for NMR. It baffles me to see that KLH applies monthly averages to calculate exceedances for more than 500 companies every year for the PROPER program, yet in the indictment KLH staff Mr. Sigit failed to consult his colleagues from the PROPER team, and instead he deliberately used the daily values for citing the exceedances for NMR. This discriminatory behavior is illegal and immoral, and is not expected from regulators who are required by law to act in an impartial manner.

Ignoring Pollution Load Calculations

In addition to the methodological errors in the indictment, there is a major scientific mistake which stands out as a fatal flaw in the Prosecutors' case. This mistake relates to the absence of the pollution load analysis in the indictment and charges, as explained by the expert witness Shakeb Afsah.

It is the most fundamental principle of environmental science, that the pollution load is the key indicator of any environmental impact. Therefore the question of exceedance must also focus on the question of whether or not the total pollution load exceeded the standard.

Both volume and concentration are specified in the permit because it is the pollution load (volume x concentration) that is the most valid indicator of environmental impact. Using the data on concentration of environmental parameters and the volume of slurry from the RKL/RPL reports I have calculated the pollution load values for NMR's operation covering the entire mine life. This quantification shows that for mercury NMR released only 8.8% of the permitted load and for arsenic the actual load released was only 6% of the permit. Similarly for copper, iron and cyanide, NMR on an average released less than 15% of the permitted amount. This calculation is shown in the table below.

	Parameters (Dissolved values in the effluent)	Maximum Allowable Load in the Permit Period (kg)	Actual Load Discharged into Buyat Bay (kg)	% of the Permitted Load	PROPER Rating Level
1.	Mercury	61.36 kg	5.42 kg	8.83%	GREEN
2.	Arsenic	3,835.00 kg	244.39 kg	6.37%	GREEN
3.	Copper	7,670.00 kg	1,004.75 kg	13.10%	GREEN
4.	Iron	23,010.00 kg	3,205.51 kg	17.76%	GREEN
5.	Cyanide-Free	3,835.00 kg	552.02 kg	13.93%	GREEN
6.	Cyanide-WAD	3,835.00 kg	1,064.38 kg	27.75%	GREEN
GREEN = Less than 50 % of the standard					

Therefore accusing me of causing environmental damage on the basis of the concentration of parameters indicates that Prosecution team has no competence in the area of environmental analysis. Looking at concentration only is a flawed method for measuring environmental impact, and cannot be used for evaluating if the environmental function has changed.

It is hard to believe that I am facing the charges of causing environmental damage when NMR discharged less than 10% of the allowable pollution load for mercury and arsenic during the entire mining operation which lasted more than eight years. The pertinent question here is - if the total pollution load is so low, how can there be any exceedance at all? It is evident that those responsible for the indictment did not care to look for scientific accuracy when they developed the list of exceedances based solely on the daily values of the concentration of various parameters in the effluent. The question is why and how could the Prosecution's team include such a blatant error about exceedances in the indictment. This, my honor is beyond my capacity to comprehend or explain in this pledoi.

Further, if the Prosecutors' claim that effluent quality exceeded the standard and caused the water quality to deteriorate, then the data on the seawater quality of Buyat Bay must show values that are higher than the applicable standards. If the data on seawater quality does not show either any increasing trend or values that are continually higher than the standards then it implies that the tailing's effluent had no impact on the seawater quality. In other words, the waste load that was transported to Buyat Bay through the effluent was well within the carrying capacity and caused no environmental damage.

A quick look at the seawater quality data from the RKL/RPL reports confirms that there is no increasing trend and the water quality never exceeded the

	Environmental Parameters	Effluent Quality Level	Seawater Quality in Buyat Bay	Seawater Quality Trend
1.	Mercury	No Exceedance	Below Detection	No Trend
2.	Arsenic	No Exceedance	< 2 ppb/ Std. 10 ppb	No Trend
3.	Copper	No Exceedance	Below Detection	No Trend
4.	Iron	No Exceedance	Below Detection	No Trend
5.	Cyanide	No Exceedance	Below Detection	No Trend
Data Source: RKL/RPL reports				

quality standard established to ensure the functioning of the marine biota. In fact, for dissolved mercury, copper and cyanide the average values were below the detection limit, and for arsenic the average values was less than 2 ppb while the standard is 50 ppb.

Again it is clear that the charges of exceedances are inconsistent with the observed quality of seawater in Buyat Bay. If the levels of metals in seawater remained below the detection limit, it must mean that there was no exceedance that adversely affected Buyat Bay. Therefore, the charges of exceedance are technically inconsistent. If the seawater of Buyat Bay is clean, as shown by multiple studies, then the quality of effluent must be fine too.

So, your Honor, what is the real truth about exceedances? The analysis I have presented so far unambiguously shows that the Prosecution has misrepresented the true environmental performance of NMR in the indictment.

Because of the focus on the issue of mercury and arsenic, I present a detailed analysis of these parameters. I also provide the analyses for dissolved cyanide, copper and iron in the tailings effluent. All the parameters uniformly show that there was no exceedance during the operational period of the mine.

Concentration of Dissolved Mercury in the Tailings

First it is important to understand that all the dissolved mercury in the effluent comes from naturally occurring mercury in the ore; NMR does not introduce any mercury in its production process. The slurry or the solid part of the tailings contains mercury sulfide or cinnabar, which is not the same as free or dissolved mercury. Therefore, the only source of mercury that could enter the environment is the dissolved mercury in the effluent. And on 11-July-00, KLH established the standard for the concentration of mercury in the tailings at 0.008 mg/L, which was to be evaluated on a monthly basis using the average value as stated in every RKL/RPL report.

As I have emphasized earlier, NMR did not exceed the standards for mercury. As testified by the expert witness, Shakeb Afsah, (who served as the quantification expert for KLH's PROPER program,) NMR's performance level

would be in the Green category if NMR had participated in the PROPER program that restarted after the financial crisis in 2002. Between the period 1-Jan-02 and 30-Sep-04, NMR submitted RKL/RPL reports to KLH every quarter. Based on these data, we can see that out of 33 months, 9 times the level of mercury concentration in the effluent was at the GOLD level, which is less than 5% of the standard. In 24 months during the PROPER period starting from January 2002, the concentration of dissolved mercury was at the GREEN level, which is less than 50% of the standard.

It is clear from the analysis of the effluent data reported in the RKL/RPL that there is no question of exceedance, and the indictment has misrepresented the effluent quality for mercury.

Concentration of Dissolved Arsenic in the Tailings

Arsenic also is a naturally occurring metal in the ore at the Mesel mine and the primary channel through which it enters Buyat Bay is through the tailings effluent. The solid part of the tailings that is deposited in the sediment contains an arsenic compound called ferro-arsenate (which is an entirely different chemical from arsenic), which remains stable in seawater. Therefore, to minimize the impact of arsenic in Buyat Bay it is most important to control the quantity of dissolved arsenic in the liquid fraction of the tailings. Accordingly, KLH specified a concentration limit of 0.5 mg/L for dissolved arsenic-III in the tailings effluent. As stated in the RKL/RPL reports and explained earlier in this pledoi, these limits are to be calculated on a monthly basis.

NMR optimized the detoxification process to minimize the level of dissolved arsenic (well below the permit limits). As shown in the chart, the concentration of dissolved arsenic in the effluent is in the GREEN range for all the 33 months from January 2002. It is due to such low levels of arsenic concentration in the effluent that the total quantity of arsenic released into Buyat Bay accounted for only 6.4% of the maximum allowable load. Clearly the question of exceedance does not arise and the Prosecution's claims of exceedances as cited in the indictment are totally wrong.

Concentration of Other Parameters in the Tailings

The detoxification plant was optimally operated to ensure that in addition to mercury and arsenic, all other regulated metals were also treated to remain well below the standards specified in the permit. As shown in the Detox Performance Report, the concentration levels of cyanide, copper and iron were also in the GREEN range. If the Prosecution had analyzed the RKL/RPL data accurately, it would have found that there was no exceedance for any environmental parameter included in the permit.

Performance of Detox Plant-PTNMR

Arsen (As-III) - (mg/L)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2002	GREEN											
2003	GREEN											
2004	GREEN											

Hg (Merkuri) - (mg/L)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2002	GREEN											
2003	GREEN	GOLD	GREEN	GOLD	GREEN	GOLD						
2004	GOLD	GOLD	GOLD	GOLD	GOLD	GOLD	GREEN	GREEN	GREEN			

Cu - (mg/L)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2002	GREEN											
2003	GREEN											
2004	GREEN	GOLD										

Fe - (mg/L)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2002	GREEN	GOLD	GOLD	GOLD	GOLD							
2003	GOLD	GREEN										
2004	GREEN	GOLD										

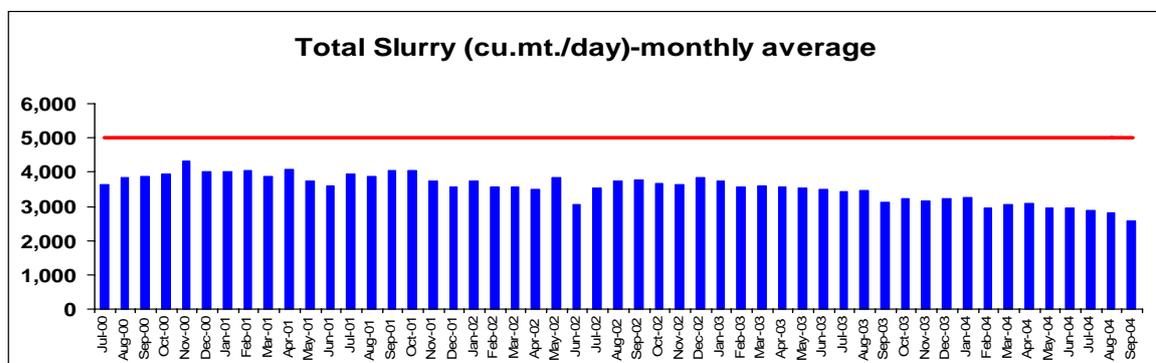
CN (free) - (mg/L)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2002	BLUE	GREEN	BLUE	GREEN	GREEN	GREEN						
2003	GREEN	BLUE	GREEN	GREEN	GREEN	GREEN						
2004	GREEN											

CN-WAD (mg/L)												
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2002	BLUE	GREEN	BLUE	GREEN	BLUE	BLUE	BLUE	BLUE	BLUE	GREEN	GREEN	GREEN
2003	GREEN	BLUE	GREEN	GREEN	GREEN	GREEN						
2004	GREEN											

Volume of Slurry Discharged in Buyat Bay

In addition to the concentration standards for the six environmental parameters, the permit also limited the total volume of slurry that could be discharged into Buyat Bay. This limit was 5000 cubic meters per day to be measured on a monthly basis as stated in the RKL/RPL reports. As shown in the chart, there was no exceedance for the volume of slurry as well that was discharged into Buyat Bay.

If the concentration of the six environmental parameters and the volume of the slurry were always in compliance, then it automatically implies that NMR never exceeded the standards.



Why did NMR Report Daily Values in the RKL/RPL?

The Prosecution has incorrectly used the daily values of effluent quality parameters to build an argument in favor of exceedances. This is a major breach of regulatory trust because NMR reported the daily values purely on a **purely voluntary basis** to ensure that the calculation of monthly averages was transparent to regulators. Because it is not mandatory to report the daily values, NMR could have limited its RKL/RPL information to monthly averages (as required by the regulation). If NMR had followed the regulations strictly and had refrained from voluntarily sharing the detailed daily data with the regulators at KLH, the accusations of exceedances based on the daily values would not have existed today.

In effect, your Honor, I am paying the price for acting responsibly and transparently. This is a travesty and now thousands of companies in Indonesia (who are closely monitoring this case) would limit their reporting to

the bare minimum requirements, in order to avoid persecution by over-zealous regulators.

In the internet age where information sharing is an important driver of economic development and innovation, I find that regulators and prosecutors are doing their best to reverse this progressive trend of voluntary information disclosure. Misusing voluntary information, like the daily values reported in the RKL/RPL by NMR, is not only unfair to me but its implications for the broader Indonesian community and economy is far more destructive. The tragedy is that the actions of the Prosecutors are an attempt to demote Indonesia.

I would urge the court to have a closer look at the RKL/RPL report because it embodies the true spirit of information-sharing and collaboration. You would notice that the RKL/RPL reports contain daily information on fifteen indicators relating to the detoxification plant. So each monthly report on detoxification contained 450 data values. If NMR had limited its RKL/RPL report of the effluent quality to the minimum requirements of the regulations, it would have reported only the monthly averages for arsenic, mercury, copper, iron, the two types of cyanides and the volume of slurry—a total of up to 8 data points per month. This implies that 442 data values per month were voluntarily reported by NMR to the regulators at KLH. Which means that over the entire period of eight years of the mine operation, NMR voluntarily disclosed more than 42,000 data values to regulators just on the detoxification plant alone.

Let's take a moment to see what the regulators did with such a rich database. From more than 42,000 data values on detoxification, they selectively focused on 122 daily values (less than 0.2% of the total data) to prove that there were exceedances. Not only did they ignore the use of monthly averages, but they also failed to recognize how the data demonstrate the excellent performance of the detoxification plant.

Instead of putting all the data to productive use through honest research, the regulators and the Prosecutors chose to be destructive. They resorted to the most manipulative form of information cherry-picking to falsely accuse me of environmental negligence. The regulators have not only trampled upon the

spirit of knowledge creation and innovation, but they have permanently planted an incentive against information-sharing and transparency.

Let's take a pause and think about why NMR had shared all this additional information with the regulators. And there is only one answer—I wanted KLH to have the maximum possible data on the detoxification plant so that they could conduct their own independent analysis to verify the monthly averages of various regulated environmental parameters.

Concluding Remarks

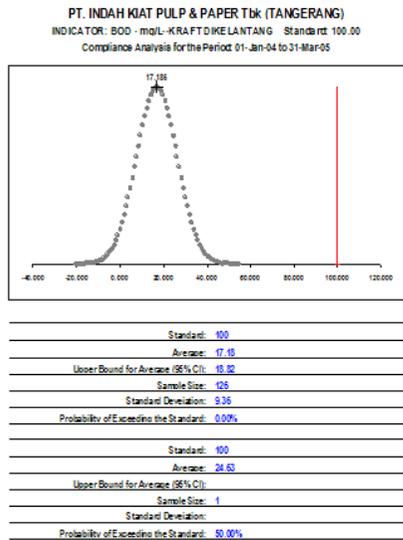
A closer look at the Prosecutors and KLH's analyses of exceedances reveals a strong discriminatory behavior against NMR. This behavior is evident from how KLH has handled hundreds of cases of exceedances in the past.

Under the PROPER program that started in 1995, KLH annually assigns a RED rating to all those companies that have exceedances on the basis of monthly average. Every year for more than a decade now, hundreds of companies all over the country have received a RED rating. Yet not a single company has ever faced any legal action by KLH. So why have KLH and the Prosecutors targeted NMR, even when there is no incidence of exceedance? Why did KLH and the Prosecutors fail to follow the Government's established procedures for compliance analysis?

The truth is that as far as NMR's operations are concerned, no environmental parameters show any violation of any standard. What has violated the standard is the unethical and unprofessional conduct of regulators who have falsely accused me of a fictitious environmental crime.



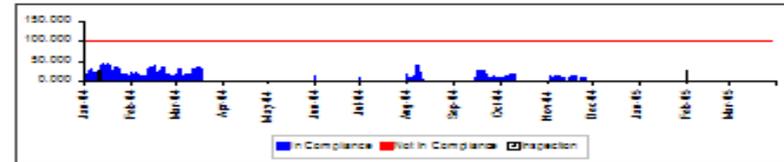
Example data used for Rating Analysis in PROPER Data Base System



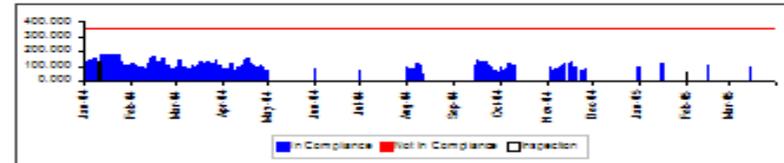
PT. INDAH KIAT PULP & PAPER Tbk (TANGERANG)

Data Period: Jan 01, 2004 to Mar 31, 2005

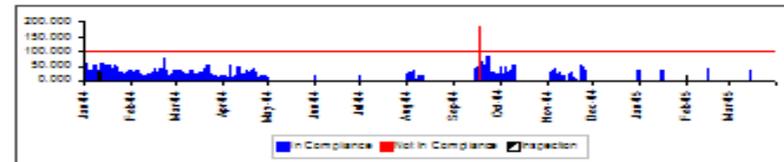
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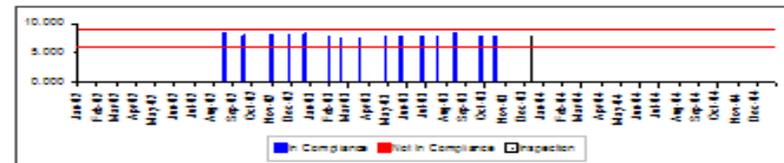
COO - mg/L-KRAFT DIKELANTANG



TSS - mg/L-KRAFT DIKELANTANG



pH-KRAFT DIKELANTANG



STP Permit

Your Honor the truth is that NMR fulfilled every aspect of the discharge permit issued by Minister Sonny Keraf on 11-July-20001. In fact, I voluntarily took the initiative to obtain the permit before the five year deadline required by the Law 23/1997, thereby bringing NMR under a permit more than a year ahead of the deadline. NMR could have easily enjoyed an additional year of holiday from the discharge permit, but I chose to act responsibly. It is truly unfortunate that some politically motivated regulators want to punish NMR and me for our conscientious behavior.

Compliance with the permit was also complete and thorough. In fact, the detoxification plant performed at a rate 50% better than the requirements of the permit. The strongest defense of NMR's full compliance with the permit was expressed by the fact witness, Mr. Makarim and the expert witness Mr. Silalahi.

Before KLH issued a permit, it reviewed the findings of various scientific studies including those that showed that the tailings are not B-3 wastes. After all, KLH would not have issued a discharge permit if there was any evidence that showed that the tailings were a B-3 waste.

Additionally, NMR completed the ERA study in accordance with the TOR agreed upon by KLH within a period of six months, as was specified in the permit. The ERA was conducted by experts of international repute. This study also utilized a comprehensive data-set covering all the four seasons. The statistical risk analysis models found no evidence of environmental or health risks from the tailings. Thus, the ERA validated the predictions of the AMDAL document of 1994. Clearly the allegation that NMR has no permit is completely manufactured to suit the interests of certain politically motivated regulators.

In this Pledoi I provide a detailed description of the three key phases related to the STP permit. First, I show that NMR acted proactively to obtain the discharge permit well ahead of the deadline of 2002. Second, NMR complied with the all requirements of the permit during its operations. Third, even after complying with the ERA requirement of submitting the study within six months, NMR continued to collaborate with regulators, even when they acted in

unpredictable ways. The facts presented here cumulatively add up to prove that NMR complied with the STP permit in every respect. The idea that NMR did not have a permit is pure fantasy.

First and foremost, NMR's tailings discharge was operated under the combined approvals of the Feasibility Study, Amdal, RKL-RPL and the Operating Permit that was granted by the Department of Mines and Energy. With the subsequent issuance of Law 23/ 97 in conjunction with PP-19/99, NMR applied for and received a separate tailings discharge permit from the Minister of Environment on July 11, 2000, which covered the legal permit requirements until NMR stopped discharging tailings in October, 2004. At no time was the company ever advised by any government agency that the tailings discharge permit that was issued on 11 July 2000 was temporary or that they had revoked it. At the same time, the Government continued to receive and accept the RKL/RPL reports from the company as well as approve NMR's Annual Work Plans which were submitted to the Government. These annual work plans routinely stated that the tailings were placed on the seabed of Buyat Bay but the Government never indicated that this could be an illegal activity.

As a background, the issuance of a submarine discharge tailings permit (STP) and subsequent ecological risk assessment (ERA) was conducted in full accordance with the agreed upon protocol between NMR and KLH. The data used in the ERA covers all the four seasons because the source data is NMR's monitoring data as reported in the RKL/RPL and submitted to the Government on a quarterly basis covering a period of more than four years of the mine's operation.

To be precise, the ERA study included 1678 data points on seawater quality covering all the four seasons for the water quality parameters of mercury, arsenic, copper, total suspended solids and cyanide. For fish, the ERA study utilized 351 data points including arsenic and mercury in fish tissue. And for detoxification, the ERA study used 7889 data points.

With such a large database how can the regulators claim that the ERA did not use the data from all the four seasons? What is most unbelievable is that now the same regulators and Prosecutors find the dataset of only 20 samples

collected by the POLRI adequate to charge me of causing pollution. But they found the thousands of data points included in the ERA study inadequate for drawing conclusions about the seawater quality. What kind of a double standard is this? This is obviously strange but it definitely indicates that my accusers are politically motivated and are operating in complete defiance of scientific or objective facts.

Clearly four years of complete data which covered detoxification, seawater quality, fish quality and human health is more than sufficient for conducting an ERA in accordance with the established international guidelines. Further, it is important for all to understand an ERA is a guidance tool to evaluate risks and truly is a "GUIDELINE" and not a regulation, as testified by various experts before this court. [US Environmental Protection Agency – National Center for Environmental Assessment - Guidelines for Ecological Risk Assessment Attachment 13]

An ERA is a scientific study, a methodology or a tool to help people make informed decisions. Even in the United States, which is the origin of this risk assessment model, ERA's are not approved by the regulators. So the accusation of regulators and prosecutors that NMR's ERA was never approved or rejected is irrelevant.

First and foremost, ERA's are not approved in any jurisdiction that I am aware of, and certainly NMR never expected an approval when it submitted its ERA within the 6 month timeframe, as stipulated in the submarine tailings discharge permit. If an approval was essential, then KLH should have stated it in the permit. And in reality they failed do so.

Second, there are no regulations or guidelines within Indonesia on how to develop an ERA. ERA's are NOT comparable to an Environmental Impact Assessment or AMDAL which require government approval through a well established process as described in the in the AMDAL regulation.

Given this context of an ERA study, I will now explain the tailings permitting process as it relates to NMR. Your Honor, my aim here is to create a common

level of understanding of the events leading up to the issuance of the tailings permit and the development of an ERA.

From the onset of the mine operations, the approval of the Feasibility Study, the AMDAL, the RKL & RPL and the granting of the operating permit, all clearly state and approve the use and the placement of tailings on the seabed of Buyat Bay. No further approvals were necessary for the placement of tailings on the seabed of Buyat Bay.

When Act No 23 Year 1997 concerning the Management of the Environment was passed (in conjunction with the issuance of Regulation PP19 of 1999 regarding Pollution Prevention and/or Sea Pollution, Chapter 10 of Law 23/1997) it contained transitional provisions in Article 49. This provision states that:

- (1) At the latest 5 (five) years from the promulgation of this Law every business and/or activity which already possesses a license, must have complied with the conditions based on this Law.
- (2) From the enactment of this Law it is prohibited to issue a license for a business and/or activity which uses imported hazardous and toxic waste.

In addition and subsequent to Law 23 /1997, Regulation PP19 of 1999 Article 18 states that:

- (1) Any person or responsible person of an undertaking and/or activity who conduct sea dumping (Dumping is the discharge of waste as residue of an undertaking and/or activity and/or other materials left unused or already expired into the sea); shall obtain permit from the Minister.
- (2) The procedure of sea dumping as mentioned in paragraph (1) is set by the Minister.

Considering the above new regulatory requirements, I requested a meeting with the State Minister of Environment/Head of BAPEDAL at the office of the State Minister of Environment. At that meeting (the meeting is attended by Mr. Sonny Keraf, two of his deputies Prof. Haryoto Kusnopurtranto and Mr. Rustam Effendy, Mrs. Masnellyarti Hilman) of January 13th 2000, I presented an

overview of Newmont's mining operations in Indonesia and I also requested a clarification on the path forward on how to apply for a tailings discharge permits for both Newmont entities which would be required to be issued by 2002.

The Minister requested that I send an official letter for a follow-up clarification and subsequently I sent that letter (PTNPN issued letter no. 86/II/SA/NPN/2000 to Minister of Environment requesting information on how to apply for STP permit under Government Regulation 19/1999) to the Minister on the 1st of February requesting the procedure to apply for a tailings permit for NMR. As a result of that letter, NMR was requested to conduct a detailed briefing which was presented to the Ministry of the Environment, Department of Mines, and the Government of SULUT on March 7, 2000. At this meeting it was decided to form a working group which would meet later in the month to work out the details on a path forward in applying for and the issuance of a tailings discharge permit.

During that same time period in early March, the Governor's Team from SULUT (Office of North Sulawesi Governor established an Independent Team by letter assignment 660.1/BPDL/I/777/99 in 1999) concluded the study of NMR's operations. This study included the results of TCLP tests of the tailings. This report was titled *Research report on the Tailing Impact of PT Newmont Minahasa Raya toward the Content of Toxic (Hg, As, Pb, Sb) in Buyat and Totok Bay by Verification Team, in accordance Letter of Vice Governor No. 660.1/BPDL/I/777/99.*"

This report concluded that:

1. Concentrations of Hg, As and Sb in seawater samples from Buyat Bay and Totok Bay were below the standard limits set by the ministerial decree, State Ministry of Population and Environment No. 02/MENKLH/I/88. PTNMR's liquid waste does not pollute the sea waters of Buyat Bay and Totok Bay;
2. The of Hg, As, Pb, and Sb in sediment samples from Buyat Bay and Totok Bay give no indication of any potential to pollute Buyat Bay waters. This condition is indicated by the TCLP value of each element

being below the standard limit according to Government Regulation (PP) No. 18 of 1999. The solid waste of PT NMR is not a B3 waste;

This finding provided further assurance about the non-toxic nature of the tailings. As a result of the meeting held on March 7, 2000, a working team for the evaluation of mine environmental management of NMR was established through a Decree of the Chief Secretary of BAPEDAL No Kep 27/SEKUT/04/02. This team consisted of both the National and the Provincial officials from relevant government agencies. The purpose of this team was to conduct evaluations on historical data sets on health and environmental parameters (including toxicity), to identify the parameters and establish the standards for the STP permitting process.

This team first held a 2-day meeting (meeting attended by government officials such as Chief Secretary of BAPEDAL, members of BAPEDAL Working Group, some sub-directorates under BAPEDAL, Department of Mines and Energy, Department of Marine and Coastal Area Exploration, BAPEDAL Regional II and III, BAPEDALDA of North Sulawesi and West Nusa Tenggara) in Jakarta on March 29th and 30th 2000 to discuss technical aspects of NMR's operation; these included the mining processes, processing of the ore, detoxification systems, STP, environmental monitoring and management, and community development. Before this meeting was held, NMR submitted all the supporting data to BAPEDAL.

The Research Team established by the Governor of North Sulawesi also presented its findings at the meeting. The meeting concluded that:

1. NMR uses a detoxification process to reduce or eliminate toxic heavy metals existent in tailings;
2. The tailing spread modeling reflect actual condition;
3. The results of biodiversity quality analysis existing at the STP location show life tolerance for marine biota around that area.
4. NMR is permitted to continue its operation during the process of permitting.

