

Jakarta, July 2, 2010

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We, of the Civil Society Organization, consisting of

- **Friends of the Earth (WALHI)**
- **Mining Advocacy Network (JATAM)**
- **Anti-Debt Coalition (KAU)**
- **People's Coalition for Fisheries Justice (KIARA)**

intend to file a complaint about the PT. Weda Bay Nickel project, which is located in Weda Bay, District of Central Hamahera, Province of North Maluku. PT Weda Bay Nickel (WBN) is a joint-venture company between PT ANTAM (10%) and the Eramet Group (90%) from France. Based on a 1998 General VII Contract of Work (KK), PT WBN has rights to a 76,280 hectare mining concession in the vicinity of Weda Bay, Regency of Central Hamahera, province of North Maluku. According to company plans, open mine nickel and cobalt mining operations will be conducted using the method of disposing of tailings in the deep sea (STD). These two methods will lead to extraordinary harm to nature followed by the destruction of the livelihood of the people who depend on local natural resources such as the rivers, the sea, forests, lakes and fields.

The PT. Weda Bay Nickel Generation VII Contract of Work was signed by Presiden Soehato on January 19, 1998. The mining concession is based on an area of 76,280 hectares, which overlaps with a forest area of  $\pm$  72,775 hectares, comprising a:

- 35,155 hectare Ake Kobe Protected Forest (HL)
- 20,210 hectare Limited Production Forest (HPT)
- 8,886 hectare Permanent Production Forest (HP)
- 8,524 hectare Convertible Production Forest (HPK)

In the exploration permit issued by the Department of Energy and Mineral Resources (DESDM), Number 056.K/40.00/DJG/2004, the area of the exploration region is 6,096 hectares in Block 1 (Santa Monica) and Blok 2 (Gate), which based on Forest Planology Board Letter Number S.210/VII-KP/2005 states that 3,162 hectares in the Santa Monica Block is Protected Forest and in the Protected Forest Gate Block it is 1,666 hectares.

WBN will violate Forestry Law No 41/1999 if it wishes to engage in open mining in the Ake Kobe protected forest. WBN will include 6 companies given an exemption to engage in open mining in

protected forests, through a Constitutional Court decision on the Judicial Review of Regulation in Lieu of Law 1 of 2004/Law 19 of 2005.

In its operations, this company, a mining company, has the potential for damaging effects, including:

## **I. Identification of policy violations and social and environmental risks**

### **PS1: Social and Environmental Assessment and Management Systems**

PS1 stipulates, among other conditions, that the Social and Environmental Assessment be based on accurate project description and appropriate social and environmental baseline data; that the analysis includes the area of influence including power transmission corridors, roads, etc. and areas potentially impacted by cumulative impacts from further planned development; that the assessment consider greenhouse gas emissions; that the risks and impacts be “analyzed for the key stages of the project cycle, including pre-construction, construction, operations, and decommissioning or closure; that the Assessment be “adequate, accurate, and objective and presentation of the issues prepared by qualified and experienced persons;” that the assessment will include an examination of technically and financially feasible alternatives to the source of impacts” and documentation of the selection rationale; that the assessment will identify vulnerable groups; that “the client will establish and manage a program of mitigation and performance improvement measures and actions that address the identified social and environmental risks and impacts;” that community engagement will be “free of external manipulation, interference, or coercion, and intimidation, and conducted on the basis of timely, relevant, understandable and accessible information;” that consultation should be based on the prior disclosure of relevant and adequate information, including draft documents and plans, should begin early in the Social and Environmental Assessment process; ... .

