



Mining Ombudsman case report: Rapu Rapu polymetallic mine



Contents

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Feedback welcome

We appreciate any feedback, comments or input you may have about issues and cases discussed in this report. Comments can also be emailed to mining.ombudsman@oxfam.org.au

**This report is available online
at www.oxfam.org.au/mining**

Front cover: Community members and their supporters protest against Lafayette outside the Provincial Government offices in Legazpi, Albay, 5 - 12 December 2008. Photo: Shanta Martin/OxfamAUS.

Left: Rice paddies on Rapu Rapu island. Fishing and farming are the primary sources of income for most residents. Photo: Shanta Martin/OxfamAUS.

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1. Executive summary

“Business is the major source of investment and job creation, and markets ... constitute powerful forces capable of generating economic growth, reducing poverty, and increasing demand for the rule of law, thereby contributing to the realization [sic] of a broad spectrum of human rights.... In addition to compliance with national laws, the baseline responsibility of companies is to respect human rights. Failure to meet this responsibility can subject companies to the courts of public opinion ... [T]he broader scope of the responsibility to respect is defined by social expectations — as part of what is sometimes called a company’s social licence to operate.”

Professor John Ruggie – United Nations Special Representative to the Secretary General on Business and Human Rights, Report to the UN Human Rights Council, June 2008

This case report outlines the social and environmental impacts caused by the operations of the Australian-owned Rapu Rapu polymetallic mine on Rapu Rapu island, the Philippines. It details the failure of two Australian companies — Lafayette Mining Limited and ANZ — to prioritise the local communities’ wellbeing over profits.

Lafayette Mining Limited (“Lafayette”) was an Australian-listed mining company until it was suspended from the Australian Stock Exchange in August 2008. Lafayette owned two subsidiaries involved in the mining project on Rapu Rapu island: Rapu Rapu Minerals Inc (RRMI) and Rapu Rapu Processing Inc (RRPI). The Rapu Rapu mining project received significant and ongoing financial support from a consortium of international banks, led by one of Australia’s largest banks, ANZ.

The history of the Rapu Rapu mine records the failure of Lafayette to hear and address the grievances of local communities who vehemently protested at the impacts of the mine on their environment, their livelihoods and their lives. There was also failure on the part of ANZ to respond when communities and their supporters made it clear that the mining project that the bank was financing was having significant detrimental social and environmental impacts. Finally, there was a lack of commitment by local authorities to effective regulation.

Poor environmental safeguards at the Rapu Rapu mine contributed to at least two cyanide-laden spillages and fish-kills within six months of the mine commencing operations.¹ This had a significant effect on local fisherfolk’s livelihoods, as well as causing fear among communities about eating locally-caught fish. In addition, neighbouring communities consistently raised their concerns about the Rapu Rapu mine both before and during the period in which it operated. These concerns included:

- potential detrimental impacts on the environment, including on local fisheries, water and land stability and the realisation of these impacts once the mine started operating;
- significant negative impacts on livelihoods as a result of a drastic decline in the saleability of fish from the seas surrounding Rapu Rapu due to consumer fear of contamination;
- the effects of the mine on health;
- increased militarisation; and
- a failure to obtain local communities’ free, prior and informed consent to the mining operation both initially and as an on-going process.

Beyond these concerns, few, if any, benefits flowed to local communities; there were low levels of local employment at the mine as well as ad hoc and unsustainable community development programs. Moreover, the mine contributed very little in the way of taxes to local, regional or national coffers due to the application of extremely generous tax concessions designed by the Philippines National Government to entice foreign investment.

Lafayette’s poor environmental performance coupled with its ineffective approach to dealing with concerns raised by local communities and civil society organisations led to an irreconcilable collapse in trust and confidence by community members both in the mine’s operators and its financial supporters, and in the effectiveness of regulatory authorities.

At the same time, ANZ failed to demonstrate its social and environmental credentials. Oxfam Australia believes that sound lending practices would have required consideration of environmental and social risks and the implementation of mechanisms to avoid many of the impacts of poor environmental performance that later eventuated. Such an approach does not appear to have been taken in the case of Lafayette. Further, ANZ and two other banks in the consortium supporting the project have signed onto the Equator Principles — a voluntary set of social and environmental standards for governing lending decisions. While Oxfam Australia welcomes the creation of environmental and social standards for project financing, the actions of these banks in relation to the Rapu Rapu mine raise serious questions about the extent to which the standards are implemented. Rather than take steps to address the negative impacts of the mine, ANZ and the other banks that invested more than USD \$268 million (AUD \$311 million) in the Rapu Rapu project prioritised the objective of minimising financial losses. Once Lafayette was clearly in financial straits, the banks sold their debt and passed on the mine without ever communicating steps taken to prioritise social and environmental considerations. No money was made available for environmental rehabilitation. No money was set aside to foster alternative livelihoods or for compensation for past impacts.

After the 2005 spills led to suspension of the mine’s operations, Lafayette was unable to pay its debts to ANZ and the banking syndicate. In late 2007, Lafayette entered into external administration and in April 2008, the administrators announced the sale of the banks’ debt and Lafayette’s interest in the Rapu Rapu mine. LG International now holds 42% of the mine, Kores 28%, and Malaysian Smelting Corp 30%. Despite widespread local opposition and the objections of many local and regional government officials, the mine is said to be “ready to resume commercial operations”.²

The rise and fall of Lafayette signals a warning to those in the Australian mining industry that fail to uphold the highest environmental and social standards in their operations abroad. The case demonstrates that dereliction in this duty leads to environmental damage and lasting detrimental effects on the lives of local communities. As evidenced by the demise of Lafayette, it can also lead to financial ruin. All of this has the potential to sully the reputation of the Australian mining sector abroad beyond the activity of any single company, leading communities in developing countries to be all the more wary of foreign attempts to mine on their land.

This report seeks to ensure that lessons can be learnt from the Rapu Rapu mine case. The mine has been an example of the exact opposite of corporate social responsibility; projects should not result in prioritisation of the pursuit of wealth at the expense of local communities and they should not leave a local community worse off than when the company entered their land. Companies learning from this case have the opportunity to showcase best practice in their operations by obtaining the free, prior and informed consent of communities before going ahead with mining activities; by monitoring and taking action on social and environmental impacts; and by giving back to affected communities through effective and sustainable community and economic development programs. By respecting the rights of the members of local communities, mining companies have a far greater potential to contribute to human development and poverty alleviation.

Oxfam Australia has a number of recommendations for the current mine owners, Philippines regulatory authorities, the Australian mining industry, ANZ and other financiers of mining projects in developing countries, and the Australian government. In brief, these recommendations include (but are not limited to):

For the mine owners:

- Do not resume operations at the mine until community consent is received.
- Ensure ongoing rehabilitation of the mine site, including addressing the impacts of acid-mine drainage.
- If consent is granted and operations continue, ensure social and environmental impacts are regularly monitored; the local community is fully engaged; an effective disaster preparedness plan is developed; and community grievances are listened to and actioned.

For the Philippines regulatory authorities:

- Remove special tax exemption status granted to the mine; undertake an assessment of taxes paid to date; and sign up to the Extractive Industries Transparency Initiative.
- Do not allow recommencement of operations until an independent multi-stakeholder investigation assesses and approves the suitability of Rapu Rapu island for mining activities, and mine operators have obtained the free, prior and informed consent of communities.
- If communities grant consent and the independent investigation approves the suitability of Rapu Rapu for mining, require the mine operators to:
 - pay into an escrow account or enter a performance bond prior to recommencement of operations to guarantee sufficient funds to cover the costs of mine rehabilitation;
 - engage in regular environmental monitoring;
 - establish a rights-compliant dispute resolution mechanism;
 - implement an effective disaster preparedness program; and
 - ensure fair employment opportunities for community members.

For the Australian mining industry:

- Where the “social licence” to operate is lost, ensure all possible means are taken to regain the trust of local stakeholders, including full disclosure of activities and involving community members in monitoring.
- Support the establishment of an independent grievance mechanism in Australia for communities affected by Australian mining operations abroad.

For ANZ and other banks and financiers:

- Where social and environmental issues in projects financed by the banks are identified, ensure transparency and public disclosure of the banks’ requirements regarding the Equator Principles, and ensure that independent technical advisors engage with local communities to inform their advice on a project’s social and environmental impact.
- Revise the Equator Principles to ensure they are consistent with international human rights standards, and create a complaints process in instances where banks do not fulfil their commitments under the Principles.
- Ensure projects financed by the bank have undergone a thorough human rights impact assessment and have in place site level rights-compliant dispute resolution mechanisms.
- Support the establishment of an independent grievance mechanism in Australia for communities affected by Australian mining operations abroad.

For the Australian government:

- Encourage Australian companies to respect the rights of members of communities in which they operate, whether acting in Australia or overseas.
- Develop regulatory and non-regulatory measures to prevent human rights violations by Australian companies overseas, including by establishing an independent grievance mechanism in Australia for overseas affected communities.

“A socially responsible company is one that listens to the community because if it has no acceptability it will not work.”

Mr Alfredo Non – President of Rapu Rapu Minerals Inc
20 March 2007

“The social licence to operate is lost in Rapu Rapu.”

Mr Horacio Ramos – Director of the Mines and Geosciences Bureau
Department of Environment and Natural Resources Philippines
18 December 2007

2. Oxfam Australia's approach to mining

Oxfam Australia is an independent, non-government aid and development organisation and the Australian member of the Oxfam International confederation. For more than 50 years, it has been a vehicle for Australians to help others to build a fairer and more sustainable world by fighting global poverty and injustice. The agency undertakes long-term development projects, provides humanitarian responses during disaster and conflict, and advocates for policy and practice changes that promote human rights and justice.

Oxfam Australia takes a rights-based approach to its work. This reflects the view that poverty and suffering are primarily caused and perpetuated by injustice

between and within nations, resulting in the exploitation and oppression of vulnerable peoples. Such injustice and suffering are neither natural nor inevitable; they result from systems based on injustice, inequality and discrimination and from the violation of human rights by those with greater access to power.

The agency is not opposed to mining but believes it must be done in accordance with rights codified under the international human rights system, including the right that Indigenous peoples and local community members have to determine their development and to give or withhold free, prior and informed consent to mining activities. Oxfam Australia believes that private sector investment can be a driver

of economic growth and poverty reduction, provided appropriate regulations and controls exist. However, without adherence to human rights standards, mining can cause the loss of land and livelihoods, degradation of land and waterways, and increased violence and conflict. The most vulnerable or marginalised members of communities — such as women, children and Indigenous people — tend to be most excluded from the economic benefits of mining, and to bear the brunt of its negative social and environmental impacts.

Oxfam Australia speaks in its own voice. It does not assume a mandate to speak on behalf of others, but aims to facilitate local and Indigenous communities to speak for themselves.

Community members in Linao gather to discuss with the Mining Ombudsman the benefits and impacts of the Rapu Rapu mine. Community members were asked to raise their hands if they were fisherfolk. Photo: Shanta Martin/OxfamAUS.



2.1 The Mining Ombudsman project

In the past few decades, the Australian mining industry has become more active in developing countries where it is increasingly affecting poor and vulnerable communities. Many communities have complained of human rights abuses and environmental degradation caused by, or on behalf of, Australian mining companies. Many of these communities find that companies disregard their concerns, while the state often provides no effective institution to which they can go for fair and equitable redress. Lack of access to an independent complaints mechanism sometimes leads to costly legal actions or violent confrontations.

In February 2000, Oxfam Australia established a Mining Ombudsman to:

- support and help women and men from local and Indigenous communities affected by mining whose basic human rights may be compromised by the operations of Australian mining companies;
- help those local women and men to understand and defend their rights under international law;
- help ensure that the Australian mining industry operates in such a way that the rights of women and men from local communities affected by mining are better protected;
- demonstrate the need for an official complaints mechanism within Australia; and
- demonstrate the need for enforceable, transparent and binding extraterritorial controls that would require Australian mining companies to adhere to universal human rights standards wherever they operate.

The Mining Ombudsman receives complaints through Oxfam Australia networks throughout the world. The Mining Ombudsman checks all claims through site investigations, a process involving extensive interviews with local community men, women and youth, civil society organisations and where possible, government and company officials.

The Mining Ombudsman then produces an investigation report that is sent to all stakeholders for comment and action, and undertakes on-site progress evaluations every 18 months to two years. It is not the Mining Ombudsman's role to judge individual mining projects, but rather to try to ensure that companies treat local communities in a fair and equitable manner, respecting the human rights of local women and men.

2.2 A complaints mechanism for the mining industry

There are several key issues that need to be addressed in forming a formal industry complaints mechanism:

- acknowledgement of power differentials between companies and affected communities;
- accessibility of the mechanism to the people from affected communities; and
- recognition that human rights and environmental standards must be improved, and that this will not happen without enforcement by an authoritative body.

Oxfam Australia recommends that a complaints mechanism have three key functions, comparable to those of the Compliance Adviser/Ombudsman (CAO) of the World Bank's International Finance Corporation (IFC)/Multilateral Investment Guarantee Agency (MIGA):

1. **Complaints handling:** receiving and investigating community complaints and making detailed recommendations to the communities, the company and, where needed, to the industry.
2. **Advisory:** providing advice to industry and government on developments required in policy and standards.
3. **Compliance:** ensuring companies comply with the recommendations from the complaints mechanism, and that the industry implements appropriate standards and policies.

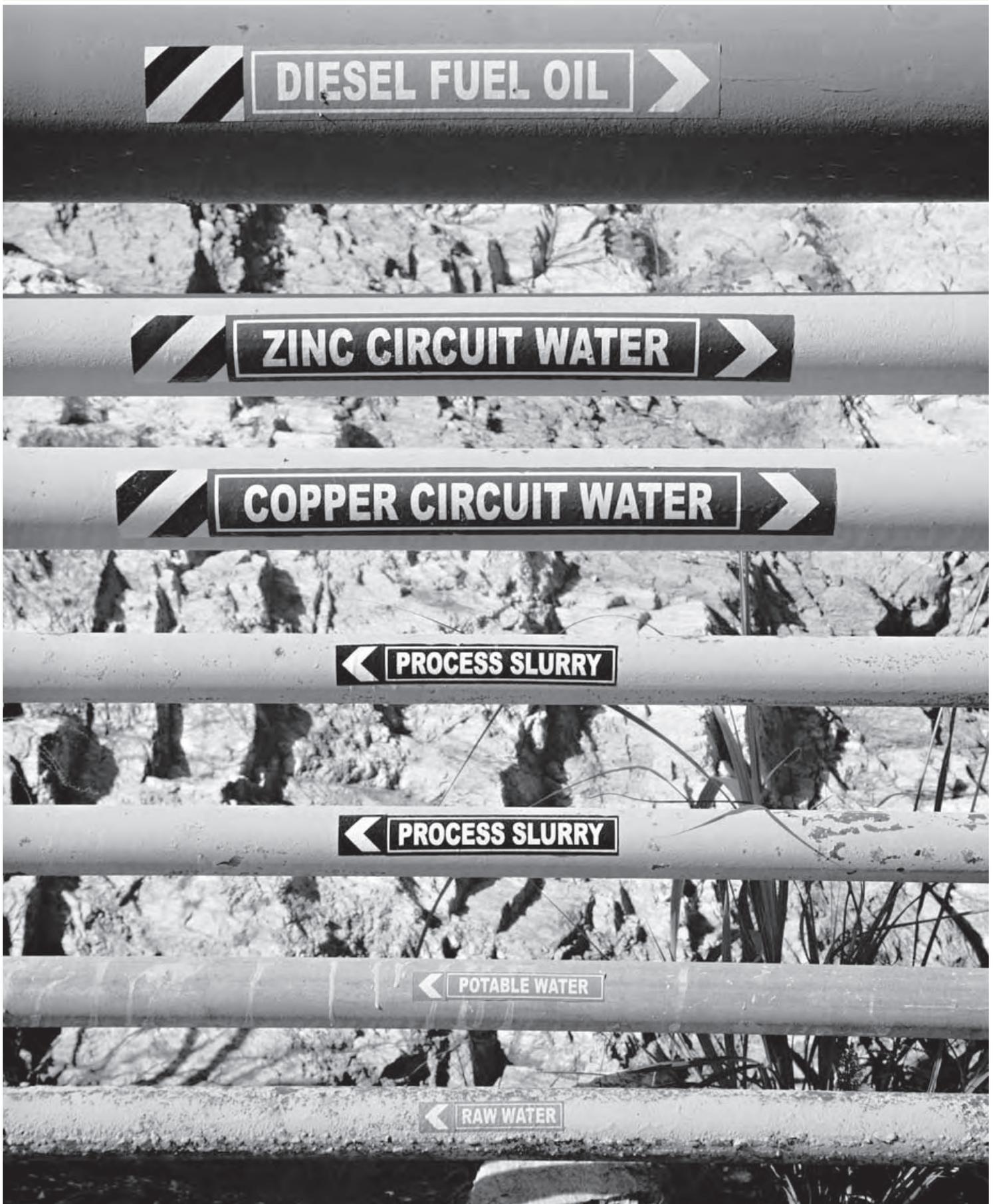
Oxfam Australia has identified six guiding principles that underpin a rights-compliant and effective complaints mechanism:

1. **Standards** that correspond with universally accepted human rights standards.
2. **Independence** from stakeholders, especially the industry, industry consultants and associations.
3. **Funding** that is transparent to ensure independence and impartiality, and to ensure the mechanism is free of charge to complainants.
4. **Enforcement** through legislation covering all Australian mining companies and the power to sanction non-complying companies and their suppliers, contractors, agents and subsidiaries, employees and directors.
5. **Accessibility** of information in the appropriate language for communities at risk, available at all stages of the mine operation.
6. **Accountability and transparency** that includes public disclosure of investigation results to ensure transparency, trust and accountability. Compliance should also be monitored regularly.

Oxfam Australia also recognises the importance of site-level complaints mechanisms for addressing community complaints at the earliest opportunity. Such mechanisms should be accessible, transparent, participatory and fair so as to gain legitimacy among communities. Their effectiveness requires recognition and respect of rights, while seeking to address inherent power imbalances.

More information is available on our website at: www.oxfam.org.au/mining

Rapu Rapu case study



3. Rapu Rapu case study at a glance

3.1 In brief

Mine owner: Australian company, Lafayette Mining Ltd ("Lafayette"), was previously the owner through its Filipino subsidiaries, Lafayette Philippines Inc (LPI), Rapu Rapu Minerals Inc (RRMI) and Rapu Rapu Processing Inc (RRPI). In 2002, 26% of LPI was sold to a Malaysian registered company, Philco Resources Ltd.³ Philco Resources is a joint venture between Korean companies, LG International Corp and Korean state-owned Korea Resources (Kores). Lafayette went into voluntary administration on 18 December 2007. Ferrier Hodgson were subsequently appointed administrators at the first creditors' meeting on 27 December 2007. On 22 April 2008, the remaining 74% of the project was sold by administrators, Ferrier Hodgson, to Philco Resources.⁴ Philco Resources have since sold a 30% share of the Rapu Rapu project to the Malaysian Smelting Corporation (MSC). LG International now holds 42% of the project, Kores 28%, and Malaysian Smelting Corp 30%. Throughout this report, the Rapu Rapu mine operating companies are referred to as "RRMI/RRPI".

Resources: Polymetallic (copper-zinc-gold-silver)

Mining method: Open pit mining

Mine location: Rapu Rapu island, Albay province, south-eastern Luzon, Republic of the Philippines

Project stage: Lafayette through RRMI/RRPI began operating the mine in April 2005, but operations were suspended after cyanide-laden spills in October 2005. The mine later resumed operations in February 2007. On 4 June 2008, the Filipino management team running the Rapu Rapu mine resigned after negotiations with Philco Resources fell through. As at the time of writing (October 2008) the mine is not operational, however, recent media reports indicate the current mine owners expect to recommence operations in the immediate future.⁵

Affected communities: Three barangays (villages) are deemed by the mine to be "direct impact areas": Binosawan, Pagcolbon and Malobago. Another four barangays are said to be "indirect impact areas": Poblacion, Santa Barbara, Linao and Tinopan.⁶ In addition, other barangays on Rapu Rapu island have been affected by fish-kills and consumer fear at eating the fish (due to suspected mine contamination), including Buenavista, Carogcog, Mananao, Morocborocan, Santa Barbara, Viga and Guadalupe. The coastal barangays of Sorsogon province have also been affected, including Bacon, Gubat, Barcelona, Bulusan and Prieto Diaz.