The team met again on April 11th where it concluded that it is necessary for BAPEDAL to adopt a policy on what NMR must do with regard to permitting. Additionally, further meetings of the working group were held on the 12th-13th and 14th of April 2000 that included the evaluation of the past monitoring and detoxification data, a formal presentation of the Governor's Team evaluation that the tailings were not a B-3 waste, a discussion on discharge criteria and the review of the draft outline for an ERA.

As a result of the combined discussions with the working group, NMR lodged a formal application for a tailings discharge permit on April 17th, 2000 (Trial Evidence No 121/IV/RN/NMR/200 dated 17 April 2000). This application included several attachments including the AMDAL – RKL – RPL – Standard Operating Procedures (SOP's) for the system including sampling methods, baseline data and a draft outline for an ERA.

On July 7th 2000 Shepherd Miller Inc., the ERA specialist consultant assigned to develop the ERA with LIPPI issued the *“Outline for An Ecological Risk Assessment of the Ocean Discharge of Tailing from the Minahasa Mine, Sulawesi, Indonesia prepared for PT NMR.”*

The government reviewed the application and all RKL-RPL monitoring results, SOP's, baseline data and ERA outline, deemed them satisfactory. As a result the **Minister of Environment issued a tailings discharge permit on 11 July,2000** (BAPEDAL letter No. B-1456/BAPEDAL/07/2000)

After the issuance of the permit, NMR submitted the final outline for the ERA. Sheppard-Miller and LIPPI were registered as a service provider by the Department of Mines (Department of Energy and Natural Resources letter No.3208/20.07/OPB/2000), and along with the working group, they compiled the ERA between July and December 2000.

As stipulated in the permit (letter No. 002A-I/NMR/kw/2001), the ERA was submitted on time and lodged with the Ministry on January 11, 2001. The results of the ERA concluded that there was no significant risk in discharging tailings into Buyat Bay.

The ERA conclusions included the following for arsenic (ERA Document attached to letter no. 002A-I/NMR/kw/2001):

- Calculated [As] in water for fish to be safe for human consumption are below the mean seawater concentrations – [*The sea water is safe for fish*]
- [As] in fish tissue is well-below safe dietary levels – [*The fish are safe for humans*]
- Therefore, arsenic does not pose a dietary risk to humans through the seawater pathway

The ERA conclusions were similar for mercury and included the following:

- Averaged over the nine food-chains, the safe seawater [Hg] for human consumption of fish was 0.044 ppb.
- The average seawater concentration of dissolved Hg was 0.025 ppb (= below detection of <0.05 ppb).
- Therefore, Hg concentrations in and around Buyat Bay do not pose a risk to humans through consumption of fish.
- This conclusion is supported by fish tissue concentrations:
 - average [Hg] in fish (1996-2000) = 222 ppb
 - safe dietary [Hg] for humans = 500 ppb

Thus the ERA confirmed that the discharge limits as set in the 11 July, 2000 permit were adequate.

BAPEDAL had some basic questions relating to the ERA, which were answered in writing by NMR and its ERA consultants and submitted on April 16, 2001 (letter from PTNMR No.038/III/rn-ki/NMR/01 to BAPEDAL regarding ERA study) The statistical analysis of the risk assessment which was also requested by BAPEDAL was submitted later the same month (Letter from PT NMR No.190/V/RN/NMR/2001 to BAPEDAL regarding ERA)

The need for capacity building/training and development of ecological risk assessment expertise within the regulatory agencies became apparent during

the ERA process as identified in a series of correspondence between the American Chamber of Commerce, the Director General of Mines and the office of the State Minister of Environment. It was proposed that a cooperative effort be formed between the University of Colorado and the Department of Education and Training work together to develop a capacity building for Ecological Risk Assessment within Indonesia if in the future ERA's were to be conducted (AMCHAM- April 12, 2001 letter to Mines and Environment – State Minister of the Environment letter number B-852/PKLN/LH/05/2001 - Department of Mines letter to AMCHAM 26 April, 2001)

I held another meeting with the Minister of Environment and other ministry officials on May 31st, 2001 and the only item that some individuals expressed concern about was that the ERA was based on NMR's sampling data and that the government may wish to conduct a verification sampling to confirm that their independent sampling results would be similar to the ones that had been reported in NMR's RKL/RPL documents. The Minister and I agreed that the only way for the Ministry to be absolutely sure about the accuracy of NMR's data was to conduct an independent sampling. It was further agreed that NMR would take a split sample of the KLH's sample for comparison. Thus it became apparent that further sampling and testing was the responsibility of the Government and not the consultant or NMR.

The Ministry of the Environment invited all the parties to the meeting to discuss the methodology of the sampling collection (Letter from BAPEDAL No.B-1397/IV/06/2001 to PTNMR inviting PT NMR to further additional meeting on 21 June 2001) NMR attended that meeting on June 21-22, 2001 to review the detailed procedures with the various participants. It was the Ministry of Environment's intent to collect samples and conduct a bathymetric survey using the BBPT/LIPPI vessel Baruna Jaya. Each party was to pay for their own cost of collection and sample analysis. The initial proposed date for the survey was sometime in the last part of July 2001. However, the Government's ship (Baruna Jaya) was not available at this time and therefore the sampling could not be conducted as planned by KLH.

On September 10th, 2001, NMR sent a letter (letter from PTNMR no.061/IX/ki/NMR/2001 to Deputy for Environmental Pollution Control of BAPEDAL regarding Bathymetry Survey) to Ministry of Environment; the letter informed them that the survey was to be conducted around 6 October, 2001; which is later than had been originally expected. However, the delay was caused by the unavailability of the equipment to be provided from BPPT as was originally decided upon in the meeting that was held on 21-22 June, 2001. BAPEDAL responded (Letter from BAPEDAL No.B-2656/IV/09/2001 to PT NMR regarding bathymetry survey) that they had no objection with the timing of the survey and they requested the inclusion of observers from various relevant agencies. However the following week, I had to inform BAPEDAL (letter from PTNMR no. 064/X/kw/NMR/2001 to BAPEDAL to advise of cancellation of the bathymetry survey because consultants from the US are unable to travel to Indonesia due to US Government restriction of overseas travel (post September 11 terrorist attacks)). that the planned survey was forced to be deferred due to the fact that the consultant responsible for this survey could not travel to the location (because of a travel ban restricting travel to Indonesia as a result of the 9-11 tragedy) and that we would notify BAPADAL immediately when the survey could be rescheduled.

In early November the equipment and personnel became available and I proposed that the survey be conducted on November 21st (letter from PTNMR no. 068/XI/kw/NMR/2001 to Deputy of Environmental Law regarding the plan for a bathymetry survey). However, BAPADAL advised that they could not attend the survey (letter from BAPEDAL no.B-3219/IV/11/2001 to PT NMR informing that BAPEDAL cannot attend bathymetry survey). Subsequently, I held a meeting with the State Minister of the Environment on the 21st of November in this regard and also conveyed a letter to the Deputy of Environmental Law Management (letter from PTNMR No. 069/X/kw/NMR/2001 to Deputy of Environmental Law in response to BAPEDAL's letter No.B-3219/IV/11/2001. Letter stated NMR regrets the unavailability of BAPEDAL representatives to attend the survey) which stated our regrets that BAPADAL representatives were unavailable for the survey, but since the equipment and representatives from other agencies were available, we were going to go ahead

and conduct the survey. I was compelled to take this step because this survey had already been delayed for 4 months.

Finally, the survey was conducted on November 24th, and with a number of agencies as observers including marine experts from UNSRAT, the Department of Marine and Fisheries, Puslitbang of Marine Geology, the Department of Energy and Mineral Resources, BAPEDALDA of North Sulawesi and the District of Minahasa and Mine Inspectors from the Department of Mines. The results of this survey were reported to the Ministry of Environment.

With the changing of the State Minister of Environment from Sonny Kraft to Nabel Makarim, the agency BAPEDAL was dissolved and merged into the Ministry of Environment in early 2003. Later, as testified before the court, the Minister of Environment, Mr. Nabel Makarim, did send the BPPT research vessel M/V Baruna Jaya to sample Buyat Bay. On this occasion, the Ministry of Environment and NMR conducted split sampling. The cost of the vessel and the Ministry's sampling procedure were covered by the Government. The results of the sampling results were similar to those that had been reported in NMR's RKL/RPL reports - which had been the basis for the ERA. While no further discussion was held on the subject of the ERA, the source data was verified by the Ministry of Environment in their 2003 independent sampling and the Ministry was also in possession of the results of the bathymetry survey of 2003 (as well as for subsequent years).

As mentioned earlier, NMR never expected to receive an "approval" for the ERA because, ERA's are normally not approved anywhere in the world. PT NMR had met all the criteria as were outlined in the tailings permit issued on July 11, 2000.

I have never had any doubt that the July 11-2000 permit was anything other than a permit. Even Minister Sonny Kraft had said that it was a permit. Furthermore, in the court transcript of Minister Makarim's testimony when asked if there was a written decision of the ERA his reply was as follows:

NM: This report came out in the last week that I was in office. So... and to my recollection, there was no follow up. But the result was that there was no

problem. So the implementation of the standards that were made based on permits was checked by the ERA, and then checked by the two studies. There was no problem, like what was desired, because there was no more problems, you see, checked with ERA, checked with two studies, there was no problem. So what else, what other decision, there's no more, right?

When the prosecution questioned *“Have you issued permits to PT NMR to dispose of waste into the environment? Have you [done that] in a written letter [sic] to PT NMR?”*

The Minister Makarim responded: *The answer would be no, because there is no need. Why need a permit on top of a permit? It's impossible, right? This permit was already in effect, and it is valid. Why must there be another permit?*

Prosecution: *The permit which you say is valid was which one?*

Nabiel Makarim: *The one dated 11 July from Pak Sonny. It must be...*

Prosecution: *That letter number 1456?*

Nabiel Makarim: *I must follow the existing policy first. The office decision must have consistency. Just because I was in office, do I have to issue new permits in place of all existing permits? No, right? Or else... so this is consistent, following what already exists here.*

Prosecution: *Yes.*

Nabiel Makarim: *Yes, alright.*

Prosecution: *Alright. And then, when you were the State Minister of Environment, have you issued permits to PT NMR?*

Nabiel Makarim: *Sir, again, this is the permit, Sir. Here, the permit already exists, the decision of my predecessor. How is it going to be if I were to issue permits again? How many dozens more would we need?*

The response is very logical. It is similar to all other licenses and permits. For example, once I have a driver's license issued by the police, I don't need a new

one just because the Polda is replaced. I nor anyone with a valid license needs to go apply for a new one.

It may be necessary to further expand that the basis of an ERA is not even a policy and is not regulated under any form of law or decree. To quote Prof. Mangantar Daud Silalahi. (transcript page 108)

“So ERA to this day is not yet a policy. There is no basis in terms of legal policy to this day. Why? Going back again to the environmental law system. If we look at Article 25 through Article 29, when Article 25 is not, is not effective, in Article 28, 29 it is said that an environmental audit is needed”

It can be definitely concluded that both the Ministers who had held office between July 2000 and August of 2004 (when NMR’s mining operations were concluded), believed as NMR and myself, that a valid tailings discharge permit was in place during the entire period - that an ERA was developed and submitted within the 6 month time period as stipulated and the permit. We further believed that ERA are guidelines or tools to make informed decisions and not something that governments and regulators need approve or formally accept.

The Ministry of Environment had the right to cancel the permit, change the standards of discharge set forth in the permit, to issue warning letters, take administrative actions and conduct environmental audits if they had any cause of concern because they were fully aware of the fact that NMR was placing mine tailings on the seabed of Buyat Bay as indicated in our quarterly RKL/RPL reports. Yet they did not do anything and the logical reason was that they were fully aware that no wrong was been done. They had conducted their own research in 2003 that confirmed the water quality and fish were fine in the receiving environment.

I have provided a detailed description of the permit issue to show that I met every requirement of the permit. Even after submitting the ERA study within six months, I continued to diligently follow-up on every request made by the regulators. The issue of the permit is a closed matter, and yet I sit here in this

court providing the full list of meetings and repeating the conclusions that NMR had a valid permit to place tailings in Buyat Bay. I have acted in good faith, but the regulators have pursued me like hunters chasing after their prey. Your Honor, I feel that I have been stabbed in the back and my life has been changed forever.

Tailings and Seawater Quality

The prosecution charges claims that NMR's tailings have somehow degraded the quality of seawater in Buyat Bay. Specifically the charges states:

“The tailings of the Accused 1, PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.”

In order to claim that the seawater quality of Buyat Bay has been reduced or degraded by tailings, it is necessary to establish three facts. First, the prosecution must provide the evidence that the levels of arsenic and mercury in Buyat Bay have remained consistently higher than the water quality standards during the eight years of the mining operations. Second, to establish the causality, they must also prove that there is an increasing trend for arsenic and mercury in the seawater quality that is correlated with the increasing footprint of the tailings placed in the seabed during the operation of the mine. And finally, they must also prove that the seawater quality continues to be degraded after NMR's operations has stopped because the tailings are still in the sea. All these three facts must be proven together before anyone can claim that NMR's tailings have degraded the water quality of Buyat Bay.

A closer look at the Prosecution's charges shows that they have failed to prove any of the three facts. On the contrary, the data shows that the level of arsenic and mercury never exceeded the water quality standards during the period of the mine's operation, there is no increasing trend for either arsenic or mercury, and most important of all - the results of the independent re-sampling by ALS conducted on behalf of the court on 29-July-2006 clearly show the seawater quality of Buyat Bay is clean even while the tailings remain in the seabed. Your Honor, I cannot understand why the Prosecution continues to charge me with

polluting Buyat Bay when the scientific facts so clearly show that Buyat Bay is not polluted.

The Prosecution also makes no clear connection between NMR's tailings and seawater quality in Buyat Bay in either the POLRI dossier or the Indictment or the Charges. The only basis for their statement seems to be the POLRI seawater and sediment testing results and three seawater results from NMR's RKL/RPL reports that the Indictment and the charges claim were exceedances in arsenic concentration in relation to a quality standard.

It has been decisively proven in this court that the Police laboratory results are simply wrong, and I will discuss it in further detail later in this Pledoi. But now I want to discuss why the three alleged exceedances of arsenic concentration in seawater of Buyat Bay are also wrong. In regard of the three alleged exceedances, the indictment and the charges makes the following comment:

“In respect of the sea water quality standard, that is based on Appendix VIII Decree of the Minister of the Environment Number: Kep-02/MENKLH/1/88 dated 19 January 1988, among other things:

➤ *As: 0.01 mg/l.*

However, Accused I, PT. NMR reported the following:

- *16 October 1997, As exceeded the quality standard (measurement result: 24.5 µg/l).*
- *19 July 1998, As exceeded the quality standard (measurement result: 26.4 µg/l).*
- *22 January 1999, As exceeded the quality standard (measurement result: 22.3 µg/l).”*

Although I was not employed by NMR at the time of these alleged exceedances, I would like to correct this error in the Indictment and the Charges. The applicable regulation is Kep-02/MENKLH/1/88 dated 19 January 1988 as stated in the Indictment, but the applicable Appendix for NMR is Appendix IX which is for mining and not Appendix VIII which is for “Sea Gardens”. This is clearly specified in NMR's ANDAL document. Specifically,

Table 6-3 in Section 6.4.11.1 of NMR's ANDAL, quotes this seawater standard for mining as the applicable standard. The AMDAL is the legal basis for NMR's environmental compliance. The limit for arsenic in seawater for mining

Tabel 6-3
Senyawa Terlarut Dalam Larutan Tailing

Parameter Analisis	Tailing Sebelum Diolah (ppm)	Tailing setelah diolah (ppm)	Standard Pembuangan (ppm)
Perak	0,074	0,015	0,05
Arsen	0,429	0,105	0,05
Antimon	14,9	4,66	
Barium	0,09	0,08	
Kadmium	TTD	TTD	0,01
Kobalt	0,04	TTD	
Kromium	TTD	TTD	0,01
Tembaga	0,09	0,83	1,0
Besi	0,18	0,31	
Raksa	0,006	0,001	0,005
Mangan	0,03	1,23	
Timah Hitam	TTD	TTD	0,05
Selenium	0,13	TTD	0,06
Seng	TTD	TTD	15,0
pH	9,5	8,2	6,0 - 9,0
Total Sianida	2,78	1,15	0,2
Sianida WAD	1,17	TTD	

TTD = Tidak Terdeteksi

AMDAL

1. Tailing yang tidak diolah adalah tailing yang dihasilkan dari proses dekstruksi sianida INCO
2. Tailing yang diolah adalah tailing yang telah diolah dengan ferric sulfat setelah dekstruksi sianida
3. Standar diambil dari Baku Mutu Air Laut Indonesia untuk kegiatan pertambangan dan Industri Kep-02/MENKLH/1/1988, Gol 4.

Tidak seperti kebanyakan logam berat lainnya, arsen dan antimon lebih mudah larut dalam air laut dari pada air tawar. Oleh karena itu ada kecenderungan logam-logam ini untuk

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P:\NEWMONT\MINAHASA\ANDAL\BAB.6

(Appendix IX) is 0.05 mg/l (which is the same as 50 µg/l) and not 0.01 mg/l (which is the same as 10 µg/l). Therefore the three dissolved arsenic values of 24.5 µg/l, 26.4 µg/l and 22.3 µg/l quoted in the Indictment are all below the applicable legal limit of 50 µg/l (Appendix IX of Kep-02/MENKLH/1/88 dated 19 January 1988).

The legal limit of 0.05 mg/L has never been exceeded in the waters of Buyat Bay during NMR's period of operation. As has been common in this case, POLRI and the Prosecutors have not checked the applicable environmental regulations, but rather have relied on misinformation provided by various sources. If they had checked NMR's ANDAL and the applicable regulation, they would know that arsenic and mercury concentrations have always been below the applicable environmental standard for Buyat Bay.

The court testimony of Drs. Munawardin, MM from the POLRI Forensic Laboratory on March 10, 2006, also provided some insight into why the POLRI thought that there was a connection between tailings and seawater quality in Buyat Bay. Drs. Muniwardin stated that the water samples taken from 9 points in Buyat Bay have exceeded the standard limit prescribed in Attachment 3 from *Kepmen KLH*, number 51 year 2004. He went on to say that although there was no standard for sediments, sediment or tailings samples collected in Buyat Bay did contained mercury and arsenic. So their logic is that arsenic and mercury are high in seawater, there is arsenic and mercury in tailings on the seabed in Buyat Bay and therefore the tailings are releasing arsenic and mercury which is reducing the seawater quality.

Let me respond to this step by step. Firstly, as I hope it has become evident to everyone that the POLRI seawater results are simply wrong. Several studies conducted before and after the POLRI sampling by Indonesian and International research teams have all concluded that mercury and arsenic concentrations in seawater are below the applicable standards. Some of these studies which used accredited independent analytical laboratories were only a few days apart from the POLRI sampling. I will summarize all these studies in another section of this Pledoi. All these studies have the same conclusion, that seawater quality in Buyat Bay has not been reduced or degraded by anything, including tailings.

Secondly, it was well-known and stated in NMR's ANDAL that the tailings to be placed in Buyat Bay contained minerals which contained various compounds of arsenic and mercury. The reason NMR was permitted to place the tailings on the seabed is that the minerals in the tailings were known to be chemically

stable in an aquatic environment. This means that arsenic and mercury would not dissolve out of the tailings solids and degrade seawater quality.

Thirdly, re-sampling results, ordered by this court and conducted independently by ALS laboratories of Bogor on 29th of July 2006, showed that arsenic and mercury concentrations in Buyat Bay waters were below applicable standards. This was testified to in court by Sri Bimo Andi Putro of ALS analytical laboratory on August 25, 2006. The Prosecution has attempted to challenge this fact based on this sampling was done approximately 2 years after the POLRI sampling and after the cessation of tailings discharge. However this goes against the Indictment and their own theory. They state that it is the tailings that have degraded seawater quality. As testified to in this court by Dr. Andojo Wurjanto of ITB and by years of monitoring by NMR and Government institutions, the tailings mound in Buyat Bay is physically stable and has not moved. The tailings are still on the seabed in Buyat Bay to this day. They did not go anywhere when we stopped discharging tailings in 2004. If tailings were degrading seawater quality, they would still be doing it today. The fact that the tailings are still on the seabed and that water quality in Buyat Bay is good with arsenic and mercury levels below standards as determined by the ALS's re-sampling, proves that NMR's tailings are not or have never degraded the quality of seawater in Buyat Bay.

Police Results of Seawater Quality Should be Dismissed by the Court

Introductory Remarks - Findings of the POLRI Forensic Lab

The National Police showed an amazing level of environmental activism regarding the Buyat case. It is not that Indonesia hasn't had environmental controversies in the past, but clearly the initiative shown by the National Police in the Buyat case has no precedence.

When Dr. Jane Pangemanan first filed the criminal complaint in Jakarta against NMR on 20-July-04, it took the National Police just nine days to arrive in Buyat Bay to take the seawater samples and at the same time to identify, summon

and examine 19 of the prosecutions witnesses in the case. And within two weeks, on 13-August-04, the Police announced to the public that the Buyat Bay was polluted with mercury and arsenic. The swiftness with which the Police acted on the criminal complaint, surprised not just me but the public, the government and the media.

Where is the Police's environmental activism in the case of Lapindo? Everything seems to be back to business-as-usual there. And it is this contradictory behavior that provides us with important insight into the mysterious police sampling that showed that Buyat Bay is polluted.

Needless to say, a sensational public announcement that Buyat Bay is polluted during an intense pre-election period created considerable media attention and it set the stage for a major scientific debate as well as political jockeying. I did not realize at this stage that the pre-election dynamics would be so complicated that it would completely eliminate the chance to hold a reasonable discussion about the possibility that the Police results could be wrong.

The findings of the Police tests came as a shock to me because their findings contradicted the results of more than eight years of continual monitoring and testing by internationally accredited laboratories. After all, pollution is not something that can appear overnight. Pollution analysis requires hard scientific evidence, not innuendos, political agendas or mystics that manipulate scientific results.

Doubts about the accuracy of the Police seawater results became evident immediately because the results of the splits of the same samples showed that Buyat Bay was clean. In fact the split samples were tested by ALS, one of the most reputable environmental laboratories in Indonesia which also has an international accreditation. I need to mention a significant fact here - that some of the police sample results were MILLIONS OF PERCENT higher than anything recorded in the past. This kind of discrepancy further called the police results into question.

The Police data came under heavy scrutiny because a series of five studies including the WHO, CSIRO, KLH and other government agencies which

sampled the water of Buyat Bay within thirty days of the Police sampling, unanimously found that Buyat Bay was clean. Further, exactly two years after the Police sampling, the tests conducted on 29-July-06 also showed that Buyat Bay was clean. All put together, it was clear that Police data was wrong and unfit for use as evidence against me or NMR.

To prove how out-of-line and illogical the police results are, I present six arguments developed on the basis of rigorous quantitative analyses that prove that the seawater results of the Police should have been inadmissible in court. These arguments are based on technical facts as well as on the basis of the established forensic procedures of Indonesia as well as plain common sense. Further, I also explain how the Police results could have gone wrong. Could the Police results be wrong due to genuine human and technical errors or were the samples intentionally tampered with to show that Buyat Bay was polluted? These factors are elaborated further.

First, the RKL/RPL report for the second quarter of 2004 presents the data on the seawater quality in Buyat Bay on 29-June-04, exactly thirty days before the Police conducted its tests in Buyat Bay. As shown in the table below, RKL/RPL data show that Buyat Bay was perfectly clean on 29-June-2004. Dissolved mercury was below the detection limit and average dissolved arsenic was 2.1 ppb, also well below the new KLH standard of 12 ppb for marine biota (KEP 51/2004) at all the sampling points.

However, exactly one month later the Police found that both mercury and arsenic were significantly higher than the standard. The difference between the Police samples and the RKL/RPL results dated 29 June 04 was so large that it was impossible to reconcile the two. It was not possible that both the Police results and the RKL/RPL data were correct—one of them had to be wrong! Since the results of RKL/RPL samples were consistent with the data collected from eight years of monitoring and also matched the results of the independent results of the tests conducted by KLH in 2003, it became obvious that the Police samples were wrong.

Second, when the Police collected the samples from Buyat Bay on 29-July-04, it split all the samples with NMR. This sharing of samples between the Police

and NMR was witnessed by Jerry Kojansow. While the Police took its share of the samples to its own laboratory, NMR sent its sealed samples to ALS. While our split sample results showed that Buyat Bay was clean, the Police sample results showed that both mercury and arsenic were above the water quality standard in the same sample. Something had clearly gone wrong with the Police results because it did not match with the RKL/RPL data covering eight years of monitoring while the results of the split samples did.

As shown in the table which shows a sample by sample comparison of the Police data and split samples, the Police data on arsenic found the Buyat waters to exceed the standard and the results on average were **673% higher**

Dissolved Arsenic Standard: 12 ppb	Average	Monitoring Points									
		I	II	IIIA	IVA-B	IXA-B	IXC-D	V	VIA-B	VIIA-B	VIIIA-B
1.1 Police Samples and Results	16.62	12.43	10.18	6.92	8.26	20.56	24.67	7.01	5.78	19.68	50.70
1.2 Split of Police Samples Tested by ALS Bogor	2.47	1.40	1.30	1.90	1.60	3.80	2.30	1.10	1.40	1.50	8.40
How high is the Police Sample for Arsenic	673%	888%	783%	364%	516%	541%	1073%	637%	413%	1312%	604%

Dissolved Mercury Standard: 1 ppb	Average	Monitoring Points									
		I	II	IIIA	IVA-B	IXA-B	IXC-D	V	VIA-B	VIIA-B	VIIIA-B
2.1 Police Samples and Results	4.89	3.31	9.80	3.83	3.06	6.14	4.11	2.03	7.45	3.60	5.56
2.2 Split of Police Samples Tested by ALS Bogor	<0.05	<0.05	<0.05	0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05
Green= 50% Less than standard; Blue=In Compliance; Red=Exceedance											

compared to the split samples tested by ALS in Bogor. Honorable Panel of Judges, 673% is not an insignificant error! This margin of error is comparable to the renowned Adam Air flight which departed Bali for Makasar and instead landed in East Nusa Tenggara—this is not a minor mistake.

Similarly for dissolved mercury, the Police lab found the level of mercury to be on average nearly five times higher than the standard while the split sample showed that dissolved mercury was below the detection limit. Clearly the difference between the Police lab and the split results from ALS is far too big to be reconciled.

Given the unexplainable difference between the Police and the split samples, it was important to compare the split sample results to the RKL/RPL data of 29-

June-2004 to see if there is a strong similarity. As shown in the table below, the split samples are perfectly consistent with the results of NMR monitoring of 29-June-2004 reported in the second quarter RKL/RPL report for the year 2004 because the average values of 2.5 and 2.1 ppb for the two data sets are so close. It becomes clear that it is the Police data that is indeed wrong and inconsistent with the facts.

