

A Summary Of The Case And Action Plan

PT Meares Soputan Mining (MSM) & PT Tambang Tondano Nusajaya (TTN) (Archipelago Resources Plc Australia) North Sulawesi / Indonesia

1. The first ever directly people elected governor of the Indonesian province North Sulawesi officially rejects his approval of the AMDAL/EIA in letter no. 660/209/Sekr, February 2nd 2007 directed to the Ministry Of Environment. The AMDAL was submitted by the companies MSM and TTN in order to achieve the operation permit for the gold mine they are currently constructing at Toka Tindung in North Sulawesi's Minahasa region. The governor's reasons are dense, consistent and in accordance with current law regarding government, social peace and regional development schemes (attached).
2. One of the reasons relates to the Constitution No. 23/1997 regarding Environment: "Institutions responsible MUST reject proposals as mentioned in point (2) if projects or activities within the zone ARE NOT IN ACCORDANCE WITH THE REGIONAL PLANNING SCHEMES." This is also mentioned in the letter No. B. 6083/LH/12/2005 dated December 5th 2005 issued by the Ministry Of Environment which tells " if activities are not in accordance with the regional planning schemes the AMDAL can't be processed".
3. This means the gold mine proposed by MSM and TTN are opposing the regional planning scheme no. 3/1991, also opposing the planning scheme of the City of Bitung no. 6/2000 and furthermore not relevant in the regional planning scheme of the then Regency Minahasa no. 24/2004. In this regard the AMDAL commission was purposefully lying in the parliamentary hearing of January 30th 2007 with Commission VII of the DPR RI when they stated that the AMDAL of MSM and TTN were in accordance with the regional planning schemes. Quite to the contrary the AMDAL very obviously is NOT IN ACCORDANCE with the regional planning scheme 3/1991 of the province, OPPOSING the City planning scheme of Bitung 2/1992 because that one was already replaced by no. 24/2004 due to the subdivision of the former regency Minahasa into the new regencies Central, South and North Minahasa. Thus the false statement of the AMDAL commission can be considered a judicial scandal of first rank, thereby the members of the state commission misusing their positions in favor of MSM and TTN.
4. According to the facts, MSM is involved in several judicial scandals which sacrifice the people's rights and violate the law. There are strong indications of collusion (KKN) thus violating TAP MPR No. XI/1998 and several constitutional chapters of the Indonesian Constitution UUD 45 as follows:
 - a. scandal of false permits
 1. The crucial contract of work with the government of the Republic Of Indonesia was granted by the Orde Baru government of Soeharto. The

contract of work was issued on November 6th 1986, eleven days before the company MSM even was formed on November 17th 1986, means the contract is a product of collusion.

2. Without permit no company is allowed to interfere in the shaping of the natural landscape, but MSM and TTN did so without even holding a valid AMDAL, only on grounds of a dubious letter of the Minister of Energy and Minerals allowing them to continue works until the new AMDAL will be issued. The Minister has no competency though to decide on AMDAL which is the Ministry Of Environment's responsibility. MSM obviously violates Environmental law.
 3. The scandal of building an illegal jetty in the bay of Rinondoran using a letter which was issued by regional divisions which don't have the authority to do so. MSM deliberately violates the rights of the traditional fishing community in pushing for the jetty.
 4. The production of the AMDAL which demands the involvement of the local communities violates Bapedal no. 8/2002 concerning the involvement of the people and transparency of information. In fact the People of North Sulawesi very much reject the goldmine proposed by MSM and TTN to a level that the governor in his letter no. 545/2201/SEKR dated December 20th, 2005 directed to the Minister of Energy and Minerals asked to temporarily hold MSM's activities as he fears social instability in the area. The same can be seen also from the Public Consultation which was held October 9th 2006 in the Provincial University (attached).
- b. The scandal of land annexation by MSM and TTN in the villages Pinenek/ North Minahasa and Pinasungkulan/ North Bitung. Several cases of traditional landowners who filed law suits against the company since 2003 are still pending and are seriously looked into by the Provincial arliament. One case which the Indonesian High Court decided in favor of the traditional owner was manipulated by MSM on the regional level.
 - c. The AMDAL scandal. On March 7th 2006 the Minister of Energy and Minerals issued letter 0998/40/MEM.G.2006 relating the status of MSM and TTN (attached) which allows MSM to continue construction works on grounds of the expired AMDAL until a new AMDAL is issued. This violates constitutional law which says, an expired AMDAL is considered as an AMDAL was never issued before. And furthermore, the Ministry Of Energy And Minerals has no AMDAL competency. The top of the arrogance is shown by the Minister in a letter 0723/30/MEM.G.2007 dated February 14th 2007 which tries to implicitly influence the Ministry Of Enviroment to bypass the Governor's veto (attached).
 - d. The illegal operation of MSM in Tokatindung which is protected and supported by the regional police forces despite the Provincial parliament's order of February 10th 2003, no. 160/DPRD/130 (attached) TO WITHDRAW Brimob brigades. There are indications of law discrimination of local people who defend their rights on land and living hood. Several constitutional chapters of UUD 45 are violated like