Brief chronology of events

(for a full chronology of events, refer to Appendix 1):

November 1998

Lafayette acquires its interest in the Rapu Rapu copper-gold-zinc-silver project.

April–July 2005

Mining (ore extraction) and milling (processing) operations start.⁷

11 October 2005

First cyanide-laden tailings spill. Dead fish are reported in and around the shorelines of Rapu Rapu.

30 October 2005

Second cyanide-laden tailings spill. Fish are found dead in nearby creeks, in and around the shorelines of Rapu Rapu.⁸

November 2005

The Department of Environment and Natural Resources (DENR) suspends milling⁹ and Lafayette's wastewater discharge permit.¹⁰

9 January 2006

Pollution Adjudication Board (PAB) issues a Cease and Desist Order against Rapu Rapu Processing Inc.

10 March 2006

The Philippines President appoints the Rapu Rapu Fact Finding Commission to investigate the social and environmental impacts of the Rapu Rapu project.

19 May 2006

The Fact Finding Commission delivers its report finding that Lafayette had engaged in grossly negligent activity.¹¹ Lafayette questions the credibility of the report.

10 July 2006

The DENR issues a Temporary Lifting Order (TLO) to Lafayette to allow it to operate and to "sample" and "test" environmental management systems to demonstrate "best practice".¹²

18 July 2006 and throughout 2006, 2007 and 2008:

Community protests (refer to full chronology at Appendix 1).

21 July 2006

Residents report a fish-kill at Mirikpitik creek on Rapu Rapu island. Lafayette denies responsibility.

12 September 2006

Local Rapu Rapu community-based organisation, Sagip Isla Sagip Kapwa, and national non-government organisation, the Center for Environmental Concerns (CEC), ask Oxfam Australia's Mining Ombudsman to take up the Rapu Rapu case.¹³

December 2006

ANZ formally adopts the "Equator Principles", a benchmark for the financial industry to manage social and environmental issues in project financing.

8 February 2007

The PAB issues a Final Lifting Order (FLO), which authorises the immediate resumption of production of concentrates from the base metals plant.

12–20 March 2007

The Mining Ombudsman conducts a preliminary field investigation on Rapu Rapu island and surrounding areas, including meeting with mine staff and undertaking a visual inspection of the mine site.

June 2007

The Mining Ombudsman raises concerns about the Rapu Rapu mine with ANZ and facilitates direct communication between local community members and ANZ.

28 October 2007

A fish-kill is reported along the shoreline of Barangay Poblacion, Rapu Rapu. Lafayette denies responsibility.¹⁴

12–18 December 2007

The Mining Ombudsman conducts a comprehensive field visit on Rapu Rapu island and surrounding areas.

18 December 2007

Lafayette goes into voluntary administration.

December 2007–September 2008

The Mining Ombudsman urges administrators, Ferrier Hodgson, and ANZ to be mindful of the human rights of local community members and the need for a responsible exit by ANZ from the project.

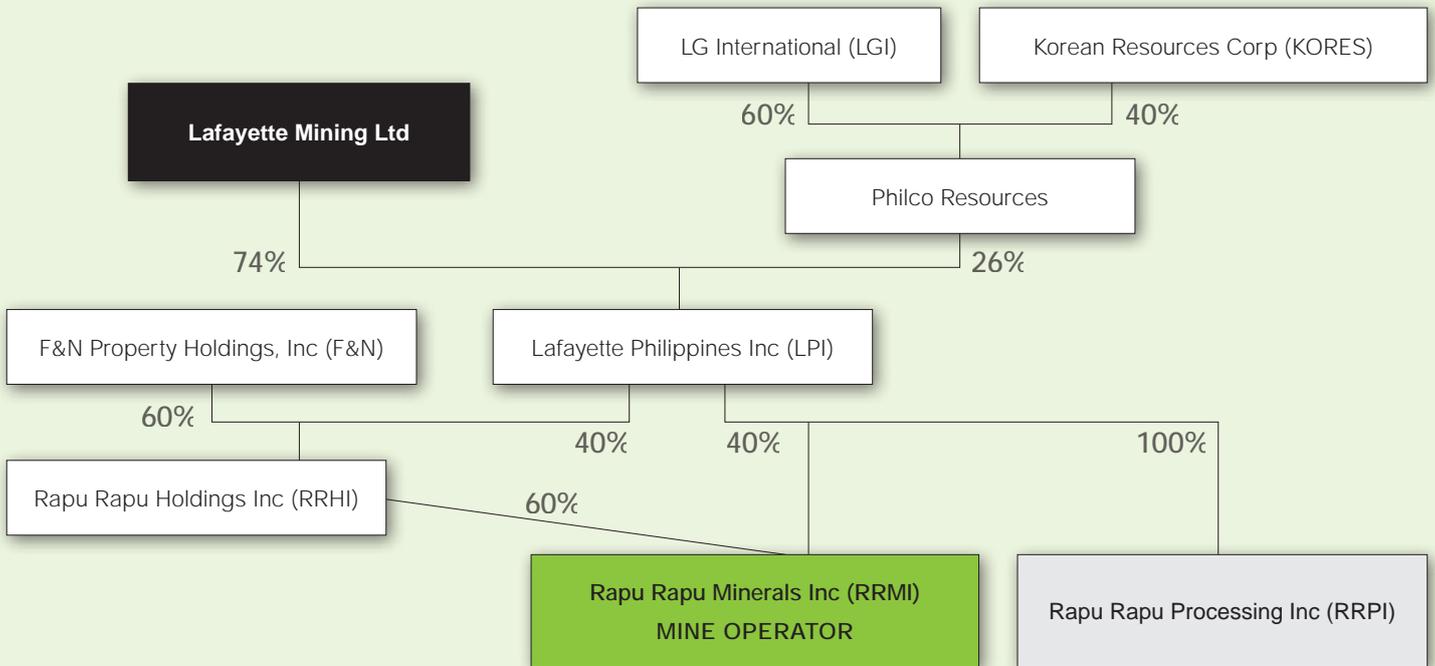
14 May 2008

Ferrier Hodgson announces the sale on 22 April 2008 of Lafayette's stake in the Rapu Rapu project to Philco Resources. The sale was structured as a sale by the banking group of the debt owed to it and the sale by Lafayette of its 74% stake in LPI for nominal value.

Left: Pipes along Rapu Rapu's main road carry fuel, water and waste to and from Lafayette mine. Photo: Alex Felipe.

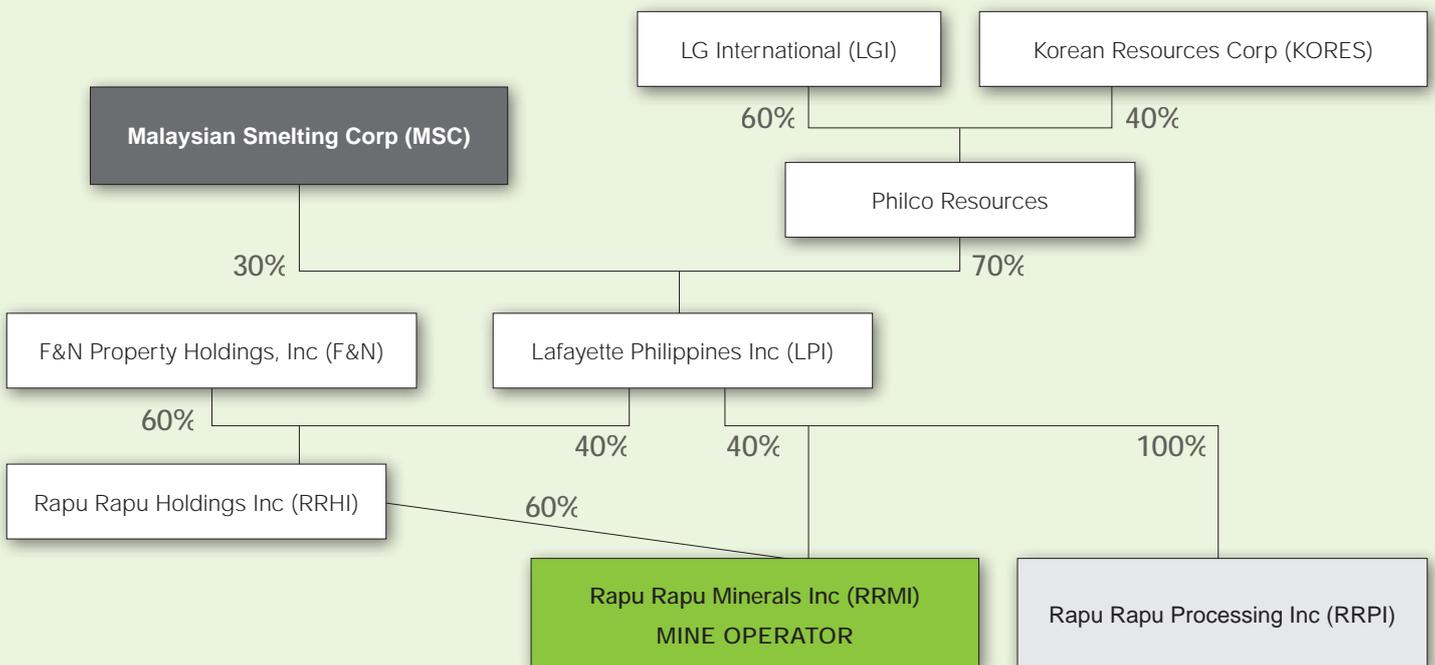
3.2 Rapu Rapu mine ownership

Prior to administration, December 2007



F&N Property Holdings is a Filipino corporation. With F&N holding majority ownership of RRHI, which holds majority ownership of RRMI, the Philippines Department of Environment and Natural Resources considered RRMI a Filipino owned company.¹⁵

After restructure, as at October 2008



4. Case background

4.1 Lafayette and mining in the Philippines

4.1.1 About Lafayette

Lafayette Mining Ltd (“Lafayette”) was an Australian publicly-listed company until it was suspended from official quotation on the Australian Stock Exchange on 25 August 2008.¹⁶ Lafayette was incorporated on 15 November 1996 and listed on the Australian Stock Exchange on 29 August 1997.¹⁷ Initially, Lafayette acquired permits and explored for gold in the Republic of Gabon, West Africa.¹⁸ In response to the then downturn in the price of gold, Lafayette sought to diversify its activities, and in November 1998, acquired its interest in the Rapu Rapu copper-gold-zinc-silver project located on the island of Rapu Rapu, Philippines.¹⁹

Lafayette’s subsidiaries were the operating companies for the Rapu Rapu mine; Rapu Rapu Minerals Inc (RRMI) conducted mineral extraction and Rapu Rapu Processing Inc (RRPI) conducted mineral processing.

Between 1999 and 2001, Lafayette undertook a drilling program, a pre-feasibility study, a definitive feasibility study funded by Standard Bank London Limited and Lion Selection Group Limited, and an Environmental Impact Study.²⁰ The definitive feasibility study concluded that development of the Rapu Rapu project was both technically and economically feasible.²¹ According to Lafayette, this conclusion was subsequently confirmed by independent technical auditors appointed by the project financiers.²²

In July 2001 the Department of Environment and Natural Resources (DENR) granted an Environmental Compliance Certificate (ECC) to the project and, shortly afterwards, approved an Environmental Protection and Enhancement Program (EPEP). In December 2002, the Philippine Mines and Geosciences Bureau (MGB) issued a Declaration of Mining Feasibility which is the final regulatory approval required to commence project construction and operation in the Philippines. Operations commenced in 2005, with the life of the mine estimated at six years.



4.1.2. Lafayette: “flagship” for foreign mining in Philippines

The Philippines has among the world’s most significant metallic and non-metallic mineral resources and a long history of mining. Indigenous populations mined gold prior to the arrival of the Spanish. The country had its first major mining boom in the 1930s. By the mid-1960s, the Philippines was one of the world’s largest producers of gold, copper, chromite and nickel. For 20 years the mining industry played a key role in the country’s economic development, contributing as much as 30% of gross domestic product (GDP) and 50% of exports.²³ At its peak, there were 180 metallic mines operating in the country, 60 of which were major ones.²⁴

Toward the end of the 20th century, however, various factors led to a rapid downturn in mining in the Philippines, including declining international metal prices, increased oil prices, political instability, and increased awareness of the impacts of irresponsible mining activity. By the mid-1980s, mining accounted for as little as 2% of GDP.²⁵ The Philippine Mining Act was passed in 1995 to revive the declining mining industry. Within one year of enactment, the number of foreign mining companies operating in the Philippines increased from four to more than 20.²⁶ However, the industry continued a decline from 17 mines in 1997 down to just seven in 2002.

Since 2004, the Philippines Government has made a concerted effort to encourage the reinvigoration of the mining industry in the hope that mining will be a major driver of economic growth. According to the DENR, the value of the country’s current ore reserves is estimated at between USD \$800 billion to USD \$1 trillion.²⁷ Changes to legislation and policies were made pursuant to a 10-point agenda of President Gloria Macapagal-Arroyo to attract foreign investment, including allowing foreign mining companies 100% ownership and control over mineral lands. In an effort to reinvigorate the mining sector, the Philippines National Government is now pitching itself as a partner to mining, rather than acting as a regulator:

“[M]y Department has appointed ‘high-level action officers’, whose task is to shepherd the priority mining projects. This illustrates that we in government have evolved from being mere ‘regulators’ into more active partners of responsible mining projects.”

Secretary Angelo T Reyes, DENR²⁸

Within this new approach, the Rapu Rapu project was the first of 24 “flagship” mining projects.²⁹ It was the first new foreign-owned mine in three and a half decades.³⁰ The Rapu Rapu project was also the first polymetallic and zinc-producing mine in the Philippines. With an investment of more than USD \$100 million, it was also the largest private venture in the province of Albay.³¹

4.2. About Rapu Rapu

The Bicol Region is one of 17 regions of the Philippines and is located along the south-eastern end of Luzon Island. Bicol consists of six provinces, including Albay, which is bordered to the south by the province of Sorsogon.

Rapu Rapu is an island municipality in the province of Albay about 350 kilometres southeast of Manila. The municipality consists of three small islands — Rapu Rapu, Batan and Guinanayan. The municipality is made up of 34 barangays (villages), with the barangay councils being the smallest local government unit in the Philippines, each headed by a barangay captain. The seat of the Rapu Rapu municipality is located in barangay Poblacion on Rapu Rapu island. There are 13 barangays on Rapu Rapu island, which has an area of just 5,589 hectares and a population of 9,749 (as at the 2000 census).

The Province of Albay is prone to natural disasters. It lies on the Filipino typhoon belt and is hit by an average of four typhoons

per annum.³² Rapu Rapu was badly hit by several typhoons in 2006 and 2007, including Typhoon Reming. The island also sits on a major fault line, making it prone to earthquakes.

Fishing and farming are the primary sources of income for residents.³³ The area produces rice, corn, abaca, fruit trees and root crops, and the main agricultural crop of the municipality is coconut.³⁴ The municipal fishing grounds are rich with marine life and are shared by Rapu Rapu and neighbouring mainland fishing communities, such as those in Prieto Diaz and Bacon in Sorsogon Province. The waters also lie in the migratory route of the whale shark. Ecotourism based on whale shark watching is an emerging industry in the area.

There is an apparent lack of social and economic services from both the national and local governments in the municipality, including education, health, transportation and communication infrastructures.³⁵ Literacy is relatively high at 92.5% however most people have only completed primary school.³⁶

The residents are predominantly Roman Catholic and the Church exercises a great deal of influence over attitudes towards political and social issues.³⁷

Mining has previously occurred on Rapu Rapu. The Filipino owned Hixbar Mining Company previously conducted a relatively small operation using open pit mining on the island but closed operations in the 1960s. Acidic run-off from the site is still evident today (see discussion at Section 5.1.2 regarding acid mine drainage).

The Rapu Rapu mine established by Lafayette is located to the east of the island. One of Lafayette's former subsidiaries, RRMI, holds a mining claim to 80% of Rapu Rapu island's total land area.³⁸

Three barangays are deemed by the mine to be "direct impact areas": Binosawan, Pagcolbon and Malobago. Another four barangays are said to be "indirect impact areas": Poblacion, Santa Barbara, Linao and Tinopan.³⁹

The coastal communities of Rapu Rapu are heavily dependent on fishing for their livelihoods. Photo: Shanta Martin/OxfamAUS.



4.3 ANZ and Rapu Rapu

4.3.1. Bank support for the Rapu Rapu mine

Lafayette received significant and ongoing financial support from an international consortium of banks led by one of Australia's largest banks, ANZ. The consortium (the "Bank Group") also included ABN AMRO Bank NV, Investec Bank (Mauritius) Limited, Standard Chartered First Bank (Korea) Limited, and FA International Ltd. In March 2004, Lafayette secured a credit facility of USD \$35 million to finance the project.⁴⁰ Further support was extended by the Bank Group despite persistent reports of concerns about the social and environmental standards of the mine.

As lead financier, ANZ should have taken into account the mine's potential social and environmental impacts at the outset. Prudent lending practices require due diligence procedures to be carried out to ensure that the risks of a project are identified, assessed and minimised.⁴¹ These risks include social and environmental risks.⁴² Since at least 2003,⁴³ ANZ itself has recognised this:

*"Our internal customer lending policies require us to assess each credit customer of our Institutional business for their involvement in industries or activities which may have an adverse impact on the environment, are ethically questionable or otherwise fall short of ANZ's policies. This assessment is part of the normal credit assessment process for Institutional clients."*⁴⁴

From the outset, ANZ should also have had in place means of monitoring and mitigating risks if they arose.

Moreover, three of the banks in the syndicate — ANZ, ABN AMRO and Standard Chartered — are signatories to the Equator Principles,⁴⁵ a benchmark for the financial industry to manage social and environmental issues in project financing. (See text box, "The Equator Principles".)

ANZ formally adopted the Equator Principles in December 2006. By signing on to these Principles, banks such as ANZ commit to "not provide loans to projects where the borrower will not or is unable to comply with our respective social and environmental policies and procedures that implement the Equator Principles".⁴⁶



Rapu Rapu mine management atop a portion of the tailings storage facility where potential acid producing materials are held, March 2007. Photo: Shanta Martin/OxfamAUS.

In so doing, signatory banks claim they will "ensure that the projects we finance are developed in a manner that is socially responsible and reflect sound environmental management practices". They state that the negative impacts on project-affected ecosystems and communities should be avoided, and if these impacts are unavoidable, they should be reduced, mitigated and/or compensated for appropriately.

ANZ claims that it goes beyond the scope of application envisaged in these standards. ANZ publicly represents that it will comply with the Principles for all project finance deals regardless of the size or geographic location and is "analysing our existing portfolio of project finance deals against Equator Principles standards to address any social and environmental issues not previously identified and that we should be addressing".⁴⁷ ANZ therefore represents that it applies the Equator Principles retrospectively to existing project finance deals.

While financing was initially provided for the mine in 2004, since mid-2007 Lafayette was actively seeking ways to expand the operation and extend the lifetime of the mine including through expansion of the open pit. Despite statements from ANZ suggesting that the Equator Principles did not apply when project financing was first granted,

since at least 2007 ANZ and the other Equator Principles banks involved in the Bank Group accepted that the Equator Principles were applicable to the Rapu Rapu project.⁴⁸

ANZ has also committed to the Organisation for Economic Cooperation Development's (OECD) Guidelines for Multinational Enterprises. The OECD Guidelines are recommendations addressed by governments to multinational enterprises regarding responsible business conduct.⁴⁹ The OECD Guidelines include recommendations that companies "provide the public ... with timely information on the potential environmental, health and safety impacts of the[ir] activities" and "engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation".⁵⁰ The Guidelines also emphasise the importance of "enterprises contribut[ing] to the public finances of host countries by making timely payment of their tax liabilities".⁵¹ Since at least March 2007, ANZ has stated that it is using the Guidelines as a framework to guide ANZ's approach to responsible business management.⁵²

The Equator Principles

Banks and other financial institutions can play an important role in ensuring that the projects that they finance are environmentally and socially sound. The Equator Principles recognise the important social responsibility role that banks can play and provide a framework for institutions engaged in project financing.