Data Source	Average Values	Monitoring Points									
Split of Police Samples Tested by ALS Bogor	2.5	I	II	III A	IV A-B	IX A-B	IX C-D	V	VIA-B	VII A-B	VIII A-B
		1.4	1.3	1.9	1.6	3.8	2.3	1.1	1.4	1.5	8.4
29-Jun-04 RKL/RPL data (30 days before the Police samples)	2.1	A-2 m	A-50 m	B-2 m	B-50 m	C-2 m	C-50 m	D-2 m	D-50 m		
		1.5	2.3	1.3	6.5	1.5	2.1	0.1	1.2		

Further, after the Police finished sampling the seawater of Buyat Bay on 29-July-2004, there were four independent studies that were conducted within a period of thirty days. First, it was the North Sulawesi Governor’s team that arrived in Buyat just two days later on the 1st of August 2004. Nine days later, the WHO/ Minamata Institute team that was commissioned by the Ministry of Health arrived in Buyat to take water samples on 9-August-04.

There were still two more independent teams that were yet to take samples from Buyat Bay. Between 11 and 12 Aug-2004, CSIRO from Australia collected the samples from Buyat, and finally the Integrated Technical Team of the Government of Indonesia collected the necessary water samples when they arrived for their survey on 28-Aug-2004.

With four independent studies of the seawater quality, one set of split sample results, and one set of RKL/RPL data for the month of June-04, there were a total of six comparable sampling results to verify the accuracy of Police data. And all put together it showed that it was only the Police sample that was not normal.

On the one hand it became amply clear that the Police data was wrong because it did not match with any of the six studies—not even one and not even close! On the other hand, all the other six studies completely agreed with each other in their results. With six data sets which included the periods before

and after the Police samples were taken, showing that Buyat Bay is perfectly clean, it became clear that something went wrong with the Police tests.

The above chart provides a clear visual analysis of how wrong the Police results are for dissolved arsenic. But for dissolved mercury the results are even harder to believe. All the six datasets had shown that dissolved mercury in Buyat Bay is below the detection limit. But the Police samples showed that the level of dissolved mercury on average is nearly five times the standard. Comparing the Police results on dissolved mercury to the results of the WHO's sample that was collected eleven days later, we find that Police laboratory has an ERROR of more than TWENTY THREE MILLION PERCENT!

Under a normal situation, the Police results would have been immediately disqualified as valid evidence. And it surprises me that the Police failed to recognize the findings of so many independent studies. In fact the Police did not even recognize the results of the Ministry of Environment in the investigation, nor would their investigators accept any witnesses or evidence such as independent reports from WHO or other government agencies into the minutes of the investigation.

It is not a surprise that the Prosecutors in Manado returned the case file to the Police several times. Clearly under hidden pressure from Jakarta, the Prosecutors reluctantly accepted this case, and here I am in the court today explaining once again that Police tests are wrong as was originally recognized by the Prosecutors themselves. It ultimately took General Suharto to hand carry the case file to convince the Prosecutors to accept it.

There are several other odd aspects to the Police data. For instance it is well known that Totok Bay has no reason to have high levels of mercury or arsenic. Even the hardest critic of NMR would agree that there should be no mercury or arsenic pollution in Totok Bay.

But this is not what the Police data shows. Police laboratory found that even Totok Bay is polluted with arsenic and mercury. This is simply impossible, and is a further confirmation of the wrong Police results.

What is also surprising about the police data is that there is over an 800% difference between some sampling points in a small bay which is only 2 kilometers in diameter! In a dynamic water body like the sea, such a large variation can be compared to one drinking out of the right side of a coffee cup and having sweet coffee and drinking out of the other side of the same cup finding it 800% more bitter—of course, this is truly impossible! In spite of these obvious errors in the Police results, the Police and Prosecution continue “full steam” ahead without even a moment’s pause to question what is really wrong with this picture.

In most cases the above analysis would be sufficient to reject the Police data. But in this case, the 32 day jailing of my colleagues, the existence of the indictment, being charged with a crime and my attending this court for over 45 sessions have **convinced me that lies could easily triumph over the truth.** That is why I will continue to present additional analyses to further prove that Police data make no sense. I want to leave no doubt that the Police results of the Buyat Bay seawater quality should be decisively rejected by the court.

Sometimes I shake my head in disbelief when I look at the Police data. If the Police data were correct, then fish should also show high levels of mercury and arsenic in their tissue. But the Police data shows a highly improbable condition. How can the Police’s own data show that fish are safe while the seawater of Buyat Bay is so polluted? Is there anyone out there who can explain this illogical result of the Police data?

It is clear that there is a major anomaly in the Police data. This inconsistency further proves that laboratory results of the Police samples taken on 29-July-2004 are wrong.

I now describe the mercury accounting analysis for Buyat Bay, as presented to the court by the quantification expert witness Shakeb Afsah, to explain why the Police result is wrong from the perspective of environmental science. This type of quantitative analysis is based on the most fundamental principle of environmental science that states that the total quantity of pollution present in an ecological system cannot exceed the total quantity of pollution it receives from various sources.

The mercury accounting framework checks if the pollution load in Buyat Bay as measured by the Police matches with the quantity of mercury that entered Buyat Bay from the Buyat River and the effluent in the tailings. There is no mercury entering Buyat Bay from the sediment because it contains cinnabar or mercury sulfide (HgS) which is insoluble in water and cannot be mobilized into the bay. Therefore, there are only two potential sources of mercury in Buyat Bay—effluent of NMR’s tailings and Buyat River.

According to the Police laboratory, the average value of dissolved mercury in Buyat Bay is 4.89 ppb. Further, the Buyat Bay residence time study conducted by Lorax of Canada shows that the total volume of water in Buyat Bay is 15.89 billion liters. Therefore the total quantity of mercury in Buyat Bay when the Police took the samples on 29-July-04 can be calculated by multiplying the average concentration of mercury with the total volume of water in Buyat Bay. As shown below in the calculation, there was 77.7 kg of mercury in Buyat Bay when the Police took the seawater samples.

$$\text{Total Quantity of Mercury in Buyat Bay (kg)} = \frac{4.89}{\underbrace{10^9}_{\text{kg / litre}}} \times \underbrace{15.89 \times 10^9}_{\text{litres of water}} = 77.7 \text{ kg}$$

However, if we calculate the quantity of mercury that entered Buyat Bay through the Buyat River and the tailings effluent on the day Police collected samples from Buyat Bay, it only adds up to 3.66 grams per day. This implies that the Police results have over-estimated the total mercury in Buyat Bay **by two million percent**.

According to this calculation there was only around 3 grams of mercury that entered Buyat Bay every day during the eight years of its operations. These 3 gms of mercury are as small as the quantity of mercury found in three to four ordinary thermometers commonly used in households. In fact during the entire period of the mine operation, NMR released a total of around 15 kgs of mercury. Therefore, the 77.7 kgs/per day that the Police results imply is simply wrong and can not be explained by any existing scientific methodology. As Mr. Shakeb Afsah, the IIT-India and Harvard trained expert witness, explained in his testimony of 7 July 2006, the level of mercury according to WHO water

sample results for mercury was only 0.2 nano grams/liter or 0.2 parts per trillion which is extremely small. Mr. Afsah explained that 0.2 nanograms of mercury per liter are as small as one second in 160,000 years - and these samples were taken only 10 days after than the police’s sampling. Therefore it is not a surprise that all other laboratory results have found mercury to be well below the detection limit.

The conclusion from the above analysis is fairly straight forward—the Police results are simply wrong and they do not reflect the water quality of Buyat Bay, Totok Bay Buyat River and Totok River.

Further, the Police laboratory results of the seawater quality are the only tests that are not in agreement with the findings of all the other studies covering various environmental as well as the health parameters. The logic of environmental damage is a matter of basic common sense. If the seawater is polluted, then fish must be polluted and because humans eat fish, human should have plenty of heavy metals in their bodies too. However, empirical findings of all the studies show that seawater is clean, the fish are clean and indeed the inhabitants of the region have no contamination. It is clear that the only oddity is the Police results of the seawater.

Study	SeaWater		Fish		Human		
	Hg 1 ug/L	As 12 ug/L	Hg 0.5 mg/kg	Inorganic Arsenic 2 mg/kg	Hg-Blood 50 ug/g	As-Blood 100 ug/g	Hg- Hair 50 ug/g
1. KLH 03	ND	0.975	0.05				
2. POLRI 04	4.89	16.62	0.007	0.04	6.329	6.026	1.097
3. POLRI (SPLIT- ALS)	ND	2.47					
4.UNSRAT	ND	2.52	0.117	0.053			
5.WHO	ND		0.243				3.071
6. DEPKES					13.14		4.006
7. CSIRO	ND	2.33	0.103	0.0176			
8. KLH 04	ND	1.51	0.169	0.176			
9. ALS 06	ND	1.33					

Findings of the Sampling Conducted on 29-July-06 Contradicts the Police

The 29-July-2004 sampling results by the Police laboratory that Buyat Bay was polluted with mercury and arsenic was a landmark event that fundamentally altered the nature of the scientific debate surrounding the case. More than five independent studies that contradicted the Police results proved insufficient to stop the case from reaching its current legal stage. The power of the wrong Police results became a challenge.

But as the case progressed, expert after expert argued in front of the court that the Police results were illogical and wrong. So there was only one option left for the court to generate the most decisive evidence about the true seawater quality in Buyat Bay—this was re-sampling and testing the seawater using an independent and a highly qualified third party. Accordingly, the court allowed ALS, an independent and internationally accredited laboratory to sample the water of Buyat Bay.

But this re-sampling issue became extremely contentious because the Prosecutors declined to follow the orders of the Judges. After two weeks of delay, the court allowed ALS to go ahead and resample the seawater without the participation of the Prosecutors. On 29-July-2006 ALS finally took samples from the same locations as the Police did. This sampling was conducted in the presence of various members of the Press.

Two weeks later on 11-August 2006, ALS reported the results to the court and it showed that the mercury level was below the detection limit, a result that matched with the results of all the independent studies and also with the eight years of NMR's own monitoring results. Similarly, the level of dissolved arsenic was well below the standard. In terms of the evidence, there cannot be any better proof that the seawater of Buyat Bay is clean today, as it was in the past and is expected to be in the future.

The Prosecutors and some NGOs attempted to argue that these results are not applicable to the case because the situation has changed over the past two years. This is clearly the weakest argument one could possibly present against the resampling results. A simple review of the USEPA and the Canadian

Environmental Ministry's findings showed that mercury pollution is something that cannot be reversed in two years. According to them, it takes several decades and even generations to reverse mercury pollution. It is no wonder that it took nearly twenty five years for Minamata Bay to be declared clean of any mercury pollution.

Let me further explain why the NGOs and the prosecutors were wrong when they tried to oppose the findings of the 29-July-06 samples taken by ALS. Their assumption is that if the water of Buyat Bay were polluted it could have been only caused by the tailings. But this is a scientific impossibility because the tailings contains mercury sulfide (HgS) which is insoluble in water. Further, if the mercury was entering the water from the tailings, then one would have found the mercury to be high even in the samples of 29-July-2006 because the tailings are still there in the Bay. The same logic applies to arsenic also. As presented by various experts, the tailings in the sediment are not a B-3 waste and it is simply not possible to mobilize any mercury or arsenic. This clearly shows that Police results are simply wrong and no amount of testing would ever reproduce those Police results.

In conclusion, the 29-July-2006 samples not only proved that Buyat Bay is clean but it also confirmed that the sediment is stable in accordance with the planned goals of the detoxification plant. And the non-cooperative behavior of the Prosecutor and the NGOs regarding the resampling definitely revealed something—that they do not want the truth about the seawater quality of Buyat Bay to come out.

Potential Explanations for the Wrong Police Results

I have now presented to the court six quantitative analyses that individually and collectively prove that the Police results are wrong. I have often wondered why the police numbers do not represent the water quality of not only Buyat Bay but also Totok Bay and also those of both the fresh water sources of the Buyat and Totok rivers. But interestingly the Police laboratory results for fish and human biomarkers are relatively the same as all other studies. As shown by the quantitative results, the error in the Police result is huge. Such an error could be caused only by a major technical failure during the testing process in the

laboratory, or if someone deliberately tampered with the samples to manufacture the evidence that Buyat Bay is polluted.

I now discuss the possibility that the samples were tampered with at some stage of the transportation or the testing process that led to the error in the Police results.

Evidence of Sample Tampering

Throughout the court testimony from several witnesses, it is obvious that the care, custody and control of the water sampling procedure were fundamentally flawed. The flaws range from Rignolda, (not the Police), handling the samples (there are photos of his hands in the sample cooler), to leaving police samples for 4 days non-preserved or refrigerated on the floor in Rataatok, UNSEALED for the whole period of time, to things vastly more complicated.

The differences between the Police field sample records signed off by the third-party-witness and the receipt of 10 additional samples at the police laboratory alone are clear evidence of someone tampering with the samples. It is not possible for sealed water samples to multiply, reproduce or duplicate during shipment from Rataatok to Jakarta. Some one undoubtedly has interfered and tampered with the water samples in this case.

If the Prosecution wishes to take exception to the above statement and use the Police laboratory results as evidence against me, then I need to have some one prove beyond a reasonable doubt, where the extra 10 samples that arrived from the laboratory came from - clearly, while there were 24 samples collected in the field, 34 arrived in the laboratory and 29 are presented as evidence before the court. This is worth repeating once again, some one added 10 sample bottles between Rataatok and the Police laboratory and then lost 5 of them between the Police Laboratory and the Prosecutor's office.

The prosecution in my opinion has not proved pollution, but I do believe that the Prosecution has proved beyond reasonable doubt that the investigative unit can not keep track of samples. I have now spent roughly 5 % of my life defending against the charge when actually the bay is perfectly clean and the

evidence they have used only goes to show that that someone cannot even ship and receive the same number of sample bottles between two points.

But is this as simple as losing samples? I don't think so. A crime or several crimes may have been committed by those perpetrating the Buyat hoax but these were not crimes committed by NMR or myself. I don't deserve to sit here on the basis of the Police data that is so obviously wrong.

Police results failed to follow the legally binding forensic procedures

In addition to potential sample tampering and the wrong laboratory results, there was clear failure to follow the established forensic procedures. From the initial acceptance of complaint by the Police and the public statements that people have been contaminated by heavy metals by a so-called medical doctor who never even conducted a complete medical examination, to the chain of custody and control of samples at the beginning of the investigative process, to laboratory technicians making medical, clinical and environmental science determinations outside their area of expertise, the whole investigative process has been fundamentally flawed.

The expert witness for the defense Dr. Abdul Munim Idries, a renowned forensic specialist, may have said it best, or at least most concisely during his examination of the BAP:

“My interpretation, according to my interpretation, the person who produced this is not... does not understand [his] authority and cannot distinguish the difference between being an Expert Witness and a Factual Witness. This is all mixed up.”

And later he continued on to state that: *“Like I explained earlier that the success of resolving a case depends, among others, on the authenticity of the evidence. So if the authenticity of the evidence cannot be maintained that means the results can be ignored.”*

Further on in his testimony when reading from the BAP he stated that:

“The population of Buyat Pantai hamlet has been contaminated by mercury (Hg) and Arsenic (As).” Dr Idries stated quote” You mean this is the conclusion? But this doesn't follow scientific principles here.”

Dr. Indries further goes on to state that : *“This sentence says “has degraded,” so there should have been a standard value first. And only then you can say if degradation has occurred. Where’s the baseline data here? None”*

Conclusions

Your Honor, the irregularity in the Police data is self-obvious. The question is how could the Prosecutors accept such evidence and even have the audacity to use it in the charges against me. I want to look in the eyes of the Prosecutors and ask them: Is this the evidence you want to use to put me in jail? Do you believe in this evidence yourself? This whole situation, Your Honor is extremely sad and I would not like it to be repeated to anyone. But someone who perpetrated this hoax needs to sit in this very chair.

Sediment Pond Decreased Quality of Buyat River Water

The Indictment and the Charges state that the *“Sludge from the sediment pond of Accused I PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.”*

While the Prosecution makes this accusation they have failed to elaborate on it. Therefore, this charge is both unfounded and vague at the same time.

I assume that the Prosecution means that the sediment pond has resulted in degradation of water quality in the Buyat River which then flows into Buyat Bay and reduces seawater quality in respect to arsenic and mercury. My assumption is based on the fact that the only connection between the sediment pond and Buyat Bay is the Buyat River. I assume they are basing that allegation on POLRI water samples collected in Buyat River. I will attempt to first describe what I consider to be misconceptions about the sediment pond and then review all the facts that demonstrate that the sediment pond did not reduce the quality of water in Buyat River and/or did not reduce the quality of seawater in Buyat Bay.

Firstly, I believe this accusation was based on a misunderstanding regarding the sediment pond by the POLRI Investigators. Mr. David Sompie and I,

provided clarification regarding the role and nature of the sediment pond at Mesel during our testimonies. The sediment pond is a legal requirement for all mines in Indonesia. This structure traps natural soils that get washed from the mine site by rainfall. The purpose of the sediment pond is to ensure that total suspended solid concentrations in waters being discharged from the mine site meet environmental standards and that they do not contribute to turbidity in the Buyat River. All of NMR's environmental monitoring data reported in the RKL/RPL shows that the sediment pond at the Mesel Mine has served its design purpose. There has never been any discharge of process-related-materials such as tailings, sludges or any other types of waste to the sediment pond. After the mine closure, the sediment pond was reclaimed back to fertile land as can be seen at the mine site today.

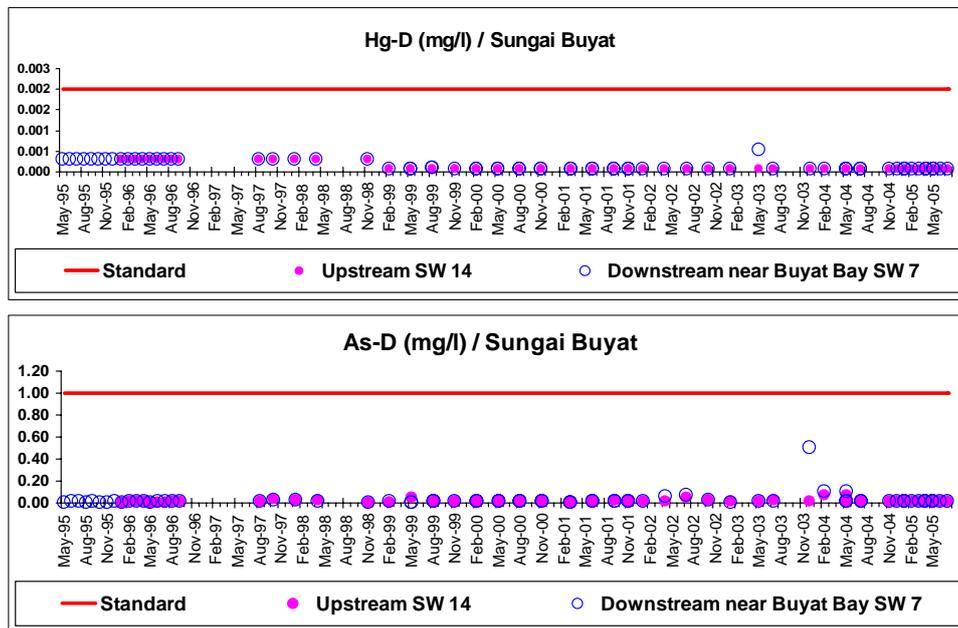
Although the Prosecution provided no witnesses or facts to support this allegation during the trial, I need to state that this allegation is false. All the data collected during NMR's operations as well a studies done by the Ministry of Environment and academic institutions (ITB/UGM) prove that the sediment pond did not pollute the Buyat River or Buyat Bay.

First let us take a look at the environmental monitoring data collected during NMR's operations. These data have been reported to the Government every three months and have been entered into evidence during this trial.

Buyat River is an undesignated stream and therefore the applicable environmental standard is Class II of Government Regulation No.82/2001. This was testified to by Dr. Ir. Rudy Sayoga Gautama and is quoted in K LH's Integrated Team report (both October 14 and November 8, 2004 reports). The applicable standard for arsenic in the Buyat River is 1 mg/L and the applicable standard for mercury in the Buyat River is 0.002 mg/L.

To demonstrate that the sediment pond did not pollute Buyat River, I will show water chemistry data from 2 monitoring stations regularly reported in the RKL/RPL reports. One station is upstream from the mine and the sediment pond and one station is downstream from the mine and the sediment pond.

Upstream station is called SW14 and downstream station is called SW7. The location of both are shown in this figure.



Dissolved arsenic and mercury concentrations in Buyat River water at both these stations for the period 1996 to 2004 are shown in the graph (this is for the period the mine was operating). First, the graph shows that arsenic and mercury concentrations were always below environmental standards at both the stations. This shows that the Buyat River is not polluted. Another thing that the graph shows is that the concentrations of arsenic and mercury are essentially the same in the station upstream of the mine and the sediment pond and in the station downstream from the mine and sediment pond. This proves that the Mesel Mine site and/or the sediment pond did not alter the levels of arsenic and mercury in the Buyat River. Therefore, it is impossible for the sediment pond to have reduced the quality of the water quality in Buyat Bay.

A study conducted by KLH's Integrated Team also measured the concentration of arsenic and mercury in the Buyat River. This study was conducted in September 2004 and the water quality results for samples collected in the Buyat River were reported in both the October 14 and the November 8, 2004 reports, which have both been entered into evidence. All samples collected showed that arsenic and mercury were below the applicable environmental standards. Furthermore, the November 8, 2004 Intergrated Team report states:

“The value of surface water quality for samples from Buyat River is relatively the same as that of samples taken in 1994 during the AMDAL study of PT NMR. Heavy metal Hg is only found in Ratatotok River, with concentrations not exceeding the river water standard for class II under Government Regulation (GR) No. 82 of 2001.”

These data and study results show that the sediment pond has not reduced the quality of water in the Buyat River.

A team consisting of experts from Bandung Institute of Technology and Gadjah Mada University also conducted research on the Buyat River in April and July, 2005. This study was commissioned by NMR and involved expert and independent scientists to answer certain environmental questions regarding the Buyat River and the community wells in Buyat Village. The findings of this study were testified to in court by Dr. Ir. Rudy Sayogy Gautama of ITB on June 30, 2006. In addition, the report of this study was submitted into evidence. In this study, 24 locations from the headwaters to the mouth of the river (close to Buyat Bay) were sampled and all data showed *“arsenic and mercury concentrations were well below standards”*. Dr. Sayoga Gautama also confirmed that in his research the content of arsenic and mercury in the water were the same, whether above or below the mine site. This is consistent with the data from the operational years that shows the sediment pond did not reduce the quality of water in the Buyat River and therefore could not possibly reduce the quality of seawater in Buyat Bay.

Finally we come to the study of the POLRI. POLRI sampled 3 locations in the Buyat River and reported arsenic and mercury concentrations above standards. The POLRI forensic laboratory results were several thousands of percents higher than arsenic and mercury measured by an accredited laboratory on split samples as well as KLH samples and the ITB/UGM samples. There is clearly a problem with the POLRI sampling and analyses. Even the trend of the POLRI data were not internally consistent with the hypothesis that the sediment pond degraded seawater quality in Buyat Bay. The three samples taken by POLRI are IISB, IISB and ISB, progressively getting further away down river from the

sediment pond. If the sediment pond was a source of arsenic and mercury to Buyat Bay, we would expect a trend of decreasing concentrations with increasing distance from the sediment pond. This trend is not observed in either of the arsenic or mercury data. In the case of mercury, concentrations increase and then decrease away from the sediment pond and in the case of arsenic, concentrations decrease and then increase. Therefore, not only are the POLRI data highly dubious, but even if one believes the data, it does not support the charge that the sediment pond is the source of arsenic or mercury to Buyat Bay.

When I asked Dr Rudy Sayoga Gautama how can it be that the results from KLH, ITB/UGM and POLRI split water samples analyzed at ALS laboratory can be so similar and yet the POLRI forensic laboratory results be so different to all these studies, he responded:

“Certainly this is a very large difference, so we can guess that there must have been some sort of an error, of which I can’t tell exactly what the cause was. But there’s a great contrast between the results of the water quality analysis performed by several... from the results of several studies with the police sampling results.”

Collectively, all the facts that I just highlighted and the lack of any evidence or expert witnesses provided by the Prosecution to support this accusation, clearly shows that the sediment pond does not, nor ever has reduced seawater quality in Buyat Bay, as alleged in the Indictment.

Marine Biota

In order to state whether marine biota are contaminated or not, one needs specific expertise in the field of marine biology and environmental toxicology. All the results of mercury and arsenic in fish tissue taken in all the studies conducted in Buyat Bay (NMR’s RKL/RPL data, CSIRO, WHO/ Minamata Institute, North Sulawesi Independent Team, KLH Integrated Team, POLRI and Ministry of Marine and Fisheries) show that that fish in Buyat Bay have normal

levels of arsenic and mercury and are safe for human consumption. Unfortunately in their investigation, POLRI and the Prosecution have relied on testimony by three supposed-experts who have misapplied standards and had no knowledge of normal levels of arsenic and mercury occurring naturally in fish in the world's oceans. If they were true experts, in reviewing the data, they would have come to the same conclusion as the North Sulawesi Provincial Team from UNSRAT, the WHO/ Minamata Institute, CSIRO and others which have concluded that heavy metal levels in Buyat Bay fish are at normal levels and no different from fish of other oceans in the world.

One of the Prosecution's experts, Dr. Rachmansyah who testified on February 24, 2006, stated that some fish had high mercury levels possibly due to contamination due to the fact that 4 of the 26 fish his group sampled had mercury concentrations higher than the WHO standard of 500 ppb (or 0.5 ppm).

Although I do not have any issues with the actual data, unfortunately Dr. Rachmansyah has both misinterpreted the WHO standard and is not familiar with natural levels of mercury in fish in the world's oceans. If he had been, he would have concluded that the fish in Buyat Bay are no different to fish from anywhere else in the world's oceans and that they are safe for human consumption.

Before I provide the argumentation to prove that marine biota in Buyat Bay are not contaminated with mercury from NMR's tailings, I need to correct an error in Dr. Rachmansyah's testimony. When he was asked if the WHO had a different standard for predatory fish, he responded that it did not and the same standard of 500 ppb also applied to predatory fish. This is categorically incorrect. As shown in Attachment 15, the WHO standard for predatory fish is 1 ppm as opposed to 0.5 ppm (500 ppb) for all other fish. This brings into question whether Dr. Rachmansyah had actually even seen the standard document from the WHO. Also, in the same document, it is stated that the standard applies to a composite box sample. This means that the standard should be compared to an average of fish tissue in a shipment and not to individual fish. This is because some fish, particularly bigger and older fish, naturally have higher

mercury concentrations in their tissue. This is a well-known fact and has been extensively documented in scientific literature.

This can also be seen by looking at mercury levels in fish from Buyat Bay before NMR operations began and therefore before tailings were discharged. To demonstrate this point, mercury concentrations of fish measured as part of baseline characterization of Buyat Bay and documented in NMR's RKL/RPL reports (Exhibit X). The RKL/RPK data show mercury levels in individual fish sampled in Buyat Bay on 11 November 1995 and 3 March 1996. Tailings were first discharged into Buyat Bay on March 23 1996. The data for mercury in fish before tailings were discharged to Buyat Bay show several individual fish which have mercury concentrations higher than that of the WHO 0.5 ppm (or 500 ppb) standard. This clearly proves that mercury levels in individual fish which are above 0.5 ppm does not indicate contamination by tailings, rather natural variability in mercury concentration in fish depending on the size and age of the fish. Again to reiterate, individual fish in Buyat Bay before tailings placement commenced on March 23, 1996 had concentrations of mercury above the WHO 0.5 ppm standard. This is normal for fish anywhere in the world's oceans and does not indicate pollution or contamination.

