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Indonesia clears U.S. mining giant of pollution

By [Donald Greenlees](#)

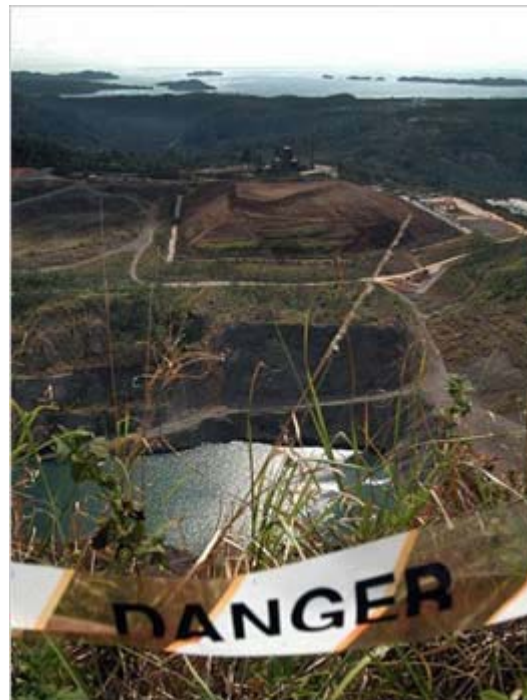
Published: April 24, 2007

MANADO, Indonesia: Acquittal seen as key to new investment; prosecution to appeal

An Indonesian court acquitted Newmont, the American mining giant, and one of its senior executives on Tuesday of charges of polluting a bay here with toxic waste from a now-defunct gold mine, in a case that became a litmus test of foreign investor confidence in Indonesia.

Ending a 21-month trial that pitted an emboldened national environmental lobby against Newmont Mining, a panel of judges found there was no evidence to support criminal charges that the company had polluted Buyat Bay, off Sulawesi Island, with toxins including arsenic and mercury.

The chief prosecutor said the verdict would be appealed.



Achmad Ibrahim/AP, 2004

Buyat Bay is seen behind the Newmont Minahasa Raya gold mine in North Sulawesi, Indonesia.

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Prosecutors had asked the court to impose a three-year jail term and a \$55,000 fine on the chief of the Newmont unit that controls the mine, Richard Ness, who is a U.S. citizen. They had also sought a \$110,000 fine against the company.

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But the chief judge, Ridwan Damanik, told the Manado District Court that the case, which followed a lengthy police investigation and the monthlong detention of five Newmont executives, including an American and an Australian, should never have resulted in criminal proceedings.

"The police evidence doesn't stand up," Damanik told a packed courtroom. Reading from a 260-page judgment, he added that the prosecution had failed to show that Newmont's system of depositing mine waste, called tailings, at the bottom of the bay via a half-mile-long pipe had polluted the environment or caused health problems for local villagers.

Ness, 57, who for a large part of the criminal proceedings had been forbidden to leave Indonesia, said that he was pleased the judges had determined that the legal procedures that allowed the case to get to court were fundamentally flawed.

"We are all thrilled with the fact that after two and a half years we have been exonerated from the horrendous allegations that were brought before us originally," Ness said in an interview following the verdict.

He added: "We should never have even gotten this far; we shouldn't have been in court."

But Purwanta Sudarmaji, the state prosecutor, said in an interview later that he intended to appeal the verdict. Under Indonesian law, the prosecution has 14 days to lodge the appeal.

Environmental activists also expressed disappointment with the verdict. About 1,000 anti-Newmont protesters gathered for the verdict outside the court, which was cordoned off by a heavy police presence.

"Newmont was found not guilty because of legal procedures, but not on the substance," said Siti Maemunah, coordinator of the Mining Advocacy Network, an environmental group, in an interview from Jakarta.

The case against Newmont has had national significance for environmentalists and investors because both sides saw it as a vital test of the balance between development and environmental protection in a country that has some of the richest mineral deposits in the world, including gold, copper, nickel and coal.

Investors and some senior government officials feared that a guilty verdict against Newmont, one of the world's biggest miners, would be another severe blow to the growth of the mining industry at a time when investment is already at a historic low. Environmentalists hoped that the

case would act as a restraint on what they say has been a permissive attitude to the resource extraction industries.

