

# MINING FOR GUILT

In the case of Indonesia vs Newmont Mining, the country faces its old demons.

It was almost 14 months ago (in July 2004) that Jerry Konjansow, a marine biologist at PT Newmont Minahasa Raya, took a boat out into Buyat Bay, North Sulawesi. In the company of police officers, he scooped out water for testing. On good faith, he had obeyed an instruction to cooperate with a police investigation into allegations of arsenic and mercury pollution in the bay from a nearby mine run by Newmont Minahasa, a local unit of the world's biggest gold mining company. He was confident the results would vindicate the Denver-based company.

That faith was sorely tested a few weeks later when he, his superior David Sompie, and three other employees were arrested without charges and jailed in Jakarta for 32 days while an investigation proceeded. Newmont's test came out negative, and the police test, positive. Konjansow, a Christian, saw it not as a test of Newmont's guilt or innocence but as a test of his faith.

Taking up on some villagers complaints, and based largely on a police forensic test result, Indonesian state prosecutors in July this year decided to charge the Newmont unit and president director Richard Bruce Ness with causing environmental harm. The other five were not named in the charges, read in the district court of Manado, capital of North Sulawesi, on August 5. Yet their names remain on the suspect list.

"Why? I want to know why?" said Konjansow, 34, exasperated after the indictment hearing. As he recounts his 14-month ordeal, he painfully recalls how his son didn't want to visit him in jail when first given the chance, and the scrutiny the seven-year-old had to suffer. Out of the media limelight, it is the day-to-day struggle to get by under an ongoing veil of suspicion that is eating into his personal life.

"My son has lost his respect for his daddy," he sighs as tears well up in his eyes. "Our lives are not the same.



PHOTOS BY S. PEARL

The stories are on the Internet—those things don't go away. When he goes to school, to college, looks for a job, it will haunt him. Our name has been tainted. This case is a stigma for my family."

In jail, Konjansow and his colleagues knew the police were also holding suspects in ongoing terrorism investigations and the experience was traumatic. Two of his colleagues were foreigners.

Dennis Heffernan, director of Van Zorge Associates, which provides business advice also advises Newmont. He said the jail time was the most shocking turn of events.

"Which multinational company is going to send employees over to a country where they jail you without formally filing charges?" he said. "Foreign investors everywhere are watching."

For Sompie, 34, the only memory he is willing to share is a happy one. His son visited him in jail on his first birthday on October 7, 2004. Sompie, a Christian, smiles at the memory. He tells me his son's name is Emmanuel, Hebrew for "God is with us."

Asked about the rest of his time behind bars, Sompie falls silent.

At the August 19 hearing, when Newmont lawyers filed objections to the charges, it was Ness, as head of the company, who sat alone before the panel of five judges to face the accusations. In the court were Konjansow and Sompie, who like all Newmont employees wore a gold ribbon pin. "For solidarity with Rick," Sompie said. When the hearing ended, he hugged Ness and walked side by side with him to brave the media cameras.

Ness faces 10 years jail if convicted. He has an Indonesian wife and five sons. The Newmont case goes to court at a time when Indonesian President Susilo Bambang Yudhoyono, 56, is about to complete his first year in power as Indonesia's first directly elected chief executive. To consolidate his position, he

will go to London and New York this month to woo investors.

The president will be travelling with companies such as PT Bank Danamon and PT Bank Mandiri, among the country's five largest banks, as well as PT Medco Energi, the largest publicly traded oil and gas exploration company, to highlight investment opportunities in certain sectors.

These include power and energy, roads, ports and airports, and telecommunications, according to the latest agenda from the organisers. Yet mining accounts for 10 per cent of the country's economic output, according to state statistics. Hampering investment, foreign investors say, is the usual litany of woes—legal uncertainty, lack of contract sanctity, tax issues, and overlapping, even contrarian regulations since Indonesia introduced regional autonomy laws to decentralize power.

The mining sector is plagued by an extra burden—the ongoing attempt to draft a mining law as well as a forestry law that bans mining in areas where previous governments may have signed contracts to allow exploitation of natural resources.

Newmont Minahasa Raya started mining gold in Mesel, North Sulawesi in 1996. It was ready to close the pit in August 2004 and hand over the mine to closure employees whose job it is to strip the mine of its facilities, rehabilitate the habitat and return the site to the government in as close a state as possible to when it started operations.

Newmont maintains it hasn't committed any illegal act in eight years of mining, which were monitored by the government's Mines and Energy Resources Ministry, and will submit internal and independent tests it says contradict the one submitted in the prosecutor's case. It disposes of mine wastes, known as tailings, 900m into nearby Buyat Bay, 82m down, as provided under its contract.



From top: Jerry Konjansow, Newmont's marine biologist who was jailed for 32 days without being formally charged; President director Richard Ness (left) speaks to his lawyer Luhut Pangaribuan during his trial in Manado, August 19, 2005; David Sompie, who was jailed.