However in PT. Weda Bay Nickel’s Environmental Impact Analysis documents, we find that:

- The assessment did not clearly consider various alternatives for most of the impact and did not prepare clear documentation about the risks of choosing alternatives, including for the exploration and feasibility stages
- Even though the ANDAL [Environmental Impact Assessment] covered all phases of the project, the assessment (“ESIA Exploration and Development”) did not honestly cover construction, operations and decommissioning or closure, even though those matters are required in the PS1 [Performance Standards 1]
- For the qualities of biodiversity and sedimentation as well as the water, the basic data also includes inadequate information (sampling methods and efforts) to assess its accuracy
- For some impacts (see the pollution section below), some issues were not sufficiently presented or contained inadequate information (for example efforts to sample for toxins) to assess its accuracy
- Forest Destruction and water crisis

If the government allows WBN to open a nickel and cobalt mine in Santamonica, which is estimated to contain a 33% deposit, the destruction of the Ake Kobe protected forest is unavoidable. Nickel mining requires total land clearance including the vegetation on it. More than 9000 hectares of forest will be destroyed to build mine shafts, factories, roads, sedimentation ponds and housing. Even though the total is the equivalent of only 6 percent of the total forest ecosystem, its impact will be wide spread and it cannot be restored. It is almost impossible to restore a forest that is totally destroyed to its original condition. Further, the damage will affect the entire forest ecosystem resulting in a decline in ecological functions including the provider of water and flood and drought prevention.

### **PS3: Pollution Prevention and Abatement**

PS3 stipulates, among other conditions, that where waste generation cannot be avoided but has been minimized, the client will recover and reuse waste; that the client will refer to the EHS Guidelines when evaluating and selecting pollution prevention and control techniques; that the client will “consider a number of factors, including the finite assimilative capacity of the environment, existing and future land use, existing ambient conditions, the project’s proximity to ecologically sensitive or protected areas, and the potential for cumulative impacts with uncertain and irreversible consequences; and (ii) promote strategies that avoid or, where avoidance is not feasible, minimize or reduce the release of pollutants;” that the “client will promote the reduction of project-related greenhouse gas (GHG) emissions in a manner appropriate to the nature and scale of project operations and impacts”

However, what we found is:

- The risks of sedimentation at all stages were not clearly identified in the matter of the impact of deforestation and the use of other lands, and in the matter of being close to ecologically sensitive (Protected Forests, coral reefs) and protectable areas (National Parks).
- The risks of pollution were not adequately identified in project documents (for all stages)
  - The sampling methods/samples, including sample measurements, for the composition of solid residues are not available in the project documents (see ANDAL V-62); the accuracy of the data for potential toxic contamination by garbage cannot be found out without this information; the potential impact from Tailing Residue Storage Facilities in the ground water has not been adequately evaluated.
  - Health threats caused by asbestos levels have not been adequately evaluated (III-4)
  - No methods for estimating projected contamination of dirty water flow to be disposed of into the sea are available; without such data, the statement that the flow of dirty water will not have a cumulative effect, will affect a limited area, and will disappear rapidly cannot be justified.
  - Air pollution from sulfuric acid production has not been adequately evaluated.
- Existing data are inadequate to verify the statement that replenishing the ground water will take place in limestone mines.

- Project plans did not sufficiently explain the pollution risks
  - The type of sewage treatment is undefined (secondary/tertiary) (I-26)
  - Sedimentation and erosion are major areas of focus and this project might not be able to mitigate their impact.
  - Zero disposal facilities, as indicated in PS Guidelines, are not an option contemplated in the ESIA.
  - The path for Residue Storage Facilities is depicted as impenetrable without making available data to indicate potential effectiveness.

- Pollution of Water Sources and the Sea

WBN mine operations will produce tailings that are planned for disposal into the sea, or the STD (*Submarine Tailings Disposal*) system. This method will clearly pollute the Weda Bay maritime ecosystem and will destroy the maritime organisms that are in Buyat Bay, North Sulawesi where Newmont has disposed of its tailings. This method is very controversial and clearly will be rejected by the Ministry of the Environment as was the PT Meares Sopotan Mining Project in North Sulawesi.

The Santamonica mine shaft will be a source of pollution for the local rivers because it contains acid rock and heavy metals. Through the water flow coming out of the mine shaft, heavy metals from former mining will pollute river water and ground water. Therefore, the Weda community, which is highly dependent on rivers to meet their need for clean water will suffer from the mining operations in Santamonica.