- Chapter 28.D paragraph (1) criminalization of the local people who defend their rights whereas the constitutions demands law protection and equality before the law as well certainty of law.
- Chapter 28.G paragraph (1) protection against threats and loss of safety
- Chapter 28.H paragraph (2) regarding equal chances to be granted in achieving justice is violated by MSM annexing the fishing communities' rights over the sea and the land owners' rights over the area, the people demanding their right being criminalized. MSM's very obvious violations though were never followed up by the police.
- Chapter 28.I paragraph (2) the right to be protected against discrimination is violated by police acting in favor of MSM on the grounds that foreign investors' interests must be protected.

Furthermore MSM misused the law enforcement apparatus by criminalizing and putting up cases against the leading members of Ammalta and Yayasan Suara Nurani which are the two most vocal and active NGOs rejecting MSM. The illegal operations of MSM damaged the foremost principles of reforming the law in Indonesia, i.e. creating equality before the law, and damaged the institution of the Indonesian Police Force and its good name as stated in Constitutional Law 2/1992 . Therefore the Head of the Indonesian Police Force sent an investigation team of three high ranking officers to North Sulawesi to look into the case.

5. On July 13th 2006 the participants of a peaceful mass demonstration against MSM/TTN on their way back home to their village Kalinaun were brutally attacked in Pinasungkulan area by a group which was under the leadership of MSM workers, thus the involvement of MSM management in directing this is strongly indicated.
6. The case of arsenic poisoning of the people of Buyat where the AMDAL submitted by PT. NEWMONT MINAHASA RAYA showed no significant amounts of arsenic in the area, but with the earthworks and tailings storage above the village gradually increased in all drinking water wells of the village. This should have given enough reason to the researchers and compilers of the AMDAL of MSM and TTN and the management to abstain from giving out guarantees that the sophisticated technology they promise to use won't put the people's health and environment at risk.
7. The official statements of MSM/TTN can't be given belief, because there are several cases which indicate purposeful lies to the public, bending law and misusing religion in their favor, e.g.
 - a. In the Manado Post edition of October 7th 2006 MSM/TTN state, " we confirm that the tailings and rock material won't contain heavy metals in a poisonous concentration nor will the cyanide contents exceed the valid standards." They state that the tailings will undergo a process of detoxification which will neutralize the poisons. On the other hand there is the statement of special staff of the Ministry For Fishery and Oceans, Prof. Dr. Rizal Rompas, M. Agr cited in the newspaper

Rakyat of October 7th 2006 where Rompas states, "...the tailings that will enter the water either directly or having undergone the process of detoxification will still pollute the environment, will still endanger the drinking water...".