The Principles provide benchmarks for assessing and managing environmental and social risk, and apply to all new project financings over \$10 million globally across all industry sectors. They also apply to all project financings covering an expansion or upgrade of an existing facility where changes in scale or scope may create significant environmental and/or social impacts, or significantly change the nature or degree of an existing impact.

The Equator Principles state that institutions that are signatories will only provide loans to projects that conform to all ten principles. The following are requirements for projects that carry potentially significant adverse social and environmental impacts:

- A Social and Environmental Assessment must be carried out to address impacts, mitigation and management measures. The assessment will address compliance with relevant host country laws and the applicable social and environmental standards.
- The borrower must prepare an Action Plan to describe mitigation measures, corrective actions and monitoring measures necessary to manage the impacts and risks identified in the assessment. Borrowers must also have a Social and Environmental Management System that addresses the management of these impacts, risks and corrective measures.
- The borrower, government or third party expert must ensure free, prior and informed consultation with affected communities. Consultation must be conducted in a structured and culturally appropriate way.
- A grievance mechanism must be established and affected communities informed of the process.
- An independent social or environmental expert not directly associated with the borrower will review the assessment, action plan and consultation process to assess compliance with the Equator Principles.
- The borrower must agree to comply with relevant host country social and environmental laws, regulations and permits and agree to comply with the action plan. They must agree to provide reports on their compliance.
- An independent environmental and/or social expert must be appointed to verify the borrower's monitoring information.
- Borrowers must also commit to report publicly on their implementation of the Equator Principles.

Do the Equator Principles ensure respect for human rights?

A recent study has revealed that the Equator Principles fail to address most fundamental human rights – including the rights to life, property, food and health. As such, banks may not be meeting their obligations to respect human rights and could be increasing the hardships faced by some of the world's poorest people.

The report, *The International Finance Corporation's Performance Standards and the Equator Principles: Respecting Human Rights and Remediating Violations?* was prepared by the Center for International Environmental Law (CIEL) and the Bank Information Center (BIC), with support from World Resources Institute, Oxfam Australia and Banktrack. It is available at www.oxfam.org.au/mining

Submitted to the United Nations Special Representative on Business and Human Rights, Professor John Ruggie, it finds that the Equator Principles and the standards used by the World Bank's private sector lending arm, the International Finance Corporation (IFC), fail to address most critical human rights and address many others only partially or inadequately.

Oxfam Australia believes that Equator Principle banks and the IFC must significantly amend the standards they rely on to make sure that their lending criteria are consistent with internationally recognised human rights. In the meantime, they need to go beyond those standards to implement better screening practices and should ensure that their borrowers have rights-compliant grievance mechanisms for affected communities. Unless such measures are implemented, banks who sign up to the Equator Principles are at continuing risk of financing projects that fail to uphold human rights.

4.3.2. Did ANZ apply sound lending practices, the Equator Principles or the OECD Guidelines?

ANZ is currently pursuing a vigorous marketing campaign in the Australian media regarding its social responsibility credentials. Signing onto the Equator Principles and its commitment to the OECD Guidelines are important aspects of this, as are statements on the bank's website declaring its "clear responsibility to uphold human rights in the way we do business".⁵³ Yet the bank's actions tell another story.

In carrying out its due diligence prior to providing finance to Lafayette in 2004, ANZ ought reasonably to have been cognisant of issues including, but not limited to:

- the existence of reports as early as 2001 regarding the unsuitability of Rapu Rapu island for mining activities, the problem of acid-mine drainage and potential health problems;⁵⁴
- the history of mining problems in the Philippines, which include cases of poor environmental monitoring by regulatory authorities, such as the Marinduque case documented by many organisations, including Oxfam Australia.⁵⁵ This should have prompted the bank to be aware that Philippine regulatory authorities may be inadequately resourced to ensure compliance and that the issuance of permits alone could not be relied upon as evidence of sound environmental plans, policies or practices;
- the existence of elements of strong anti-mining sentiment in the Philippines as a result of the poor history of mining problems, meaning that social engagement programs by any proposed mine operator would need to be particularly rigorous and extensive;
- the presence of Philippine laws offering significant tax and other concessions in order to draw in foreign investment, which may result in limited social benefits in the absence of particularly extensive community development programs; and
- Transparency International Corruption Index reports from the last 10 years indicating corruption is a significant problem in the Philippines,⁵⁶ meaning that the bank would have been mindful of the need for the company to have rigorous governance practices.

In light of these factors, it would have been reasonable for ANZ to insist on stringent environmental, social and governance programs from the outset of the provision of financial services to Lafayette. A prudent bank would also have insisted that such programs be monitored by an independent advisor to the banks. It appears from the information made available to the Mining Ombudsman in discussions with ANZ representatives that no such requirements were in place prior to the time the social and environmental systems of Lafayette were seen to be failing.

Even if ANZ had not been aware of the inherent risks of the Rapu Rapu mine in 2004, it was or ought to have been aware of the social and environmental problems at the Rapu Rapu mine since at least November 2005. In October 2005, the occurrence of two-cyanide laden spillages from the mine would have put the banks on notice that environmental practices at the mine were not sufficient. The 2006 release of a report by a presidential-appointed Fact Finding Commission that accused the mine of gross negligence,⁵⁷ and a Philippine government department report detailing lapses in the environmental standards of the mine,⁵⁸ should also have made the banks acutely aware of the need for Lafayette to institute greatly improved environmental processes.

ANZ was aware of the need for Lafayette to improve its social processes by 2007. On several occasions in 2007 the Mining Ombudsman raised with ANZ the many community grievances outlined in this report.⁵⁹ In addition, the Mining Ombudsman facilitated direct discussions between ANZ and local non-government organisation activists, including the leader of a local Rapu Rapu community based organisation, so that ANZ representatives could hear from local people about their concerns.⁶⁰ These included:

- opposition by almost all local communities to Lafayette's operations and extension plans;
- concerns about lack of appropriate consultation with communities. Some communities in areas likely to be affected were neither consulted nor informed prior to the project commencement, while communities affected by fish-kills were not adequately consulted prior to recommencement of operations;
- perceived power of the company over regulatory processes, with inadequate regulatory oversight by the DENR;

- climate and topography of the island making it unsuitable for mining. Communities feared that typhoons, excessive rain, and blasting for mine operation and expansion would increase occurrences of toxic waste spillages and landslides;
- concerns about the direct and indirect consequences for the environment in terms of acid-mine drainage and tailings disposal;
- effect of the mine on traditional livelihoods including the risk of a reoccurrence of the 2005 fish-kills and subsequent loss of income;
- harassment and intimidation by security personnel and increased presence of military on the island;
- effect on water and aquatic biodiversity and the subsequent effect this will have on livelihoods;
- minimal return to the community through inadequate community development programs and few local employees; and
- minimal return to the province or country from overly generous tax exemptions.

In discussions with ANZ as well as in written correspondence, the Mining Ombudsman urged ANZ to uphold sound environmental and social standards in its dealings with Lafayette, consistent with its commitment to the Equator Principles.

ANZ responded that it had appointed an independent technical advisor, as required under the Equator Principles, whose responsibilities included undertaking an audit of the extent to which Lafayette was in compliance with the Equator Principles. By letter dated 20 July 2007, the Mining Ombudsman and other concerned parties requested the following from ANZ, consistent with the OECD Guidelines and Principle 5 of the Equator Principles, regarding consultation and disclosure:

- documentation clearly demonstrating the Bank Group's expectations and requirements of Lafayette as regards implementation of the Equator Principles;
- information as to the measures being taken to ensure that the independent technical advisor obtains a full and complete assessment of the environmental and social impacts of the mine;

- transparency regarding the process of undertaking the audit of Lafayette's compliance with the Equator Principles including information as to the identity of the independent technical advisor undertaking the audit;
- a schedule of times when the independent technical advisor would be visiting Rapu Rapu island so as to undertake the assessments;
- publication of the independent technical advisor's assessment documentation and reports regarding the Rapu Rapu mine, and specifically that a proposed community action plan to respond to community concerns and opposition be provided to stakeholders including Sagip Isla Sagip Kapwa for comment and input;
- an undertaking that direct lines of communication between the independent technical advisor and concerned groups would be established and that the independent technical advisor would openly and transparently meet with a broad array of the communities affected by the Rapu Rapu mine.

No written or substantive verbal response was received to this letter and none of the documentation requested was supplied. Further, the Director of Institutional and Corporate Sustainability at ANZ informed the Mining Ombudsman that ANZ would not disclose the identity of the independent technical advisor. The Mining Ombudsman expressed serious concerns with ANZ that the expert would be unable to assess compliance with social requirements without consulting with local communities, including those who had previously raised objections, and that unless local community members knew who the independent technical advisor was and when he or she was present, they would be unable to meet with him or her.

On 27 November 2007, in a telephone conference with ANZ, ABN Amro and Standard Chartered (as the Equator Principle members of the Bank Group), the Mining Ombudsman and several other civil society organisations questioned the adequacy of steps taken by Lafayette and the banks to address the persistent social and environmental concerns. In particular, Oxfam Australia's Mining Ombudsman urged greater transparency, consistent with the Equator Principles and the OECD Guidelines. In addition, the Mining Ombudsman raised the need for the Equator Principle banks in the Bank Group to demonstrate leadership and ensure positive outcomes for local communities.

Specific suggestions for means by which such leadership could be demonstrated included:

- creating a livelihoods fund directed at assisting those in and around Rapu Rapu island, particularly given that there had been almost no livelihood or other benefits from the mine for local communities. As the Bank Group was considering accepting a large discount on their recovery of debt, such a fund could have been financed by the banks foregoing a small percentage of the amount of any moneys recovered;
- ensuring that performance bonds be held in escrow;
- ensuring that decommissioning plans were in existence; and
- encouraging any new owners of the mine to address the serious environmental and social difficulties surrounding the mine.

At the end of the telephone conference, the Director of Institutional and Corporate Sustainability at ANZ proposed that the banks would consider the various means by which they could make a responsible exit from the mine and would communicate that in due time. Oxfam Australia's Mining Ombudsman received no further communication from ANZ prior to Lafayette entering external administration.

Despite being aware of the social and environmental problems at the Rapu Rapu mine from as early as November 2005, the Bank Group extended its support to Lafayette in 2007 by providing a line of credit of AUD \$132.8 million, of which Lafayette used AUD \$114.5 million by 30 June 2007.⁶¹ This was in addition to a secured bank loan of AUD \$45.7 million, which Lafayette had utilised in 2006. The loans were secured with just AUD \$28.6 million of current assets (assets capable of being converted into cash within one year) and AUD \$95 million of non-current assets.

On 7 February 2007, the Bank Group was issued 91,164,190 options by Lafayette at AUD 10.6 cents per share,⁶² representing a total of approximately AUD \$9.7 million. This represented the single largest option issue by Lafayette in its history and came at a time when shares in Lafayette had been on a steep decline since 2005 and were trading at approximately 8 cents per share.

By 18 December 2007, when Lafayette went into external administration, the Bank Group was owed approximately USD \$268 million (AUD \$311.6 million).⁶³ ANZ was Lafayette's single largest creditor, having provided financial support to Lafayette in three ways: as part of the Bank Group ANZ was owed almost AUD \$115 million, as a creditor in its own right it claimed AUD \$11,881, and as a shareholder ANZ Nominees claimed AUD \$200,000.⁶⁴

On 22 April 2008, the Rapu Rapu mine was sold, with the transaction being "structured as a sale by the banking group of the debt owing to it and the sale by the Company [Lafayette] of its 74% stake in LPI for nominal value".⁶⁵ Ferrier Hodgson announced that the proceedings from the sale would be used to repay a portion of the amount owing to the Bank Group, with no surplus available for unsecured creditors or shareholders.⁶⁶

Despite multiple requests for specific documentation and information from both Lafayette and ANZ, including a further request to ANZ by letter from the Mining Ombudsman dated 8 May 2008, as at the time of writing (October 2008), information had still not been provided. Neither ANZ nor the other Equator Principle banks have provided any explanation of steps taken to ensure the banks made a responsible exit from the Rapu Rapu mine. This is in stark contrast to public representations made by ANZ that once social and environmental issues are identified, the bank will "continue to monitor developments and keep in touch with the client as well as any stakeholders who contact us with concerns about the client and/or transaction".⁶⁷

Oxfam Australia is aware of commitments made by ANZ since 2006 to develop a policy on mining that will describe in detail how the bank makes decisions on transactions that have a potential impact on the environment, or raise social policy or ethical issues.⁶⁸ Oxfam Australia's Mining Ombudsman has on several occasions offered to discuss the development of a mining policy with ANZ. To date, ANZ has not acted on these offers to engage.

A fisherman from the direct impact barangay, Binosawan, shares his concerns with the Mining Ombudsman. Photo: Shanta Martin/OxfamAUS.





4.4 The Mining Ombudsman and Rapu Rapu

In September 2006, the Mining Ombudsman received a request from local community organisations to conduct an investigation into the effects of Lafayette's mining operations on Rapu Rapu island.⁶⁹ The Center for Environmental Concerns Philippines (CEC) contacted the Mining Ombudsman on behalf of local community group, Sagip Isla Sagip Kapwa, with whom CEC had been working since 2000. These organisations and others in the Albay area had undertaken research, conducted capacity building seminars in the community, and organised protest actions and petitions. They requested the assistance of the Mining Ombudsman to raise the concerns of local communities with Lafayette, its subsidiaries, shareholders, financiers and other stakeholders in Australia.

The Mining Ombudsman began her investigation by examining documentation released by the Philippines Government, the company and independent researchers.

Two site visits were made to the area in March and December 2007 to speak directly with community members, mine staff and stakeholders, and to examine and document physical evidence. During these visits, the Mining Ombudsman met with, interviewed and collected testimonies from over 250 stakeholders. The Mining Ombudsman travelled to seven barangays on Rapu Rapu island as well conducting interviews in Legazpi, Naga, Sorsogon province, Manila and Australia. She conducted a tour of the Rapu Rapu mine and interviewed key staff of Lafayette and its subsidiaries. (See Appendix 2 for a schedule of interviews and meetings.)

At all times, Oxfam Australia's Mining Ombudsman has attempted to engage Lafayette and the Bank Group in relation to the grievances raised by community members. Reports of findings from field visits were reported back to ANZ,⁷⁰ and to Lafayette until Lafayette went into external administration on 18 December 2007.⁷¹ Thereafter, Oxfam Australia communicated with ANZ and the administrators of Lafayette, Ferrier Hodgson.⁷²

Above: Local community members in Binawasan discuss their concerns with the Mining Ombudsman (centre). Photo: OxfamAUS.

Opposite: Antonio Casitas leads a local community-based organisation, Sagip Isla Sagip Kapwa, which opposes the Rapu Rapu mine. Mr Casitas says that the impacts of the mine on the people of Rapu Rapu are overwhelmingly negative. Photo: Shanta Martin/OxfamAUS.

5. Community grievances

Fish-kills

Poor environmental standards led to cyanide-laden spillages resulting in fish-kills and public fear. This produced community protests and an official enquiry. Regulatory constraints were imposed that led to the mine being less than fully functional from November 2005 to February 2007. (See Appendix 1.)

Timeline of reported fish-kills:

11 October 2005:

First cyanide-laden tailings spill causes dead fish and other marine organisms to wash up on local shores. Cyanide levels of local creeks are 633 times the DENR standard.

31 October 2005:

Second cyanide-laden tailings spill causes more dead fish and other marine organisms to wash up on local shores. Cyanide levels of local creeks are 356 times the DENR standard.

20–21 July 2006:

During testing phase, DENR reports about nine kilograms of sea shells, a moray eel, urchins and squid found near Pagcolbon (close to mine site). DENR finds high acidity in Pagcolbon creek (Internal MGB Memo, 14 December 2006). Lafayette denies a causal link with the mine.

28 October 2007:

Dead fish are found near Poblacion. Some reports of fish also seen in barangays closer to the mine. Lafayette denies a causal link with the mine.

Rapu Rapu residents and their supporters have voiced concerns about the mine since 2000, and since then a swell of community organisations opposed to the mine has continued to form. When the Centre for Environmental Concerns first approached the Mining Ombudsman, it was already working with more than 23 groups such as Sagip Isla Sagip Kapwa, Defend Patrimony! and Kalikasan-PNE. The local parishes were also heavily involved. Together they organised protest actions in the community as well as in the broader region of Bicol and in Manila. Thousands of local people have signed petitions demanding the closure of the Rapu Rapu mine.⁷⁴

When the Mining Ombudsman visited seven of the barangays on Rapu Rapu island, she asked community members about the benefits of the mine as well as the problems. At almost every barangay, the Mining Ombudsman was overwhelmed by the number of people wishing to speak about their dissatisfaction at the mine and the negative impacts they perceived it had on their livelihoods. People rarely identified benefits and commonly expressed a desire to see the mine closed. In general, community members were concerned about the impact of the mine on the environment as well as on people's health, the effect of the mine's environmental impacts on livelihoods, and the increased militarisation on the island that has occurred since the mine opened. Many community members also pointed to a lack of proper consultation and information about the possibility of negative outcomes prior to the establishment of the mine.

In light of apparent widespread disdain at the mine, many community members expressed their concern that Lafayette and its subsidiaries had sought to buy the support of barangay captains.⁷⁵ The Mining Ombudsman was concerned to learn from at least one barangay captain that he received money from the mine to monitor community opposition and report to the mine about planned activities. The Captain of Viga, Elmer Echague admitted he received 3,000 Philippines pesos (AUD \$77) per month from the mine for these activities, "especially if people are conducting interviews".⁷⁶ When asked whether he believed RRMI/RRPI paid him to support the mine, he stated, "Sure, that is their thinking". The Mining Ombudsman heard similar reports about captains receiving payments in Linao, Malobago and Binosawan.

The one village visited by the Mining Ombudsman where opposition was not freely expressed was Malobago, which is home to the majority of workers at the mine, including many who have migrated to Rapu Rapu from other areas. While some community members in Malobago did discuss with the Mining Ombudsman their concerns as well as the benefits of mining, others were very hesitant and appeared fearful of talking openly. The Barangay Captain of Malobago, Reynold Asuncion, was very supportive of the mine and told the Mining Ombudsman that he had seen no ill-effects from the project.⁷⁷

"Before there was no mining, the people were living on their own, a simple lifestyle...but now the mining came, all our barangays are complaining of the situation of mining, destruction of our forests, our ocean, our people."

Mr Antonio Casitas, Rapu Rapu elder and leader of Sagip Isla Sagip Kapwa.⁷³



5.1 Environmental issues

Dr Emelina Regis of the Institute for Environmental Conservation and Research at the Ateneo de Naga University of the Philippines, warned as early as 2001 that mining could not be conducted sustainably and safely on the island of Rapu Rapu.⁷⁸ According to Dr Regis, this was due to the island having a small land area with steep slopes, erratic weather prone to typhoons and heavy rain, the potential for landslides, limited freshwater resources, and a great propensity to develop acid-mine drainage due to the presence of iron sulphide rocks.

Many of the limitations observed in Dr Regis' report have since resulted in damage being sustained by the receiving environment, including local waterways. Dr Regis anticipated that acidic run-off and heavy metal contamination from the mine site could lead to the contamination of the fisheries of Albay Gulf and have impacts for not only those on Rapu Rapu island, but those in and around the Albay Gulf.⁷⁹

5.1.1. Cyanide-laden spills and fish-kills

Since the commencement of the Rapu Rapu mine in 2005, the island has been plagued by a series of fish-kills, which local residents attribute to poor environmental standards at the mine.