#### **PS5: Land acquisition and Involuntary Resettlement**

PS5 stipulates, among other conditions, that, for “people living in the project area [that] must move to another location,” the client will (i) offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation where appropriate; and (ii) provide relocation assistance suited to the needs of each group of displaced persons, with particular attention paid to the needs of the poor and the vulnerable.

However what we found was:

- The presence of the Tobelo Forest people who live in the region or area of the Contract of Work conflicts with the statement that “it is hoped that there will be no physical dispossession of families from their homes” (V-1) and the claim that no moving or dispossession actions is needed.

#### **PS6: Biodiversity Conservation and Sustainable Natural Resource Management**

PS6 stipulates, among other conditions, that clients will “assess the significance of project impacts on all levels of biodiversity as an integral part of the Social and Environmental Assessment;” that the Assessment will take into account the differing values attached to biodiversity by specific stakeholders,

as well as identify impacts on ecosystem services; that the assessment retain qualified and experienced external experts for cases with critical habitat or legally protected areas; that the client will not implement project activities in “critical habitat” (which include areas with high biodiversity value “such as areas that meet the criteria of the World Conservation Union (IUCN) classification,” “including habitat required for the survival of critically endangered or endangered species;” “areas having special significance for endemic or restricted-range species sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or which are associated with key evolutionary processes or provide key ecosystem services; and areas having biodiversity of significant social, economic or cultural importance to local communities”) unless “there are no measurable adverse impacts on the ability of the critical habitat to support the established population of species ... or the functions [justifying the critical habitat designation]” and “there is no reduction in the population of any recognized critically endangered or endangered species;” that in legally protected areas, the client must consult with all related stakeholders and act consistently with protected area management plans; that “clients involved in natural forest harvesting or plantation development will not cause any conversion or degradation of critical habitat.” Relatedly, the IFC Exclusion List precludes projects with financial intermediaries that involve commercial logging operations for use in primary tropical moist forest.

However what we found was:

- Basic information on biodiversity is insufficient and inadequate and the information is not accurate enough. There are no efforts at survey information (for example, species accumulation curves). Survey of fauna is still incomplete (VI-2). Basic data included in the ESIA shows several gaps and information disagreements (for example, unidentified bats in a cave, names of species misspelled).
- There is a critical habitat but it is not properly identified. Almost half of the Contract of Work area is identified as Protected Forest (even though the maps actually identify it as Protectable Forest. Protected Forest, under Forestry Law No. 41 of 1999, is forest “whose main function is to protect the life support systems for hydrology, prevent floods, control erosion, protect from sea water intrusion and guard soil fertility.” Protected Forests, with several site-specific exceptions that are formed by law, are outside the limits for mining. Protected Forests match the description of the categories of areas protected by the IUCN such as IV or VI. In the context of a lack of biological surveys, a number of the species are endemic to Halmahera or Maluku and at least one of the species threatened with extinction has been found in the area (for example, *Hopea gregaria* included in Threatened with Extinction, 27 species of birds are endemic, *Rattus morotaiensis* is endemic). Important populations of flocking species (bats) could be present in caves in limestone regions that have not been surveyed. Forests, limestone regions, and coral reefs also provide key ecosystem services such as water storage and erosion control as well as fish production, and fauna can play an additional role in ecosystems such as pollination. Forests and coral reefs also represent economic biodiversity and other interests for local communities. All of this marks the presence of a critical habitat, whose activities this project cannot run unless the project can guarantee that there will be no harmful impact on the critical habitat (its species or functions). The ESIA does not provide those guarantees. A critical habitat also requires an evaluation by qualified and experienced experts, which these limited data show are not part of

the ESIA. Additionally, the permanence of the natural forest (the planned clearing) could cause a conversion or degradation of the critical habitat. It seems like this will take place.