This is why the WHO standard of 1 ppm (or 1 mg/kg) for predatory fish and 0.5 ppm (or 0.5 mg/kg) for all other types of fish applies to the average concentration of mercury in fish from any particular study. When I showed the WHO standard to Dr. Rachmansyah and read it to him, he acknowledged that the standard should be applied to the average value. I then showed him his own data on the graph that shows the average concentration of fish from his study is below the WHO standard of 0.5 ppm.

Although I believe Dr. Rachmansyah is a well-meaning scientist, unfortunately I believe the subject of metals in fish tissue is not really his area of expertise which explains the errors he has made in interpreting his study data.

My statements regarding the application of the average mercury concentrations and natural variability in arsenic and mercury in fish are based on statements from the expert witness, Dr Inneke Rumengan of UNSRAT who gave testimony in court on June 23, 2006. Dr. Rumengan is a Lecturer at the Department of

Fisheries and Marine Sciences of Sam Ratulangi University. Dr. Rumengan was also a team member in the North Sulawesi Independent Team that conducted research in Buyat Bay in late July and early August 2004 (the same time as the study described by Dr. Rachmansyah).

Dr. Rumengan presented the results of the North Sulawesi Independent Team on Buyat Bay and in regards to the study conclusions, she said:

“It can, Sir. From the facts that exist, I dare to say it, because there is data on sediment, water and a number of biota. From all facts that we obtained, generally it can be said that it has not been polluted. That is the conclusion that we can make. Scientifically we do need further studies to fulfill scientific idealism.”

Dr. Rumengan also gave her opinion based on the North Sulawesi Independent Team Buyat Bay study results, she stated in court:

“In my opinion, the ecosystem there is fine.”

The second expert witness for the POLRI and Prosecution who stated that marine biota were contaminated was Drs. Munawardin, MM from the Forensic Laboratory of POLRI who testified in court on March 10, 2006. However it is strange that in the Minutes of Investigation taken on October 5, 2004, Drs. Munawardin does not reference either marine biota data or any conclusions of contamination of marine biota. This is not surprising since as an analytical chemist, he would not know what is and what is not contamination in marine biota. However sometime after October 5, 2004 and before March 10, 2006, he has formed the opinion that marine biota are contaminated and expressed this in court even though it is not his area of competence.

Dr. Keith Bentley who has extensive experience in marine environmental studies in Indonesia and other countries in Southeast Asia through his expertise as an Environmental Toxicologist stated in court:

“The levels of mercury and arsenic in fish and other sea food again is no different to that in control sites in Sulawesi or from the Jakarta fish market.”

POLRI sampled arsenic and mercury in the tissue of 4 marine biota samples from Buyat Bay. POLRI investigators presented the results to Dr. rer. nat. Budiawan on November 2, 2004 who concluded that the samples indicated contamination.

It is clear that Dr. rer. nat. Budiawan is not an expert in interpretation of marine biota metal data. He appears to think any level of mercury or arsenic in fish is a sign of contamination, whereas in reality mercury and arsenic occur naturally in all fish. In support of this, Dr. Inneke Rumengan who is an expert in interpreting marine biota data stated in her testimony:

“Alright. Thank you, Sir. So as a scientist, if a certain level in a certain material is said to be high or low, it doesn’t automatically mean that what we say as high is polluted.”

The strange thing is that the actual levels of mercury and arsenic in marine biota from Buyat Bay measured by the POLRI were very low and well below all applicable standards. The error in the Indictment and Charges stating those marine biota are contaminated seems to be due to the fact that the POLRI Forensic Laboratory and Dr. Budiawan have no experience in interpreting fish tissue metal concentrations.

In a question by the Defense Counsel about the conclusion of the WHO/Minimata Institute report that states that mercury levels in Buyat Bay fish are at normal levels, Dr. Keith Bentley of the Centre for Environmental Health, Australia, stated:

“Again, this conclusion is the same as written by the Indonesian researches who published their work through the CIDA-sponsored study. The low mercury levels referred to in fish are just typical of both these area. They are the same as other non-polluted areas in Indonesia and actually, they are lower than the normal fish consumed in Japan. They are also incidentally as an

average lower than the levels that we recorded for the Sidney Fish Market.”

To summarize, all studies conducted to-date show arsenic and mercury levels in fish to be below all applicable standards, the same as anywhere else in unpolluted coastal areas and safe for human consumption.

Human Contamination and Itchiness

The accusation that people in Buyat Bay were intoxicated on mercury and arsenic resulting in illnesses is the issue that first started this criminal case. However since the initial accusations and throughout the course of this trial, I believe it has become obvious to all that have evaluated the evidence that these accusations are entirely false; local residents in Buyat Bay are not contaminated with arsenic and/or mercury and the illnesses suffered by some local residents are easily diagnosable and have no connection to NMR's activities.

The allegations in the Indictment and Charges were primarily based on the evidence given by a fact witness, Dr. Jane Maureen Pangemanan, M.Kes and by an expert witness, Dr. rer. nat. Budiawan.

The allegations in the Indictment by Dr. Jane Pangemanan are consistent with several statements she had made to the media in which she had connected illnesses reported by some individuals to mercury and arsenic in tailings of NMR. However, in her court testimony on October 7, 2005, Dr. Jane Pangemanan recanted her above statement regarding NMR and further stated that she had revoked her criminal complaint to the POLRI. She stated that she did not do any research into the cause of the illnesses and therefore she did not have a diagnosis. She did however suggest that poor hygiene and sanitation practices and defecation in, and bathing and drinking of, Buyat River water may be a possible cause of some of the illnesses.

During cross-examination by the Defense Counsel, she also denied that she had said to Jane Perlez of the New York Times that: *“...of the 60 people I examined about 80% showed symptoms of poisoning by mercury and arsenic.”*

Since this exact quote did appear in the New York Times, I must conclude that either Dr. Jane Pangemanan perjured herself in court or that Jane Perlez fabricated the quote.

It is obvious that Dr. Pangemanan was not involved in the Buyat case as a medical doctor, but as a member of a group of activist that were working with certain community members and who wanted to bypass the local medical authorities and to take this case to the media in Jakarta. Here, far from Buyat Bay and the medical professionals who knew the truth about this community's ailments, she and her cohorts painted a false picture of a polluted Buyat Bay. And finally, when her lies and deception were exposed through various subsequent studies by the Ministry of Health, WHO/ Minamata Institute and Medical Faculty of UNSRAT, she recanted everything that she had said to the POLRI and the media and said that she "regretted" making premature conclusions.

The accusations of health impacts from NMR operations were also based on interviews of 12 villagers by POLRI. Three Buyat Bay residents were interviewed by POLRI during their trip to Jakarta. The Minutes of Examination for Rasit Rahmat (July 22, 2004). Juhria Raturbahe (July 23, 2004) and Masna Stirman (July 23, 2004) gives me real concern about the POLRI investigation. This is because the questions and answers by these 3 individuals are essentially identical. The following are examples of some of their answers.

In answer to Question 8, all three gave word-for-word the same response:

"As far as I recall and undergo, there have never been such types of disease prior to the disposal of tailings by PT. Newmont Minahasa Raya or prior to the year 1996 in Buyat Pantai hamlet."

In answer to Question 9, all three gave word-for-word the same response:

"Yes, it has. It once conducted a public health examination; however, they always said that the result was that the disease suffered by the community members was only common skin disease, not a dangerous one."

In answer to Question 10, yet again, all three gave word-for-word the same response:

“As far as I know, yes, there is. Since PT. Newmont Minahasa Raya dumped its tailings to Buyat Bay, the fish living in Buyat Bay waters were affected by the tailings. We then ate the relevant fish. Consequently, we also consumed toxic and hazardous substances contained in the fish so as to suffer from this type of medical complaints.”

I would imagine that an experienced POLRI investigator would question the three witnesses that used exactly the same words and sentences to answer their questions. Clearly if three people use exactly the same words to answer questions, it indicates a high level collusion. However, this did not seem to concern the Investigator in regards to the veracity of Rasit Rahmat, Juhria Ratonbahe and Masna Stirman’s well-rehearsed and identical statements.

For the sake of brevity I will not mention all the peculiarities in the Minutes of Examination, however there are several other responses by the witnesses from Buyat Pantai that also strongly suggest that their answers were rehearsed and not genuine.

Several medical doctors testified in court regarding their involvement and medical diagnosis of their work as well as results of their research on the residents of Buyat Pantai. These were Dr. Sandra Rotty, Dr. Joy Rattu and Professor Dr. Winsy Warouw.

Dr. Sandra Rotty, the head of the local clinic, who is familiar with the local residents that complained of various symptoms stated during her court testimony on June 2, 2006 that in her opinion these were not unusual symptoms and resulted from ordinary diseases that she had seen in other communities in which she had worked as a doctor; specifically regarding skin diseases that can lead to itchiness.

In addition to her direct involvement in the diagnosis and treatment of residents, Dr. Rotty accompanied many medical teams to determine if the illnesses suffered by the local residents were related to the presence of heavy metals. These included the team from the Department of Health and the Minamata Institute which measured mercury and arsenic in hair, the medical services

team from North Sulawesi Provincial government, South Minahasa District and the University of Indonesia which conducted the Health Audit and measured arsenic and mercury in hair and blood and the team from the Faculty of Medicine of UNSRAT which conducted research on arsenic in urine. In regards to the conclusions of all those studies, Dr. Rotty stated:

“Yes. So because I accompanied every one of these researches, I always sought to find out about the results, because I was always being asked by the community and I always tried to get the results. And from the results that I obtained I discussed with those who had done examinations and researches, and indeed to this day there is no evidence [to link] the symptoms of the illnesses, yes, illnesses found among Pantai Buyat residents with heavy metal intoxication.”

On the specific issue of Andini, Dr. Rotty stated that she had tried to provide medical assistance to her, but her family had refused to cooperate and had not given the baby the medication offered by Dr. Rotty. In regards to the cause of Andini’s skin condition, Dr. Rotty stated:

“Well, first of all, this is because of the baby’s nutrition status, and then compounded by the [poor] hygiene and sanitation, yes, [coming] from the family who didn’t pay much attention to the doctor’s advice.”

Dr. Angel Heart Joy Mainhart Rattu who is a lecturer at the Medical Faculty of Sam Ratulangi University also testified in court on June 2, 2005. Dr. Rattu specializes in Environmental Health, which is the branch of medicine that looks at the relationship between human health and the living environment. He had led and also participated in several medical studies in Buyat Bay. He confirmed that the most common illnesses were dermatitis and upper respiratory tract infections. Specifically regarding dermatitis, he stated:

“Well, because in our team there were people someone who had already done research on environmental health, we found that it turns out the dermatitis there had a close correlation with the

[lack of] hygiene and sanitation in the environment where the community in question lives.“

In addition, Dr. Rattu led the medical team that assessed the level of arsenic in urine of members of the local communities in March 2005. He used the most up-to-date medical procedures supported by references for the assessment of arsenic in people. He explained that arsenic in urine was extremely low and well below levels that would indicate any unusual exposure of people to arsenic. In fact, he stated that even if you multiply the observed levels of arsenic in urine by 10, they would still be well below levels at which you would expect any health effects. He had presented the results of his study at the International Seminar in Manado and at a medical conference in Maastricht, Netherlands in June 2005. In conclusion, he stated:

“....So we can say in conclusion that this is very very safe and this was not contradicted by the international participants in the seminar where we presented, which was attended by experts from Germany, from Canada, from a number of countries.”

Professor Dr. Winsy Warouw, Professor at Sam Ratulangi University in the field of Dermatology, was the third medical doctor to testify in court on June 2, 2009. In addition, Professor Dr. Warouw is the Head of *Environmental Health and Occupational Dermatology* for North Sulawesi and holds a certification from the International Board of Metal Toxicology.

He described his studies and research in Buyat Bay. His conclusions as an expert dermatologist were consistent with all the previous testimony by medical doctors and toxicological studies. These conclusions were that illnesses suffered by residents of Buyat Bay were common illnesses suffered by individuals in North Sulawesi and well as other regions of Indonesia and that there was no indication of any health effects from mercury and/or arsenic intoxication. Specifically he stated:

“So our research found that the illnesses there are similar to [those in other] coastal areas in North Sulawesi. And why do I say this? In the hospital where I work, the dermatology department is

where all dermatology cases in this region are referred to, including the entire eastern region [of Indonesia]. There was nothing significant. What is there is dermatitis or what people often call eczema, or allergies, or scabies,”

Professor Dr. Winsy Warouw also personally examined Andini. He confirmed that he together with Dr. Sandra Rotty attempted to refer Andini for a follow-up medical treatment as her skin condition was getting better but they had some concern regarding her nutritional status and hygiene. However her family, along with certain individuals belonging to certain NGOs refused medical help and did not administer the medication prescribed for Andini, but rather chose to continue to take Andini out to public demonstrations against NMR.

Collectively, the testimonies of Dr. Sandra Rotty, Dr. Joy Rattu and Professor Dr. Winsy Warouw and the retraction in court from Dr. Jane Pangemanan, means there is not a single medical doctor from Indonesia or abroad which has diagnosed the people of Buyat Bay as suffering from mercury or arsenic intoxication. These testimonies together with reports from WHO/ Minamata Institute and the Ministry of Health prove that NMR's tailings in Buyat Bay or any other activities by NMR have not harmed the health of local residents in the vicinity of Buyat Bay.

Dr. rer. nat. Budiawan, was interviewed on three separate occasions by POLRI (September 16, October 4 and November 2, 2004) and gave testimony as an expert witness in court. He examined mercury and arsenic data on hair, blood and nails of Buyat Bay residents and concluded that Buyat Bay residents were contaminated with mercury and arsenic. Specifically in regards to mercury, his conclusion was based on what he claimed was a standard of 8 ppb mercury in blood. The reference he quoted was *International Program on Chemical Safety (ICPS) No.101, 1990*. So because some residents had mercury content in their blood above 8 ppb, he claims that they can be said to have been contaminated.

Dr. Budiawan's claims are simply outrageous and contrary to all toxicological principles. Firstly, in the cross examination of Dr. Budiawan, it was exposed that he only partially quoted the ICPS document. That document does not say anything about 8 ppb being a “normal” level of mercury in humans. What it

states is that 8 ppb is the average level of mercury in blood of a group of people who usually eat less than 1 fish meal per week. This is so because all fish have some level of mercury in their flesh. So the more fish people eat the more mercury they will have in their blood. It had nothing to do with contamination. The same ICPS and other WHO document all acknowledge this fact. When confronted with this fact and shown the reference during cross-examination, he became evasive and defensive and did not explain why he had omitted to include the full reference in his testimony. Secondly, he admitted that the Buyat Bay residents had not undergone any dietary restrictions before they were tested. When Counsel for the defense showed him a US toxicology method document called *California Action Line updated January 2002*, which states:

“If mercury in the blood is tested it is important to ensure that no sea food product is consumed for at least 30 hours prior to testing, in fact one portion of sea food may increase the mercury content in the blood 20 to 30 hours after the ingestion. Consumption of sea food will produce a misleading result.”

He again became defensive and did not address the fact that his data could be misleading because he did not ensure that people did not eat seafood 30 hours prior to the test being carried out. Generally speaking Dr. Budiawan's behaviour during his testimony resembled someone with a personal agenda or interest rather than an unbiased scientist.

In regards to arsenic, Dr Budiawan testified in court that there are no WHO standards but he had got some “normal” ranges from a website that he did not identify to again conclude Buyat Bay residents were contaminated with arsenic. Firstly, this is contrary to the findings of the WHO/Minamata Institute report that measure arsenic in hair of local residents and concluded all metal levels (including arsenic) were at normal levels. Secondly, since he or POLRI had not taken caution to follow appropriate pre-test dietary restrictions for the group, the numbers for arsenic in blood, from POLRI are meaningless. As stated in subsequent testimony by Dr. Keith Bentley, arsenic in blood values simply reflected recent ingestion of seafood. The correct toxicological analysis is

measuring the inorganic arsenic in urine. This is the true measure of whether someone had been contaminated by arsenic. Dr. Bentley also explained that the toxic form of arsenic is inorganic arsenic. Since 99% of arsenic in fish is organic and not inorganic, he explained there has never been a case in the world where people have been intoxicated with arsenic through eating of fish.

Dr. Bentley, from the Center for Environmental Health, Australia, testified in court on 23rd June, 2006. Dr Bentley's expertise and over 40 years of experience is in the field of Environmental Toxicology, in general, and the health effects of metals on people, in particular. In the past, he had worked for the World Health Organisation as an Advisor in Chemical Safety for the Western Pacific Regional office. In addition he has worked for the Federal Ministry of Health in Australia where he was the Director of Environmental Health for the Australian National Health and Medical Research Council.. During his work with the National Health and Medical Research Council, he was the Team Leader for Environmental Health with Indonesian Ministry of Health in Indonesia between 1997 and 2000.

In response to previous testimony that individuals with blood level of over 8 ppb can be considered contaminated, he stated:

"I'm sorry that is silly nonsense. The first point would have to be the value of 8 is an average value. That means that if I took all the people in this room and I took all of your blood and I analyzed it for mercury if we have enough people and I likely would come out with a number not unlike but not necessarily 8."

He went on to explain that there has been several studies that have been incorporated in the WHO and ICPS guidelines. Those studies show mercury blood levels are dependent on the amount of fish consumption in the diet of the people in that particular region in the world and that it has nothing to do with pollution or contamination. So, for a group that eat less than 1 fish a week the average mercury content of their blood would be around 8 ppb. For a group that eat 4 fish per week the average would be around 45 ppb. Both the Ministry of Health's Health Audit and Police blood samples showed mercury contents typical of unpolluted coastal communities consuming moderate amounts of fish.

Dr Bentley was involved in 3 different toxicology and health studies of Buyat Bay area. These were the WHO/Minimata Institute study, DEPKES/Minamata Institute Health Audit and the UNSRAT arsenic in urine study. In addition, this expert had reviewed all other biomarker and health study results such as those by WALHI and POLRI.

Summarizing all of the various health and toxicological studies, Dr. Bentley stated:

“But the truth of the matter is that this levels are just typical of moderate fish eating community. It doesn’t matter where in the world you do your studies..These results are typical of non-impacted groups.. All of the data including that of the police are of no health significance whatsoever.”

I believe given the unreliable testimonies of some of the Buyat Bay villagers claiming illnesses related to NMR’s tailings, recantation of Dr. Jane Pangemanan’s previous statements to POLRI in court, testimonies of Dr. Sandra Rotty, Dr. Joy Rattu and Professor Dr. Winsy Warouw, who all diagnosed the illnesses as common illnesses suffered by many communities in North Sulawesi and Dr. Keith Bentley’s testimony regarding normal mercury and arsenic levels in local residents, there can be no doubt that NMR’s tailings nor any other activities harmed the health of local residents in Buyat Bay.

This – Your Honorable Panel of Judges, concludes my technical and scientific arguments of the case. I believe I have shown that science has been manipulated by unscrupulous individuals to paint a picture of health problems and pollution, when the facts clearly show otherwise. One can only conclude that my accusers must be politically or otherwise motivated and are operating in complete defiance of scientific or objective facts.

9. BUYAT CASE IN THE CONTEXT OF THE INDONESIAN MINING SECTOR

The Indonesian mining industry continues to be an important part of economic development and growth in Indonesia. In addition to the substantial direct impact of development and growth in a region, there is an even larger indirect flow of benefits.

Some of the most significant benefits of mining are that it brings development to areas where development would not normally have occurred, it trains and develops people, it creates infrastructure and with mining come better educated and healthier communities. Central to modern mining practices is the principle of Sustainable Development. This principle provides for continued community development subsequent to mine closure so that the financial and social benefits of mining can be enjoyed by local communities long after a mine shuts down. The post-closure socio-economic development program developed several years before the Mesel Mine closure and currently being implemented in the local communities of Ratatotok and Buyat is a prime example of effective and sustainable development arising from the mining industry.

Looking at the mining industry as a whole in Indonesia, there were about 36,000 people directly working for mining companies in 2004 [*Price Waterhouse 2004 report on the mining industry Attachment 29*] and that for every person working directly for the industry it creates at least 12 other jobs within Indonesia. So the mining industry creates employment for just under a half million people in this country, and contributes between 2.5-5% of GDP of the nation. But, in the case of specific Regions that are blessed with natural resources, mining can contribute up to 58% of that Regional GDP. Total direct revenues to the Indonesian Government were to the tune of US\$1.66 billion in 2004 and with higher commodity prices in 2006, this year's annual contributions will be significantly higher.

The mining industry in Indonesia is at a critical juncture because the future for new mines being developed seems relatively bleak. Indonesia is rich in mineral

resources and ranks number 6 in the world for mineral potential but receives less than one half percent of global exploration expenditures. [*Price Waterhouse 2004 report on the mining industry Attachment 29*]

Only certain provinces of Canada and Australia have been placed higher than Indonesia in the mineral potential index. But, potential alone is meaningless and of no value to anyone if exploration and development do not occur. Potential does not employ people, feed or educate our children, generate revenue for the government so the government can provide health care, build infrastructure and roads, all of which are fundamental requirements for the development of any country.

The mining sector has served as a foundation for long-term economic growth for many countries, including the US, Sweden and Finland. In the late nineteenth century, it was the mining sector in the US that helped establish the Research & Development base that ultimately created the strongest manufacturing sector in the world. Similarly, Sweden and Finland that were the dark corners of Europe in the middle of the nineteenth century were transformed into leading examples of modern economies today due to the mining (iron ore) and forestry sectors. Indonesia too can leverage its huge natural resource base in the mining sector for a strong and long-lasting economic growth in the future.

The Fraser Institute of Canada conducts worldwide annual surveys and ranks countries based on a combination of their potential and investment conditions. Sadly, out of 64 nations that have mining potential, Indonesia ranks third from the bottom and only slightly ahead of the Democratic Republic of the Congo and Zimbabwe in investment conditions. Ranking just below Australia and Canada in mineral wealth potential and only slightly ahead of the Congo and Zimbabwe on investment climate is not a desirable position. We want this nation to develop and our children to be as well or better off than we are today. Why is Indonesia at the bottom of the list? The Institute report cites the following reasons: “Regulatory duplication and inconsistencies” and “uncertainty concerning the administration, interpretation and enforcement of existing regulations”.

One could use those exact words to explain, at least in part, why we are all sitting here today. To me and to probably the rest of the world, these words sound systemic to “the Buyat Bay case”. Investors and financial institutions are still watching the developments of this case. They are all sitting back and “scratching their heads” wondering how a company and an individual can be criminally charged in a pollution case when world renowned institutions such as WHO, Minamata Institute, CSIRO in conjunction with Indonesia’s own leading scientific experts and institution say that the Bay and its communities are normal. What’s really going on here?

I believe that the potentials of the Indonesian mining industry are very promising. I also believe that the mining industry will continue to be a major contributor to economic development in Indonesia. However, the Buyat case that forced NMR and me to be here today without any basis, is yet another example of why Indonesia’s economic growth is being hampered by legal uncertainty. The decision to bring NMR and I to trial is a wrong one and one that should have never happened.

10. HISTORY OF NMR AND THE ROLE OF RBN

In this section of this Pledoi I intend to provide a historical perspective in order to help the court understand the evolution and development of NMR's Mesel Mine in North Sulawesi and its relationship and context to this case.

Overview

PT Newmont Minahasa Ray was established and signed a Contract of Work for exploration and exploitation of minerals in the Minahasa and Bolaang Mongondow regencies of North Sulawesi. A discovery of gold ore containing both sulfide and oxide mineralization resulted in the submission of a feasibility study and subsequently the AMDAL. Both documents were approved in 1994. After all necessary approvals were obtained, construction of the facilities in support of a 700,000 tonnes per annum (tpa) gold processing plant commenced in November 1994. Mining of gold-bearing ores was initiated in July 1995 and actual processing of the ore commenced in March 1996. Tailings placement in Buyat Bay commenced on the 21st of March, 1996. The mining of ore from the open pit ceased in October 2001. The processing plant continued to process stock pile ore and to leach gold minerals from the heap leach pad until the end of August, 2004.

Like most mining projects, operations at Mesel Mine evolved throughout the life-of-mine in the continuous effort to maximize the economic efficiency and environmental performance of the mine.

Geology

Gold mineralization in the Mesel area is associated with the introduction of fine-grained arsenical pyrite into decalcified/ dolomitized, pervasively silicified and brecciated carbonate host rock (which in simple environmental terms means the rock is not acid generating). Gold was sub-micron size and generally

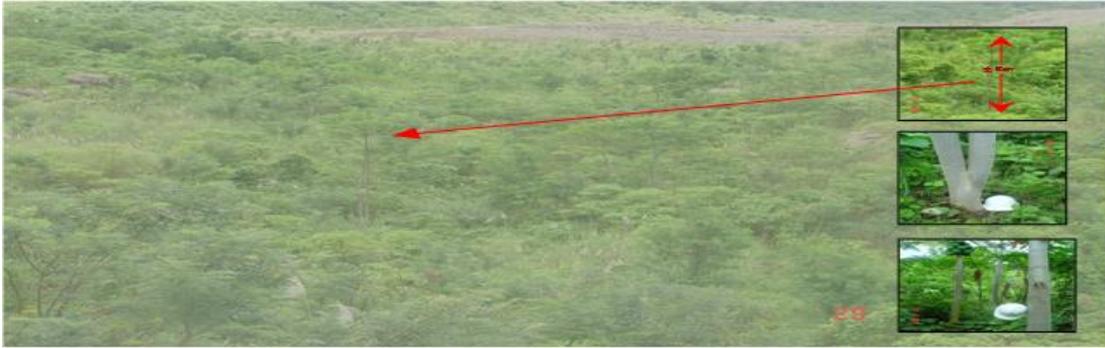
occluded in the fine-grained arsenical pyrite; no visible gold was observed during mining. Gangue mineralogy included quartz, calcite, dolomite and chalcedony, realgar (AsS), orpiment (As₂S₃), stibnite (Sb₂S₃) and cinnabar (HgS). These mineral compounds are not chemically the same nor do they have the same toxic characteristics as arsenic (As) and mercury (Hg) – In the same way as one can not compare hydrogen gas (H) with water (H₂O) or with sulfuric acid (H₂SO₄) just because all have these compounds have hydrogen in them. It is the lack of such basic understanding of the chemistry of this naturally occurring non-soluble mercury compound of cinnabar (HgS) and the arsenic compounds associated with sulfur and iron which were manipulated by unscrupulous NGOs to create fear, mistrust and to stage-manage public perception that is the root cause of the case before you today.

Mining Operations

Mining at Mesel employed conventional open pit mining methods including pre-stripping of soils and overburden, drilling and blasting of ore and waste rock, loading by excavators onto mine trucks and hauling to run-of-mine stockpiles, waste dumps or topsoil stockpiles. After the area was mined, topsoil was returned and vegetation and trees planted to return the mining area back to being as close as possible to pre-mine conditions.