There is no dispute that within six months of starting operations in 2005, two cyanide-laden spills at the mine resulted in the discharge of toxic slurry into the sea. The mine waste (tailings) contained cyanide as much as 633 times the standard set by the DENR, which was high enough to cause the death of many kilograms of fish and other marine organisms.⁸⁰ The DENR later found that "Lafayette had wrongfully started to operate fully even before its completion of the required environmental infrastructure".⁸¹ Lafayette's subsidiaries operating the mine, RRMI/RRPI, did not deny that these spills were caused by the operations of the mine.⁸²

The President of the Philippines established a Fact Finding Commission that found the company had been grossly negligent in failing to establish environmental safeguards, which led to the toxic discharges in 2005.⁸³ The Commission also stated that the government department responsible for regulatory compliance, the DENR, had allowed Lafayette to violate the environmental protection requirements of its Environmental Protection and Enhancement Program. Despite the Commission's recommendation that RRMI/RRPI's mining permits be revoked and that a moratorium on mining be declared on Rapu Rapu, the DENR response was to allow RRMI/RRPI to temporarily recommence operations in order to pass a series of environmental compliance audits. The temporary lifting of cease and desist orders was extended several times to enable Lafayette to meet the environmental criteria. The mine was not fully operational for most of 2006. (Appendix 3 provides a full account of

"In the 2005 fish-kills, Lafayette accepted it was them. Why would they not accept this time? I think because the Environmental Compliance Certificate said if it happens a third time the company must close."

Rapu Rapu municipal councillor (name withheld upon request) – 14 December 2007



the 2005 fish-kills, the actions taken by concerned parties and enhancements made by RRMII/RRPI to try to meet environmental standards.)

Despite some environmental enhancements being made at the mine site such as increasing the number of pumps operating in the emergency events pond and increasing the height of the tailings dam wall, subsequent fish-kills were also reported in 2006 and 2007. RRMII/RRPI, which had undergone a change of management following the earlier admissions regarding the 2005 spillages, has never accepted that these subsequent fish-kills were a result of the Rapu Rapu mine.



Rapu Rapu's mine management attributed these fish-kills to sabotage by anti-mine protestors; spillages of fertilisers used for farming; and/or heavy rains which led to fish "drowning" through high siltation and lack of oxygen.⁸⁴ In relation to the October 2007 fish-kill, company announcements stated that dead fish were only found in Poblacion, some 10 kilometres from the mine site, which the company contended made it unlikely that the mine was the source of the fish-kill. Mine management referred to various "certificates" obtained from local barangay council members stating that no dead fish were observed.

Contrary to the company's assertion that dead fish were only found in Poblacion in October 2007, the Agricultural Technologist and Municipal Fisheries Coordinator of Rapu Rapu, Mr Malovega, informed the Mining Ombudsman that he had conducted interviews with more than 100 fisherfolk from seven barangays who reported seeing dead fish in each of the various barangays in October 2007. Further, the Mining Ombudsman met with the captain of the barangay closest to the mine, Pagcolbon, who claimed that dead fish were found in the seas around Pagcolbon in late October 2007, and he reported this to the Mines and Geosciences Bureau. He provided the Mining Ombudsman with a signed written statement concerning this and emphasised that it was inappropriate that another member of his council had provided a certificate to say that no fish-kill had occurred.

According to municipal officials, the Bureau of Fisheries and Aquatic Resources (BFAR) did not collect and test samples of the 2007 fish-kill as the samples were too decomposed by the time they communicated with the municipal office. Instead, BFAR directed officials to collect live fish samples some nine days after the reported fish-kill. These fish tested negative for cyanide and were not tested for any other elements. As such, the cause of the 2006 and 2007 fish-kills has not been indisputably determined.

Despite this, the resident fisheries official in Rapu Rapu, Mr Malovega, was of the firm opinion that the cause of both the 2006 and 2007 fish-kills was most likely the mine. Mr Malovega emphasised that he is not opposed to mining; he is concerned to ensure the sustainability of agriculture and fishing. He explained that the July 2006 fish-kill could not have been caused by the disposal of fertiliser into the sea by farmers, as claimed by Lafayette. According to Mr Malovega, the use of fertiliser occurs between November and February, during the rainy season. The farmers cannot afford to store fertiliser or insecticides during the off-season. As such, during the July 2006 fish-kill, when it was the dry season, it was highly unlikely that farming materials would have been present so as to spill into the sea.

Interviews with local farmers and visual inspection of farming practices by the Mining Ombudsman found that farmers bought fertiliser in small quantities as they did not have the resources to purchase large quantities, and as such, only small amounts of fertiliser were bought and used on the island, making spillages unlikely.

Mr Malovega also explained that while some fisherfolk use minute quantities of cyanide for fishing, even if the entire contents of their cyanide stores were spilled into the water, it would not produce a fish-kill the size of those reported in 2006 and 2007.

"The effect of the Lafayette mine has more impact on fishing than these [fishing] practices... I have been in this position since 1994 and I was born on this island. The only time I have seen fish-kills has been after the mining started."

Mr Jack Malovega
Agricultural Technologist and
Municipal Fisheries Coordinator
Rapu Rapu Municipal Council⁸⁵

In meetings with local communities, the Mining Ombudsman heard similar statements from elderly residents, that prior to the establishment of the mine there had never been fish-kills.⁸⁶

The Governor of Albay, Mr Joey Salceda, expressed his desire for the DENR and MGB to issue a categorical statement that the mining operation was not a possible cause of the October 2007 fish-kills.⁸⁷ To date, no such assurance has been forthcoming.

Above: Dead fish that were found floating on the shores of Barangay Poblacion, Rapu Rapu, on 28 October 2007. Local people believe the fish-kill was caused by the Rapu Rapu mine. Photo courtesy of Father Andres Baliwas, Sold/Abaliwas.

Left: Community members listen to the Vice-Governor and Albay Provincial Council members. Following further fish-kills in October 2007, hundreds gathered at the Albay Provincial Government building. The protestors stormed the building, demanding to speak with the Vice-Governor and the Provincial Council, which promised to launch an investigation into Lafayette. Photo: Shanta Martin/OxfamAUS.

Outcome of the spills: the financial slide of Lafayette

The delay in production at the Rapu Rapu mine caused by the mine's suspension impacted on the company's revenue flows and financial position. The directors of Lafayette were of the opinion that, "As a consequence of events ... including a twelve month suspension of operations imposed by the Philippines government plus serious structural damage to Project infrastructure inflicted by Super-typhoon Reming, the Company's financial position deteriorated." (McClusky, P and Sutton R, Report by Administrators, 7 March 2008, 5).

The company reported considerable losses year on year; AUD \$111 million in financial year 2005/06, a further AUD \$94 million in 2006/07 and even more over the following six months (Lafayette Mining Limited, Annual Report 2007). In an increasingly desperate effort to raise funds, the company issued more and more shares. With almost 1 billion shares issued, the value of the shares on the market declined, closing at 5.1 cents per share on 30 June 2007.

In the 2007 financial year, total losses amounted to AUD \$234 million, with current liabilities exceeding current assets by AUD \$28.5 million; the financial position was looking dire. Despite accumulating losses of over AUD \$94 million in 2007 alone, the executives of Lafayette were

paid handsomely; the CEO and Executive Director of Lafayette, Mr David Baker, received remuneration of AUD \$892,225 for financial year 2006/07, of which 30% was "performance related", and the Chief Financial Officer and Executive Director, Mr Jeffrey Quartermaine, received AUD \$526,668 of which 20% was 'performance related'. It is unclear how performance was measured.

In July 2007, Lafayette unsuccessfully attempted to restructure and recapitalise to keep the company and the Rapu Rapu project going. However, on 18 December 2007, the Lafayette Board of Directors agreed that the company could no longer meet its debts, and resolved to voluntarily appoint Ferrier Hodgson as external administrators.

The Administrators reported that Lafayette failed because of:

- acts of God – namely two super typhoons;
- inadequate equipment due to delays in the delivery of vital machinery;
- poor communication between senior and local management; and
- lack of adequate working capital (McClusky, P and Sutton R, Report by Administrators, 7 March 2008, 10).

In Oxfam Australia's view, the opinion of the directors of Lafayette more accurately reflected the cause of the collapse, being the suspension of operations due to a failure of the mine operators to establish adequate environmental safeguards prior to commencing operations, and to ensure local stakeholders were fully engaged and supportive of the mine.

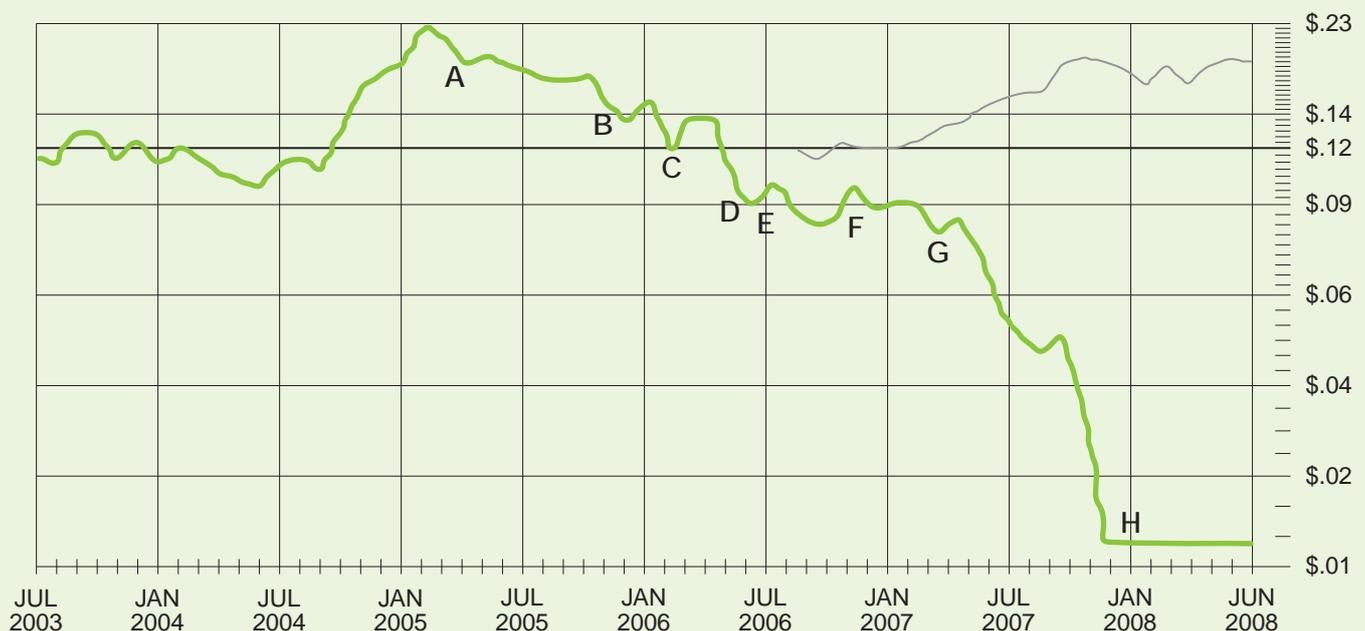
In April 2008, Philco Resources, owned by state-run Korea Resources Inc (KORES) and LG International Corp, raised their stake in the Rapu Rapu project from 26% to 70%. The remaining 30% share was bought by Malaysia Smelting Corporation (MSC). The three companies will hold the bank debts and inter-company loans as well as 100% of Lafayette Philippines Inc. The buy-out and restructuring will allow the mine to continue, however the losses incurred by shareholders and creditors of Lafayette cannot be recouped.

Legend

- LAFAYETTE — (green line)
MTL&MINING — (grey line)
- A MINING OPERATIONS COMMENCE
 - B TAILINGS SPILLS
 - C CEASE AND DESIST ORDER
 - D FACT FINDING REPORT RELEASED
 - E TEMPORARY LIFTING ORDER
 - F TYPHOON REMING
 - G FINAL LIFTING ORDER
 - H VOLUNTARY ADMINISTRATION

Adapted from share price graph compiled by the Australian Securities Exchange.

Lafayette Mining Limited share value 07/2003 – 06/2008



Treated waste water from Lafayette mine flows down Pagcolbon Creek into the ocean. Multiple tests conducted on the water in November 2007 by Dr Emelina Regis' team measured the acidity (pH) at between 2.3 and 2.7, which is highly acidic. According to DENR requirements, acceptable levels are between 6.5 and 8.5. Following the 2005 spillages, DENR recommended that "the water quality in Pagcolbon Creek has to be immediately addressed by the company".
Photo: Alex Felipe.



5.1.2. Effect on water

Mining can be both a major consumer and polluter of water. In the Philippines, some mining concessions overlap with watershed areas where demand for water exceeds the available supply — mining in these areas therefore competes with the needs of other users, including farmers and local households.⁸⁸ Many community members in Rapu Rapu expressed their concern to the Mining Ombudsman that the mine had contaminated local water sources and had lessened the availability of clean drinking water.

One of the greatest challenges to the mining industry is the effects of a process known as acid-mine drainage (AMD),⁸⁹ in which rock containing sulphur is exposed by the mining process to air and water, causing run-off water to become highly acidic. As the acidic water contacts rock, it can leach out toxic metals and other contaminants, resulting in more sulphuric acid and triggering a continual cycle of drainage of contaminated acidic water that can last for centuries.⁹⁰ The highly acidic and contaminated water can have profound impacts on surrounding water bodies (including groundwater) and the flora, fauna and people dependent on them. While a number of different methods exist for trying to prevent and limit AMD, there is currently no definitive solution for stopping this process once started.⁹¹

Rapu Rapu is well-known to be prone to AMD, originally observed as a result of the operations of a smaller mining operation that has since closed.⁹² In these circumstances, it was foreseeable that a large-scale mine with an open pit and significant waste rock production might exacerbate AMD and have a considerable environmental impact. Mine management explained to the Mining Ombudsman in early 2007 that the mine was collecting potential acid-producing materials in a separate part of the tailings storage facility and using impermeable encapsulation as well as limestone treatment to limit AMD. Contrary to earlier reports that RRMI/RRPI would revert the mined area to agricultural use after abandonment of mining activities,⁹³ mine management told the Mining Ombudsman RRMI/RRPI intended to flood the open pit for mine closure as a means of stopping rock being exposed to oxygen and preventing the AMD process. Several studies have raised significant doubts about the effectiveness of the mechanisms employed and proposed by the mine to address AMD.⁹⁴

During the Fact Finding Commission investigation in 2006, testing of local rivers found excessively high acidity. The Mining Ombudsman's visual inspection of the mine and surrounding areas also confirmed the presence of extreme yellow colouring typical of AMD-affected rivers (refer to photograph on the inside back cover of this report). When the Mining Ombudsman toured the mine site in March 2007, the area of impermeable encapsulation of potential acid-forming materials exhibited the characteristic bright yellow stains of AMD. Mine management stated that they conduct regular biological and chemical testing of water in surrounding barangays, however the results of these tests have not been made available.

In addition to the effects of AMD, the Mining Ombudsman heard complaints regarding water and other environmental issues. Research conducted by the Ibon Foundation found that farmers have noticed a marked decrease in water supply since Lafayette started mining and processing.⁹⁵ Community members in surrounding barangays of Pagcolbon and Binosawan reiterated these observations to the Mining Ombudsman. They believe that the water has been diverted to the mining operation. However, mine management disputed these claims, stating that in the case of Binosawan the village "is too far from our area here to be affected"⁹⁶ despite it being classified by the mine as a direct impact barangay.

The village of Pagcolbon was originally located where the open pit now stands. Seven families accepted a relocation offer including a house and land lot from the company.⁹⁵ Mr Manuel Belardo, former Barangay Captain of Pagcolbon, explained to the Mining Ombudsman that the land they used to occupy was fertile and good for production, "but here, because of the effect of the mining, the plants are affected, the environment and water are affected."⁹⁶ Whereas previously his family grew mango, citrus and jackfruit, now they only have enough land to grow banana. Mr Belardo says that water quantity and quality has dropped since the mine began and he is concerned that the mine spillages have contaminated the drinking water. According to Mr Belardo, "They promise and promise to put [in a] water supply but they don't do it." When asked about the supply of clean drinking water to local barangays, mine site management claimed that fresh water was in plentiful supply and that the company intended to build a bigger catchment area.⁹⁷ At the time of writing, these proposed works had not proceeded.

5.1.3. Landslides

According to a Lafayette announcement to the Australian Securities Exchange (ASX), the Rapu Rapu project was exposed to three typhoons in the last quarter of 2006, which resulted in 900 millimetres of rain falling in the project area.¹⁰⁰ Typhoon Reming hit hardest in November 2006. Landslides occurred, killing 11 people, near the village of Malobago on Rapu Rapu island — an area identified by the company as a "directly affected" community. Many community members expressed to the Mining Ombudsman that they believed these fatal landslides as well as an increase in landslides elsewhere since the mine commenced operations were largely a result of slope instability caused by blasting activity at the mine.¹⁰¹ Some community members also believed that tree felling around the mine site was adding to the problem.¹⁰² The company denies any causal link between the mining operations on Rapu Rapu island and the landslides.¹⁰³

A group of scientists were asked by CEC to review the Permanent Lifting Order issued by the DENR. They reported: "It is a generally accepted fact that ground disturbances such as those caused by earthquakes, blasting and precipitation lowers the threshold for slope failure. The high frequency of landslides ... suggests that the area is marginally stable ... any additional disturbances could trigger failures or further bring the system closer to instability".¹⁰⁴

At present, no monitoring equipment is in place to measure the effect of blasting activities. Moreover, the Mining Ombudsman found that local communities were unaware of the blasting schedule of the mine. Greater communication with surrounding communities about these activities would be warranted.

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of ... lack of livelihood in circumstances beyond his control.”

Art 25 (1) Universal Declaration of Human Rights

5.2. Social issues

5.2.1. Detrimental impacts on community livelihoods

When the DENR rejected the Fact Finding Commission's recommendation to close the mine, it reasoned that lost economic benefits in the form of wages, social development programs and taxes, would harm the local and national economy.¹⁰⁶ The DENR did not appear to consider the effect of the mine on other forms of livelihoods and the concurrent economic impacts for local communities.

Impact of the 2005 cyanide-laden spills and absence of compensation

Shortly after the cyanide spills in 2005, and the fish-kills which followed, people stopped buying and eating fish caught near Rapu Rapu island, as they feared it had been contaminated. This fear was fuelled by circumstances such as an epidemic of vomiting and stomach aches in Sorsogon, which local people attributed to eating the fish.¹⁰⁷

Community members who relied on selling fish for their livelihood reported they were significantly impacted by the spills and the subsequent drop in demand for their catch. Fish vendors told the Mining Ombudsman they struggled to earn enough to feed their families and afford schooling for their children,¹⁰⁸ and many said they had to turn to other means of income.¹⁰⁹

In the bayside barangay of Bacon, some fisherfolk claimed that consumer fear relating to the 2005 spills had an impact on sales that lasted three months.¹¹⁰ Others reported they felt the effects for up to a year.¹¹¹ The impact of the fish-kills on incomes of local residents has been estimated to be as high as 70% of lost weekly income in the period following the spills.¹¹² Local Rapu Rapu resident Amabel Gamboa told the Mining Ombudsman, “Before the mine, people would ask if the fish was from Rapu Rapu and would say ‘ah good’. But now if it is from Rapu Rapu they say, ‘no we don’t want it’”.¹¹³ The Mining Ombudsman spoke with dozens of fisherfolk and fish-sellers who reported similar consumer sentiment.

Consumer reluctance to eat locally caught fish has not been easily overcome. Following the fish-kills, the Bureau of Fisheries and Aquatic Resources issued a warning that people should not eat the fish. While this warning was later



Vilma Tapaganao's story

“Most people here earn their living from fishing but because of the fish-kill, it has a big effect on us. Before, we had a lot of catch, but now the amount is not enough for even one day. And we are afraid ... If the mining will still continue, what will be the effect on us? What if people eat that fish, what effect on them? We don’t have other form of livelihood, just fishing... So we want Lafayette to close. We don’t believe when Lafayette disclaims responsibility for the [latest] fish-kill.”