- The issues of protected areas are not properly considered in the ESIA. Protected forests are a type of region protected by the law. Additionally, a National Park is within 4 Km from the project area; however the ESIA did not discuss plans for regulating a buffer zone of that National Park.
- The truth of claims for forest habitat rehabilitation and improvement has not been proven. “It is thought that the impact can be reversed by rehabilitation” — where are the proven examples? “It is known that the complete restoration of tropical forest ecosystems is very difficult, if it is not thought to be impossible” (ESRS) but the ESIA claims that “it is expected that the impact on the forest as a natural forest can be totally reversed and restored in 20 years” (I-24) and “it is expected that the total restoration of the natural fauna in the area to be restored can occur after 10 years”(I-25)?
- The impact of deforestation on the forest habitat is unidentified and is considered not very feasible. The areas to be cleared that are in the protected forest (for exploration or other activities) are also unidentified. “The area to be cleared is very small compared to the entire forest in the lower part of Halmahera” (I-25) however this assessment fails to include the cumulative impact on deforestation planned at the construction and operation stages, and from the forest cutting activities by other parties (also mentioned but not clearly quantified)
- The wood from land clearing will be sold (I-23) and it seems that this represents a commercial mining operation. The forest appears “relatively untouched by human activity except for selective felling” and “it’s as if it was still in pristine condition (at yet untouched);” some of it seems to meet the condition of “primary tropical rain forest.” Clearing will conflict with the IF exemption on commercial felling operations in tropical rain forests.
- Decline in Biodiversity

Deforestation causes a fragmentation of the habitat and further affects all forest regions as a single ecosystem. Forest biodiversity<sup>1</sup> can be impacted by the following:

- A decline in population to below the minimum number for preservation
- An increase in fringe areas which make some species threatened by (1) predators (2) competition with wildlife from outside the forest and pests, as well as (3) wind
- Creation of barriers that reduce the ability of some species to (1) spread to and inhabit new habitats, (2) seek food and (3) find mates.

Mining will damage one of the most important *biodiversity hotspots* in the world. It is not an exaggeration to fear that many species of birds on this island will become extinct because they are endemic (are not found in any other hemisphere than Halmahera).

## **PS7: Indigenous Peoples**

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<sup>1</sup> Miller, G.T. Environmental science: Working with the Earth, 9<sup>th</sup> edition, Thomson Learning, 2002

PS7 stipulates, among other conditions, that the “client will consider feasible alternative project designs to avoid the relocation of Indigenous Peoples from their communally held traditional or customary lands under use. If such relocation is unavoidable, the client will not proceed with the project unless it enters into a good faith negotiation with the affected communities of Indigenous Peoples, and documents their informed participation and the successful outcome of the negotiation. Any relocation of Indigenous Peoples will be consistent with the Resettlement Planning and Implementation requirements of Performance Standard 5. Where feasible, the relocated Indigenous Peoples should be able to return to their traditional or customary lands, should the reason for their relocation cease to exist.”

However we found that:

- “The fact that the Tobelo Forest Community depends on the natural resources that is within it or that is close to the area that will be mined is unknown” and “The Tobelo Forest Community at the present time is in ... a location for which an RSF is being offered;” this project must still document the impact that might occur and get information and involve traditional community participation in the project area.

### **PS8: Cultural Heritage**

PS8 stipulates, among other conditions, that “the client is responsible for siting and designing a project to avoid significant damage to cultural heritage; that the client will not significantly alter, damage, or remove any critical cultural heritage (internationally recognized heritage of communities who use, or have used within living memory the cultural heritage for long-standing cultural purposes, and legally protected cultural heritage areas, including those proposed by host governments for such designation).

However we found that:

- “The project area has still not been fully mapped in detail and assessed for its tangible cultural heritage” so for that reason this project cannot successfully be “responsible for the mapping and design of a project to avoid significant damage to cultural heritage” or to protect the critical cultural heritage that could be affected by the impact of exploration and the stages of feasibility, or construction, and the closure stage.