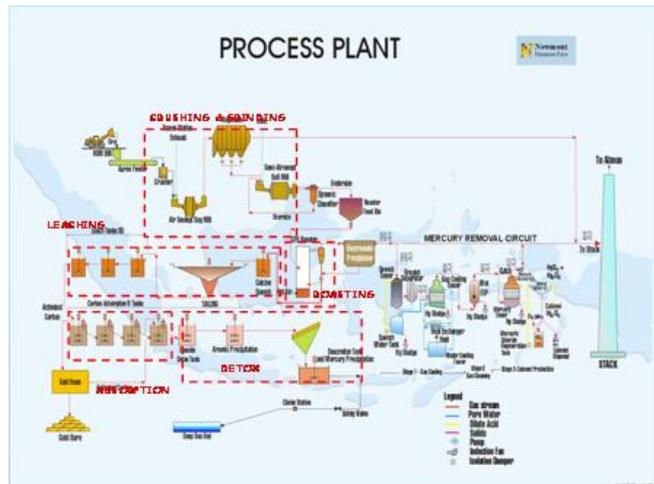
Waste Rock and Topsoil Management

The extraction of ore necessarily results in the generation of waste rock material. At Mesel, approximately 40 million tonnes of waste rock was generated throughout the life-of-mine and stored in engineered facilities at site. During pre-stripping operations and pit expansions, topsoil and overburden material was removed and stockpiled. Unlike waste rock, topsoil and shallow overburden material is not considered waste, as it is used in reclamation programs. An example of a reclaimed mine area is shown below for reference.



Ore Processing and Recovery

Gold was recovered from Minahasa ore primarily using a 700,000 tpa plant which consisted of crushing, dry milling, whole ore roasting, cyanidation/ carbon adsorption, electro winning/ electro-refining, tailings detoxification and a submarine tailings placement system.



In addition, a heap leach facility was commissioned in 1999 to recover non-refractory gold from lower grade oxide ores.

A simplified flow sheet of the Mesel mill process is depicted above.

Tailings Detoxification

Treatment of the tailings slurry was necessary prior to submarine tailings placement. Because of the characteristics of the ore and the milling process, the Mesel Mine tailings slurry contained various forms of cyanide, arsenic, copper, mercury and antimony. The ore was naturally enriched in compounds of arsenic, antimony and mercury above typical background levels. A three-stage detoxification circuit was employed to reduce cyanide, arsenic/antimony and mercury concentrations in the liquid fraction of the tailings slurry prior to discharge to the ocean. Other metals, including copper and iron, were also treated in the process.

The first stage of detoxification following carbon adsorption involved sulfur dioxide (SO_2) -air destruction of cyanide. This cyanide treatment technology utilizes a combination of sulfur dioxide and air, in the presence of copper catalyst to oxidize both free cyanide and metal cyanide complexes to cyanate.

Slurry from the cyanide destruction tanks entered the remaining stages of tailings detoxification for arsenic (and antimony) and mercury removal. Arsenic and antimony were precipitated from liquid solution using ferrous sulfate. Mercury was removed using sodium sulfide (Na_2S) to precipitate highly insoluble synthetic cinnabar (HgS). Following mercury removal, the treated tailings entered a 9.5 km long submarine tailings placement system.

The Submarine Tailings Placement System

Two tailings disposal options were evaluated in NMR's ANDAL document. These were: on-land storage in an impoundment within the Mesel Creek drainage, to the south of the Mesel Pit; and Submarine Tailings Placement (which hereafter I shall refer to as STP) from an outfall at 82-metre depth in Buyat Bay, located approximately 1 km offshore. Potential impacts associated with on-land storage were identified in the ANDAL and included: loss of plantation and mixed garden area (34 ha); degradation of groundwater and surface quality; changes to surface hydrology; and, effects on wildlife or livestock attracted to the impoundment. In addition, the geotechnical stability of tailings impoundment was considered a long-term environmental liability, given that the mine site is located within the Minahasa Arc seismo-tectonic unit (a seismically active region classified as Seismic Zone 2 or the second highest earthquake risk zone) and a high rainfall zone with up to 2 m of precipitation per year.

Potential impacts identified in the ANDAL for the STP option were: degradation of seawater quality; the effects of tailings solids and dissolved constituents on fish, plankton, mangrove and sea grass communities, coral reefs and benthic organisms and benthic habitat. Results from laboratory test-work, numerical modeling and through knowledge gained in previous studies of STP systems at other sites, it was concluded that the impacts were either non-existent,

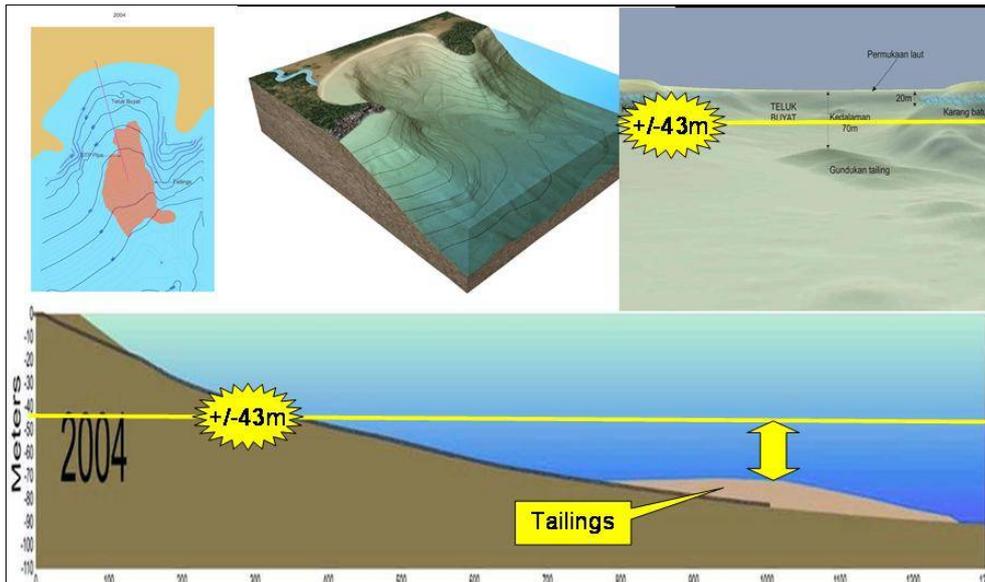
negligible or confined to the duration of active tailings discharge and reversible subsequent to its cessation.

The STP system at Mesel was engineered to place tailings in a controlled manner on the seabed in Buyat Bay. I would like to re-emphasize this point: this was an engineered process, tailings were not dropped or dumped through the water column but the non-toxic tailings that were disposed grew more like an ant hill on the bottom of the sea bed. This is the reason that when people sampled sea water, even one meter above the tailings placement, tailings particles were not observed. This strategy was predicted to insure the long-term physical and chemical stability of the tailings and thereby minimize impacts to the marine ecosystem. In contrast to the on-land storage option, any potential impacts were considered reversible subsequent to system closure and thereby no long-term environmental liability associated with the submarine tailings was envisaged. STP was therefore chosen as the preferred option, predominately based on the site-specific environmental considerations.

The tailings generated from the process plant were transported by submarine pipelines to an outfall at a water depth of 82 m in Buyat Bay, approximately 1 km offshore.

Subsequent to the acceptance of the ANDAL and permitting of the STP system, tailings placement in Buyat Bay commenced in March 1996. An extensive marine monitoring program, encompassing physical, chemical and biological components, was implemented during STP operations to quantify and record potential impacts of STP on the environment in Buyat Bay.

In July 2000, site-specific effluent discharge limits were applied to the tailings slurry by the Ministry of Environment (KLH permit). Continued placement of tailings in Buyat Bay was permitted based on a maximum tailings discharge rate of 5,000 m³/day and compliance with environmental quality standards for the following parameters: pH, arsenic (III), cyanide (WAD and free), mercury, copper and iron. Operational monitoring data and compliance with the site-specific standards have been documented in NMR's quarterly RKL/RPL submissions to government.



To ensure that the methods to minimize impacts are working, NMR conducts a regular and comprehensive monitoring program for air and water quality, stream sedimentation, sea water quality, sea water sedimentation, sea water chemistry, fish flesh, coral reef health, fishing and the deposit of tailings. These monitoring results are reported to the government on a quarterly basis and still continue today, even after the mine is closed. NMR has submitted these quarterly reports to appropriate Government departments on time from 1995 to the present day.

Compliance with Laws and Regulations

NMR endeavored to comply with all existing applicable laws and regulation, at any given point in time, more than 30-40 permits or approvals ranging from something as simple as a permit to employ an expatriate to a permit to discharge tailings, I have elected to summarize in the following table what I deem major milestones and approvals necessary to operate the mine. General or annual approvals normal in the everyday course of business have been eliminated for simplification before this court.

6 November 1986	President of the Republic of Indonesia approves grant of a Contract of Work to PT Newmont Minahasa Raya (PTNMR) by Decree No. B-43-Pres/11/1986.
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18 November 1986	PTNMR incorporated by Notarial Deed numbered 163 and approved by Ministerial Decree No. c2-8254-HT.01.01.TH'86 dated 27 November 1986.
2 December 1986	PTNMR and Government of the Republic of Indonesia sign a Contract of Work (Generation IV).
25 June 1988	Decision of Directorate General of General Mining regarding reduction I of PTNMR Contract of Work area and commencement of exploration period.
4 January 1990	Decision of Directorate General of General Mining regarding reduction II of PTNMR Contract of Work area.
15 April 1991	Decision of Directorate General of General Mining regarding reduction III of PTNMR Contract of Work area and extension of exploration period.
23 January 1993	PTNMR application to enter feasibility study period approved by Ministry of Mines Decree No. 18.K/20/DDJP/1993
5 November 1993	PTNMR submits KA Andal to AMDAL Central Commission of Ministry of Mines and Energy.
26 November 1993	Department of Mines and Energy AMDAL Central Commission issues letter to PTNMR advising KA Andal document is approved by AMDAL Central Commission and attaching evaluation.
6 January 1994	Feasibility study period extended by Decree of Minister of Mines No. 04/K/29/DDJP/1994
3 August 1994	Feasibility study period extended by Decree of Minister of Mines No. 235.K/29/DDJP/1994
29 September 1994	Department of Mines and Energy issues letter approving PTNMR feasibility study.
17 November 1994	Department of Mines and Energy issues Decree No. 4791/0115/SJ.T/1994 to approve PTNMR's ANDAL (Environmental Impact Assessment).
17 November 1994	Department of Mines and Energy issues Decree No. 4792/0115/SJ.T/1994 to approve RKL and RPL and attaching evaluation of RKL and RPL.
14 March 1995	Ministry of Mines and Energy issue Decree No. 83.K/29/DDJP/1995 to approve PTNMR to enter construction phase on their Contract of Work Area. Decree retrospectively effective to 1 December 1994.
23 March 1995	Decision of Director General on Sea Transportation granting PTNMR

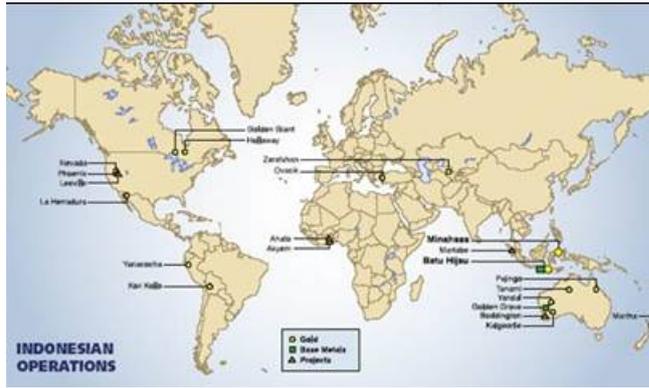
	permit to develop special port facility.
21 March 1996	Mesel process plant commences initial discharge of tailing.
13 May 1996	Letter Directorate General of General Mining to PTNMR regarding principal approval of grant of contract area.
1 July 1996	Full production capacity on oxide ore achieved.
14 April 1997	Minister of Mines and Energy issues Decree No. 230.K/29/M.PE/1997 approving commencement of production operations stage and the "Mining Area" of PTNMR.
31 December 1997	Yearly production of gold is [207,320 oz.] and annual royalties to Government is [\$884,524]
22 September 1997	BAPEDAL issues letter to PTNMR regarding waste oil collection/storage permit.
31 December 1998	Yearly production of gold is [466,880] and annual royalties to Government is [\$782,114]
18 November 1998	PTNMR sends letter to Minister of Mines and Energy requesting approval to undertake heap leach process at Mesel, Letter No. JBS-nd/PTNMR/XI/98-362
3 February 1999	Letter from Minister of Mines and Energy to PTNMR in principle approving PTNMR proposal to conduct heap leaching process and confirming PTNMR to submit revised RKL and RPL.
8 March 1999	Central AMDAL Commission of Department of Mines and Energy issues evaluation of revised RKL and RPL to PTNMR.
10 March 1999	Department of Mines and Energy issues temporary permit to conduct preparatory heap leach base construction.
15 March 1999	PTNMR submits revised RKL and RPL to AMDAL Commission of Department of Mines and Energy.
23 April 1999	Central AMDAL Commission of Department of Mines and Energy issues second evaluation of revised RKL and RPL to PTNMR.
11 June 1999	Revisions to PTNMR's RKL and RPL, as detailed in the RKL supplement and the RPL supplement approved by the Minister of Mines and Energy by Ministerial Decree No. 2049/28/SJN.T/99.
28 June 1999	PTNMR submits final revised RKL and RPL to Central AMDAL Commission.

31 December 1999	Yearly production of gold is [338,579] and annual royalties to Government is [\$941,989]
17 April 2000	PTNMR submits letter to Minister of Environment (Sonny Keraf) requesting permit for STP.
31 December 2000	Yearly production of gold is [391,644] and annual royalties to Government is [\$995,932]
11 July 2000	PTNMR granted a STP permit by Ministerial Decree No. B-1456/BAPEDAL/07/2000 issued by Sonny Keraf, the Minister of Environment. Permit requires PTNMR to undertake an ERA within 6 months from issue date (i.e. by 11 January 2001).
11 January 2001	Letter from PTNMR to Minister of Environmental/BAPEDAL submitting ERA documents.
31 Dec 2001	Yearly production of gold is [343,373] and annual royalties to Government is [\$926,513]
11 July 2001	Letter from PTNMR to Department of Energy and Natural Mineral Resources regarding the extension of permit for Mining Service.
1 August 2001	Letter from Department of Energy and Natural Mineral Resources to PTNMR regarding extension of Mining Service Business Permit.
28 March 2002	"Minahasa Mine Closure Plan" submitted to DGMR.
31 December 2002	Yearly production of gold is [156,561] and annual royalties to Government is [\$536,512]
20 August 2002	DGMR approves success criteria for Minahasa Mines Closure Plan by letter No. 3532/40.01/DJG/2002.
31 December 2002	DGMR approves PTNMR Mine Closure Plan by Ministerial Decree No. 4274/87.03/DJG/2002. (<i>See Mine Closure Plan at 03481-03757 – English version, 04334-04623 - Bahasa</i>)
31 December 2002	Letter from Department of Energy and Natural Mineral Resources to PTNMR regarding approval of mine closure plan, advising several actions required and attaching evaluation on mine closure plan.
18 March 2003	Governor of North Sulawesi approves PTNMR Mine Closure Plan and sends letter to Director of Geology and Natural Mineral Resources regarding mine closure and reporting requirements, environmental obligations and other aspects under PTNMR's CoW.
13 May 2003	Letter from PTNMR to Directorate General of Geology and Natural

	Resources regarding submission of approved mine closure documents and various letter from Department Energy and Natural Resources to Regional Government regarding submission of PTNMR mine closure plan
31 December 2003	Yearly production of gold is [89,339] and annual royalties to Government is [\$546,055]
3 February 2004	Letter from Department Energy and Natural Mineral Resources to Kepala Teknik of all mining companies regarding test results from competency tests.
16 February 2004	Letter from Ministry of Mines and Energy to PTNMR advising of site visit to assess PTNMR application for permit for temporary storage of B3 waste.
19 February 2004	Director General Geology and Natural Mineral Resources issues decision number 013.K/73.05/DJG/2004 on the Implementation of Monitoring Team of Mine Closure PTNMR.
19 February 2004	Director General Geology and Natural Resources issues decree number 013.K/73.05/DJG/2004 on Monitoring Team Implementation of PTNMR Mine Closure Plan
17 June 2004	Letter issued by Ministry of Environment to PTNMR regarding permit for temporary B3 waste storage.
31 December 2004	Yearly production of gold is [78,570] and annual royalties to Government is [\$624,284]
12 August 2004	MenLH issue PTNMR permit No. KepMenLH No. 140/2004 to store B3 waste.
16 August 2004	PTNMR issued letter to Technical Director of DGMR concerning mine closure and confirming cessation of ore processing on 31 August 2004.
31 August 2004	PTNMR ceases ore processing.

Corporate Structure

To first understand how the management structure functions within NMR, one must first look at how Newmont, as a global mining operation functions, and how NMR fits into the larger corporate structure. Newmont Mining Corporation is a leading gold producer with operations on five continents. Newmont was founded in 1921 in New York City. Newmont has been trading on the New



York Stock Exchange (NYSE) since 1925. In addition to the NYSE, Newmont trades on the Australian and Toronto stock exchanges. Newmont is headquartered in Denver, Colorado.

Newmont is committed to high standards and leadership in the areas of environmental management and health and safety for its employees and neighboring communities.

As with any limited liability company incorporated in Indonesia, NMR has shareholders, a Board of Commissioner and a Board of Directors. As members of the Board of Directors, normally we conduct four Board of Directors meetings each year, usually in conjunction with the Board of Commissioners meetings in addition to General Meeting of shareholders annually. As President Director, I am the chairman for both the Board of Directors and Annual General Meeting of shareholders.

I, along with four other Directors comprise of the Board of Directors. During most of the operational period, one of the Directors was based at the mine site and also held the position of General Manager as well as the Technical Mines Manager. The Technical Mines Manager is a function established under the Department of Mines, Health, Safety and Environment Decree (Minister of Mines and Energy 555K/26/M.PE/1995) which regulates and establishes accountability for all matters relating to Occupational Health, Safety and Environment.

My primary duties as the President Director is to help insure that the company complies with the Newmont Mining Companies corporate policies, goals and objectives as handed down, by the shareholders as well as to ensure that the

company operates as outlined by its articles of association or incorporation.

Other functions include:

1. As the President Director and member of the Board, review and approve annual work plan and budget.
2. Conduct periodic field visits to observe facts on the ground.
3. At each quarterly Board meetings, normally in conjunction with the Board of Commissioners, review and approve the report on operations (including environment, health and safety matters) submitted by the General Manager.
4. Interact with all regulators to ensure all regulatory obligations are met.
5. Nominate to Department of Mines, a qualified individual to assume the role and responsibility of the Kepala Teknik.

As with most mining companies, operations at the site are managed by the General Manager, who has all site personnel reporting to him and to which he delegates some of his authority and responsibility. In the case of NMR, the General Manager was responsible for all operational activity in the field, including occupational health, safety and environmental issues. In addition, the General Manager also was responsible for community development and relations with the Government at the provincial, district and sub-district levels.

Financial Contributions

During operations, NMR was the single largest direct and indirect employer in the Minahasa area. Since the inception of operations, NMR and its contractors have employed 700 Indonesians. Of the people employed, 85% are from the Province of North Sulawesi.

There are many other people indirectly employed by the mining industry, such as those who supply mining companies with equipment, construction materials, food products, and all the other things it takes to operate mines. NMR purchases goods from local suppliers whenever possible. Since 1994, NMR has purchased over \$100 million worth of goods and services from the local economy of North Sulawesi.

Benefits are also felt in communities where many community members are employed. Local employees have considerable buying power and are able to purchase a variety of goods and services that can be provided by local businesses.

From the commencement of exploration till the final closure, Newmont will have invested about 20 years in North Sulawesi, providing significant economic benefit for the local communities. Since construction of the mine began in 1994, more than US\$300 million of financial benefit has accrued to Indonesia, including over \$50 million in taxes and royalties paid to the government. Over the eight-year period of operations, total direct and indirect benefits to the Indonesian economy were well in excess of US\$500 million. This does not include elements such as NMR's funding of \$30 million to a foundation which is chartered to continue development and environmental monitoring for the next 10 years.

In addition, as a result of mine closure, many additional items were donated to the communities and government. Examples of these include a 16 megawatt power plant, light vehicles and numerous other assets. I have made no real attempt to quantify the value of benefits but needless to state, those contributions have been significant and substantial.

Mine Closure

The mine closure program's goal is to provide the highest level of protection for the environment and human health of local residents while, maximizing long-term viability of the local economy and leaving a positive legacy in the region subsequent to mine shut-down. The process of planning for the mine's closure has been underway since the mine was started.

According to the Contract of Work, NMR was required to submit a Mine Closure Plan in the fourth quarter of 2002. NMR submitted the Proposed Closure Plan to the Government of Indonesia in March 2002; well ahead of schedule. After various consultations with related parties, the Government approved the plan on 31 December, 2002. The approved mine closure plan contains closure planning programs for all technical, environmental and social/economic aspects

in accordance with the standards and criteria of Indonesia and Newmont Mining Corporation.

Stakeholder consultation was an important process in mine closure to understand the concerns of various stakeholders. Consultative meetings with stakeholder groups at all levels (village/local, district, provincial and national) were held starting March 2001 and resulted in giving valuable input to the mine closure plan.

Reducing the number of employees during the mine closure activity was unavoidable. The company and employees have developed a redundancy program that could accommodate the company's need and ensure a smooth transitional period for the employees. Other programs provided by the company included maintaining some of its employees to work with the company by transferring them to other Newmont projects where positions are available. But irrespective, all employees who have worked for NMR have departed with a higher level of skill and education and will continue to apply their knowledge to develop the economy of North Sulawesi.

Community Development Activities

The purpose of community development is to improve the quality of life in the communities surrounding the mine. The goal is to have the benefits of the mine flow to the surrounding communities not just through direct employment but in other activities that may be encouraged by the presence of the mine (multiplier effect). It is also a goal that these benefits will outlast the life of the mine and that the industries and businesses that develop as a result of the mine will carry on when the mine no longer exists. To attain these goals NMR has contributed in several key areas: Education, Infrastructure Development, Curative Health Care and Vocational Training and Business Development. The goal is not to replace the roles and responsibility of the Government who are primarily responsible for the people's welfare. But as a company and a neighbor, NMR had a significant positive impact on the standard of living in the communities adjacent to the mine.

Education

We at NMR believe that the betterment of communities will be achieved through the education of their children. Because of this belief, two scholarship programs have been established by NMR since 1995 to assist students in completing their education. An Achievement Scholarship program has been in place since 1995 for students in senior high school and university. An economic scholarship programs for those who cannot attend school because of a lack of money also provides elementary, junior and senior high school students with funding. Every year, 100's of students are funded to attain a better education.

Infrastructure

Improvements in infrastructure have been one of the primary requests from the community and implemented by the NMR. A more detailed listing of benefits to communities is attached as a reference to this Pledoi, however, a short summary would include a public health facility providing health care to a community; access to such a facility was not available prior to NMR's presence. Many of the schools and government buildings have been developed from the ground up or renovated, depending on the need. One should not forget that there was not even an all-weather road to Ratatotok prior to the development of NMR. Ratatotok, which is now the government seat of a new Kecamatan, did not have any docking facilities for fishing vessels. NMR has converted some of its infrastructure in cooperation with another company to transform its seaport into a fuel supply point for fishing vessels, a cold storage, ice making and a very large fish processing plant; all of which will add value to the fishing industry in the area which now already has a portion of its fish catch exported abroad. In addition, Buyat/ Lakban has become a place for tourism. Every year 1,000's of people come to swim and enjoy the beautiful beaches in the area. Despite the preposterous allegations perpetrated by the creators of the Buyat-hoax that Buyat Bay is polluted, Buyat/ Lakban has beautiful beaches and a vibrant marine ecology comparable to that of Bunaken. If the Provincial Government makes further improvements to the road to Manado, Buyat and Lakban beaches will be a growing tourist attraction in the years ahead. The

combination of fishing and tourism alone means continual growth and prosperity for the region well after NMR operations have ceased.



Health Improvement

The health improvement program has been engaged since inception of operations. This includes the construction of a village health center by NMR, supplying it with equipment, medical staff and vehicle, which provide services to the surrounding villages. A monthly grant was also provided by NMR to cover the cost of all medicines made available at the health center.

Vocational Training and Business Development

Various vocational training programs have been implemented in order to provide the community members with the opportunities to develop skills that would enable them to pursue sustainable economic development. Business development has included the use of local contractors for activities at the mine, supporting the establishment and training personnel, assisting in the expansion of agriculture projects and other engines of economic growth.

Agriculture and Fisheries Program

Agriculture and fishing have traditionally been, and continue to be, a major source of income for the local communities. NMR had provided fishermen with training in marine culture techniques, developed a seaweed cultivation program, provide loans to upgrade fishing equipment and reducing destructive

fishing practices such as reef bombing. NMR has provided farmers with an opportunity to learn new agricultural techniques at an agriculture demonstration plot.

Minahasa Marine Habitat Enhancement Programs

Unsustainable fishing practices such as reef bombing have resulted in the degradation of reefs in the coastal region of North Sulawesi. Harvesting of mangroves for construction materials has also resulted in significant degradation of this important fish nursery and feeding habitat. NMR initiated and fully-funded the Minahasa Marine Habitat Enhancement Program. This program consists of two components, the Reef Ball Program and the Mangrove Rehabilitation Program. A Reef Ball project was developed which included developing the molds for building the concrete reef structures. The purpose of the reef ball is to increase coral reef growth and the number of fish and thereby improve livelihood for local fishermen. The Reef Ball Program is the biggest Industry-funded Reef Ball project in the world, with over 3,000 deployed. The Mangrove Rehabilitation Program has succeeded in replanting about 5 ha area involving local communities, local NGOs and a local university. This project has been so successful that it was “show cased” at the United Nations 10 year Summit on Sustainable Development in 2002, by the National Geographic Magazine in August -2006 and last month in the North Sulawesi dive and tourism book “Teluk Buyat dan Sekitarnya” (Buyat Bay and adjacent area).



Yayasan Minahasa Raya

As part of the closure program, NMR has also allocated US\$1.5 Million to establish a Yayasan that will pursue future community development and business development activities that will persist after the mine is no longer working.

Goodwill Agreement

NMR and the Government entered into a Goodwill Agreement which will cover the cost of independent third party monitoring and reporting of actual conditions of Buyat Bay as well as continue development programs in the region for the next 10 years. The cost of this program is US\$ 30 million over a 10 year period. This document has already been submitted as evidence, the substance of the agreement is that NMR remains confident that Buyat Bay is NOT polluted and the Government is “unsure” and agrees “that further scientific investigation, monitoring and analysis is appropriate to make final conclusions” or in other words, this court case is premature, baseless, and not rooted in facts.

What may be as importance as the agreement itself is why NMR would enter into an agreement and be willing to spend money if there was no pollution? As I have often stated in court and in various press interviews, the real victims of Buyat Bay are those people living within the neighboring communities surrounding the mine. The area has been hurt economically, people have had their lives disrupted, and have lived in constant confusion for almost two years as a result of the actions of a few people who have spread malicious lies that Buyat Bay was polluted.