Mrs Vilma Tapaganao, local resident, Barangay Viga, Rapu Rapu.¹⁰⁵

Mrs Vilma Tapaganao (far left) and other residents of Viga gather to tell the Mining Ombudsman of their concerns about the mine and its impact on their livelihoods. Photo: Shanta Martin/OxfamAUS.

withdrawn, consumer confidence remained low. Fisherfolk both on Rapu Rapu island and in villages in the surrounding bay (in particular at Prieto Diaz where some fish were washed up in 2005) repeatedly informed the Mining Ombudsman that they found it very difficult to sell their catch. A fish seller reported, “People won’t believe the government if it says the fish are okay because it is well known the [national] government supports the mine.”¹¹⁴ Municipal councillors of Rapu Rapu also claimed that there was nothing they could do because as long as the mine remains, the perception that the fish are contaminated would persist.¹¹⁵

The DENR assessment of the Rapu Rapu project in 2006 imposed 15 conditions on the project's continuation, one of which was that the mine needed to compensate the affected fisherfolk for the 2005 spills. Despite the mine acknowledging responsibility for the 2005 spills, RRMI/RRPI maintained that there was no impact on the livelihoods of fisherfolk and that no claims for compensation were made.¹¹⁶ However, community members consistently reported to the Mining Ombudsman that no information about procedures for obtaining compensation was made available to them.



Left: Fisherfolk in Sorsogon experienced a significant downturn in fish sales following reports of fish-kills in and around Rapu Rapu. Photo: Shanta Martin/OxfamAUS.

Right: Food aid is delivered to the Rapu Rapu Municipal Council in December 2007. Due to decreased access to fresh fish, some residents of Rapu Rapu say they now depend on humanitarian aid for food. Photo: Shanta Martin/OxfamAUS.



"We did not ask for compensation because... we don't know the process for how to ask for compensation."

Jesus Alamir, Barangay Councillor, Poblacion¹¹⁷

Mine management told the Mining Ombudsman in March 2007 that they had recently received complaints of lost income by local residents. Management dismissed these claims on the basis that "it is too late; we have no way of confirming the cause is really our incident... If they can show evidence of fish-kills and animals, then maybe we can do something, but it is our word against theirs".¹¹⁸ When questioned about the process used by the company to determine the impact of the fish-kills, mine management stated that they sought and obtained a "certification" from one barangay captain in which he stated that there was no need to pay compensation.

The company's efforts to determine the short, medium and longer-term impacts of the cyanide-laden spills and provide compensation were clearly inadequate. An initial assessment would have intuitively included immediate loss of income and lower availability of food sources, as well as the delayed impacts of consumer fear on the local economy.

The company had no fair and accessible system for receiving and responding to community grievances, meaning local community members were generally reluctant to approach the mine. Instead, the mine expected local fisherfolk with very few resources to provide evidence to show cause for compensation, failing to recognise what a high burden this process would place on impoverished families.

If communities had been able to access a trustworthy rights-compliant grievance mechanism, a fair compensatory process might have been possible. (Refer to Section 2.2 above for the principles needed to underpin effective grievance mechanisms).

While villagers on Rapu Rapu island received no compensation for the 2005 spills, local governments provided assistance to villagers in the surrounding bay area, some 12 kilometres from Rapu Rapu. Residents of Bacon told the Mining Ombudsman that a sack of rice was given to full-time fisherfolk and half a sack to part-time fisherfolk.¹¹⁹ However, some fisherfolk missed out on this assistance and fish retailers received no compensation at all.¹²⁰

Subsequent fish-kills and consumer fear further affect community livelihoods

When subsequent fish-kills were reported in June 2006 during the testing phase of new environmental measures for the mine, consumer fear resurfaced. Similarly, when fish-kills were reported in October 2007, many fisherfolk reported an inability to earn a sustainable living from fishing.

According to the Rapu Rapu Municipal Social Welfare Development Officer, Ms Shirley Osman, many fisherfolk have stopped fishing since the fish-kills in 2005, 2006 and 2007 because it is hard to sell their catch and because "they are afraid of being poisoned".¹²¹ The Agricultural Technologist and Municipal Fisheries Coordinator of Rapu Rapu, Mr Jack Malovega, informed the Mining Ombudsman that the last fish-kill in October 2007 caused the most impact on livelihoods because "almost all residents no longer want to eat fish".¹²² To date, however, fisherfolk and their families remain uncompensated and unassisted by the operators of the Rapu Rapu mine.

"We cannot assume responsibility unless we have proven we are the direct cause. We have accepted responsibility for the [2005] cyanide laden spills but not for the effect on fisherfolk... It is their word against ours."

Ms Carmelita Pacis, Environmental Management and Pollution Control Officer

“Right now we have so much poverty. Before we were poor but we had fishing. Before I bought milk for my children, but now I only can give them rice-water. My child got sick because I can’t afford the milk... A couple of days ago my husband wanted to go fishing but I didn’t have food for him for breakfast, so how could he go? I am tortured because before my budget for breakfast was PHP40, now it is PHP20... Now I have to divide the rice between the children.”

Mrs Arlene Bordarais, Rapu Rapu resident and mother of 12 children.¹³⁶

Longer-term issues

“I am already 41 and have been fishing for 20 years. Before when I would go to sea I would always have a catch but since the mine, sometimes there is no catch.”

Perfecto Banaynal, local fisherman¹²³

“We have to go on what BFAR and the DENR tell us but I believe that 90% [of the decrease in fish] is from Lafayette, because even the old folks have never seen anything like it before.”

Municipal councillor,
name withheld on request¹²⁴

Many community members associate the operation of the mine with dwindling fish catches. Villagers in Viga, for example, tell a common tale. Despite not being recognised by the mine as an impacted area, local fishermen and their wives informed the Mining Ombudsman that before Lafayette began mining, they could catch 10 to 15 kilograms per day, but since the mine their daily catch is about one kilogram.¹²⁵

Mining Ombudsman interviews found the majority of communities in and around Rapu Rapu island fell into two categories: those who believe smaller fish catches are due to the mine and those who believe the mine has aggravated already declining fish numbers.¹²⁶ Over-fishing and illegal fishing activities have damaged the reef areas around Rapu Rapu and are likely to have contributed to a decline in fish numbers.¹²⁷

Whether the mine contributed to declining fish numbers is difficult to determine. However, what is apparent is that dwindling fish stocks have caused fisherfolk to experience significant financial strain, which has been exacerbated by low saleability of fish due to consumer fear of contamination.

Many report they have to travel large distances to make substantial catches and incur increased fuel costs and work longer hours.¹²⁸ The price of fish has therefore risen. Simultaneously, they are now competing with imported fish.¹²⁹ Struggling with lost income, many fisherfolk are attempting to grow their own root crops for consumption, further exacerbating the reduced incomes that farmers receive.¹³⁰

The Mining Ombudsman heard reports that some men have had to leave their families to look for work in Manila and nearby cities. Women have also found it necessary to find other work, which can take them away from child-rearing duties, while older children are recalled from school to help with household duties and to look after younger children.

Some fisherfolk reported they had sold their fishing equipment to raise money.¹³¹ As a result, they would not be in a position to return to traditional income-earning activities without assistance.

“Now we can’t eat fish. There is a lot of poverty. We can’t afford rice. Sometimes we can eat root crops or the relief goods from the government.”

Beata Ebuenga, local resident,
fisher woman and mother of four,
Poblacion, Rapu Rapu.¹³²

5.2.2. Effects on health

Rapu Rapu fisherfolk whose incomes have been impacted by the spills noted their health has been affected. Many told the Mining Ombudsman they were eating only once per day¹³³ and forgoing foods such as fresh fish.

Villagers in Linao reported that before Lafayette commenced operations people earned approximately PHP 500 (AUD \$13) per day, however now even PHP 50 (AUD \$1.30) is difficult to obtain.¹³⁴ Javee Ann Garcia, a local fisherman’s wife, told the Mining Ombudsman that she used to feed her daughter branded milk but now feeds her rice-water.¹³⁵ As the principal carers in most families, women in particular reported hardship.

Many community members are also concerned about the mine operation’s possible effects on their health. The approach to dust management by RRMI/RRPI was at odds with recognised best practice in the Australian mining industry. As “dust generated from the surface of tailings storage facilities may be a public health risk and cause environmental impacts from airborne particulates and contaminants,”¹³⁷ it is common practice in the Australian mining industry for dust control measures to be implemented. According to residents in one of the barangays closest to the mine, Binosawan, dust from the mine site poses a significant health risk.

Kagawad Jimmy Roxas, a councillor of Binosawan, explained, “The dust comes from the mine when they dump their waste ... when the wind blows the dust comes towards the community all over the barangay”. At a meeting convened by a local group opposed to the mine,

locals told how they and their children suffer from respiratory illness during the summer, which they attributed to dust coming from the open pit and tailings dam at the mine.¹³⁸ However, Rapu Rapu mine management denied that Binosawan or other villages were close enough to be affected by dust from the mine.

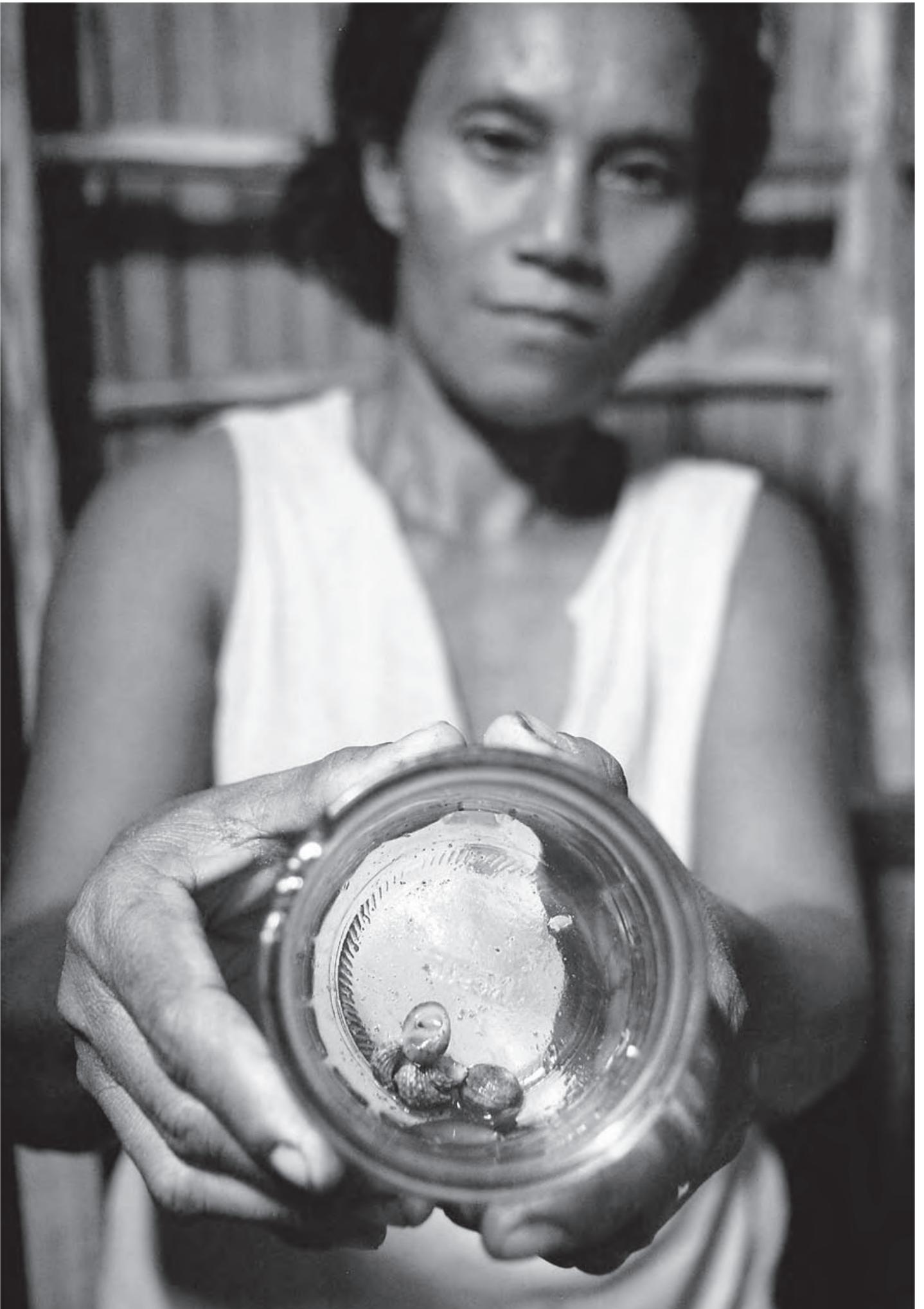
There are also concerns about toxic heavy metals from the mine contaminating water, air and food sources. However, neither the health authorities nor the mine operators have established a toxicological assessment program, so the impact on health is difficult to determine.

The Fact Finding Commission investigation into the 2005 spills referred to testing by the Department of Health for toxic heavy metals such as cadmium, lead, arsenic and mercury in the blood and urine of a sample of individuals from coastal areas of Rapu Rapu and Sorsogon. While the study found that some children had toxic heavy metals in their blood and urine, the studies were not able to conclusively link the findings to contamination of water, air or food sources in the area.¹³⁹

In its commentary on the 2005 spillages, the DENR noted that skin diseases were reported from people within a 20-kilometre radius who had come into contact with the water.¹⁴⁰ However, it concluded that there was no basis for linking the mine with skin diseases of residents in the host communities. The DENR stated that dermatologists from the University of the Philippines concluded that the skin diseases were more likely due to fungal and bacterial infections than exposure to heavy metals.

The Charge Nurse at Rapu Rapu District Hospital, Mrs Gamboa, informed the Mining Ombudsman that within three days of the October 2007 fish-kill, the hospital treated three cases of food poisoning within 24 hours. All cases reported that they had eaten shell fish.¹⁴¹ When asked whether this was a common occurrence, Mrs Gamboa emphasised that it was not.

Janny Valicio-Belbin shows some of the shellfish her children collected and cooked while she and her husband were out of the house. Mrs Valicio-Belbin claims her children became sick after eating shellfish shortly after the October 2007 fish-kills and were rushed to hospital for treatment. Photo: Alex Felipe.



5.2.3. Militarisation

As at October 2007, RRMI/RRPI employed 47 paramilitary personnel accompanied by five army cadres to secure the business operations at the mine.¹⁴² These individuals dressed in military uniforms and carried firearms and ammunition issued by the Armed Forces of the Philippines (AFP). According to the company security manager, the security force was in place in the perimeter and sensitive areas, and ordered not to leave the camp site or visit any of the three barangays directly affected — being Pagcolbon, Malobago and Binosawan.¹⁴³ In addition, a nine-man team of the 65th Infantry Battalion was deployed to the mine in case of “actual armed attacks at the camp site and elsewhere in the island”.

The number of military personnel on the island increased between October and December 2007. In December 2007, the Mining Ombudsman interviewed the Governor of Albay, Mr Joey Salceda, who confirmed that there were 28 Philippine government soldiers deployed on the island. Wooden signs in barangays around the mine state that these military have been deployed to track down the New People’s Army (NPA), the guerrilla arm of the Communist Party of the Philippines, an avowedly Maoist group outlawed in the Philippines. Governor Salceda stated that the NPA is not on the island but the soldiers are there to protect “just in case”.¹⁴⁴

Rapu Rapu mine management stated they employ security guards to patrol within company property and that such security guards are uniformed and bear clear identification.¹⁴⁵ RRMI/RRPI also claimed the company ensured military were kept “from public eyes by stationing them at an isolated spot in the camp site”.¹⁴⁶ Mine management told the Mining Ombudsman,

*“The military are based near the magazine securing explosives. They don’t go around; they stay in the barracks. Only our security guards man the road checkpoints”.*¹⁴⁷

Contrary to these assertions, many local community members claimed that they had seen armed military patrolling the island, both in uniform and plain clothed. The Mining Ombudsman heard from villagers that a public thoroughfare from Binosawan to Malobago and Pagcolbon was guarded by security guards and military who didn’t always have clear identification or uniforms and who were on public property.¹⁴⁸ Villagers complained that they were often stopped by security or military on this road. They reported that security and military would ask where they were going,¹⁴⁹ require them to sign documentation in order to continue,¹⁵⁰ and at times denied them the right to pass.¹⁵¹ Similarly, following the 2005 tailings spills, Dr Emelina Regis from the Institute for Environmental Conservation and Research, attempted to collect water for testing. The water samples were confiscated by mine security even though Dr Regis and her team were not on company land.¹⁵²

In a memorandum from the security manager for the mine, it is stated that “militarisation should be perceived as acts of an armed group or component to exercise control over the citizens of a given area by virtue of superior arms and strength. These acts include curtailment of the people’s freedom of movement... [But] in our case this is not happening”.¹⁵³ However, the Mining Ombudsman’s own experience on Rapu Rapu confirms that there is curtailment of freedom of movement by armed military and paramilitary. In traversing the road from Binosawan to Pagcolbon and Malobago, the Mining Ombudsman passed five checkpoints, observed security guards without clear identification, a security guard without any identifiable uniform, and two military personnel stationed outside mine property.

Voluntary Principles on Security and Human Rights

The Voluntary Principles on Security and Human Rights provide guidance to mining, oil and gas companies in maintaining the safety of their operations while respecting human rights and fundamental freedoms. The Voluntary Principles are an initiative of the governments of the United States, United Kingdom, Netherlands and Norway, extractive industry companies and non-government organisations. They address three main areas: risk assessment; interactions between companies and public security (such as military); and interactions between companies and private security.

They include, for example, the principles that companies should:

- when assessing risk, consider the available human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security. Awareness of past abuses and allegations can help companies to avoid recurrences as well as to promote accountability;
- consult regularly with host governments and local communities about the impact of their security arrangements on those communities;
- make sure that the type and number of public security forces deployed should be competent, appropriate and proportional to the threat;
- in their consultations with host governments, take all appropriate measures to promote observance of applicable international law enforcement principles, particularly those reflected in the United Nations Code of Conduct for Law Enforcement Officials and the United Nations Basic Principles on the Use of Force and Firearms; and
- ensure that private security provide only preventative and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities.

For further information, visit www.voluntaryprinciples.org

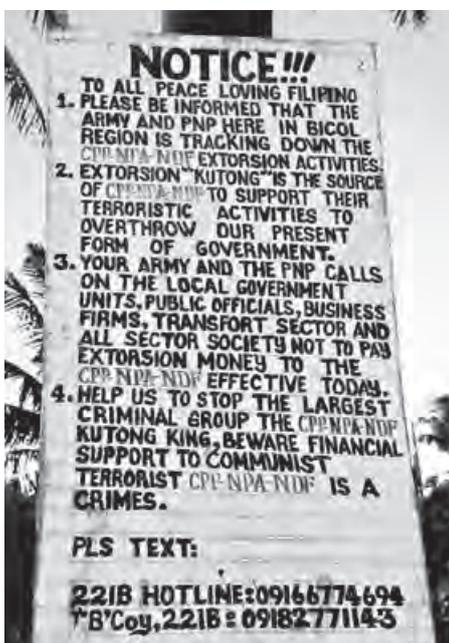
Top Right: Armed security personnel physically barred the passage of the Mining Ombudsman and her accompanying party. A third security guard armed with a shot gun arrived soon after this photograph was taken.
Photo: Shanta Martin/OxfamAUS.



Centre Right: A member of the Philippine army mans a checkpoint erected on public land along the Pagcolbon road. RRM/RRPI claimed that the military stayed only in their barracks and were kept from public view.
Photo: Shanta Martin/OxfamAUS.

Bottom Right: One of several security guards along the road between Binosaan, Pagcolbon and Malobago who monitored the passage of the party accompanying the Mining Ombudsman. This security guard was not wearing a uniform and showed no clear identification despite RRM/RRPI claims that all security personnel are uniformed.
Photo: Shanta Martin/OxfamAUS.

Below: A sign posted in Barangay Linao on Rapu Rapu island advises local residents that the army is "tracking down the CPP-NPA-NDF extortion activities". Residents and government officials reported to the Mining Ombudsman that prior to the arrival of the mine, there was no military presence or terrorist activity on Rapu Rapu.
Photo: Shanta Martin/OxfamAUS.