- b. Since submitting the first AMDAL of 1998 which later was declared expired, MSM/TTN stated they wanted to employ the SUBMARINE tailings disposal although they said it was more expensive, because they considered it much safer than the tailings storage facility on land. After this plan was rejected in March 2006 by a joint declaration of the Ministry of Environment, Ministry Of Home Affairs, Special Committee of the Provincial Parliament and the Department of Minerals and Energy, they switched to the TAILINGS STORAGE ON LAND which they suddenly considered to be more costly but SAFE for the environment and the people's health because of the sophisticated technology. Very strange indeed....
- c. MSM also misuses and manipulates the religion by having organized community services in the villages of the surrounding area in June 2006 which in the KA-ANDAL PT. MSM of July 2006 were cited as part of socializing the AMDAL. The people very secularly intimidated by telling them that the government was the minister of god and it had accepted MSM, thus refusing MSM was a sin against god and would receive punishment.
- d. The illegal construction activities of MSM in the Tokatindung area of East Likupang's district between the years 2003 and 2006, modeling the landscape without AMDAL, on March 11th 2007 most probably caused a mud flood which was unseen before in the area. It forced 400 villagers of Rinondoran and vicinity to flee their houses which were buried under fine mud of 1 – 1.5 meters strength and turned the crystal clear ocean into a stinky mud pool. There were also hundreds of dead fish swept ashore – very mysterious...

Analysis how government officials bend the law and by-pass environmental regulations (a description of the spiralization of the case)

That the AMDAL of PT MSM/TTN was declared suitable by the AMDAL commission members is the peak of the synergy of several law scandals which turned up before in the years between 1986 – 2007. The logic of the case strongly hints at occupational crime in the form of a network within the government. A scheme of white collar crime appears before our eyes that is a very common form of power abuse in countries with dictatorships and anti-democratic systems and is known as state organized crime. In this regard not only the law is disregarded but also the constitution and the human rights.

Starting from the grassroots, the actors involved on vertical and horizontal levels can be identified to be the village chiefs in the vicinity of the mine, the district chief (East Likupang), district police force, the regency's head and several government officials on the regency's level (North Minahasa), then several department heads on the provincial level like the head of the Provincial division of the Department of Energy and Minerals, staff of the Provincial division of the Department of Environment; and on the Ministerial

level in Jakarta the Head of the Department of Energy and Minerals as well as leading staff of the Departments of Environment, Economy, Social Welfare, Political Law and National Security and of the State Secretariat. On the parallel level there are members of the Provincial Parliament and the National Parliament who can be identified as part of the network. The question here is who might be the leading force of such a wide network and the one who is able to co-ordinate and mobilize state officials for the purpose? The answer points in the direction of the Head of the Department of Energy and Minerals (ESDM), the one institution that not only gives out the permit but at the same time appears to be the most resistant and protective force in demanding that MSM/TTN must immediately operate – even without an AMDAL.

Still being in the exploration stage and having been asked by the Governor Of North Sulawesi not to commence construction until an AMDAL is issued, this ministry, ESDM is the one which

- Issued several letters which violate current regulations (mal-administration)
- Pressurized the Provincial Parliament to conduct comparative studies at a point when the law status was already very clear
- Circulated rumors that the provincial governor was “against investments”

At the same time the coastal population was stirred up by glorious work promises, and rumors of a splendid future for the villages that support the mine, on the other hand by intimidations against the ones that showed resistance. The village chiefs were called into conspiracy meetings, generously paid and their families employed as workforce, as long as they supported the mine by suppressing adversary village people and issuing support letters which never passed any village meeting but were made in the name of the village.

This whole scenario shows that the companies had carefully departed on the assumption that law in Indonesia can be bend and paid according to what the needs are – part of the “investment”.

The organized crime chain broke though at the moment when the Governor of North Sulawesi refused to become part of the game by rejecting the AMDAL. When bargaining lobbying had failed, intimidation and pressuring from the central level started which was conducted systematically, but failed. Even within the ranks of the governor’s own staff it can be detected that there are individuals who brought up the plan of conducting “comparative study tours” (financed by MSM) out of the area. Public pressure prevented this though. The governor’s stand became to be identical with the public opinion of the People Of North Sulawesi.

Analyzing the prime actor’s role in the law scandal around MSM/TTN

- The letter 0998/40/MEM.G/2006 issued on March 7th 2006 by the Minister of Energy and Minerals (attached) allows MSM and TTN to conduct construction activities still using the AMDAL which was declared expired. This violates the

constitutional law that states an expired AMDAL has to be regarded as never having had an AMDAL. Moreover the competency over AMDAL is not with the ESDM but with the Department Of Environment. Another letter 0723/30/MEM. G/2007 issued by the Minister on February 14th 2007 (attached) recommends the Department of Environment not to take into account the refusal of the Governor of North Sulawesi. Thus the Minister For Energy And Minerals can be identified as the prime trouble maker and conductor in the law scandal starting with the contract of work being issued in 1986 violating chapter 12 UU number 11/1967