From the very beginning, we, as a company and I, individually, have made a commitment to help improve the lives of the people surrounding the mine, even beyond the timeframe of the mine’s closure; and we both have and will continue to live up to that commitment. This agreement lets us work together with the government on a united path that will maintain our commitment for continual and systematic development to help the “victims” who have been hurt by those malicious allegations.

As I have stated from the first day when four villagers were brought to Jakarta with allegations of “Minamata Disease” being caused by NMR operation, that there is no pollution in Buyat Bay. None of our environmental monitoring operations or studies conducted by credible institutions has ever indicated any pollution from our mining operation. Buyat Bay is not polluted - full stop! The formation and long term funding of a scientific panel of credible experts to independently monitor and evaluate the environment for the next 10 years will bring additional confidence to all parties that Buyat Bay and the areas surrounding the mine have never, nor will in the future show any signs of pollution. This is a gesture of how sure we are of our science and technology.

The 10-year environmental monitoring program for Buyat Bay will be under the direction of an Independent Scientific Panel. This panel of experts consists of 6 experts that will design the monitoring program, interpret the results and draw conclusions which they will communicate annually to all stakeholders. This panel of expert consists of 3 scientists nominated by NMR and 3 scientists nominated by the Government of Indonesia. The letters of confirmation and acceptance of the panel members by Government and NMR are attached to this Pledoi. The Government-nominated panel members are:

1. Dr. Inneke Rumengan
2. Dr. Amin Subandrio
3. Dr. Achmad Sjarmidi

This court is familiar with Dr. Inneke Rumengan from UNSRAT who provided expert testimony on the behalf of the defense in the field of marine ecology.

The NMR-nominated scientists are:

1. Professor Irene Umboh
2. Dr. Keith Bentley
3. Dr. Donald Langmuir

This court will note that Professor Irene Umboh of the State University of Manado (UNIMA) was the lead researcher in a study that looked at physical and social aspects of the Buyat Bay case. Her report on the subject has been

submitted as evidence by our defense and she and her co-researches have also published their work in the proceedings of the UNSRAT International Seminar held in May 2005. This document has also been submitted to this court as evidence by the defense team. This court will also recall Dr. Keith Bentley who was a defense expert witness and gave testimony in the field of human toxicology.

I have the utmost confidence in this group of experts and look forward to their study and conclusions in the coming years. This group of credible and independent scientists will focus on facts and scientific principles and I believe they will arrive at the same conclusions as all neutral scientists and institutions to date. The ultimate conclusions being that Buyat Bay is not polluted. Despite the efforts of certain individuals and distortion of the truth by anti-development activists, the truth will ultimately conquer all. Everyone in the future will know that Buyat Bay is not polluted and therefore agree with the absurdity of these charges against me and NMR.

Many people have asked - why enter into an agreement with the government? Well ultimately, the government is the prime mover of health, education, and development of a region. Part of the Buyat Bay controversy has also been an attack on the Government's inability to provide health care and other services to the community. It is logical to include the government at the National, Provincial, Regional and Local levels.

That's what the establishment of the foundation through the Goodwill Agreement is all about. It is a contractual commitment with the government to help them do what governments do, or should do, that is to provide the educational, health and development infrastructure necessary to keep the economy growing in the local communities.

Efforts to Preserve the Environment.

First of all, Newmont is a publicly owned company with shareholders all over the world. As a result, shareholders demand through the Board of Directors that every "Newmont" entity adopt the very best practices in their environment, health and safety management programs, and to apply these principles uniformly to all subsidiary operations including NMR.

Therefore, Newmont has developed corporate principles that clearly state its commitment to the highest standards in the areas of environment, health and safety. From corporate policy perspective, Newmont developed a vision and value statement that stresses the goals of environmental and social performance through best practice. This means that it is everyone's goal to perform better than the bare minimum requirements of regulations. These same principles are adopted in the vision and value statement of NMR.

As part of our corporate policy, we place special emphasis on our social responsibilities. We aim to maximize health benefits of our communities and create sustainable long-term economic opportunities for them. These corporate objectives also translate into a code of business ethics and conduct that are applicable to every employee and affiliates of NMR. These codes set performance standard for NMR that are in many cases superior to the requirements of national and international standards. I believe that the operational results presented before this court in sworn testimony and in evidence confirm that these corporate principles were fully internalized in our day-to-day operations in the areas of environmental management and community development.

The allegation that I intentionally or knowingly failed to apply any effort towards preserving the environment is entirely false. On the contrary, NMR and I applied every effort over and beyond the requirements of the law to ensure that the environment is fully preserved. The level of effort to preserve the environment is derived from our very strong corporate policies on environmental and social performance.

There are twelve specific activities related to environmental, health and safety goals that were continually undertaken by NMR. These activities are the testimony of commitment and continual effort made by NMR employees to preserve the environment. These activities include:

1. Baseline studies and AMDAL were completed including extensive monitoring and management plans to care and evaluate environmental management.

2. Voluntary TCLP testing and monitoring were conducted to verify NMR's tailings were not a B3 waste and ensure no adverse environmental impact occurred and that the prediction in the AMDAL were accurate.
3. Monitoring detoxification systems was conducted every 2 hours, again on a voluntary basis.
4. Daily averages were reported to the government even though RKL/RPL reporting required monthly averages. This was done to ensure total transparency in its operating performance.
5. The company extensively utilized domestic academic institutions to strengthen quality assurance of the monitoring process.
6. The company used world-renowned experts from international firms such as Lorax, Sheppard Miller, Rescan and others to conduct analysis of environmental performance and for "Best Practices" advice.
7. Every NMR employee operated responsibly to react to any upset conditions. For example, immediate shutdown of operations if any disruptions occurred and advised regulators of any disruptions.
8. From the beginning, NMR's placed occupational health, safety and environment ahead of production and profitability. As an example; we tested employees, many of whom live in the local communities, each month for heavy metal exposure.
9. Extensive training programs for employees were implemented to insure qualified personnel were in control of the process.
10. All employees practiced a commitment towards continual improvement in all areas, including health, safety and environmental performance and one just has to look at operating records to see this was achieved.
11. NMR maintained its commitment to health, education, infrastructure and economic growth. The total living environment of the communities surrounding the mine actually improved not degraded as a result of NMR's presence throughout the life of the mine.

12. The net result is that the people living in communities surrounding the mine are healthier than what is shown by the national average, and this too in a region where before NMR's entry on the scene, no medical facilities were available or existed.

11. SCIENTIFIC AND MEDICAL STUDIES AT BUYAT BAY

Your Honorable Panel of Judges:

There are over 30 independent scientific and medical studies done to date at Buyat Bay and in the local communities that have irrefutably proven that Buyat Bay is not polluted, NMR's tailings are not hazardous or toxic waste and have not adversely impacted the marine environment and the health of local residents has not been negatively impacted by NMR's operations. These study findings are consistent with NMR's own environmental monitoring data that has been reported to Government every 3 months. For the benefit of the court, I have selected 15 of these studies and summarized their conclusions to assist the Honorable Panel of Judges in their review of written evidence which has already been submitted before this court.

North Sulawesi Team (2000)

Based on the assignment letter from Deputy Governor of North Sulawesi, No 660.1/BPDL/1/777/99, a team was established in 1999 to determine if PTNMR's tailings were hazardous and/or toxic (B3). The study team included: the Regional Environmental Monitoring Agency (Bapedalda) of North Sulawesi, Expert Team of Bapedalda, North Sulawesi Office of Mines and Energy Department, PTNMR and Regional House representatives of North Sulawesi. All chemical analysis and testing of tailings and seawater for the study were conducted by Pursarpedal-Bapedal (Center for Environmental Monitoring – Environmental Monitoring Agency). The results of this study were published in a report entitled: "Survey Report – Effects of waste of PT Newmont Minahasa Raya on Toxic Element (Hg, As, Pb, Sb) Content at Buyat Bay and Totok Bay", dated March 2000. This report is entered into evidence as Exhibit T.I-34.

This study measured arsenic and mercury concentrations in seawater and found all samples taken in Buyat Bay to be below the applicable standard. In

addition, Toxicity Characteristics Leaching Procedures (TCLP) was conducted on tailings. TCLP is the standard methodology for assessing whether a substance can be classified as hazardous and/or toxic (B3). The results of the TCLP showed that the metals in tailings were stable with low solubility and that NMR's tailings were not a hazardous or toxic waste (B3). One of the conclusions of the study was: *"To date, concentrations of Hg, As, Pb and Sb in sediment samples from Buyat Bay give no indication of polluting the Buyat bay waters. This condition is indicated by the TCLP value of each element below the standard limit according to Government regulation PP 18 of 1999"*.

UNSRAT Dermatology Study (2001)

A medical survey of villages in the vicinity of NMR's mine site was conducted in March and April 2001 by the Department of Dermatology, Faculty of Medicine, Sam Ratulangi University Manado North Sulawesi, Indonesia. The findings of the study were published in a report entitled: "Survey of Skin Diseases Among the People of the Villages in the Bay of Ratatotok and the Bay of Buyat", by Warouw W.F.Th, Pandaleke H.E.J, Sinolungan J.S.V, Niode N.J, Waworuntu L.V, Pangkahila E.D. This report is entered into evidence as Exhibit T.I-66b.

Door to door visits were conducted in the villages of Ratatotok I, Ratatotok II, Ratatotok Selatan, Ratatotok Timur, Buyat Beach and Buyat by medical teams that consisted of dermatologists, residents of the Department of Dermatology and internship students of the final year from the Medical Faculty of the University of Sam Ratulangi, Manado. This survey covered essentially all the residents in the villages surveyed. Data from the Belang and Kotabunan clinics were also reviewed as part of this study. The result of the survey showed that skin diseases were primarily due to factors such as sanitation, hygiene and nutrition as commonly seen in similar coastal communities in North Sulawesi. Specifically, the report concluded: *"The result of this survey revealed that there is not any adverse reaction or harmful condition caused by mercury or arsenic or other heavy metals. The present skin diseases are of common skin diseases in North Sulawesi."*

WHO/ Minamata Institute Report (2004)

As the result of allegations of health effects by certain individuals in Buyat Bay, the Ministry of Health requested the World Health Organization (WHO) to conduct a study to determine if people were suffering intoxication from mercury or other metals. The WHO in conjunction with the Minamata Institute of Japan conducted a study in Buyat and Totok bays in August 2004. The findings of this study were published in a report entitled: "Mercury Pollution – Buyat and Totok Bays, North Sulawesi, Indonesia", by Mineshi Sakamoto, Ph.D., dated September 8, 2004. This report is entered into evidence as Exhibit T.I-68. The study determined the level of methyl mercury and other heavy metals in hair of local residents from Buyat Bay Village and Rata Totok Village. In addition, a few samples of soil, water and fish were also taken to assess the state of the environment. Sampling for the study was conducted in the field between August 8 and 11, 2004.

One water sample from the beach at Buyat was analyzed and a mercury concentration of 0.2 ng/L (nanograms per liter), which is 0.0002 µg/L or ppb, was recorded. The mercury level in this sample was therefore 5000 times lower than the seawater standard of 1 µg/L for dissolved mercury. The report also concluded that mercury levels in fish from Buyat and Totok Bays were within the normal range. In regards to the people, the report stated that average hair mercury concentrations in the population were 20 times lower than the threshold levels and were similar to the Japanese population and that there were no health effects due to methyl mercury exposure. The study also concluded that all other metals, including arsenic, in the people's hair were all within normal ranges.

North Sulawesi Independent Team (2004)

The study was conducted by Independent Team on Research, North Sulawesi Province (Group A) which consisted of Ir. James Paulus, Dr. Daniel Limbong, Dr. As'ad Paturusi, Dr. Inneke Rumengan, Ir. Danso Ayhuaen, Dr. Desy Mantiri

and Treesye Londa. The findings of the study were presented in a report entitled: "Determination of Mercury and Arsenic in the Compartment of the Marine Ecosystem in Buyat and Totok Bays". Dr. Inneke Rumengan of UNSRAT also testified to the finding and conclusions of this study in court on June 23, 2006. Dr. Daniel Limbong and Dr. As'ad Paturusi also presented the study findings at the UNSRAT International Seminar in May 2005 (Page 169 in Conference Proceedings - Exhibit T.I-61).

The study determined levels of arsenic and mercury in marine sediment; marine biota and seawater. Sampling in Buyat and Totok bays was conducted in late July 2004. Seawater samples collected from Buyat Bay had mercury and arsenic concentrations below the applicable Indonesian standard for the protection of marine biota. All fish samples collected from Buyat Bay had mercury and arsenic concentrations below the WHO and Australian food standards and were therefore safe for consumption. It was determined that sediments in Totok Bay had a higher mercury content than those in Buyat Bay and that sediments in Buyat Bay had a higher arsenic content than those in Totok Bay. Additional studies were also recommended to further research the impact of tailings in Buyat Bay.

Tailings Toxicology Study (2005)

In response to recommendations by the North Sulawesi Independent Team regarding additional studies of tailings, Ir. James Paulus conducted a toxicological study to determine if NMR's tailings were a hazardous waste (B3). Ir. James Paulus was a member of the North Sulawesi Independent Team and is the Head of Toxicology and Pharmaceuticals Laboratory at UNSRAT. The results of this study were published in a paper entitled: "Measuring Quality of the Buyat Bay Sediment by Using Toxicity Characteristics Leaching Procedures (TCLP)", which was presented by Ir. James Paulus at the UNSRAT International Seminar in May 2005 (Page 302 in Conference Proceedings - Exhibit T.I-61).

TCLP is the standard methodology for assessing whether a substance can be classified as hazardous and/or toxic (B3). Ir. Paulus sampled sediments from the tailings footprint in Buyat Bay and conducted TCLP testing. By comparing the results of the TCLP tests and standards referenced in Government Regulation PP18 of 1999 regarding hazardous and toxic waste, he concluded that NMR's tailings placed on the seabed in Buyat Bay are not hazardous or toxic. Furthermore, based on observed mercury and arsenic concentrations in the TCLP solution, Ir. Paulus concluded that NMR's tailings are chemically stable and are not affecting the function of the marine ecosystem in Buyat Bay.

Commonwealth Scientific and Industrial Research Organization (CSIRO, 2004)

In response to allegations of pollution, NMR commissioned CSIRO to conduct a study focussing on arsenic and mercury in the marine environment of Buyat Bay. All sampling, analysis and interpretation of results were conducted by CSIRO personnel and at CSIRO's accredited laboratory in Australia. CSIRO is an independent organization that conducts scientific studies on behalf of government institutions, non-government institutions and the private sector. They have a well deserved reputation for being independent and to adhere to the highest scientific principles. The results of the study are presented in a report entitled: "PT Newmont Minahasa Raya, Environmental Monitoring Study August 2004" by S.C. Apte, S.L. Simpson, R.F. Jung, G.E. Batley and L.T. Hales, dated October 2004 (Report # ET/IR729R). This report is entered into evidence as Exhibit T.I-14d. Dr. Stuart Simpson of CSIRO also presented the study finding at the UNSRAT International Seminar in May 2005 (Page 284 in Conference Proceedings - Exhibit T.I-61). In this study, sediment, seawater and fish samples were collected from Buyat and Totok bays. Sampling for the study was conducted in the field between August 10 and 13, 2004.

Arsenic and mercury were present in sediment samples collected from the seabed in Buyat Bay. This is as expected and envisaged in NMR's ANDAL, as tailings were placed in Buyat Bay. Metal concentrations including mercury and arsenic in seawater samples taken from Buyat Bay were all well below the

applicable environmental standards for both Indonesia and USA. All arsenic and mercury concentrations measured in fish from Buyat Bay were below WHO and Australian food standards and were within normal ranges for fish anywhere in the world's oceans. In its final conclusion the CSIRO report states: *“Fish are relatively long-lived receptors that are high in the food chain, making them a good indicator of metal availability in the environment. The general absence of elevated metal concentrations in fish muscle and liver tissue in this study is therefore a good indicator that metal availability in the waters of Buyat Bay and the surrounding marine waters is not excessive and would not be considered a polluted environment. The concentrations of metals in the water column were also below regulatory standards and provide further evidence to support this conclusion.”*

Ministry of Health – Public Health Audit (2004)

Since the mercury poisoning allegations were proven to be false by WHO/Minamata Institute study, some individuals changed their allegation to arsenic poisoning or occurrence of strange diseases in local residents. As a response, a Public Health Audit team was established by the Ministry of Health. Public Health Audit team consisted of experts from the University of Indonesia (Faculty of Public Health, Faculty of Mathematics and Natural Sciences, Faculty of Medicine), University of Sam Ratulangi (Faculty of Medicine and Faculty of Marine Sciences), University of Gadjah Mada (Faculty of Medicine) and University of Airlangga (Faculty of Public Health). The team was facilitated by the Ministry of Health (Director General of Contagious Disease Eradication and Environmental Health, Center for Health Research and Development, Provincial Office Health-North Sulawesi, Regency Health Office-South Minahasa and Center for Environmental Health Techniques, Manado). The team was lead by Prof. Dr. Haryoto Kusnopranto, SKM, Dr. PH (University of Indonesia). Mercury, arsenic and antimony levels in blood and hair samples of 222 individuals were determined by National Institute of Minamata Disease Japan (WHO Collaborating Center). In addition, a health examination was

conducted involving a number of neurologists, internists, and dermatologists in accordance with the prevailing procedures.

The audit was undertaken from October to November 2004. The results of the Health Audit were published in a Press Release by the team in Jakarta on May 6, 2005. This Press Release is entered into evidence as Exhibit T.I-67d. Prof. Dr. Haryoto Kusnoputranto also presented the study finding at the UNSRAT International Seminar in May 2005 (Page 99 in Conference Proceedings - Exhibit T.I-61). The study results led the team to conclude that mercury, arsenic and antimony levels in hair and blood of the local population were below tolerable thresholds values as established by WHO/ICPS. As well as clearly identifying all the prevalent diseases in the local communities, none of which were “strange”, the team established that there was no connection between heavy metals and the health status of local residents. Specifically, the team state in the Press Release: *“There is not enough evidence to conclude that the prevalence of such diseases (neuropathy, lymphoma, and dermatitis) in study areas can be associated with Hg, As, and Sb heavy metals.”*

Ministry of Environment Buyat Bay Report (October 14, 2004)

The then Minister of Environment, Mr. Nabel Makarim commissioned a study in July 2004 to determine the environmental status of Buyat Bay. An integrated team comprising of KLH staff, NGOs, academic scientists and other government ministries was established to conduct a study to assess environmental conditions in Buyat Bay. The study involved assessment of various physical, chemical and biological parameters through a field sampling program. Field sampling at Buyat Bay was conducted in late August 2004 to early September 2004. The Ministry of Environment issued a report on the Integrated Team findings entitled: “Report – Environmental Quality Assessment of Buyat Bay and Totok Bay” dated 14 October, 2004. This report is entered into evidence as Exhibit T.I-14a. It is important to note that is the same study and the same data as the subsequent report, dated November 8, 2004, compiled by some members of the team that suggested the health of the

environment in Buyat Bay had been impacted by NMR's tailings. The original Ministry of Environment report however had very different conclusions.

In general, the Ministry of Environment report concluded that Buyat Bay was not polluted. Specifically, the key conclusions of the report in respect to Buyat Bay and the Buyat River were:

- *“Data shows that the water in Buyat Bay is not polluted. All parameters of water quality are well below the standards. Further, the quality of water in Buyat Bay was found to be the same as the quality of water at the control points, and in Totok Bay.*
- *The data on fish collected by the integrated field team found that total mercury in fish is below standard prescribed by World Health Organization. This finding is the same as the finding of the September 2004 study by the joint team from WHO-Indonesia and the National Institute of Minamata Disease, Japan, which was conducted for the Ministry of Health. The data also shows that the level of inorganic arsenic (10% of total arsenic) in fish is below the standard prescribed by the Food Standard of Australia and New Zealand.*
- *Data shows that the dissolved metals in River Buyat and River Totok are below the standard for Class-1 water quality.”*

State University of Manado Social Study (2004)

The State University of Manado (UNIMA) conducted an independent study of the Buyat Bay situation in 2004. The team of scientists and sociologists was lead by Prof. Dr. M.I.J. Umboh. The findings of the study were published in a report entitled: “Buyat Study Report-Social Aspects Assessment”. This report is entered into evidence as Exhibit T.I-1. In addition, Dr. Ferdinand Kerebungu, who was a member of the UNIMA research team, presented the findings of the study in a paper entitled: “Social Environmental Study on People of Buyat” at the International Seminar held by UNSRAT in May 2005 (Page 104 in Conference Proceedings - Exhibit T.I-61).

This study looked into the various social influences on the community at Buyat Bay. Specifically, the study uncovered the role of local activists and local and national NGOs in fermenting social conflict and creating the issue of pollution to further their own self interest. In addition to social and political findings of the study, the report stated: *“the diseases found at Buyat Bay are caused by the absence of environmental sanitation to date [and] the low level of education among members of the community, which has caused them to have a low understanding regarding health.”*

State University of Manado Physical Environment Study (2004)

In response to the pollution allegation in Buyat Bay, UNIMA conducted an independent study on the physical environment in Buyat Bay and Buyat River. The study was conducted between early July and late November 2004. The study focused on mercury and arsenic and involved sampling for seawater quality, marine sediment quality and marine biota in Buyat Bay and river water and sediment quality in Buyat River. The results of the study were presented by Prof. Dr. Irene Umboh at the International Seminar held by UNSRAT in May 2005 in a paper entitled: “Study on Physical Environment at Buyat Bay”, By M.I.J. Umboh, Tress K. Londa, R. Rumampuk Murdiyanto, F. Wurangian and J. Tani (Page 228 in Conference Proceedings - Exhibit T.I-61).

The study concluded that mercury and arsenic were below applicable quality standards for all compartments measured in Buyat Bay and Buyat River. Specifically, the report concluded: *“Thus from the research results mentioned above, the organisms from the Buyat Bay are still safe and healthy to be consumed by the people.”*

UNSRAT Arsenic in Humans Study (2005)

A study of arsenic in the urine of local residents of the area was conducted in 2005 by the Faculty of Medicine of UNSRAT, in cooperation with Health Office of North Sulawesi and that of the South Minahasa Regency. The study conducted between March 12 and 16, 2005, in which 100 individuals from

Ratatotok Village, Buyat Pante, Buyat Village and Tanawangko (as a reference location) were tested. The results of the study were published in a paper entitled: "Urinary Total and Speciated Arsenic in North Sulawesi Communities" by dr. Joy A. M. Rattu and dr. Recky Sondakh, Faculty of Medicine, UNSRAT, Manado, which was presented at the International Seminar held by UNSRAT in May 2005 (Page 313 in Conference Proceedings - Exhibit T.I-61).

This study showed that levels of the toxic, inorganic form of arsenic in local residents was very low as compared to other international studies. The study further concluded that the levels of arsenic "are at least an order of magnitude below the levels where one might expect to see skin pigmentation changes in the population and two orders of magnitude below the levels normally associated with arsenicosis and other arsenic-related diseases." This means that arsenic levels measured in local residents were 10 to 100 times lower than levels at which health effects would be expected. This study clearly showed that arsenic levels in local residents were at normal levels and no health effects would be expected in the local communities around Buyat Bay due to exposure to arsenic.

ITB/ UGM Buyat River and Hydrogeology Study (2005)

In 2005 NMR commissioned a study to address two key issues: i) the environmental conditions in the Buyat River and the source of trace amounts of arsenic present in shallow community wells in Buyat Village. The research team comprised of Dr. Ir. Rudy Sayoga Gautama, Professor Doctor Rubini Soeryaatmadja and Professor Doctor Sudarto Notosiswoyo, all of ITB and Dr. Ir. Heru Hendrayana from the School of Engineering, Gadjah Mada University. The research included geological and topographical mapping, Buyat River flow measurements, mineralogical assessment, water chemical analysis and drilling. The research focussed on arsenic and mercury in river and well waters. The research was conducted in the field between April and July 2005 and the findings of the study were published in a report entitled: "Research on Hydrogeology System in Buyat Area, North Sulawesi". This report is entered into evidence as Exhibit T.I-90.

The conclusions of the study were that arsenic and mercury in the Buyat River were well below the applicable water quality standards and that NMR's mine site was not having a negative impact on river water quality. The arsenic in shallow community wells in Buyat Village was not coming from NMR's mine site or other mining activities and that the source of the arsenic was a natural mineral called arsenopyrite, which occurs in the soils below the village. Specifically the report stated: *"Results of water chemical analysis did not indicate any impact of mining activities on the groundwater quality in Buyat Village."*

UNSRAT Coral Reef Research (1996-2005)

UNSRAT has been conducting yearly coral reef surveys in and around Buyat Bay for the last 10 years. The survey use the latest scientific protocols for recording and documenting coral reef and fish in order to establish trends in the health of the coral reef ecosystem over time. The work is conducted by a team of marine experts from UNSRAT led by Ir. L.T.X. Lamentik. The findings of the surveys have been published in annual scientific reports. These reports are entered into evidence as Exhibits T.I-29a to T.I-29n.

The studies have consistently recorded a living and thriving coral reef ecosystem in Buyat Bay. Several changes in the composition of the corals have also been recorded over time. Three major causes have been identified as key influences in the documented changes in coral conditions. These were: the natural bleaching events in 1997 and 2000, the proliferation of crown of thorns starfish in 1997, and the existence of illegal fishing activities from 1996 to 2002. It is clear from the 10 years of UNSRAT's monitoring data that NMR's tailings have had no negative effect on the coral reef or coral fish communities in Buyat Bay. In fact the UNSRAT study has found that the reef ball program sponsored by NMR has generally improved the status of coral reefs in and around Buyat Bay resulting in significantly greater coral cover and diversity.

UNSRAT International Seminar (2005)

43 scientists from Indonesia, Canada, Australia and Germany participated in an International Seminar organized by Sam Ratulangi University, Manado, entitled "Mining, Environment, and Sustainable Development: A Lesson from the Gold Mining Controversy in Buyat Bay, North Sulawesi, Indonesia", which was held in Manado on 9-10 May 2005. The Seminar Proceedings document is entered into evidence as Exhibit T.I-61.

Subsequent to study presentations by Indonesian and International scientists and medical doctors and panel discussions, the seminar participants working through a formulating team, formulated a number of conclusions regarding the scientific and medical findings of research scientists. The members of the formulating team, who were signatories to the seminar conclusions, were: Prof. dr. Haryoto Kusnoputranto, Dr. PH. (UI), Prof. Irene Umboh, DEA, Eleonore Blaurock-Busch, Ph.D. (IBCMT-Germany), Dr. Keith Bentley (Centre of Environmental Health – Australia), Prof. dr. Otto Soemarwoto (UNPAD), Prof. Dr. Ir. Daniel Moninta, M.Sc., Prof. dr. Winsy Warouw, Sp.KK. (K) (UNSRAT), Dr. Ir. Heru Hendrayana (UGM), P.L. Coutrier (IPLHI), Prof. Dr. S. Berhimpon (UNSRAT), Prof. Dr. K.W.A. Masengi (UNSRAT), Prof. Dr. Ir. S. Rondonuwu-L, M.Sc. and Prof. Dr. Ir. Ellen Kumaat, DEA (UNSRAT).