Politically motivated killings in the Philippines

The United Nations Special Rapporteur on extrajudicial killings reported on his 2007 visit to the Philippines that “over the past six years, there have been many extrajudicial executions of leftist activists in the Philippines. These killings have eliminated civil society leaders, including human rights defenders, trade unionists and land reform advocates, intimidated a vast number of civil society actors, and narrowed the country’s political discourse. Depending on who is counting and how, the total number of such executions ranges from 100 to over 800”.¹⁶⁰

Human Rights Watch released a report in June 2007 investigating extrajudicial killing in the Philippines.¹⁶¹ The report documents the involvement of the armed forces in the killings of individuals because of their political activism including anti-mining activities. It claims activists are being gunned down or “disappeared” with their murders going unprosecuted.

The Mining Ombudsman and her party were stopped twice along the road. Prior to arriving in Malobago, armed uniformed private security guards physically barred the party’s passage and demanded that the group sign documentation held by the mine. The security personnel obstructed the party until they received permission from mine management to allow the party to continue.

Curtailed freedom of movement has added to community mistrust of the mine. Mr Antonio Casitas, leader of a local activist group, Sagip Isla Sagip Kapwa, says the mere presence of military makes villagers afraid.¹⁵⁴

A fear of militarisation is all the more profound in the Philippines, which has experienced a large number of extrajudicial killings of leftist activists, as documented in a report of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions.¹⁵⁵ Mr Casitas is concerned that Sagip Isla has been branded “leftist” and members may be “marked for summary killings” (a form of extrajudicial punishment where a person is killed without trial).¹⁵⁶

Some local activists claim that death threats have been received by groups organising anti-mining rallies.¹⁵⁷

The concerns of local activists are heightened by news of Bicol residents who have apparently been the victim of summary executions. On 31 July 2006, 21-year-old student Rei Mon Guran, from Aquinas University of Legazpi, was reportedly gunned down by two assailants on a motorbike as he boarded a bus.¹⁵⁸ Mr Guran was a leader of a leftist organisation, the League of Filipino Students, and had participated in rallies against Lafayette in June and July 2006. On 12 December 2006, Attorney Gil Gujol was shot dead in Sorsogon along with his driver. Gujol was the lawyer of Sorsogon-based complainants who filed a class suit against Lafayette demanding compensation for the damage allegedly brought about by the mine spills.¹⁵⁹ There is no evidence linking the incidents with Lafayette or their operation.

5.2.4. Free, prior and informed consent

The Philippine Mining Act requires companies to obtain an Environmental Compliance Certificate (ECC) as part of the regulatory process. In order to be granted an ECC by the Environmental Management Bureau, a company must first conduct an Environmental Impact Assessment (EIA) and submit a statement that documents the “environmental impacts of a project including the discussions on direct and indirect consequences upon human welfare and ecological and environmental integrity”.¹⁶² The company must submit proof of social acceptability through the ECC approval process. This includes endorsement from the local barangay councils and the Sangguniang Bayan (Municipal Council).¹⁶³ Ascertaining “social acceptability” is defined as a process that ensures that the valid and relevant concerns of stakeholders, including affected communities, are fully considered and/or resolved in the decision-making process for granting or denying the issuance of the ECC.¹⁶⁴ The DENR and the company are required by law to hold a public hearing to ensure that public concerns are fully integrated into the EIA.¹⁶⁵

The Equator Principles also state that projects with significant adverse impacts on affected communities must ensure free, prior and informed consultation and facilitate communities’ informed participation.¹⁶⁶ The Principles further state that consultation with communities must be conducted in a structured and culturally appropriate manner.

Beyond these standards, obtaining free, prior and informed consent is also good business practice, and helps in securing a “social licence” to operate. Both a regulatory licence to operate from the host government as well as an ongoing social licence to operate from affected communities is needed for project viability; a mining project attempting to operate without one or the other is inherently unsustainable from both a business and a social perspective. Oxfam Australia has produced a guidance note entitled *Free, prior and informed consent: the role of mining companies*, available at www.oxfam.org.au/mining.



According to Lafayette, the barangays closest to the mine and directly affected by their operations are Malobago, Pagcolbon, and Binosawan. Poblacion, Santa Barbara, Linao and Tinopan are recognised as being indirectly affected.¹⁶⁷ No other barangays are identified as affected communities. In interviews with local leaders of the coastal barangays of Sorsogon, Prieto Diaz and Bacon, all confirmed that there was no prior consultation or consent sought by the company. Being only 12.5 kilometres away and with common current movements in the direction of these coastal villages, it was foreseeable that contamination of waterways in Rapu Rapu might affect the Albay Gulf as well as coastal communities of Sorsogon. Indeed, the potential for mine contamination to affect fisheries in the Albay Gulf was predicted by research scientist, Dr Emelina Regis, in 2001.¹⁶⁹

Concerns were raised with the Mining Ombudsman about the processes used by Lafayette and its subsidiaries to obtain and prove the social acceptability of the mine. Consistent with legal requirements, a public hearing was held on Rapu Rapu island in December 2000 and public notices were displayed to inform residents of the meeting. Contrary to best practice, however, the meeting was held on the proposed mine site, which was less accessible to community members from more distant barangays who would have been reliant on the company for transportation and accommodation.¹⁷⁰ The DENR acknowledged that the venue was "secured from groups, particularly to some who were unruly and wanted to disrupt the proceedings".¹⁷¹ It has also been reported that in meetings with local communities, the company spoke only of the benefits the community would allegedly receive and did not mention the environmental and socio-economic risks of the mine.¹⁷² Further, one former local barangay councillor for Binosawan, Mr Edwin Boticario, claims that his signature and that of three of his council colleagues were forged in passing a resolution supporting the mine.¹⁷³

Above: Community members in Viga gather to discuss their views on the Rapu Rapu mine with the Mining Ombudsman. Photo: Shanta Martin/OxfamAUS.

“The extent and nature of economic growth is central to development and to the lives of poor people. Put simply, countries that have reduced poverty have invariably had to grow to do so. Properly managed, growth in the market economy creates jobs, increases incomes, and generates tax revenues that effective states can invest in infrastructure, schools, and hospitals.”

Oxfam International, *From Poverty to Power*¹⁷⁴

5.3. Little contribution to local, regional or national development

It is often believed that large infrastructure projects create added income for both governments and the people in the form of taxes and employment, and thus lead to economic growth. In the case of Lafayette and the Rapu Rapu project, overly generous tax exceptions, inadequate community development programs and limited local employment opportunities have resulted in very little economic benefit for local residents or the provincial and national governments.

5.3.1. Lack of effective community development programs

“The exploitation of a country’s mineral resources can only be justified if it does not irreparably damage the environment and if it benefits the community and nation as a whole. This is beyond all argument.”

DENR Assessment of the Rapu Rapu Polymetallic Project¹⁷⁵

The Philippine Mining Act stipulates that mining contractors must assist in the development and well-being of affected communities,¹⁷⁶ and requires each mine to develop a five-year Social Development and Management Program (SDMP).¹⁷⁷ The budget for SDMPs must be a minimum of 0.9% of the direct mining and milling costs annually, with a further minimum of 0.1% to be allotted to labour training and development of mining technology and geosciences. The Mining Act stipulates that activities intended to enhance the development of local communities may be credited towards SDMP expenditures unless required or provided for under existing laws or collective bargaining agreements.

The Mines and Geosciences Bureau anticipates that SDMP programs include projects and activities such as the construction and maintenance of schools, hospitals and roads; the establishment of livelihood industries; and education and health programs.

According to the Mines and Geosciences Bureau, the approved SDMP for the Rapu Rapu mine was PHP 30 million (AUD \$770,000).¹⁷⁸ According to Lafayette and its subsidiaries, 85% of this was to be spent on the three direct impact barangays of Binosawan, Pagcolbon and Malobago, with the remaining 15% being spent on programs in the indirectly affected barangays of Poblacion, Santa Barbara, Linao and Tinopan.

In March 2007, Rapu Rapu mine staff informed the Mining Ombudsman of a number of projects and activities which had started or were planned, including:

- a piggery project to stimulate an alternative livelihood to fishing. After the project was unsuccessful, a goat-rearing project was planned;
- a vegetable farming project as an alternative livelihood to fishing. (The project was started but crops were destroyed by a typhoon);
- provision of school bags and pens to children;
- mathematics and science training for teachers;
- a planned waste management project;
- feeding infants in the three direct impact barangays;
- a medical and dental mission in Linao;
- boarding allowance for 12 children from the three direct impact barangays to attend the local public high school in the main village of Poblacion, which is approximately one hour by boat from the villages;
- provision of free electricity in the three direct impact barangays;
- support for two people to attend an agro-mechanical school;
- construction of roads connecting Pagcolbon to Malobago;
- provision of relocation packages for seven families from Pagcolbon (whose land is now occupied by the mine);
- an honorarium for street sweepers;
- a plan to provide a toilet in every home in the direct and indirectly affected barangays;

- planned construction of day care centres for six barangays, and provision of teachers’ honorarium and supplies;
- planned skills training for 20 people per barangay in welding and machinery, 70% of whom would be employed by the mine;
- planned provision of four-wheel drive passenger transport between Binosawan and Pagcolbon; and
- planned construction of water tanks and connecting system to supply water to direct impact barangays.

RRMI/RRPI also said it provided financial grants and relief goods to typhoon victims.

The management of RRMI/RRPI acknowledged that some projects had been adversely affected by tension in communities caused by the fish-kills and general anti-mining sentiment. Some communities rejected assistance and burnt school bags given by the company at anti-mining rallies.¹⁷⁹ Community members also claimed that RRMI/RRPI failed to follow through on commitments once anti-mining protests were carried out.¹⁸⁰ “If you oppose, they do not give,” said Binosawan barangay councillors.¹⁸¹

The actual amount spent on community development to date is difficult to verify as company reports on expenditure vary significantly. The company has represented different expenditures at different times, and readjusted expenditures for previous periods.¹⁸² In correspondence with Lafayette,¹⁸³ the Mining Ombudsman requested information relating to delivery and expenditure of the community development projects; however no response has been received.

The Mining Ombudsman is also concerned that some expenditure is being erroneously characterised as part of the SDMP. For example, one of the programs claimed to be part of the SDMP is construction of an “all-weather barangay access road” between the villages of Malobago, Pagcolbon and Binosawan. The company claims the road “now links and allows access to the three [villages] especially during inclement weather when the use of boats is not safe to reach these coastal barangays”.¹⁸⁴



Former Barangay captain, Efren Dubuenga, stands in front of the Binosawan school. The rooves of the old school buildings can be seen in the background. These were repaired by RRMI/RRPI, while new school buildings in the foreground are being constructed by the government. Photo: Shanta Martin/OxfamAUS.

However, a road existed prior to the construction of the mine and was regularly used by villagers, who say that the old road “was better because it used to be more direct”.¹⁸⁵ The old road ran through land that has been taken over by the mine and has therefore been rerouted. The portion of the road that has been improved by the mine is a large section that runs from near the mine’s port to the mine to allow heavy vehicles to transport machinery and goods. This portion of the road is at times described by company management as a “private road”, but the Mines and Geosciences Bureau says that a public thoroughfare cannot become a private road.¹⁸⁶ Villagers have no option but to use this road in order to travel between barangays, however, it has been constructed without a pedestrian walkway so that villagers must step off the road if they hear oncoming mining trucks, making it more dangerous to use. Armed private security personnel and military also now monitor and restrict access to the road.

Other program expenditure reported under SDMP may also be a misrepresentation. According to the Mining Act 1995 and the Mines and Geosciences Bureau, expenditure on labour development programs should be separate and in addition to SDMP funding. However,

the Rapu Rapu mine website states that a significant portion of its SDMP expenditure has been allocated to training, which includes “vocational/technical skills training” for local residents to gain skills for employment within the project.¹⁸⁷ It should be noted that due to the application of generous tax concessions, RRMI/RRPI is able to deduct 50% of the costs of these training programs from taxes that would otherwise be paid to the government.¹⁸⁸

Ensuring that local residents are able to gain skills for employment in the mine is a laudable objective; however, such training should be funded by the 0.1% of costs required by the law to be allotted to “manpower training”. Funding should not be at the expense of development programs which are intended by law to form part of the SDMP. Similarly, relocation packages for people whose land has been occupied by the mine should not be considered as part of the SDMP, but rather as part of the required process for acquisition of land.

In relation to those programs that genuinely form part of the SDMP, the Mining Ombudsman is very concerned about their sustainability and broader beneficial nature. As is recognised in Filipino regulations giving rise to the SDMP— which require participation by local communities in

creating social development programs — a participatory approach is essential to the projects’ effectiveness and sustainability. A company representative informed the Mining Ombudsman that programs were developed in consultation with the communities directly and indirectly affected by the mine,¹⁸⁹ yet he was unable to elaborate on how this occurred. In each of the seven barangays visited by the Mining Ombudsman, almost all community members complained that they were not involved in developing the programs and that few if any were beneficial. Most stated that where programs did exist, they were only available to barangay officials and other individuals who showed strong support for the mine.

During the Mining Ombudsman’s December 2007 visit, she inspected some of the SDMP projects and found serious flaws. For example, the Mining Ombudsman met with villagers, the Barangay Captain, Barangay Councillors and the former Captain of Binosawan, which is one of the three direct impact barangays that should receive 85% of the SDMP. Random interviews with local residents of Binosawan invariably resulted in statements to the effect that the local people receive no benefits from the mine and that many of the projects promised by the company were never carried out.

When the Mining Ombudsman asked about some of the projects the company had identified as being undertaken in Binosawan, such as the goat-rearing project and water tanks, a community member stated, "It's all promises... they also promised a breakwater but [it is] still just a promise. It's useless. We have heard promises since exploration. They promise a concrete road but still nothing."¹⁹¹ Such sentiments were heard in most barangays the Mining Ombudsman visited and were echoed in discussions with municipal and provincial government officials. The Rapu Rapu Municipal Social Welfare Development Officer confirmed that the Municipal Council had received no assistance from the company despite a dire need for food, shelter and education on the island.¹⁹² Staff at the starkly under-resourced municipal hospital also stated the hospital received no assistance from the mine.

In contrast to these views, the Mining Ombudsman heard very positive reports when interviewing the former captain of Binosawan, Mr Efren Dubuenga, who stated, "The company helps us whatever help we need."¹⁹³ He claimed the company had spent PHP 5 million (AUD \$128,000) on development programs in Binosawan in 2007, and referred to eight projects: a water system; a chapel; a livelihood program piggery project; repair of three school rooms; contribution to a 120-metre council-built concrete reinforcement of a local riverbank; a day-care centre; four janitors being paid to keep the barangay clean; and provision of scholarships to 15 children. While Mr Dubuenga denied being paid by RRMI/RRPI, he explained that he receives payments for an environmental monitoring process and handles the money for salaries for janitors and other projects.

Mr Dubuenga took the Mining Ombudsman through the village to inspect the projects. It was revealed that many projects that were supposed to be completed had yet to be actioned, and others which had been carried out years before were no longer effective. The Mining Ombudsman learned during this inspection that:

- the water project had not been completed as the company had not paid the contractors;
- the chapel was built in 2004–2005 without consulting the local priests, who now refuse to use it;
- the piggery project had failed because the company had stopped providing loans when the mine was not fully operational, and people could not afford to feed the piglets or repay the loans. The village had not been provided with the promised goat-rearing project;
- the company had replaced roofing irons on a dilapidated school building that was further damaged during the typhoon, while metres away the Department of Education was constructing new buildings;
- the company had not fulfilled its commitment to repair the riverbank reinforcement built four years prior, and which had been destroyed in the 2006 Typhoon Reming;
- there was no building for the day-care centre: instead a barangay hall was being used. One day-care teacher was receiving a salary from the company;
- the community was engaged in a village-wide voluntary effort to clean up all refuse, making the need to pay janitors dubious;
- scholarships provided to students were to allow them to attend the free local high school, and amounted to an allowance for lodging of PHP 250 (AUD \$6.40) per week and weekly transport on a motor boat; and
- an electricity generator was installed in 2004 when electricity was already available to Binosawan from a hydroelectricity project. When initially installed, the generator only supplied select individuals, but was made available to the rest of the community after the hydroelectric generator was damaged in the 2006 typhoon. Mr Dubuenga explained that once the mine closed, people would be required to pay for electricity again. Thus, the benefit of the generator is only temporary.



The Mining Ombudsman observed similarly poorly-planned projects in other barangays. For example, a goat pen had been built in Tinopan, but no goats had been provided. Local villagers also explained that the materials used in the pen's construction were unlikely to last as the company had used a form of local bamboo, "buho", which does not withstand damp environments.¹⁹⁴

On the basis of these observations, it was clear that very few, if any, resources had been spent on effective and long-lasting community development by RRM/RRPI. After touring Binosawan, Mr Dubuenga conceded it was difficult to substantiate and confirm that PHP 5 million (AUD \$128,000) had been spent in his village in 2007, saying, "It was supposed to be PHP 5 million spent this year, but I don't see any document."¹⁹⁵ The Governor of Albay, Mr Joey Salceda, confirmed that the company was well behind schedule in delivering its community development projects, having spent by December 2007 only about PHP 2 million, or 10%, of the amount committed for the entire year.¹⁹⁶



Left: RRM/RRPI constructed a portion of concrete reinforcement along the creek bank. The reinforcement has collapsed and is in a state of total disrepair. Photo: Shanta Martin/OxfamAUS.

Above right: The road between Pagcolbon and Malobago has been widened by RRM/RRPI to allow heavy machinery to transport goods between the port and the mine. Local residents using the road have no separate path, making the road less safe for pedestrians. Residents also complain they are sometimes barred by company security from using the public thoroughfare. Photo: Shanta Martin/OxfamAUS.

Right: Community members of Binosawan were engaged in a village-wide clean up when the Mining Ombudsman visited in December 2007. Photo: Shanta Martin/OxfamAUS.

Far right: A chapel in Binosawan was constructed by RRM/RRPI without consulting the local clergy, who now refuse to use the building. Photo: Shanta Martin/OxfamAUS.

"I personally don't get anything from that mining, especially because our livelihood is affected. For us, the fisherfolks, we get nothing... We're not working at Lafayette so we don't get anything."

Local villager (name withheld upon request), Binosawan.¹⁹⁰

5.3.2. Poor employment prospects for local community

In general, large-scale mining is a low level employer beyond the construction phase. Increasing mechanisation of processes has reduced job prospects even further for local communities. Many jobs within a mining operation require specialised skills and experience. Mining projects can, however, stimulate the creation of additional jobs through service and ancillary industries.

One of the many complaints heard by the Mining Ombudsman was that the mine had brought few jobs to local community members. It was said that local community members were generally unable to obtain staff positions.

There are approximately 9,749 people living on Rapu Rapu island (as at the 2000 census). During a visit by the Mining Ombudsman to the mine site in March 2007, mine management gave a presentation in which figures were provided for the employment of locals. According to these figures, as of August 2006, the total labour force was 888, with 285 people employed by the mine while 603 were employed through the Australian company, Leighton Contractors. Of the 285 staff, the company reported that 93 men and four women were employed from the directly impacted barangays surrounding the mine. A further 30 men and four women reportedly came from other barangays within Rapu Rapu. The remaining 154 staff (54%) were employed from other Philippine regions or internationally.¹⁹⁸ Rates of pay ranged from approximately PHP 270 (AUD \$6.90) per day for manual labourers to PHP 400 (AUD \$10.20) per day for skilled workers. A request by the Mining Ombudsman for the company to provide a breakdown of the types of jobs in which locals were able to gain employment was not fulfilled.

The proportion of local staff at the mine appeared to improve slightly after 2006, while contractor rates dropped markedly. The drop in contractor positions was no doubt in part due to a reduction in construction needs as well as the non-payment of Leighton Contractors, which precipitated the external administration of Lafayette. According to 2008 figures released by RRMI/RRPI, the labour force in 2008 was 742. There were 413 employees of both companies, of which 241 were from Rapu Rapu, while 89 contractors out of 328 were local.¹⁹⁹

"They said there would be jobs, but most people from here don't have knowledge of the machines and can only get a few jobs."