For Denver-based Newmont, the case also became a focus of shareholder concern about the environmental and social standards adopted by the miner in developing countries, where regulations on companies are sometimes less stringent than those in the United States.

A group of institutional investors in Newmont, with links to religious organizations, have proposed a resolution for the independent monitoring of the environmental and social impact of the company's operations. Newmont executives said the company's board of directors was planning to endorse the adoption of the resolution on Tuesday at its annual meeting in Wilmington, Delaware.

Still, the legal victory on Tuesday might give Newmont executives very little reason to change the method of disposing of tailings at sea by submarine pipe - the issue at the heart of the environmental case against the mine in Indonesia. This method is also used at a much bigger Newmont mine on the island of Sumbawa, in eastern Indonesia.

"One of the real positives about outcomes from this is that basically the judges assessed whether ocean disposal of tailings caused pollution, and the answer is no," Bob Gallagher, vice president for Asia Pacific operations of Newmont, said in an interview. "So in fact, I think it is a very positive outcome in terms of the disposal of tailings."

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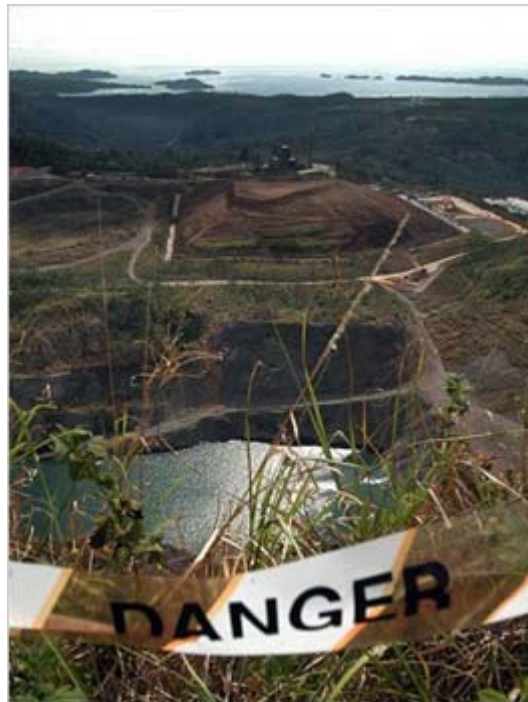
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The case against the miner's local unit, Newmont Minahasa Raya, centered on claims made in 2004 by a doctor and some local residents that toxins used in the mining process and pumped into the sea with the tailings caused a variety of illnesses, including skin rashes, lumps and dizziness. They alleged that a baby had died as a result of exposure to the mine's toxins. The charges came just as the mine was shutting down after eight years of operation.

A subsequent police investigation, which involved the testing of samples from Buyat Bay, found unsafe levels of heavy metals and resulted in the filing of criminal charges. This was supported by a report in November 2004 from a group of experts engaged by the Environment Ministry, who found that arsenic levels in fish posed "high risks to human health."

The indictment prepared by prosecutors alleged that the waste pumped into the bay had polluted the environment and caused health damage to the population, and that the pumping was done without the proper waste disposal permits.

But the prosecution's case was weakened when the doctor who brought the initial health claims



Achmad Ibrahim/AP, 2004

Buyat Bay is seen behind the Newmont Minahasa Raya gold mine in North Sulawesi, Indonesia.

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retracted her statement in a letter sent to the police. A \$543 million civil lawsuit brought on behalf of villagers was dropped. But Newmont did reach a \$30 million "good-will" agreement with the government that provides for 10 years of environmental monitoring and community development aid.

During the criminal trial, Newmont was able to point to several international studies, including from the World Health Organization and the Commonwealth Scientific and Industrial Research Organization in Australia, which indicated that there was no danger to villagers' health.

The August 2004 report from the Australian research organization said the absence of elevated metal concentrations in fish indicated that "metal availability in the waters of Buyat Bay and the surrounding marine waters is not excessive" and the bay "would not be considered a polluted environment."

A later study on mercury pollution for the WHO found no evidence of health problems associated with the mine and warned that a greater risk to health was posed by small unlicensed mining operations run by local people.

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