The future of Buyat Bay has been taken out of the hands of the villagers.

It was in July that allegations of skin ailments intensified in the local press and then in the national media. Non-government organisations took up the cause of the villagers in the maelstrom of media coverage.

The government changed hands in October 2004, but the new president could only allow the law to run its course and not be seen interfering with the other branches of power.

Under a democratic government, Indonesians are finding their voices slowly but surely. "For 30 years, giant mining companies have operated in Indonesia with impunity despite shocking environmental practices," an August 5 statement by the Indonesian Forum for Environment said. "They have taken advantage of a failure in law enforcement by the government."

"Mine waste dumped by Newmont in Buyat Bay poses a risk to local people," an August 5 press statement by Friends of the Earth—Indonesia, Indonesian Mining Advocacy Network and Indonesian Center for Environmental Law said.

The joint report recommended the residents be monitored over 30 years for any signs of accumulated arsenic poisoning. "Buyat Bay human health hazard requires fish intake reduction and possibly relocation of residents," the report added.

A community development officer explained that during the 32 years of President Suharto's rule until 1998, NGOs had a hard time because the dictator squashed all opposition. Today, people are careful in criticising NGOs to avoid accusations of repression or oppression, she said. "This of course creates a problem if the NGOs are hitting out without proper procedure,"

she said, declining to be named as she lives in the same community. "It's not about right and wrong in the case. It has become about the rights of the wronged in the past."

A year into the bitter dispute, the Buyat Bay villagers have been torn asunder.

About 266 people, making up 68 families, relocated to a new area 300km away on June 25, said Siti Maimunah, the national coordinator for Mining Advocacy Network.

A few dozen families decided to stay behind. A visit to Buyat

Bay village today shows torched huts, said to be homes burnt by the departing families.

Leni Jacobus, 40 years old with six children, does farmwork while her husband works in the quarry. She said those who left were offered money by non-governmental organisations who charged Newmont with wrong.

"There were people who were tempted to relocate for the money, not because they were convinced there was pollution," she said. "But our thinking is that we want more than money. We want to earn a living. There is no guarantee of money. And we already have our lives and livelihoods here."

Amid the confusion of the suits and countersuits in the past year, and a sudden introduction into the science of mercury and arsenic poisoning, Marice Bawole, 49, relied on one certainty. She said, "I've been here since 1981. Who do we believe? We believe ourselves—our experiences. We are fine. We live here and fish here, and we don't have these diseases."

Mari Sandag, 40, said the conflict has many layers. "The people who left had wanted assistance from Newmont and thought they could do it through NGOs," she said. "This issue is about politics. People were using each other to achieve their goals."

"Some of them promised money to help us relocate and for that, families fought and were broken. I prefer to have my family than have the money," she said. "Life goes on."

At ground zero, that is all you hear about: people struggling to find jobs, food and if they're lucky, education for their children.

"At its core, all the conflicts in Indonesia boil

down to a neglect of local communities," said Maimunah of Mining Advocacy Network. "It's not about religion. It's not about ethnicity. It's about the government not having the right paradigm to build an Indonesia of the future."

"Under past governments, the mining investor was king," she said. "The national budget is funded by the selling of our depleting natural resources: minerals, oil and gas. So they paid little attention to local communities and local governments. There is not enough attention to building technology, providing education. Things have to change."

Rudy Guntur Rompah, 42, appears to be the most conflicted of the parties involved and interviewed. He holds a government job, lives with the local community and received funding from Newmont for community development programs such as improving farming yields. He has some degree of accountability to all three parties with vested interest in the case. Rompah lives in Buyat village, about five km from the bay. By Indonesian standards, the village isn't poor. It has power, a new church is under construction and the roads are tarred. Cloves are being dried in every other garden, and mature coconut palms sway in the background.

Unlike poorer villages across the Indonesian archipelago, "the economy is self-sustaining," he said. "But


we achieved better productivity with programmes funded by Newmont. The local government didn't give us enough funds."

Yet, when pressed to answer whom he believed, he said, "The people feel they have to side with the government because they should not be seen to be siding with outsiders. Even though I don't think the government is right, I think we have to have faith the government will do the right thing."

The case is thus a heady mix of issues ranging from poverty to opportunism, empowerment of individuals and NGOs, testing nascent institutions, the delicate balance of winning investments while satisfying the swelling demands of a newly democratic country. From faith in God to faith in the government, everyone's resolve is being tested.

On September 1, the Manado district court will decide if the evidence presented by the prosecution has enough merit to warrant the trial to proceed. If so, it could drag out over at least nine months, lawyers said.

For Konjasnow, who grew up near the bay, it is a life suspended. "I love the sea. I grew up here. My daddy taught me how to swim here. My whole life is in Minahasa. As long as this case is unfinished, I don't see any future. My mind is unfocused."

His voice trails off. 

Shall we go or shall we stay?: The Buyat Bay villagers who took the reports of pollution to heart, burnt down their homes before leaving.