Mr Antonio Casitas, Rapu Rapu elder and leader of Sagip Kapwa.¹⁹⁷

Many people in and around Rapu Rapu, including the Governor of Albay, believe that the benefits provided by the number of jobs "are too paltry"²⁰⁰ to make up for the negative impact that the mine has had socially, environmentally and fiscally. Many local community members emphasised that most employees living in and around the mine are not originally from Rapu Rapu, but from other regions.²⁰¹ In Malobago, the Barangay Captain, Reynold Asuncion, estimated that the local population had almost doubled since the commencement of the mine.²⁰² Many other community members complained that locals are rarely employed as skilled labourers.²⁰³

When asked whether local community members were offered the opportunity to obtain skills, the Mining Ombudsman was told by Mr Asuncion that only a few single males were being trained. He explained that most people could not afford to go for training as the trainees only received an allowance, which was not enough to feed a family.²⁰⁴ As a result, local community members tended to receive short-term contracts and menial jobs,²⁰⁵ for example, to erect fences and undertake other minor construction work.²⁰⁶ Many explained that their capacity to obtain even contractor positions was hampered by the practice of the mine and its contractor to hire people from other areas, particularly Visayas.²⁰⁷

5.3.3. Generous tax concessions and non-payment of taxes

Government collection of taxes from mining companies' revenues can be used to contribute to economic growth and poverty reduction. However, the failure to collect taxes which may otherwise be used for social development is a significant problem. So too is the failure of governments to use such taxes for development initiatives that have a lasting and sustainable benefit for communities.

Due to generous tax concessions, many prominent leaders in the Philippines, as well as local communities, are angered that the Rapu Rapu mine contributes very little to national, provincial or local revenue.

Both domestic and foreign corporations operating in the Philippines are usually subjected to a variety of taxes, including:²⁰⁹

- income tax at a rate of 35%;
- capital gains tax at a rate of 35%; and
- profit remittance tax at a rate of 15%.

However, under a tax regime established by the Philippines National Government, some company operations can receive significant tax breaks, resulting in corporations contributing very little to national, provincial or local revenue.

The Philippine Economic Zone Authority (PEZA) is a government investment promotion agency that establishes special economic zones, or "Ecozones", to attract foreign investment. The Special Economic Zone Act²¹⁰ states that except for real property taxes on land owned by developers, no taxes, local or national, are payable by PEZA-certified companies.²¹¹ Such companies therefore do not pay national internal revenue taxes, local government fees, licenses or taxes, gross receipts tax, value added tax, or excise taxes.²¹² PEZA-certified businesses pay only 5% of gross income. Three per cent of the gross income is distributed to the National government, while 2% must be paid by the company to the treasurer's office of the municipality or city where the business is located. As an additional incentive, businesses are able to deduct 50% of the value of labour training expenses and management training programs from the 5% final tax due.²¹³ The Section Chief of the Tax Exemption and Incentives Division of the Philippines Bureau of Internal Revenue (BIR), Ms Tess Idio, explained to the Mining Ombudsman that these tax exemptions apply for the first four years, with a further extension being possible on application.²¹⁴

On 1 May 2004, the Philippines Presidential Office signed a PEZA certification designating certain areas on Rapu Rapu island as the "Rapu Rapu Ecozone".²¹⁵ PEZA granted to the Rapu Rapu mine a "pioneer status", effectively a longer tax holiday, in relation to its zinc production as there are no other zinc producing operations in the Philippines.

“In order to ensure this generation gets benefit, they [Rapu Rapu mine operators] need to pay taxes.”

Governor Joey Salceda, Governor of Albay.²⁰⁸

Under these conditions, RRMI/RRPI is not required to pay taxes for four years on profits arising from the mine's copper, gold and silver production and six years on profits from zinc production.²²¹ The estimated life of the mine was only six years.²²² The DENR estimates that foregone tax revenue to the Philippines from the Rapu Rapu mine due to PEZA incentives was approximately USD \$64 million.²²³

Doubts were raised by local and provincial authorities over the manner in which the company was granted PEZA status.²¹⁶ Lafayette clearly pressured the National Government for the certification, stating in a letter to President Macapagal-Arroyo that “without the granting of an Economic Zone, project development will not be possible and cannot proceed”.²¹⁷

Local government endorsement is required for an area to be granted PEZA certification,²¹⁸ however a member of the Rapu Rapu Municipal Council signed a sworn affidavit stating that his signature was forged in the resolution.²¹⁹ The DENR has asserted that the National Bureau of Investigation would be asked to enquire into the allegations of forgery;²²⁰ however no action appears to have been taken.

In addition, serious concerns have been raised about the manner in which the mine's operators have calculated the amount of tax they were required to pay under the PEZA scheme. As RRPI was buying from its sister company, RRMI, the Fact Finding Commission queried whether the price paid for ore was below market price,

resulting in an undervaluation of income and therefore tax payable. The Fact Finding Commission also found it likely that RRMI had underreported production by almost half.²²⁴ In a subsequent report by the DENR, it too found that the basis for computation of taxation had been incorrect. The DENR committed itself to request the Bureau of Internal Revenue to investigate the issue of underreporting of ore production.²²⁵ In an interview with the Mining Ombudsman, the Director of the Mines and Geosciences Bureau, Mr Horacio Ramos, stated that a condition of the temporary lifting order was payment of all taxes.²²⁶

It appears, however, that neither Lafayette nor RRMI/RRPI was required to recalculate and pay these taxes. Enquiries by the Mining Ombudsman at the BIR revealed that the BIR had never conducted an inquiry as stated in the DENR report. The Section Chief of the Tax Exemption and Incentives Division of the BIR, Ms Tess Idio, who is tasked with monitoring payment of taxes under the PEZA-certification scheme,

*The Rapu Rapu Municipal Hospital is in desperate need of equipment, yet municipal councillors and hospital staff confirmed that the mine provides no support to the hospital. Generous tax exemptions also limit the availability of resources from mining operations for government expenditure on health services.
Photo: Shanta Martin/OxfamAUS.*



told the Mining Ombudsman, "Honestly we cannot monitor all because there are over one thousand PEZA entities across the Philippines", and the BIR has insufficient resources.²²⁷ When the President of RRMI, Mr Alfredo Non, was asked about the DENR report's reference to incorrect excise tax computation, Mr Non merely asserted that the DENR report was incorrect, saying that the basis of the computation was the market value, not the transfer price to RRPI.²²⁸ He also confirmed that the Bureau of Internal Revenue had not issued an assessment.

It appears RRMI/RRPI sought various means to avoid the payment of taxes. The Assistant Treasurer at the Rapu Rapu Municipal Office, Ms Imelda Araojo, stated that PHP 3.2 million (AUD \$82,000) was collected for the period January to September 2005.²³¹ However, due to the mine's cyanide spillages and suspension, the municipal government had received no income from the mine between October 2005 and December 2007. Ms Araojo explained her belief that the National Government had granted the company an additional tax holiday for three years, exempting the company from the payment of the 2% usually paid to the municipal government. A municipal councillor showed the Mining Ombudsman documentation in which the company offered to provide the municipal council a PHP 5 million (AUD \$128,000) grant as part of the SDMP and in lieu of payment of taxes.²²⁹ The Provincial Prosecutor assessed the arrangement as being contrary to law.²³⁰

"They violate provisions of the ECC [Environmental Compliance Certificate] and they were the ones given the tax holiday; that is the harsh reality. Why were they given a tax holiday when it was their fault? ... We were expecting millions ... at least for when they were producing from February to June 2007, but it appears they have been given a special privilege."

Ms Imelda Araojo, Assistant Treasurer, Rapu Rapu Municipal Council

RRMI/RRPI therefore sought to provide the PHP 5 million as an "interest free loan" under the same conditions, even though the PHP 5 million would have to be repaid to the company.

The amount of taxes actually paid by Lafayette and RRMI/RRPI is difficult to clearly ascertain. The Mining Ombudsman requested from both Lafayette and RRMI/RRPI details of contributions of taxes, revenues and royalties to local, municipal and National Government authorities in November 2007.²³² The companies have not responded. While the Rapu Rapu Municipal Accountant, Mr Arden Eclao, was willing to assist, he was unable to obtain clear financial data.²³³ Meanwhile, the National Bureau of Internal Revenue claimed it was prevented from disclosing the amounts paid due to s270 of the National Internal Revenue Code, which states that such information is confidential. The Mining Ombudsman later obtained a written statement from the DENR which

stated that RRPI had paid approximately PHP 36 million (AUD \$923,000) in excise taxes between 2005 and March 2008,²³⁴ however no information has been obtained regarding payments by RRMI. Such lack of transparency in the payment of taxes to government authorities is a significant obstacle to development and has been recognised as such at the international level (see boxed text, "Why is revenue transparency needed?").

At a meeting with the Mining Ombudsman in 2007, the DENR stated it now recognises that PEZA certification of the mine was a mistake.²³⁵ The DENR further asserted that they are now asking PEZA to ensure that mining operations are not given Ecozone status, although downstream operations such as refining may still be eligible.²³⁶ In its report on the Rapu Rapu mine, the DENR conceded that removing PEZA tax incentives would be beneficial to the communities and local governments.²³⁷

Why is revenue transparency needed?

Despite the great wealth capable of being generated by mining, oil and gas extraction, the exploitation of these resources in developing countries has commonly failed to generate benefits for the poor, with massive profits failing to go to poverty alleviation initiatives. In many countries, money from oil, gas and mining is associated with poverty, conflict and corruption. Commonly referred to as the "resource curse", this is often driven by a lack of transparency and accountability around the payments that companies make to governments, and the revenues that governments receive from those companies. Revenue transparency is a vital first step towards alleviating the crushing poverty of ordinary citizens in many resource-rich developing countries.

The **Publish What You Pay (PWYP)** campaign, of which Oxfam is a founding member, aims to help citizens of resource-rich developing countries hold their governments to account for the management of revenues from the oil, gas and mining industries. The PWYP coalition of more than 300 non-government organisations worldwide calls for the mandatory disclosure of the payments made by oil, gas and mining companies to all governments for the extraction of natural resources. There is also a need for governments to "publish what you earn". If companies disclose what they pay in revenues, and governments disclose their receipt of such revenues, then members of civil society will be able to have the basic tools needed to hold their governments to account and to insist that the wealth generated be spent on socially beneficial programs. For more information go to www.publishwhatyoupay.org

The **Extractive Industries Transparency Initiative (EITI)** is a voluntary initiative, supported by a coalition of companies, governments, investors and civil society organisations. It aims to strengthen governance by improving transparency and accountability in the extractives sector. The EITI sets a global standard for companies to publish what they pay and for governments to disclose what they receive. For more information go to www.eitransparency.org

6. Ineffective monitoring regime

6.1. Lack of regulatory oversight

“Our Government [the DENR and BFAR] should look and give help first to our people, not to the company.”

Tata Felix Paz – Regional Chairman of Kilusang Magbubukid ng Pilipinas (Peasant Movement of the Philippines)²³⁸

There is strong criticism in the Philippines of the capacity of government authorities to provide effective regulatory oversight of mining company activities. Filipino law requires the establishment of Multi-partite Monitoring Teams (MMTs), which are supposed to consist of local government units, non-government organisations, the company and government representatives.²³⁹ These MMTs rely on the monitoring trust fund of the mining company.

Rapu Rapu resident, Amabel Gamboa, indicates the area beyond the open pit where cyanide-laden mine tailings were discharged into local waterways, leading to fish-kills in October 2005. Photo: Shanta Martin/OxfamAUS.

Participants in the MMTs are reliant on the technical expertise provided by the company or government representatives. The Mining Ombudsman’s investigation revealed that members of local government units that participated in the monitoring for Rapu Rapu generally played no active role as they lacked training. Non-government representatives were also selectively chosen by the company. In a meeting with representatives of the DENR, the Mining Ombudsman asked if there were any examples of a non-government organisation critical of a company being part of these teams. The DENR representatives could not refer to any.²⁴⁰

The DENR is the government regulatory agency responsible for “the conservation, management, development, and proper use of the country’s environment and natural resources”.²⁴¹ It is also the main body for regulating mining activity through the Mining and Geosciences Bureau and is responsible for issuing and revoking mining companies’ Environmental Compliance Certificate (ECC).

The DENR has come under much criticism for issuing an ECC to Lafayette initially and then for being too lenient in

ensuring compliance with the ECC.²⁴² The Fact Finding Commission assessed the extent to which the DENR may have contributed to Lafayette’s failure to comply with the ECC and continuing operation following the 2005 cyanide-laden spills. It concluded that the Department was “dysfunctional” and had been negligent in its handling of the spills.²⁴³ The DENR’s response to the Fact Finding Commission report noted that “the Rapu Rapu incidents surfaced the need for closer, more frequent and more comprehensive monitoring of mining operations”.²⁴⁴

When asked by the Mining Ombudsman whether the DENR has the capacity to monitor mining in the Philippines, the Assistant Secretary of the DENR, Jeremias Dolino, stated, “As far as mining is concerned, yes, but as far as environmental incidents are concerned, no”,²⁴⁵ emphasising that in his view the cyanide-laden spills were environmental incidents, not mining incidents. This is a very worrying assessment considering the mandate of the DENR includes environmental conservation and the inherent interconnection between mining and the environment.





6.2. Absence of means of monitoring impact on marine life

The cyanide-laden spills have clearly had an impact on fish, with significant flow-on effects for local communities dependent on fisheries. Community members have also claimed that the mine is having a sustained impact on local fisheries. Yet despite these circumstances, no measures have been taken by either government entities or RRMI/RRPI to conduct regular monitoring of marine life. The Mining Ombudsman interviewed the President of RRMI, Mr Alfredo Non, and asked whether the company should undertake regular testing of marine life to measure what impact, if any, the mine might have on fish. Mr Non's response was, "Why should we?".²⁴⁶ In an interview with the Mining Ombudsman, Mr Leo Jasareno of the Mining Tenements Management Division of the Mines and Geosciences Bureau, DENR, noted that the Bureau of Fisheries and Aquatic Resources (BFAR) had discussed the need for regular ocean floor sampling as well as creating mollusc stations to ensure regular testing. One obstacle the Bureau faces, however, is resources. To date, no such testing regime has been established.

6.3. Ineffective disaster preparedness program

The effect of the spillages on 11 October 2005 on local fish was first brought to the attention of mine staff when local people noted the fish-kills. When the second spill occurred on 31 October 2005, it was local barangay officials who notified the company of the appearance of dead fish.²⁴⁷ Communication by RRMI/RRPI to local communities about the spillages was not proactive, meaning that local populations were unknowingly potentially exposed to contaminants and contaminated fish for longer periods than necessary.

Following the 2005 spills, the DENR stated that it required the company to "institute an emergency warning and alert system for the local population" in case of accidents or spillages as a precondition to continuation.²⁴⁸

The DENR reported that the project management had complied with this condition and had:²⁴⁹

- "developed and manualized [sic] the Emergency Notification Procedure;
- established direct communication links with the local population;

- organized [sic] Quick Reaction Teams;
- cascaded emergency procedures to the local communities".

When the Mining Ombudsman enquired about emergency preparedness procedures with mine site management, the Environmental Management and Pollution Control Officer for the mine, Ms Carmelita Pacis, explained the mine has a "Quick Response Team" comprising:

- environment personnel to assess the environmental impact;
- media and special operations personnel to explain to the media and the public what happened;
- safety personnel; and
- legal personnel who oversee any liabilities.²⁵⁰

When asked at what point the team engages with local communities to minimise impacts, Ms Pacis explained that the safety personnel would work with local communities. She stated that the company had instituted an emergency warning and alert system for the local population and that two drills had been coordinated with the direct impact barangays of Pagcolbon,

Left: Dr Emelina Regis and her team, from NGO INECAR-Ateneo de Naga University, collect and analyse marine samples near Barangay Poblacion, November 2007. Photo: Alex Felipe.

Right: This picture taken from the tailings dam shows the proximity of the mine to productive farmland and the sea, with tailings treatment ponds in between. Local residents worry what will happen if there is no money set aside for rehabilitation of the mine site. Shanta Martin/OxfamAUS



“The Mining Act of 1995 and its implementing rules and regulations have provided such environmental and social safeguards [for] hold[ing] mining companies responsible even in the most challenging cases like what Rapu-Rapu faces now.”

Jose L Atienza Jr, Environment Secretary²⁵³

Malobago and Binosawan. Another manager explained that several barangay councillors had participated in these drills. However, Ms Pacis also stated that “if we only spill for example five litres of cyanide solution, we will not alert the community”.²⁵¹

At every barangay visited by the Mining Ombudsman, community members and councillors were asked about their awareness of an emergency response system. In every single case, without exception, people responded that there was no system to their knowledge.²⁵² Such knowledge would be essential to an effective disaster preparedness system. As a result of poor integration with local communities, the emergency response system created by the mine would be unlikely to result in an appropriate response in the communities and would be inadequate for minimising impacts from further spillages.

6.4. Failure to set aside funds for rehabilitation

As explained to the Mining Ombudsman by the Director of the MGB, Mr Horacio Ramos, and MGB advisor, Mr Leo Jasareno, Philippine regulations require four funds to be maintained.²⁵⁴ These are the:

Progressive Mine Rehabilitation Fund: a PHP 5 million fund used during the year for ongoing rehabilitation measures (the fund must be replenished each year);

Monitoring Trust Fund: PHP 50,000 for monitoring (replenishable);

Mine Waste and Tailings Fund for compensating for damages for spills;

Final Mine Rehabilitation Fund: Philippine regulations require that the total costs of final mine rehabilitation be deposited by 2010 with 20% of the costs to be deposited by the end of 2008.

The Final Mine Rehabilitation Fund is the single largest fund required to be maintained, however at the time Lafayette entered into external administration in December 2007,

the MGB declared that no money had yet been deposited in relation to the Rapu Rapu mine.²⁵⁵ According to Lafayette, the main reason for this was the failure of the DENR to approve a rehabilitation plan for Rapu Rapu.²⁵⁶

In February 2008, the Rapu Rapu mine’s proponents Lafayette Philippines Inc, Rapu Rapu Holdings Inc, RRMI and RRPI filed for “corporate rehabilitation” (administration) at the Pasig City Regional Trial Court Branch 158, saying they had incurred debts after the mine was forced to stop operations in November 2005.²⁵⁷ The Environment Secretary Jose L Atienza Jr, was reported to have ordered the companies to “set aside” at least PHP 137 million (AUD \$3.5 million) for the environmental rehabilitation and social development of affected areas.²⁵⁸ Rapu-Rapu Minerals Senior Vice President for Legal Affairs, Bayani Agabin, was reported to have indicated that the amounts required to be paid would need to be discussed and that the amount would possibly be lower than the PHP 137 million quoted by Mr Atienza.²⁵⁹

7. What lies ahead

7.1. Current owners

In its report on the 2005 cyanide spillages, the DENR commented on the Fact Finding Commission's recommendation that a moratorium on mining ought to be imposed in Rapu Rapu:

*"The rationale for the mining moratorium is due to the fear that the project ownership may just be passed on to another company who would then be given a clean bill of health. However, it is highly suspect that another company would so willingly accept the current levels of responsibilities and liabilities. This is so because as a matter of legal practice, the new owner will have to pick up not only the assets of the company but also its responsibilities and liabilities."*²⁶⁰

It is apparent that the DENR's assessment of the likelihood of a change of ownership of the mine was inaccurate. Lafayette announced the sale of its 74% ownership in the mining asset to Philco Resources on 14 May 2008.²⁶¹ Philco Resources have since sold a 30% share of the Rapu Rapu project to the Malaysian Smelting Corporation. LG International now holds 42% of the project, Kores 28%, and Malaysian Smelting Corp 30%. Despite widespread local opposition and the objections of many government officials including the Governor and Vice-Governor of Albay, the mine is said to be "ready to resume commercial operations".²⁶² This has prompted renewed calls from the former head of the Fact Finding Commission for a total closure of the mine.²⁶³



7.2. Further exploration

The Governor of Albay, Governor Joey Salceda, has stated that the Rapu Rapu mine would not receive new permits to explore as it had not contributed enough to the economy: "I would consider not signing if the permits were now being sought".²⁶⁴ Despite this, RRMI holds a mining claim to 80% of the total land area of Rapu Rapu island.²⁶⁵

In May 2007, RRMI/RRPI began an exploration program, which was deemed successful, with each drill hole intersecting more sulphide mineralisation.²⁶⁶ It is likely therefore that the new owners of the Rapu Rapu mine might seek to capitalise on these finds. Many community members expressed fear of expanded activity by the Rapu Rapu mine. The barangay captain of Viga, Elmer Echague, for example, shared his concern that he was being pressured to allow exploration in his area. Mr Echague produced documents demonstrating exploration activities were being sought and that the companies involved had drafted council resolutions supporting the exploration activities, which they urged Mr Echague to sign. To undertake any further exploration activities without addressing the significant community opposition and concerns of environmental impact would be irresponsible.