The International Seminar conclusions were:

- *“There has never been any scientific evidence showing that the alleged environmental pollution has occurred.*
- *The quality/condition of seawater in Buyat Bay when linked with the contents of heavy metals does not show any indication/level harmful to marine biota.*
- *Coral reefs in Buyat Bay waters have grown normally.*
- *Concentrations of heavy metals (mercury [Hg] and arsenic [As]) in fish in Buyat Bay waters are below the WHO (World Health Organization) standard limits. This means that the fish are safe to be consumed by the community.*
- *The average concentrations of all heavy metals examined (Hg in blood and hair, As in blood, hair, and urine) in the bodies of the residents of Ratatotok,*

Buyat Pante, Buyat and Belang are below the tolerable concentration value/limit (WHO-IPCS).

- *There is no significant correlation between the concentrations of heavy metals (Hg and As) in the residents' bodies and the diseases suffered by the residents living around Ratatotok and Buyat, particularly neuropathy, "lump"/benign tumor (lymphoma, atheroma cyst , fibroma, papiloma and neurofibromatosis), skin diseases/dermatitis.*
- *Direct correlation between the high As content in ground water in Buyat and mining activities is not scientifically proven.*
- *Sources of contaminants come from various locations.*
- *The Buyat controversy has, to a great extent, been triggered by a social and economic gap in the region."*

National Geographic Magazine (2006)

In its August 2006 issue, The National Geographic Magazine published an article entitled: "Paradise of Dome Corals" which focused on coral reefs in Buyat Bay. This article is entered into evidence as Exhibit T.I-28a. This article likens the area around Buyat to Lembeh Strait and National Sea Garden of Bunaken, North Sulawesi which are world class diving areas. Given the high circulation and popularity of the National Geographic Magazine, this article is likely to attract a large number of recreational divers to the Buyat Bay area.

In addition to printing an underwater photograph of Buyat Bay, the article discussed the vast biodiversity and pristine nature of the coral reef ecosystem in and around Buyat Bay. It focuses on the artificial reef ball program sponsored by NMR and coral reef monitoring studies conducted by UNSRAT. The article states: *"The survey conducted by University of Sam Ratulangi in September 2005 found 84 species and 12 types of coral fish have inhabited in the waters, including 50 genera of rock corals, 44 of which grow well at the reef balls..."*

12. RESPONSES TO THE REVISED REPORT OF THE INTEGRATED TEAM ISSUED ON NOVEMBER 8, 2004

As has been stated several times during this court trial, the Revised Report of the Technical Team issued on November 8, is a political re-write of the KLH October 14 report by NGO and some members of KLH. This report used the same data of the KLH report, which concluded that Buyat bay was not polluted, and uses questionable scientific analysis and interpretation to draw unfounded conclusions. This was demonstrated by several dissenting opinions being submitted in writing by members of the original technical team. Dissenting opinions which have been entered into evidence include those from personnel from the Ministry of Energy and Mineral Resources, UNSRAT, PERHAPI/ITB and members from the North Sulawesi Government. While a full technical review regarding this report was submitted before this court as Defense Evidence number T.1-59, this section of my Pledoi attempts to articulate the groundless and dubious elements of that report in a summarized fashion.

I have personally written a letter to the Minister of the Environment outlining the technical shortcomings of this revised report in a letter dated September 19, 2006 (Evidence no. 28 on attachment). The last 3 paragraphs of my letter states:

“Minister Witoelar, I respectfully request that your Ministry review the validity of this report. I am well aware this Technical Team was concocting this report prior to your taking office. That report is an embarrassment to the scientific community of Indonesia, your Ministry and the Government as a whole.

PTNMR and I have no problem defending ourselves, our actions, our operational performance, and care for the Environment before the court. Both have no problem addressing allegations, and if necessary, embarrassing some of the NGOs and individuals who perpetrated this pollution hoax before this nation and the

international community. However, neither PTNMR nor I will take any pleasure in having to discredit a report developed by specific individuals under the name of your Ministry.

All that we seek is fairness. I view it in both our interests to uphold the credibility of this administrations institution. Should you need further clarification on the numerous errors contained within the Technical Teams Report, I am more then willing to provide that clarification.”

I have not received a response from the Minister to date.

The actual data in this report show that seawater quality and arsenic and mercury in fish tissue are at normal levels and below applicable standards. However for several parameters for which there are no environmental standards, certain members of the team use erroneous and unscientific methods to arrive at what is clearly their predetermined conclusion that of Buyat Bay is polluted.

The Integrated Team revised report makes some comments about the thermocline being deeper than 110 meters in Buyat Bay. Thermocline was discussed in an earlier section of this Pledoi. The actual temperature data from Buyat Bay as presented by an oceanographic expert, Dr. Andojo Wurjanto of ITB, showed that the thermocline is at a depth of 43 meters, well above the depth at which NMR's tailings were placed (82 meters).

Claims regarding sediment quality, plankton, benthos, risk to human health and arsenic occurring in shallow groundwater wells in Buyat Village are addressed in detail in the following sections.

Allegations of Sediments Being Polluted

Although there are some conclusions of the Revised Integrated Team report which I consider to be a lack of understanding of scientific principles, I am afraid that the statement regarding sediments in Buyat Bay being polluted based on a reported ASEAN: standard can not be explained in any other way than being deliberately misleading. Please let me explain.

The Revised Integrated Team report references the “ASEAN Marine Water Quality Criteria 2004” to conclude that the sediments in the tailing discharge area are “polluted,” based on the levels of arsenic and mercury in marine sediments collected from the tailing mound. Arsenic concentrations ranged from 243 to 666 mg/kg and mercury from 0.025 to 1.51 mg/kg.

Firstly, let’s look at NMR’s ANDAL which was approved by the Government of Indonesia in 1994. The ANDAL provided a sample analysis of tailing solids (Table 3-4 in ANDAL) that showed an arsenic concentration of 840 mg/kg and a mercury concentration of 6.2 mg/kg. Consequently, the concentrations of those metals reported in the Revised Integrated team report are within the range that would be expected based on the sample data that was reported in the ANDAL, as approved by the Indonesian government. The presence of arsenic- and mercury-containing compounds such as ferro-arsenate and cinnabar in the tailing solids is therefore no surprise. The Indonesian Government allowed the deposition of the tailing, containing compounds of arsenic and mercury, into Buyat Bay because these metals are in a stable form and are not released into the water or do not enter the marine ecosystem.

Secondly, there is no ASEAN standard for sediments. Let me explain. The reference quoted in the Revised Integrated Team report as “ASEAN Marine Water Quality Criteria 2004” is actually a paper by a scientist from the Philippines called Deocadiz. He presented a paper in an Australian AID workshop in 2004 which was designed to help ASEAN countries develop marine water quality criteria. This is sea water quality and not sediment quality. Specifically, the Revised Integrated Team report states that the ASEAN document provides that sediment arsenic levels between 50 to 3,000 mg/kg and sediment mercury levels between 0.4 and 350 mg/kg constitute polluted sediments. Somehow a paper by a scientist at a workshop becomes an ASEAN standard in the Integrated Team report. However, the ranges referenced in Deocadiz’s paper are not standards or criteria for sediment quality. Those values simply represent ranges of sediment metal levels that were observed during one study of arsenic at a single location in the Gulf of Bothnia, Sweden (Hallberg, 1979) and during two disparate studies of mercury at locations in Norway and Great Britain (Skei, 1978, and Bartlett, et al., 1978).

The fact is that these concentration ranges are only isolated field observations and not ASEAN standards for sediment quality.

A more detailed explanation of the misleading statements of the Revised Integrated Team report is provided in a review document compiled by Indonesia and International scientists entitled: "Technical Review of the Ministry of the Environment November 2004 Report on Buyat Bay" (Evidence T.I-59). Specifically regarding sediments, the report states (Page 52):

"In summary, there is no scientific basis for suggesting that the ranges referenced in ASEAN (2004) and cited in the Revised Report constitute sediment quality guidelines or standards. The referenced ranges are nothing more than isolated field observations from dissimilar geographic regions. Those ranges have never been established as sediment quality standards based on any scientific assessment of human health or ecosystem effects, and have been incorrectly used by the Revised Report as an indicator of sediment quality. In fact, there are no established, legally enforceable sediment quality standards in Indonesia or other parts of the world. The lack of international standards for metals in sediment is due to the fact that there is no direct correlation between sediment metal levels and environmental impacts. Rather it is the fraction of metals in sediments which is unstable or bioavailable that determines its toxicity to marine organisms. There is a suite of tests (e.g., TCLP, toxicity tests, pore water assessments, etc.) that are typically conducted to assess potential environmental impacts of metals associated with sediments. Consequently, the Revised Report's suggestion that there is a general criteria or guideline that defines polluted marine sediments is unfounded and has no scientific or regulatory basis."

In addition, I personally contacted the ASEAN Environmental office and requested any sediment standards that they may have. ASEAN Environmental Division confirmed that they only have water quality standards and no sediment

standards. This is no surprise as there is no country in the world that has legally enforceable sediment quality standards.

So to summarize, observed arsenic and mercury concentrations in sediments in Buyat Bay are as presented in the ANDAL and approved by the Government of Indonesia. The metals are locked in stable minerals that do not affect seawater quality or the marine ecosystem. There are no Indonesian or ASEAN sediment quality standards that can be used to conclude the sediments in Buyat Bay are polluted. In fact no country in the world has sediment quality standards, as it is the form rather than the concentration of metals that is of environmental relevance. The forms of metals in NMR's tailings has been proven through ANDAL studies and 8 years of environmental monitoring to be safe resulting in no adverse impacts to the marine ecosystem.

Allegation of Plankton Being Impacted

The discussion about plankton in the Revised Integrated Team report is typical of the misuse of science in support of certain team members' pre-determined conclusions about Buyat Bay being polluted. In their zeal to find NMR guilty, members of NGOs and certain members of KLH within the team have fabricated a case that is at best an embarrassment to KLH, and at worst, has damaged the reputation of the Indonesian scientific community. The basic premise of the Revised Integrated Team report is that plankton community structure is different in Buyat Bay as compared to Totok Bay and therefore Buyat Bay can be considered a "perturbed" environment. A detailed review of the plankton components of the Revised Integrated Team report is provided in Chapter 5 of the document entitled: "Technical Review of the Ministry of the Environment November 2004 Report on Buyat Bay", authored by a number of Indonesian and International experts. In summary, this report states:

"The Revised Report concludes incorrectly that phytoplankton have been adversely affected in Buyat Bay compared to Totok Bay. The Revised Report authors employed improper plankton sampling methods, and the results cannot be used for any scientific analysis.

Moreover, the Revised Report's use of diversity and similarity indexes to evaluate that data is inconsistent with well-accepted analytical practices."

The group of scientists who reviewed that report pointed out that there were many factors in the observed plankton distribution in Buyat and Totok bays. Plankton community structure varies depending on location and time. In regards to sampling methods by the Integrated Team, the review scientists concluded that there were numerous defects in the plankton sampling protocol, specifically.

- 1. The sampling period of only 6 days was too short to collect representative samples. That is an insufficient time to collect representative samples, given the extremely variable population dynamics exhibited by plankton. Any number of factors could dramatically affect the size and composition of plankton populations at any point in time, including, winds, freshwater runoff, tidal changes and seasonal currents. It is simply impossible to draw any conclusions as to the overall size, composition and health of plankton communities in Buyat and Totok bays based on a 6-day sampling period.*
- 2. The sample collectors used improperly sized nets to collect samples. Plankton samples were collected with a net of 55 micron mesh which is too large to collect a representative phytoplankton sample. In fact, more than 90 % of the phytoplankton would be too small to be captured by such a net, and would have escaped collection. Additionally, a 55 micron mesh net is too small to collect representative zooplankton samples. Consequently, it is impossible to draw any accurate conclusions as to the overall phytoplankton and zooplankton species composition and diversity within Buyat and Totok bays based on the sampling protocol reported in the Revised Report.*
- 3. The Revised Report states that plankton was collected by "surface sampling," whereby the nets were dragged across the surface of the water from motor boats. Again, it is well-accepted that sampling at the ocean surface does not yield representative marine plankton population samples, since the surface layer often contains freshwater lenses as a result of precipitation and land run-off. This is especially true in areas, such as*

Buyat and Totok bays which are fed by rivers that provide a significant freshwater source. Consequently, the collected samples are not representative of the overall plankton populations within the euphotic zones in the two Bays.

- 4. Regarding the zooplankton samples, it is noted that these were collected during the day at the sea surface. Much of the zooplankton population migrates out of the euphotic zone during the day and is only present near the surface at night. Therefore, zooplankton samples are best collected at night.*

The technical review authors state:

“In summary, the sample collection protocol employed by the Revised Report authors was contrary to standard scientific methods and ignored the basic biological factors that control plankton diversity and population dynamics. Thus, it is not possible to draw any accurate conclusions on the overall status or health of plankton communities in Buyat and Totok bays based on the Revised Report’s data.”

Even if the plankton samples had been properly collected, the analysis of species diversity and similarity indices presented in the Revised Report shows a lack of scientific understanding which results in erroneous conclusions. Firstly there are no “normal” or “abnormal” ranges for these indices. Also there is no scientific basis for the Revised Report’s apparent assumption that the plankton diversity in Buyat and Totok bays should be the same. In fact there are numerous ecological differences between the two areas that could account for very different plankton communities. For example, Totok Bay is a much more enclosed and protected bay, and would not experience the same wind conditions as Buyat Bay.

To use a common example of how ridiculous the revised report’s authors’ assumptions are, let us use a theoretical comparison of Jakarta and Manado. Let’s say a group of researches state that their study shows that Jakarta has a higher pollution of people than Manado and that there is greater ethnic diversity in Jakarta than in Manado and therefore Manado must be polluted. First, there

is no reason why the two cities should have the same population or ethnic make up. Second, the fact that Jakarta has a higher population and greater ethnic diversity is due to many other factors and has nothing to do with pollution.

The Revised Report states that there is a correlation between higher sediment arsenic levels and a lower phytoplankton diversity index in Buyat and Totok bays. As stated by the technical review authors:

“The numerous errors and omissions in the sampling make data and calculated diversity indices virtually useless for any scientific evaluation.”

However, even if there was a correlation between plankton diversity and sediment arsenic levels, the Revised Report correctly did not suggest that sediment arsenic levels were the cause of lower plankton diversity. Phytoplankton resides only in the euphotic zone of the marine water column, which, in Buyat Bay, has been found to extend from the water surface to approximately 35 to 55 meters in depth. Because the phytoplankton lives in the upper water column, the chemistry of that water is the relevant environmental parameter for evaluating whether the phytoplankton may be affected by contact with metals in the environment, such as arsenic. As the Revised Report found, and has been documented by extensive water monitoring during and after the Mesel Mine operations, the concentration of arsenic in the euphotic zone (<50 m) in Buyat Bay consistently met the strictest Indonesian marine water quality standards. The seawater quality data alone will indicate to any objective scientist that planktons in Buyat Bay are not in any way impacted by NMR's tailings.

Allegations of Benthos Being Impacted

Benthic species, also called benthos, are organisms that live on the seabed. On sandy-muddy seabeds below the euphotic zone, such as the area where tailing was deposited in Buyat Bay, benthic species include fish, crabs, burrowing shellfish and polychaete worms.

In a very similar approach to that taken for plankton, the Integrated Team attempted to collect samples and use benthos diversity and similarity indices to evaluate the environmental conditions in Buyat Bay versus Totok Bay. Again, the sampling protocols used to collect the benthos data were inadequate to provide reliable results, and the resulting data are unusable for any sound scientific analysis of the status of benthos populations in Buyat and Totok bays. And here again, the Revised Report's application of the benthos diversity and similarity indexes is contrary to standard scientific principles. These again were the conclusions of the technical review scientists from Indonesia and abroad that presented their findings in a report entitled: "Technical Review of the Ministry of the Environment November 2004 Report on Buyat Bay". They concluded:

"The Revised Report also concludes incorrectly that benthic species have been unduly impacted by the tailing placement. However, as with the plankton sampling, the methods employed to collect benthic samples deviated substantially from acceptable practices, and the results are unreliable for any scientific analysis."

Firstly, it is important to note that burial of benthos by NMR's tailings resulting in a short-term decrease in benthos populations within the tailings footprint in Buyat Bay was an acknowledged impact of submarine tailings deposit and was clearly described in the ANDAL. This is due to burial of benthos by tailing and not due to any chemical or toxicological effects. Data collected during and since mine operation document that actual impacts to benthic species were less than predicted in the pre-mining analyses, and that benthos are re-colonizing and living on the tailing sediment. Specifically, benthic surveys conducted in the Buyat Bay area since the start of mining operations have documented approximately 1,000 different species, with some samples documenting several hundred individuals per square meter. These results clearly show that the tailings are not toxic to benthos and that the observed impacts are the same or less than those predicted in NMR's Government-approved ANDAL.

Let's look at this in a bit more detail. The ANDAL predicted that there would be a main "footprint" of tailing deposition greater than 1 meter thick that would cover an area of 3.5 square kilometers, with thin patches of tailing covering approximately 3.6 additional square kilometers (Section 6 of ANDAL). The ANDAL also predicted that within the 3.5 square kilometer main footprint area, all stationary benthic organisms would be buried, and that the tailing placement would result in *"the removal of 3.5 square kilometers of benthic habitat together with most of the associated biota."*

Annual benthos survey conducted by NMR and routinely reported to Government of Indonesia show that, instead of covering 3.5 square kilometers as predicted in the ANDAL, the maximum area of seabed with tailing greater than 1 meter thick is approximately 0.26 square kilometers. Additionally, the surveys conducted during the mine operations have documented that even within this 0.26 square kilometer area there has not been a complete loss of benthic habitat. To the contrary, benthos surveys during mining consistently documented that benthos occupy this area, some of them in large numbers. For example, in the 2001 survey, at the tailing outfall point there were 52 live benthos taken by the grab, in other words 520 organisms per square meter, representing 21 benthic species.

As predicted in the ANDAL, it is expected that the diversity of benthos occupying the tailing mound area will increase rapidly (within one to three years) now that the tailing deposition has ceased. These predictions are being proven true by ongoing annual benthos surveys of Buyat Bay subsequent to mine closure.

Apart from not acknowledging the fact that some impacts to benthos were predicted in the ANDAL and actual impacts of NMR tailings placement in Buyat Bay has been less than the predicted levels, the Integrated Team get it wrong again in their own study protocols. It is clear that the sampling methods employed by the Integrated Team were wrong in several respects. Two examples identified by the technical reviewers are:

1. *The samples were collected over a very short period of time in a single month. That single round of sampling is inadequate to account for the*

natural variations in benthos populations and species composition that would be expected. It is highly likely that samples taken from the same locations a few months later would contain different types and numbers of benthic species and individuals. Consequently, it is not possible to draw any conclusions as to overall status of the benthos populations in Buyat and Totok bays, based upon such limited sampling.

- 2. The samplers used two different Ponar Grabs in collecting the benthos samples. The two samplers were different sizes (a smaller sampler was used in Totok Bay and shallow parts of the Buyat Bay, whereas a larger sampler was used further offshore in Buyat Bay) and therefore the samples collected from the two samplers cannot be quantitatively compared. Furthermore, most of the samples in Buyat Bay were collected using a grab without a screen on the topside, while most of the samples in Totok Bay were collected with a grab that did have a screen on the topside. These two grabs would have had very different sampling efficiencies. The grab used in Buyat Bay, without a topside screen, would have set up a pressure wave as it was lowered, and this wave would have displaced (and not captured) small lightweight crustacean and other organisms on the surface of the sediment. Hence, the Buyat Bay sampling would not have collected all the benthos actually present. In contrast, the grab with a screen that was used in Totok Bay would have collected a much larger percentage of the benthos. Thus, the samples collected with the different grabs are not comparable, and it is not possible to draw any valid biological conclusions from a comparison of those samples.*

As with plankton, the Revised Report goes on to misuse a diversity index (the Shannon Wiener Diversity Index) and a similarity index to draw conclusions about the status of benthic populations in Buyat Bay. The Revised Report incorrectly states that Shannon Wiener Diversity Index of less than 1 shows that a sampled area has been heavily polluted. The Revised Report then incorrectly states that because the diversity index for samples in the Buyat Bay area were between 0.683 and 1.099, that area is heavily polluted. Finally, the report contradicts itself and finds that a lower diversity of benthic species could

be caused by numerous factors, including physics, chemistry or biological perturbation.

The technical review authors explain that at any given location, the species composition and population size is likely to vary over time due to a number of factors, such as characteristics of the seabed, currents and tidal effects. There is no reason to assume the benthic population in Totok Bay should be the same as that in Buyat Bay. There are numerous reasons why the benthos diversity in the two areas could vary under natural conditions, especially given the limited sampling period of the Integrated Team study. The most glaring issue is that samples from Totok Bay were taken at very different water depths (approximately 40 m) from those taken in Buyat Bay (>60 m). Depth is one of the most important natural variables that affect the composition of a benthic community, yet the Revised Report authors failed to recognize and control this variable in its sampling protocol and use of the data.

The Revised Integrated Team report also implies some connection between arsenic concentrations in sediments and observed benthos populations in Buyat Bay. In respect to this, the technical review authors state:

“The Revised Report states that there is a correlation between lower benthos diversity index values and higher arsenic concentrations found in Buyat Bay sediments. The Revised Report does not attempt to explain the cause of any such correlation, but implies that the arsenic in Buyat Bay sediments may be adversely impacting the benthos. The “sediments” referred to in the Revised Report that have higher levels of arsenic are tailing. As predicted in the ANDAL the tailing does contain certain metals, such as arsenic, which are in a stable form and are not being released to the marine environment. Further, as discussed above, there has been some reduction in the number of benthic species occupying the tailing mound as a result of the physical deposition of tailing on the seabed and the corresponding burial of some benthos (however, the impacts have been much less than predicted in the ANDAL). Thus, it is to be

expected that there is a correlation between lower benthic diversity and the presence of tailing. However this correlation is due to the temporary physical burial of benthos from tailing, and not the exposure of benthos to metals in the tailing, which are geo-chemically stable.”

In addition, the Revised Report’s suggestion that the benthos collected in Buyat Bay contained elevated levels of mercury is not considered valid by the technical review authors. Firstly, there were too few samples taken to facilitate a justifiable statistical comparison. Secondly, the Revised Report states that the organisms were combined and homogenized and then wet destructed in strong acid. There is no mention of any washing or depositions prior to homogenization to remove and eliminate solid sediment/tailing particles from the benthos. This is a necessary and normal step in the preparation of benthos samples prior to chemical analysis, which if not performed, or not performed adequately and consistently for all samples, invalidates the resulting chemical data. The reason that this step is so critical is that even a small particle of sediment/tailing attached to an organism would contain minerals that, if included with the sample, would produce data reflecting the metal content of the sediments rather than the concentration within the organism tissue. Due to these reasons, the benthos mercury data reported by the Integrated Team is completely meaningless.

The Integrated Team report’s arguments in support of their conclusions are scientifically weak to the point of desperation. Collectively, the above facts and the review comments from the team of Indonesian and International experts shows that the health of the benthos community in Buyat Bay is the same or better than predicted in NMR’s ANDAL, re-colonization of the tailings footprint is underway as predicted and that NMR’s tailings are not toxic to benthos.

Human Health Risk Assessment Conclusions

The Buyat case has generated many odd and unexplainable scientific conclusions, but the one that stands out most prominently is the hazard index

calculation by some members of the Technical Team on Buyat Bay. The calculation error for the hazard index from fish consumption is so outlandish that it has led to overestimating the health risk by more than 4,500 %. On the contrary, if the hazard index is calculated correctly, it shows that the fish from Buyat Bay are perfectly safe for human consumption.

The implication of this error in the Technical Team's report is quite significant because the central conclusion of the report rests on the hazard index calculation itself. Therefore, if the calculation errors for hazard index are corrected, the Technical Team's report would show that Buyat Bay is clean. This result would correct a major flaw in the Technical Team's report.

In this section of the Pledoi, I explain that there are two main sources of errors in the hazard index calculation. First, the Technical Team has applied the wrong formula. And second the error in the hazard index calculation gets further amplified because the Technical Team applies the wrong data. It is the combination of wrong formula with the wrong data that led to overestimating the average daily intake value of arsenic by a factor of 45,00%.

According to the technical team's report, the formula for calculating the average daily intake of arsenic from fish consumption comes from the "Risk Assessment" guidelines developed by Chulaborn University in Thailand. To check whether or not the Technical Team applied the formula correctly, I obtained the original document from Chulaborn University. The parameter-by-parameter comparison of the formula showed that the Technical Team had incorrectly applied the formula in Table 3.7 of their report.

There are three critical errors in the formula used by the Technical Team. These errors pertain to the definition and the units of measurement for the following parameters:

1. **Ingestion Rate (IR)**
2. **Exposure Frequency (EF)**
3. **Exposure Duration (ED)**

These errors are highlighted in the table at the end of this section. First the parameter “**Ingestion Rate (IR)**” has been applied incorrectly. As shown in Row-2/Col-3, the original reference defines IR as “Ingestion Rate” measured as “kg of fish per meal”. But in the Table 3.7, the parameter “IR” is measured as “kg of fish per day”. This means that the Technical Team has automatically inflated the value of the parameter “IR” by 300%.

The size of the error in the application of the formula increases further when you look at how the technical team has changed the meaning and definition of the parameter “**Exposure Frequency (EF)**”. As shown in Col-2/Row-4, according to the original reference EF is defined as ‘number of meals of fish per year’. But as highlighted in Col-4/Row-4 the technical team changed the unit of the parameter “EF” to “hari” which has no association with the original definition of the parameter “EF”.

Finally, in Col-2/Row-5 the parameter “**Exposure Duration (ED)**” is correctly measured in terms of “years”. But in Table 3.7 of the technical teams report the unit of measurement of the parameter “ED” changes to “meals per year”—once again the technical team has totally altered the meaning of the parameter as defined in the original source.

The errors in the calculations of hazard index get further compounded because on top of using a wrong formula, the Technical Team has used the wrong data of various parameters. As shown in the table, there are seven parameters (Row-1 to Row-7) that together define the formula for the average daily intake of arsenic from fish consumption. This may sound totally unbelievable, but the technical team has applied wrong data for five of these seven parameters. With this kind of errors in the data, it is impossible to get a correct result. First I describe these data errors and later show that these errors have led to a 4,500% overestimation of the true level of risk of arsenic poisoning from fish consumption.

The data on the concentration of inorganic arsenic in fish comes from the twenty two samples of fish from Buyat Bay tested by the Integrated Team in 2004. These fish were tested for total arsenic in their muscle tissue at SARPEDAL. The amount of inorganic arsenic was estimated using a conservative conversion factor of 10%, even though the tests conducted by CSIRO in 2004 showed that there was less than 2% inorganic arsenic in the fish from Buyat. The chart shows that the quantity of inorganic arsenic in fish varied from 0.00-0.934, with 0.176 as the average.