- The Minister Of Energy And Minerals violates chapter 12 of the Indonesian Constitution (UU) no. 11/1967
- The Minister Of Energy And Minerals deliberately on the grounds of being concerned about the harm for investments in Indonesia encouraged members of the AMDAL commission to violate UU no. 23/1997 regarding Environmental Management and government regulation chapter 16(4) 27/1999 relating AMDAL
- The Minister of Energy And Minerals deliberately ignores the human rights of the People Of North Sulawesi who reject 10 mio. Tons of poisonous tailings to be deposited upon their heads in the hills of Toka Tindung because this will put their environment and their health at risk.
- The Minister of Energy And Minerals abuses his power and misuses his office as well as violates current law in order to protect and further the case of MSM/TTN and thus deliberately sacrifices the People Of North Sulawesi.
- ESDM has already several times proven to be the trouble maker disregarding human rights and sacrificing the People Of Indonesia as is seen from cases like Lapindo Brantas, Buyat (Newmont Minahasa Raya), Freeport Papua and others when it issued permits which later on turned into human catastrophes.
- The Minister Of Energy And Minerals is the leading force in spreading threats of MSM/TTN that they will file a lawsuit against Indonesia on the international level if they are not given production permit. The public and government officials shall be made believe that the investment climate in Indonesia will suffer severe harm if the company is denied. It is very obvious though that MSM/TTN are responsible for their losses as they disregarded current law and bribed certain government officials into maladministration and misusing offices. Thus instead MSM/TTN should be filed lawsuits against by the Republic Of Indonesia.
- The Minister Of Energy And Minerals at the very moment provides MSM/TTN with material to file a lawsuit against Indonesia with the purpose of pressing out state money.

Consequences For the People which are caused by MSM/TTN

- MSM/TTN co-operating with police and government official in the offices for land disappropriated villagers' rights over their land in the area Pinenek / East Likupang district and Pinasungkulan / North Bitung district. Villagers defending their land rights are marked and treated as criminal offenders.

- MSM/TTN misappropriated local fishing communities of Batuputih, Rinondoran and Kalinaun over their fishing grounds by illegally building a jetty for ships transporting building materials.
- MSM/TTN filed lawsuits against 8 fishermen from the villages Batuputih, Rinondoran and Kalinaun as well as three environmental activists of local NGOs who protested the construction of the jetty. Those eleven people are accused of having burnt down a wooden security post, measuring 3 x 4 m. As videos taken from five different angles prove, those eleven didn't burn the post, thus it is assumed that the case was filed against the eleven to erode the resistance among the people by intimidating them and also paralyze the leaders of the resistance movement AMMALTA. The case is meant as a show case what happens to people who resist the company.
- MSM/TTN are strongly deemed to deliberately create horizontal conflicts among the local people and in communal institutions like schools and churches by creating the image that the ones who resist the company destroy the working opportunities and livelihoods of many, as if the communities were desperately dependent on job opportunities granted by the company and will fall into poverty without.
- MSM/TTN are most probably the ones responsible for a recent mud flood in March 2007 which caused 400 villagers of Rinondoran to flee their houses and take refuge in camps, as the company interfered into the natural waterflow through their construction activities they don't have a valid permit for.

Recommendations by AMMALTA and YAYASAN SUARA NURANI (YSN)

1. Have a simultaneous and systematic campaign of environmental, anti – corruption and human rights NGOs on a national and international level to take the Minister Of Energy And Minerals to the national anti – corruption commission and file law – suits against him
2. Stage solidarity of the victim communities all over Indonesia to have the Minister Of Energy And Minerals lay down his office or have the President replacing him.
3. Have NGOs on national and international levels send letters of support for the environmental activists and fishermen who are filed unjust lawsuits against by MSM. Letters shall be addressed to the High Court Manado.
4. Support for the People of North Sulawesi by having national and international NGOs sending their letters of support for a green North Sulawesi and against destructive investments. Letters shall be addressed to the governor's office and the local NGO AMMALTA.

Manado, March 2007
AMMALTA SULUT & YSN