## **II. The matter of consultation and community involvement**

PT. Weda Bay Nickel said a number of times at meetings with the civilian society, including during “consultations” held at the Cemara Hotel Jakarta on Tuesday, June 15, 2010, that consultations were also held with the local civilian society and some local NGOs, one of which is the North Halmahera Friends of the Earth. This is incorrect because the North Halmahera Friends of the Earth has never had a dialog with PT Weda Bay Nickel or with MIGA.

In addition, the community in the area of potential mining, especially, the Village of Sagea, is determined to oust WBN if their mining operations pollute the river. They will also oust WBN if they plan to dispose of their wastes in the river or in the sea (Weda Bay). The communities around Weda Bay are united by the bonds of Sawai traditional law.

### **III. The Open Information Problem**

Documents relating to this new project were not available on MIGA's website until early April 2010, meaning they were in the form of electronic files that were hard to download, especially for the community and community organizations at the project site.

### **IV. Economic, political risks and other conflicts**

#### **Problem Partners**

One of the shareholders of Weda Bay Nickel is PT. ANTAM Tbk, which holds 10%. This company is one of the companies that have committed environmental crimes in one of its mining areas on Gebe Island, also in North Maluku. Besides destroying the region and environment of Gebe Island, PT. ANTAM also engaged in acts of violence against the surrounding people.

#### **A. Social Risks**

- a. Mining operations in Santamonica have the potential for triggering tenurial conflicts with the local community in connection with the forest resources that they use on a daily basis for various needs and activities. If mining takes place, people's access into the forest will be restricted by security forces even though they were there far before the arrival of the company. The community will be affected if they are forbidden from using the forest because many of their needs are met by the forest, such as wood, rattan, honey, game animals and traditional medicines. This impact will be felt by the Tugutil community which lives in and fully depends on the forest. They will be very much affected by WBN mining activities, which could cause serious conflicts.
- b. In the Ake Kobe forest region there is a site that is sacred to the community, the Batu Gua Lubang that it is feared will be damaged if there are explosions. This place is very much glorified by the Sagea people because they are certain that it is where their ancestors meditated. Damaging this region means despising the local community's culture and could trigger resistance to WBN.
- c. Mining operation wastes to be disposed of in the sea and overflows of water from the mine shaft that pollute the rivers will trigger major social problems. The pollution of the living space will eliminate the community's access to clean water and sources of healthy food, and will damage their source of income. These impacts will be felt even more strongly as time goes on until eventually it will eliminate the community's ability to survive.

#### **B. Economic Risks**

Economically, WBN mining operations will not benefit the local people because the use value extracted from the sale of nickel and cobalt will not flow to the local people. On the contrary,

WBN mining operations, especially if they use the open mine and STD methods, will destroy and pollute their sources of income, such as the forests, rivers, lakes and sea. Therefore, the agrarian sector, which is what the people depend on, will be destroyed and they will experience long-term impoverishment.

### C. Political Risks

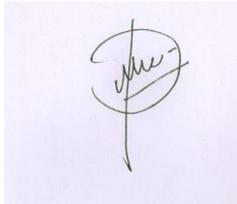
WBN mining operations will be very controversial because they conflict with the Forestry Laws and will damage a *biodiversity hotspot* region recognized by the world. These mining operations will have extraordinary resistance from the community, however it will also bring forth opportunistic groups that will side with the company from government circles, parliament, and the community. Finally this process will touch on the corruption of National officials to make WBN operations run smoothly.

For the powerful reasons given above, we hereby **demand that CAO conduct an immediate investigation into the points that we have set forth above, and that MIGA delay its approval for granting a guarantee of the feasibility phase of the PT Weda Bay Nickel project study, until there is a decision on the results of the investigation conducted by CAO.**

These are our objections and complaints, along with an explanation of the potential significant impact of this project, to be used as material for consideration by the CAO.

Thank you.

Respectfully yours,



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