As shown in the Row-1/Col-5 of the table, the technical team has used the maximum value of 0.934 mg/kg for inorganic arsenic in fish for the parameter CF. This is shown as the value of the sample #22 in the graph below. However,

as shown in the USEPA's reference on the right, the correct measure to use for calculating the chronic exposure is the mean or the median, not the maximum value. According to the USEPA, the maximum value of

United States Environmental Protection Agency 600R03036

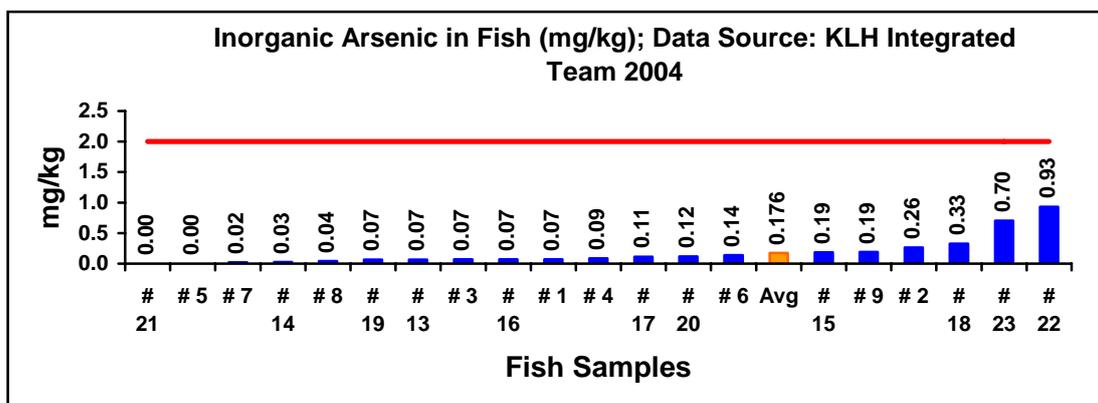
Example Exposure Scenarios

2.9.3 Exposure Factor Inputs

C_{fish} - The concentration of contaminants in fish is either the measured or predicted concentration, based on modeling, of the chemical of interest in the fish caught in the contaminated surface water. **For estimating central tendency exposures, the mean or median values would be used.** In this example, the 95% upper confidence limit of the mean concentration is used as a conservative estimate of the mean concentration. For the purpose of the example calculations shown below, it is assumed that the modeled 95% upper confidence limit of the mean concentration of chemical "x" in fish is 1×10^{-3} mg/g fish (as consumed).

pg-55

concentration should be used only for measuring acute exposure which refers to a one-time event of lethal dose. If the correct methodology is followed the appropriate value to use for the parameter CF would be 0.176, the average value of inorganic arsenic in fish based on the samples tested by the integrated team. Therefore, the correct value of the parameter CF which is the average value of 0.176 is shown in Col-6/Row-1 of the table.



The ingestion rate measures the quantity of fish consumed in each meal by an individual. In the table below, the analysis of average daily intake is evaluated for a 15 kg child. The technical team has the wrong value for the parameter IR because they measure IR as quantity of fish consumed per day instead of quantity of fish per meal as specified in the original formula. According to the technical team a 15 kg child eats 200 grams or 0.2 kg of fish per day. Assuming that each child takes three meals of fish per day, the correct value of IR would be equal to: $\frac{0.2\text{ kg}}{3\text{ meals per day}} = 0.067\text{ kg}$. This correct value is shown in the table

in Col-6/Row-2 next to the wrong value of Technical Team calculation in Col-5/Row-2. This value alone shows that there is an error of 300% in the value of the parameter IR.

The Exposure Frequency (EF) measures the number of meals of fish each person has every year. This again shows the sloppiness in the technical team's calculations. According to the technical team, each person has 365 fish meals per year or on average one meal per day. In fact, we assume that Buyat Bay community eats fish in every meal they have through out the year. Therefore the correct value for the parameter EF should $3 \times 365 = 1095$ meals per year. This correct value is shown in Col-6/Row-4 of the table.

As explained in the original reference from Chulaborn University, the parameter Averaging Time (AT) which is measured in "days" shows the number of days of exposure a person has had from consuming fish. This is because we are measuring the "average **daily** intake" and not the "average annual intake". Therefore it is important to use the number of days of exposure and not the number of years of exposure.

A related parameter in the average daily intake formula is called "Exposure Duration (ED)" which measures the exposure period in terms of years. Therefore averaging time is simply $ED \times 365$ days, as shown in the referenced document page view below.

Chulaborn University, Risk Assessment Guidelines; pg-29

Table 11 : Estimating Intake from Ingestion of Contaminated Fish and Shellfish

**RESIDENTIAL EXPOSURE : FOOD PATHWAY
INGESTION OF CONTAMINATED FISH AND SHELLFISH**

$$\text{Intake (mg/kg-day)} = \frac{\text{CF} \times \text{IR} \times \text{FI} \times \text{EF} \times \text{ED}}{(\text{BW} \times \text{AT})}$$

Where :

- CF = Chemical Concentration in Fish (mg/kg fish)
- IR = Ingestion Rate (kg fish/meal)
- FI = Fraction Ingested from Contaminated Area (0 to 1.0)
- EF = Exposure Frequency (meals/year)
- ED = Exposure Duration (years)
- BW = Average Body Weight (kg)
- AT = Averaging Time (period over which exposure averaged in days)

Variable Values :

- CF = Site specific measured or modeled value
- IR = Specific values for age, sex, ethnicity, region
- FI = Pathway specific value (consider local patterns)
- EF = Population specific value (from 12 meals/year to 360 meals/year or greater)
- ED = 70 years (lifetime, by conversion)
30 years (US national upper-bound (90th percentile) time at one residence)
9 years (US national median time at one residence)
- BW = 70 kg (adult average, US EPA)
15 kg (child age 1 to 6)
- AT = Pathway specific for non-carcinogenic effects = ED x 365 d/yr;
Lifetime for carcinogenic effects
Carcinogens = 70 yr x 365 d/yr

As can be seen from the table in Col-5/Row-6, the technical team uses the value of 365 for AT. This implies that the “Exposure Duration-ED” is one year. But in Col-5/Row-5, the value of ED is 10 years. If the value of ED is 10 years, then the correct value of the parameter should $10 \times 365 = 3650$. It is obvious that some technical team members simply did not understand the concept and the methodology for calculating the average daily intake value for inorganic arsenic.

It is clear that the technical team has underestimated the correct value of the parameter “AT” by 1,000%. If the technical team’s reports are replaced by the correct values, the hazard index would be less than one showing that fish from Buyat Bay are safe for human consumption. Hazard Index measures whether

or not the average daily intake of inorganic exceeds the daily reference dose (RfD). The reference dose is equivalent to a health standard or a limit for the maximum safe level of certain contaminant that a human can tolerate.

$$\text{Hazard Index (HI)} = \frac{\text{Average Daily Intake of Inorganic Arsenic from Fish Consumption}}{\text{Daily Reference Dose for Inorganic Arsenic}}$$

Therefore hazard index is simply a ratio which is measured as:

If hazard index is greater than one, it implies that there is a risk of poisoning from inorganic arsenic from fish consumption. However, if the hazard index is less than one, it means that there is no health risk from fish consumption.

I now apply the corrected data and calculate the true hazard index and compare it to the erroneous calculation reported in the Technical Team's report. The correct calculation is shown in Col-6 of the table below.

As shown in Col-6/Row-9, the correct value of Hazard Index is 0.11, which is less than one. This implies that fish from Buyat Bay are safe for human consumption and there is no risk of any arsenic poisoning. If we compare this value to the incorrect calculation of the Technical Team as reported in their Nov-2004 report, we see that their incorrect value for hazard index is 5.6.

Clearly, the technical team has overestimated the risk by nearly 4,500%. If the calculation is conducted correctly as shown in Col-6 of the table, it shows that fish are safe for human consumption, and even if the Buyat community increases their fish consumption by ten times, they would still be no health risk.

Analysis of Errors in TABLE 3.7 of Technical Team Report: The Case of Fish Consumption of a 15 kg Child

	Col-1	Col-2	Col-3	Col-4	Col-5	Col-6
	PARAMETER	Penjelasan Parameter Berdasar Literatur	Penjelasan Parameter Berdasar Laporan KLH 8 Nov 2004, halaman 21	Parameter Tercantum Pada Tabel 3.7 Laporan KLH Nov 2004, halaman 33	Contoh: Data Yang Digunakan untuk contoh anak (yang pertama) pada baris ke 4 pada Laporan 8 Nov	Perhitungan contoh yang sama, dengan masukan yang benar.
Row-1	CF	Chemical concentration in fish (mg/kg fish)	Konsentrasi Kontaminan Dalam Ikan (mg/kg)	Konsentrasi As anorganik (mg/kg)	0.934 (nilai maksimum yaitu pada lokasi sampling Buyat Bay 33).	0.176 (nilai rata-rata).
Row-2	IR	Ingestion Rate (kg fish/meal)	Jumlah Ikan yang Dikonsumsi (kg/konsumsi)	Rata-rata meal (kg/hari)	0.2	0.2/3 = 0.067 (kg/konsumsi, bukan per hari)
Row-3	FI	Fraction Ingested from Contaminated Area (0 to 1.0)	Fraksi Injeksi dari Sumber yang terkontaminasi (tanpa satuan)	Fraksi Injeksi	0.9	0.9
Row-4	EF	Exposure Frequency (meal/year)	Frekuensi Paparan (konsumsi/tahun)	Frekuensi Paparan (hari)	365	3 x 365
Row-5	ED	Exposure Duration (years)	Lamanya Paparan (tahun)	Lamanya Paparan (meal/tahun)	10	10
Row-6	BW	Average Body Weight (kg)	Berat Badan (kg)	Berat Badan (kg)	15	15
Row-7	AT	Averaging Time (period over which exposure averaged in days)	Waktu rata-rata terpapar (hari)	Rata-rata Paparan (hari)	365	365 x 10
Row-8	Average Daily Intake	Intake (mg/kg-day) = $\frac{CF \times IR \times FI \times EF \times ED}{BW \times AT}$	Intake (mg/kg-hari) = $\frac{CF \times IR \times FI \times EF \times ED}{BW \times AT}$	Intake (mg/kg-day) = $\frac{CF \times IR \times FI \times EF \times ED}{BW \times AT}$	Intake (mg/kg-day) = $\frac{0.934 \times 0.2 \times 0.9 \times 365 \times 10}{15 \times 365} = 0.112$	Intake (mg/kg-day) = $\frac{0.176 \times 0.067 \times 0.9 \times 3 \times 365 \times 10}{15 \times 10 \times 365} = 0.0021$
Row-9	Hazard Index (HQ)	HQ Interpretation: HQ < 1 means fish are "Safe"; HQ > 1 means fish are "Unsafe"	Hazard Index (HQ) = $\frac{\text{Intake (mg/kg-day)}}{\text{Reference Dose (mg/kg-day)}}$ Ref. Dose = 0.02 mg/kg-day	Hazard Index (HQ) = $\frac{\text{Intake (mg/kg-day)}}{\text{Reference Dose (mg/kg-day)}}$ Ref. Dose = 0.02 mg/kg-day	Hazard Index (HQ) = $\frac{0.112 \text{ mg/kg-day}}{0.02 \text{ mg/kg-day}} = 5.6 > 1$	Hazard Index (HQ) = $\frac{0.0021 \text{ mg/kg-day}}{0.02 \text{ mg/kg-day}} = 0.11 < 1$
Row-10	Comparison of the CONCLUSION of the Hazard Index Analysis				UNSAFE to Eat Fish	SAFE to Eat Fish

Arsenic in Shallow Groundwater Wells

The Revised Report of the Technical Team, mentioned that 4 out of the 6 shallow wells in Buyat Village sampled had arsenic concentrations above the Ministry of Health standard for drinking water, and although it did not state it, implied that this may be related to NMR's operations.

In 2005 NMR commissioned a study to address two key issues: i) the environmental conditions in the Buyat River and the source of trace amounts of arsenic present in shallow community wells in Buyat Village. The research team comprised of Dr. Ir. Rudy Sayoga Gautama, Professor Doctor Rubini Soeryaatmadja and Professor Doctor Sudarto Notosiswoyo, all of ITB and Dr. Ir. Heru Hendrayana from the School of Engineering, Gadjah Mada University. The research included geological and topographical mapping, Buyat River flow measurements, mineralogical assessment, water chemical analysis and drilling. The research focussed on arsenic and mercury in river and well waters. The research was conducted in the field between April and July 2005 and the findings of the study were published in a report entitled: "Research on Hydrogeology System in Buyat Area, North Sulawesi". This report is entered into evidence as Exhibit T.I-90.

The conclusions of the study were that arsenic and mercury in the Buyat River were well below the applicable water quality standards and that NMR's mine site was not having a negative impact on river water quality. The arsenic in shallow community wells in Buyat Village was not coming from NMR's mine site or other mining activities and that the source of the arsenic was a natural mineral called arsenopyrite, which occurs in the soils below the village. Specifically the report concluded:

- *Arsenic concentration in the communal wells may come from the weathering of arsenopyrite (FeAsS) contained in the flooding deposit ground layers.*
- *Hydrogeologically, the contact between the Buyat Village groundwater system and the location of PT NMR gold mining is made through the Buyat River, however:*

- ❖ *Results of water chemical analysis did not indicate any impact of mining activities on the groundwater quality in Buyat Village*
- ❖ *The matter is further supported by analysis of groundwater flow in Buyat Village which runs toward the Buyat River.*

The team from ITB/UGM have presented their results to Government officials from the Department of Mines, Environment and Health both on a Provincial (North Sulawesi) and District (Minahasa and Bolaang Mongandow) levels.

13. CONCLUSIONS

Your Honorable Panel of Judges:

The intent of writing my own Pledoi was to convey the “**Truth**” in a way that is easy to understand, thereby leaving no room for doubt that **Buyat Bay is not polluted**. I am confident that I have proved, without any doubt, that that Indictment and Charges against both me and NMR are baseless and a sham.

I would like to repeat once again and expressly state that all elements in the Indictment and the Charges are untrue, and that during the proceeding the Public Prosecutor’s Team has failed to establish the truthfulness and validity of the Indictments and the Charges. It is important to emphasize that it was the Prosecutor’s obligation, or burden, to prove each and every allegation in the indictment by presenting evidence that proved those allegations beyond a reasonable doubt. Neither I nor NMR had an obligation to present any evidence. Because the Prosecution failed to carry its burden of proof, there is no evidence sufficient to support a finding that a crime was committed. Moreover, in this trial, not only did the Prosecution fail to carry its burden of proof, but the Defense Team presented evidence that proved beyond any reasonable doubt that **the Prosecution’s allegations are wrong**.

The primary elements of the Indictment and the Charges, namely: (a) **the existence of an unlawful act**, is untrue and incorrect. The evidence demonstrates beyond reasonable doubt that I have adhered to and have performed each and every applicable Indonesian Law and Regulation and that fact remains that Buyat Bay is not polluted. Buyat Bay never was, is not today, and never will be polluted by mine tails from NMR’s mining operations, (b) **that there is negligence on my part in performing my duties** is also untrue and has never been proven, because it is clearly established during the proceeding of this Criminal Case and in this Pledoi that I and NMR have fulfilled all obligations under the Indonesian Laws and Regulations, AMDAL, RKL and RPL, and obtained a valid and in force license to carry out mining activities and operations in Mesel, South Minahasa, including the license for the disposal of NMR Tailings to the Buyat Bay seabed in accordance with AMDAL and Permit

issued from the Environmental Ministry; (c) that it is also completely untrue ***that NMR does not possess any license or permit to dispose NMR Tailings to the Buyat Bay Seabed*** because NMR has obtained AMDAL and a Permit from the Minister of Environment which clearly permit and allow the disposal of NMR Tailings to the Buyat Bay seabed as the most environmentally safe method of disposal; indeed, based on the evidence presented -- the Government issued AMDAL for tailings disposal; the Government issued Permit dated 11 July 2000; the Government knowledge of ongoing tailings disposal as shown by, for example, Isa Karnisa's March 2002 letter; the Government acceptance of quarterly RKL/RPL reports on the quality of the tailings discharge; and, among other evidence, the testimony of former Minister of the Environment Nabel Makarim that NMR had a permit to dispose of tailings -- it is an act of stupidity for the Public Prosecution Team, whose duty is to seek and present the truth, to continue to assert that NMR disposed of tailings without a permit (d) ***the act of not preventing toxic tailing disposal*** is also completely untrue and unsubstantiated because it clearly has been established during the proceedings of this criminal case and in this Pledoi that tailing from NMR are basically an inert substance which will not harm the environment and all testing conducted by both the Government of North Sulawesi and NMR confirm that the tailings are not a B-3 waste (e) it is also wrong that the statements in the Indictment and the Charges state that ***“even that I already knew NMR did not have a permit to dispose tailing to the sea, however I did allow /did not give any instruction to stop the disposal of tailings to the sea by NMR”***. I always knew that NMR had obtained the permit or license to dispose of NMR Tailings to the Buyat Bay seabed from the fact that NMR obtained the AMDAL, Operating License from the Department of Mines, and was in receipt of a valid Permit issued by the Ministry of Environment, and as such the disposal of NMR tailings to the Buyat Bay seabed had always been authorized or permitted by the Indonesian Government. The disposal of NMR tailings to the Buyat Bay seabed since the early stage of NMR operations in 1996 was legally and administratively permitted and authorized by the NMR's AMDAL and the monitoring of the environment was actively reported to the Government in NMR's RKL/RPL

Reports - even to this day, and the disposal of NMR tailings to the Buyat Bay seabed after the promulgation of the Environmental Law was legally and administratively permitted and authorized by the Ministry of Environment's Permit.

Moreover, if such disposal was conducted without permit, the Indonesian Government based on the Contract of Work, the Mining Law, and the Environmental Law would have issued a warning to NMR to obtain the permit, or even stop operations pending the obtaining of the required permit. The Indonesian Government has never issued such a warning, and has never instructed myself or NMR to stop its mining operations or to stop disposing NMR's tailings to the Buyat Bay seabed. The Charge ***"even that I already knew NMR did not have a permit to dispose tailing to the sea"*** is preposterous, I knew just the opposite.

The fundamental fact remains, **BUYAT BAY IS NOT POLLUTED**. Without pollution there is no crime, and the charges, the consequent request by the Prosecution for a 3 year prison term for maintaining a perfectly clean bay is a disgraceful act!

It has also been proven, by the Defense Team, beyond any reasonable doubt that I am not the one who broke the law but that there were violations of the laws and regulations by those that investigated, testified and vigorously prosecuted this case. These violations of the laws and regulations are a clear breach of my human rights as set forth by any standard, whether under Indonesian laws or any international convention on human rights.

Based on the evidence, this honorable Panel of Judges can conclude with absolute confidence that **I am innocent of all Charges that have been brought against me.**

Before I make my request to The Honorable Panel of Judges concluding this Pledoi, there is a broader conclusion that I have drawn during the drafting of this document that I would like to express. Even though I am not a citizen of this Nation, I am very familiar with its people, I try to understand its wide and

diverse culture, I have looked at the nations history and how it evolved from a colonial state to the third largest democracy in the world. In such a nation, one must ask how did this case even evolve to be in a criminal court? Us all sitting here today debating a two and a half year old hoax is preposterous. Buyat Bay is not polluted, its people are not impacted by heavy metals from mine tailings, Buyat Bay waters are pristine with abundant fish and aquatic life. Anti-mining and anti-development NGOs have made noise before and even tried to perpetrate the Minamata Hoax and nothing happened, so what is different this time? Are it the people involved and their supporters that make the primary difference?

I would like every one at the prosecutions table to consider the following; Your fathers and grandfathers were men with principles, courage and integrity, they held a belief and had a dream. That dream was a free and independent Nation, governed under law. This nation they dreamed of was Indonesia and the Law they drafted and ratified was your Constitution, known a UUD 1945. **IN YOUR OWN CONSITIUTION** in the **FIRST** article it states that ***“the State of Indonesia is a state based on law”***. A state based on the rule of law was not included as an afterthought; it is primary in the first article. This is what your fathers and forefathers fought and died for against the Japanese occupation, and this is under what principle and dream they fought and died for when fighting the Dutch for Independence. Your red and white flag is their symbol of that belief. Following and assuring that ***“every person shall have the right to receive recognition, security, protection and legal certainty based on fair and equal treatment before the law”*** is what they fought for. What part of this do people investigating and prosecuting this case have a problem understanding and abiding by? This is the primary difference between what happened when the anti-development NGOs made unfounded allegations in 2001 and what happened in 2004. Relating to the Buyat hoax, from 2004 until today no one has followed the rules, the rules of investigation, or the rules of human rights. The Prosecution with assistance and maybe pressure accepted a one-sided case file that they knew was defective and had not been properly investigated; they indicated such in their first P-19's when they returned the case back to the police. One does not need a law degree to see that

procedures had not been followed and human rights denied. In the simplest terms, it is clear that the investigation of PTNMR and myself has been unfair, and if it is unfair it is unreasonable, and if it is unreasonable, it is unlawful.

I believe your fathers and forefathers would have to agree, as they also declared in their constitution that ***“Every person shall have the right to protection of his/herself, family, honor, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right”***

I for one do not think that I have been afforded such rights through the investigative or prosecution stage and this has been proven before this court. So far, this case has been a sham and a mockery of the legal process dreamed of by your fathers and forefathers.

Your forefathers were also people who believed in not only the law but in God. If one does not believe in its nations constitution and laws, believe in those sent down by God. If you are Muslim; the Holy Koran states in S.4-135: ***“O ye who believe! Stand out firmly for justice, as witnesses* to Allah, even as against yourselves, or your parents, or your kin, and whether it be against rich or poor. For Allah can best protect both”*** – (*This means something higher than formal justice or human law – we are to act as in the presence of Allah, to whom all things acts and motives are known.) If you are Christian, the Bible in Mathew 23:23 states ***“Woe to you, experts in the law and you Pharisees, hypocrites! you neglect what is more important in the law – justice, mercy, and faithfulness! You should have done these things without neglecting the others.”***

Has the investigators, certain government regulators and the Prosecution of this case been in accordance with both the rules of God and Man? Ask yourselves, are you prosecuting this case based on what your fathers and forefathers fought and died for, are you upholding their dream of the Republic of Indonesia as a ***state of law***? Are you upholding your own personal beliefs as one who believes and follows the rules of your God? Or are you allowing yourselves to be the instrument of politicians and special interest groups and are mere “Wayangs” in a play called “Buyat Bay”?

If you can answer to yourself that you are doing something that would make your fathers proud of, if you honestly believe that your are following the laws of this Nation and your God, so be it, go home in peace tonight and think about drafting your counter arguments to my Pledoi. If I am correct, and you honestly do not believe that you have followed and are enforcing the law, then state so when you make your counter-motion and stop what I believe is a sham and a mockery of your judicial system, fight for the truth, ***Stand out firmly for justice.....even as against yourselves.***

I believe I have shown in this Pledoi that science has been manipulated by unscrupulous individuals to paint a picture of health problems and pollution, when it is clear to anyone who spends one hour in Buyat Bay and the surrounding communities that the area enjoys an environment and health status that would be the envy of the majority of the people living in the world.

I believe I have show that certain politicians, NGO members and member of KLH have rewritten NMR's history to support their political agendas or their prejudices against the company and myself and to support the prosecution of this case.

I have made every effort to abide by all laws and regulations of Indonesia in my personal as well as my professional life during my 20 years in this country. The accusation that I have knowingly and willingly participated in an act of pollution is abhorrent to me beyond words, and I will not stop until my name as well as those of my colleagues is fully cleared and the truth of the Buyat Bay hoax is exposed for all to see. I believe that I have proved beyond any reasonable doubt that:

BUYAT BAY IS NOT POLLUTED!

14. REQUEST OF DEFENDANT II

There have been several criminal acts associated with the “Buyat Controversy”, “Buyat Hoax” or what ever name you wish to give this travesty and miscarriage of justice. However, criminal acts of *change of function* or pollution of a bay, communities being impacted from heavy metals from mine tailings, or criminal disposal of a toxic substance into the environment are not among those crimes that have been uncovered by this court.

The prosecution failed to prove any wrong doing by NMR and I, or that pollution or damage of the environment even occurred. The activities of PT Newmont Minahasa Raya did not cause people to become ill or itchy. The quality of the environment in Buyat Bay is just not polluted; it’s a pristine marine ecological setting with full capacity to continue to support the livelihoods of those dependants on that segment of the sea for a living.

Similarly, the prosecution botched all attempts to prove that NMR or myself have even transgressed the administrative law such as exceeding the standards that are set for detoxified tailings and those set for seawater quality and marine biota quality, much less have committed a criminal act under Law 23 of 1997. I truly believe that the Prosecution now knows that Buyat Bay is not polluted and there has been no crime and therefore, I respectfully requested in the earlier chapter of this Pledoi that Prosecution do what they know is right and request a dismissal of all charges in their response to this Pledoi.

Since there are no facts of legal transgression regarding pollution and/or damaging of the environment that caused losses to humans or the living environment that could be alleged as a criminal illegal act, then there is no environmental crime. Therefore I respectfully request that in accordance with stipulations of Article 191, clause (1) of the Code of Criminal Procedures, which state: *“If from the results of the examination, the allegations charged are not legally and convincingly proven, then the defendant should be released.*

Therefore I respectfully request the Honorable Panel of Judges to declare me not guilty and release me from the charges.

However, as I mentioned earlier, this court proceeding has uncovered several criminal or illegal acts which led to the unjust prosecution of the company and myself by individuals within and outside the legal system who do not care about their legal or professional obligations.

I personally feel that justice will not be served by only an “innocent” verdict in favor of the company and myself. An “innocent” verdict only addresses the wicked allegation that the company under my leadership poisoned people and polluted the environment. An “innocent” verdict does not address those criminals that perpetrated a crime of immense proportion which virtually crippled some institutions of a national government, misinformed the public in such a reckless manner that caused the break up of families, the relocation of people, distorted a local economy which disrupted the income and livelihoods of the community.

Nor does an “innocent” verdict correct the wrongful detention of innocent individuals, nor rectify the injustice of depriving them of their basic human and legal rights by the very institutions which were established to protect those basic rights of each citizen and resident of this nation. Justice will only be served when those that violated the law or aided and contributed in the perpetration of this “Buyat Hoax” are investigated, charged, tried and sentenced under the laws of this land. Only then will justice be served and the “rule of law” applied in the “Buyat Travesty”. Specifically, I respectfully request to have included in the courts final ruling an order to investigate, and if sufficient evidence is established, for the prosecution of those suspected of their illegal actions. Those individuals include;

1. Rignolda Jamaludin, Jane Pangemanan and Raja Siregar for the perpetration of the Buyat Hoax.
2. Those members of the Ministry of Environments “Technical Team” under the guidance of Masnellyarti Hilman who willfully and knowingly

manipulated data and referenced non existing regulations to deceive the public by creating the image that a village needed to be relocated because of pollution when in fact no pollution existed.

Honorable Panel of Judges, those parties as stated above, did not commit minor violations of the law, their combined acts have disrupted countless numbers of lives, caused un-comprehensible losses to various institutions and members of the Indonesian society. They have brought shame on Government Institutions, the Indonesian Criminal Justice System, the Nation and society as a whole. I respectfully once again restate, give those involved in the perpetration of this travesty the opportunity to sit in the same chair I have occupied for the last 46 hearings. They deserve the opportunity.

In closing, I would like for the record, to thank and express my gratitude to the various Government and academic institutions who have maintained their professional integrity and academic independence. These institutions are the real backbone of society and the foundation of a great nation. And finally, to thank this Honorable Panel for the opportunity for me to present our evidence in this case, and the fairness and consideration shown to me as a defendant before this Court.

Thank You.

Manado, January 2007

Sincerely yours,

Richard B. Ness