7.3. When the mine is gone

According to the *Regis Report* published in 2001, "On the issue of possible agricultural usage of mining sites, the picture is bleak despite the plan of the mining company to revert the mined area to agricultural use after abandonment of mining activities."²⁶⁷ Dr Regis further states that even if removed topsoil is stored for future revegetation, the possibility of restoring the soil is low considering the topology of the island. It would most likely be washed away during heavy rain and regular typhoons. Should this soil be contaminated in any way, the heavy metals would end up in the coral reefs and local waterways. The Hixbar mining area abandoned in 1976 remains unproductive, polluted and acidic to this date.

Given the likelihood of continued environmental impacts of mine waste on the island, a comprehensive mine closure and rehabilitation plan is required. Leading practice in the Australian mining industry recognises that planning for mine closure should be undertaken well in advance of actual closure.²⁶⁸ As referred to above, however, the DENR has yet to approve the Rapu Rapu project's rehabilitation plan and no funds have been set aside for rehabilitation. The Australian mining industry now recognises that:

*"Mine completion ultimately determines what is left behind as a benefit or legacy for future generations. If mine closure and completion are not undertaken in a planned and effective manner, a site may continue to be hazardous and a source of pollution for many years to come."*²⁶⁹

The failure of the Rapu Rapu mine to have a mine closure plan and the lack of available resources to institute rehabilitation measures present significant ongoing risks to local communities. Many in the Philippines are familiar with the legacy of abandoned mines where companies have been allowed to avoid responsible closure processes and have left local communities to live with the toxic effects. One example, the Marinduque case documented by Oxfam Australia, can be downloaded at www.oxfam.org.au/campaigns/mining/ombudsman/cases/marinduque

Left: Captain Elmer Echague of Barangay Viga shows the Mining Ombudsman an application for mining exploration activities in his local area. Photo: Shanta Martin/OxfamAUS.

Right: A traditional fishing boat is dwarfed by Lafayette's mining port in Barangay Malobago, Rapu Rapu island. Photo: Alex Felipe.



8. Recommendations

8.1. For the current mine owners

- Do not resume operations at the mine until community consent to continue is obtained.
- Ensure ongoing rehabilitation of the mine site and treatment of AMD during cessation of operations.
- Publicly disclose all past and present payments of royalties, taxes, fees and other forms of revenue paid to local, provincial and national government's, and sign on to the Extractive Industries Transparency Initiative.
- If free, prior and informed consent of affected communities is gained and the mine recommences operations:
 - prior to commencement of operations, ensure payment into an escrow account or provision of a performance bond that ensures sufficient funds are available and guaranteed by a party of sound financial standing to cover the costs of mine closure and rehabilitation, and for addressing the ongoing impacts of acid mine drainage (AMD);
 - institute means for monitoring impacts of mining on local marine life with the participation of local communities, ensuring availability of training for local communities to maximise their active participation;
 - fully engage with local communities to ensure broad acceptance of the mine and its operations on an ongoing basis; ensure the development of a disaster preparedness system of which local communities are familiar;
 - commit to the Voluntary Principles on Security and Human Rights;
 - ensure monitoring equipment is in place to measure the effects of blasting on slope stability and transparently provide timely information to local residents regarding blasting schedules; and
 - ensure a rights-compliant grievance mechanism for affected communities is in place.

8.2. For Philippines regulatory authorities

- Support a thorough independent multi-stakeholder assessment of the suitability of Rapu Rapu island for mining activities.
- Require permission to recommence operations at the Rapu Rapu mine to be dependent on a positive finding from the independent enquiry that the island is suitable for mining and on the mine operators obtaining the free, prior and informed consent of affected communities prior to recommencement.
- Provide a specified period within which the mine operators must obtain community consent to continue operations and otherwise require the closure and rehabilitation of the mine.
- Remove the special tax exemption status granted to the mine by the Philippine Economic Zone Authority (PEZA), undertake an assessment of taxes paid to date and require the full payment of taxes due.
- Publicly disclose all revenues received from the Rapu Rapu mine, and sign on to the Extractive Industries Transparency Initiative.
- Establish an independent rights-compliant grievance mechanism for affected communities which can escalate grievances not able to be resolved at the site level, and which would cooperate with any mechanism created within Australia.
- Provide livelihoods assistance to fisherfolk whose capacity to pursue fishing as a livelihood has been substantially affected, particularly those who have been forced by low sales to dispose of their fishing equipment.

- If the free, prior and informed consent of affected communities is gained and the independent assessment results in the recommendation that mining can recommence:
 - require the monitoring of impacts of mining on local marine life with the participation of local communities, ensuring availability of training for local communities to maximise their active participation;
 - prior to commencement of operations, ensure payment of funds into an escrow account or impose a performance bond on the company, guaranteed by a party of sound financial standing, which requires unconditional payment of an agreed sum to the relevant government authority if the company fails to meet environmental commitments. The required sum should be sufficient to cover the costs of mine closure and rehabilitation, and for addressing the ongoing impacts of AMD ;
 - require mining operators to have site-level rights-compliant grievance mechanisms for affected communities;
 - institute a system voluntarily accessible to community members for regular monitoring of toxicological indicators to determine health impacts free of charge;
 - require the mine operators to establish a comprehensive disaster preparedness system that fully engages local communities; and
 - ensure mine operators offer employment opportunities first to local community members, with training provided and provision of a living wage both during and after training.

8.3. For the Australian mining industry

- Where a “social licence” is clearly lost, ensure that all possible means are taken to regain the trust of local stakeholders, including by ensuring full and frank disclosure of operations, impacts and measures for redress, as well as ensuring that local communities are actively involved in monitoring activities.
- Support the establishment of an independent grievance mechanism for communities affected by Australian mining companies in developing countries.

8.4. For ANZ and other banks and financiers

- Provide a guarantee, require proof that a party of sound financial standing has guaranteed, or require proof of payment of environmental performance bonds into escrow accounts to ensure sufficient funds are available to cover the costs of mine closure and rehabilitation prior to commencement of operations.
- Where there are social and environmental concerns about a project financed by the banks, ensure:
 - transparency and public disclosure of documentation demonstrating the bank’s expectations and requirements as regards implementation by the project proponents of standards referred to in the Equator Principles and international human rights law;
 - that independent technical advisors engage with local communities so as to obtain a full and complete assessment of the environmental and social impacts of the project;
 - transparency and public disclosure of the process of undertaking an independent audit of a company’s compliance with the Equator Principles including final reports;
 - that local communities are fully engaged in developing any proposed Community Action Plan.

- Revise the Equator Principles to make sure that lending criteria are consistent with internationally recognised human rights.
- Until such time as the Equator Principles are amended, go beyond those standards to implement better screening practices and ensure that bank clients have rights-compliant grievance mechanisms for affected communities.
- Develop an Equator Principles overview mechanism to enable stakeholders to raise issues of concern when Equator Principle signatories fail to implement the Principles.
- Ensure that projects financed have undergone a thorough human rights impact assessment and that appropriate measures are in place to avoid such impacts.
- Support the establishment of an independent grievance mechanism in Australia for communities affected by Australian mining companies in developing countries.

8.5. For the Australian government

- Encourage Australian companies to respect the rights of members of the communities in which they operate and to develop rights-compliant grievance mechanisms, whether acting in Australia or overseas.
- Develop regulatory and non-regulatory measures to prevent human rights violations by Australian companies overseas, including by establishing an independent grievance mechanism in Australia for overseas affected communities.
- Strengthen judicial and develop non-judicial mechanisms to hear complaints and enforce remedies against corporations that are accessible to persons whose human rights are violated by transnational corporations and other business enterprises operating or based in Australia.
- Support development at the international level of standards and mechanisms aimed at ensuring that transnational corporations and other business enterprises respect human rights.

Appendix 1: full chronology of events

November 1998

Lafayette acquires its interest in the Rapu Rapu copper-gold-zinc-silver project.

1999

Lafayette carries out an extensive drilling program on Rapu Rapu island as well as commissioning an independent preliminary feasibility study of the project.²⁷⁰

2000

Lafayette commissions a definitive feasibility study and completes an Environmental Impact Study as well as extensive independent pilot plant test work at Rapu Rapu.²⁷¹

January 2001

The definitive feasibility study is completed and concludes that development of the Rapu Rapu project is both technically and economically feasible. According to Lafayette, this conclusion is subsequently confirmed by independent technical auditors appointed by the project financiers.

Early 2001

A report by *Regis et al*²⁷² advises that mining should not be conducted on Rapu Rapu by any individual or mining company due to the likely environmental and social effects of mining on the island.

July 2001

The Government of the Philippines grants an Environmental Compliance Certificate (ECC) to the project and, shortly afterwards, an Environmental Protection and Enhancement Program (EPEP) approval.

December 2002

The Philippine Mines and Geosciences Bureau sanctions the project with the issuance of a Declaration of Mining Feasibility which is the final regulatory approval required to commence project construction and operation.

LG International (LGI) and KORES purchase 26% of Lafayette's wholly owned subsidiary, Lafayette Philippines Inc (LPI).²⁷³

April 2005

Mining (ore extraction) operations start.²⁷⁴

July 2005

Milling (processing) operations start.²⁷⁵

11 October 2005

First tailings spill: between midnight and 2am, the main pumping unit of the Rapu Rapu mine malfunctions and tailings materials flow into the plant's storm water drainage which flows into the sea.²⁷⁶ Dead fish are reported in and around the shorelines of Rapu Rapu.

30 October 2005

Second tailings spill: following heavy rainfall, the lower tailings storage facility overflows and on the morning of 1 November, fish are found dead in nearby creeks, in and around the shorelines of Rapu Rapu.²⁷⁷

7 November 2005

The Department of Environment and Natural Resources (the DENR) suspends milling.²⁷⁸

9 November 2005

The DENR suspends Lafayette's wastewater discharge permit.²⁷⁹

9 January 2006

Pollution Adjudication Board (PAB) issues a Cease and Desist Order against Rapu Rapu Processing Inc.

10 March 2006

The President appoints the Rapu Rapu Fact Finding Commission to investigate the social and environmental impacts of the Rapu Rapu project.

April 2006

Declaration by the Philippines Bureau of Fisheries and Aquatic Resources (BFAR) that fish caught from the Rapu Rapu area are now safe to eat.²⁸⁰

19 May 2006

The Presidential Fact Finding Commission delivers its report finding that Lafayette had engaged in grossly negligent activity.²⁸¹ Lafayette questions the credibility of the report.

15 June 2006

March and prayer rally is held in Legazpi. At least 6,000 people participate in the event concerned at the National Government's lack of response to the Rapu Rapu Fact Finding Commission recommendations.

10 July 2006

The DENR issues a Temporary Lifting Order (TLO) to Lafayette to allow it to operate and to "sample" and "test" environmental management systems to demonstrate "best practice".²⁸² Stage 1 commissioning of the TLO by Lafayette commences. The test run involves the circulation of water into the system to test for leaks.²⁸³

11 July 2006

March and prayer rally in Legazpi. At least 8,000 people participate to show their concern at the National Government's lack of response to the Rapu Rapu Fact Finding Commission recommendations.

13 July 2006

Lafayette reports that a leak, which the DENR later dismissed as a minor incident, occurred during operations at the mine.²⁸⁴

18 July 2006

The DENR issues an order confirming that Rapu Rapu Processing, Inc. (RRPI) has fully complied with all of the requirements of Stage 1 of testing and grants permission for RRPI to proceed with Stage 2. This involves the processing of non-ore-bearing materials.²⁸⁵ A public rally is held at the Rapu Rapu Municipal Hall, Poblacion, protesting the DENR's response to the Stage 1 testing. At least 1,500 people are reported to have participated.

20 July 2006

A petition against the resumed operations of the Rapu Rapu mine is gathered with more than 800 signatories from residents and environmental groups. A class action is filed on 20 July at the Makati Regional Trial Court asking for a temporary restraining order on Lafayette's 30-day test run on Rapu Rapu. The Makati Regional Trial Court rules that it is not the venue for the suit. Petitioners were advised to take their case to the Pollution Adjudication Board. That course of action was not taken by the petitioners because the PAB is under the DENR which had approved the conduct of test runs.

20 July 2006

Greenpeace contacts Oxfam Australia's Mining Ombudsman requesting an investigation into environmental concerns on Rapu Rapu island.

21 July 2006

Residents report a fish-kill at Mirikpitik creek on Rapu Rapu island. Lafayette denies that there was a toxic spill which led to a fish kill and claims the fish-kill was a result of acts of sabotage. A report by the Mines and Geosciences Bureau of the DENR later obtained by the Mining Ombudsman confirms that approximately nine kilograms of dead marine organisms were collected along the shoreline on 20 July and 21 July 2006.²⁸⁶ Acidic water was measured by the DENR at one of the mine's outflow creeks, Pagcolbon Creek, with elevated levels of copper, lead, zinc, cadmium and iron. Tests for cyanide by the Bureau of Agriculture and Fisheries are negative.

25 July 2006

Police and unidentified security personnel detain and question Greenpeace employee, David Andrade, after he was apprehended while obtaining water samples from Mirikpitik creek.

24 August 2006

RRPI receives permission to commence Stage 3 commissioning from the DENR, which is the final regulatory approval required to ramp up production from the plant, pending a successful application for a Permanent Lifting Order (PLO).²⁸⁷

12 September 2006

Local Rapu Rapu community-based organisation, Sagip Isla Sagip Kapwa, and national NGO the Center for Environmental Concerns (CEC) ask Oxfam Australia's Mining Ombudsman to take up the Rapu Rapu case.²⁸⁸

13 September 2006

A 60-day extension of the TLO (backdated to 9 September 2006) is granted, enabling Lafayette/RRPI to continue commissioning its base metals plant and testing its environmental management systems at commercial levels of production.²⁸⁹

28 September 2006

Operations at the site withstand a direct hit by Typhoon Milenyo. Lafayette states that all critical operational areas are undamaged. Power supply to the process water pumps is restored with processing activities resuming on 6 October 2006.²⁹⁰

9 October 2006

Lafayette announces a USD \$10–\$15 million convertible note issue to raise funds for a targeted exploration program on Rapu Rapu island and to provide a working capital safety net.²⁹¹

9 November 2006

A further 30-day extension to the TLO is announced.²⁹²

End November 2006

Supertyphoon Reming hits the island causing damage to various structures including the wharf facility, camp accommodation and office facilities, but Lafayette states there is no damage to the environmental management systems.²⁹³

December 2006

ANZ formally adopts the Equator Principles, a benchmark for the financial industry to manage social and environmental issues in project financing.

14 December 2006

The DENR delivers an evaluation / report on the Rapu Rapu Polymetallic Project under the test-run conditions.

8 February 2007

The PAB issues a Final Lifting Order (FLO) formally terminating all proceedings in connection with the tailing spills of late 2005. The FLO authorises the immediate resumption of production of concentrates from the base metals plant.

12–20 March 2007

The Mining Ombudsman conducts a preliminary field investigation on Rapu Rapu island and surrounding areas, including meeting with mine staff and undertaking a visual inspection of the mine site.

23 April 2007

Earth Day rally is held in Legazpi. At least 500 people are reported to have participated protesting environmental issues and human rights violations.

6 June 2007

The Mining Ombudsman contacts Mr Gavin Murray, Director of Institutional and Corporate Sustainability, ANZ, to raise concerns expressed by villagers about the Rapu Rapu mine and to enquire into the position of the bank.

8 June 2007

Community members and local leader of Sagip Isla Sagip Kapwa, Antonio Casitas, and Frances Quimpo of Centre for Environmental Concerns-Philippines (CEC) attend a Lafayette General Meeting in Melbourne to present a petition with 3,000 signatures of locals opposing the Rapu Rapu mine.

12 June 2007

The Mining Ombudsman hosts a meeting between Gavin Murray of ANZ, Antonio Casitas of Sagip Isla Sagip Kapwa, Frances Quimpo of CEC, and Techa Beaumont of Mineral Policy Institute, to provide Mr Casitas an opportunity to express community concerns to ANZ regarding the Rapu Rapu mine and ANZ's involvement. Mr Murray is provided a copy of a 3,000 signature petition calling for the closure of the mine. A number of follow-up actions are agreed by Mr Murray, including providing information on how ANZ is urging Lafayette to comply with the Equator Principles.

22 June 2007

The Mining Ombudsman follows up with Mr Murray and learns that none of the agreed actions have been carried out. The Mining Ombudsman urges Mr Murray to ensure ANZ demonstrates its commitment to fulfilling the Equator Principles.

11 July 2007

LPI launches a libel suit in the Philippines against Frances Quimpo and Antonio Casitas regarding statements made at the Lafayette General Meeting in Melbourne.

Appendix 1: full chronology of events (continued)

20 July 2007

Follow-up letter sent to Mr Murray and Mr Gerard Brown, Group General Manager, Corporate Affairs and Investor Relations, ANZ, and other members of the banking syndicate regarding the appointment of an independent technical advisor and the lack of compliance with the Equator Principles.

23 August 2007

The Mining Ombudsman writes to ANZ Director of Institutional and Corporate Sustainability requesting a response to previous letters and requests for information.

28 October 2007

Antonio Casitas and Municipal Councillor Wilson Guianan report sighting of dead fish along the shoreline of Barangay Poblacion, Rapu Rapu. The company claims the fish-kill is a result of high sedimentation caused by heavy rain, and also claims the fish-kill is a hoax.²⁹⁴

30 October 2007

Albay Governor Jose Sarte Salceda calls for a thorough investigation of the fish-kills by the Environmental Management Bureau (EMB) and the BFAR.²⁹⁵

31 October 2007

Public rally is held in front of Rapu Rapu Municipal Hall. Over 1,000 people are reported to have participated and demanded closure of the mine.

14 November 2007

Rally at the "People's Camp" in front of the Rapu Rapu Municipal Hall. Mr Antonio Casitas and Mr Stephen Prestado of Ateneo De Naga University are arrested and temporarily detained by local police during the rally.

21 November 2007

Lafayette requests a temporary halt in the trading of Lafayette's shares on the Australian Stock Exchange.

23 November 2007

Lafayette announces that a cornerstone investor is evaluating its option to purchase the company's debt from the Bank Group. Suspension of trading is lifted.²⁹⁶

26 November 2007

The Mining Ombudsman writes to Lafayette copied to ANZ requesting detailed information and documentation relating to the Rapu Rapu mine. No written response was received and no information provided.

27 November 2007

The Mining Ombudsman, Mineral Policy Institute, and Rapu Rapu civil society group representatives hold a teleconference with Mr David Baker, Managing Director of Lafayette and representatives from ANZ, ABN AMRO and Standard Chartered (the three Equator Principle members of the Rapu Rapu project's banking syndicate). Oxfam Australia questions the adequacy of steps taken by Lafayette and the banks to address community concerns, and urges greater transparency by the banks, consistent with the Equator Principles.

30 November 2007

Lafayette requests a second temporary halt in the trading of the company's shares on the ASX.

5–12 December 2007

The People's Camp moved from the front of the Rapu Rapu Municipal Hall to the provincial capital, Legazpi. On 12 December the protesters stormed the morning session of the Provincial Board after it failed to act on the complaints about the recent fish-kill. The board later held discussions with community representatives. The committee promised to investigate not just the fish-kill but all matters relevant to mining on Rapu Rapu.

12-18 December 2007

The Mining Ombudsman conducts a comprehensive field visit on Rapu Rapu island and surrounding areas.

18 December 2007

Lafayette goes into voluntary administration.

24 December 2007

The Mining Ombudsman writes to administrators, Ferrier Hodgson, copied to ANZ, urging the parties to be mindful of the human rights of local community members and pointing to regulatory requirements relating to environmental bonds yet to be paid by Lafayette. A copy of the letter from 26 November is also provided.

27 December 2007

First creditors' meeting confirms appointment of Ferrier Hodgson as administrators of Lafayette.

22 January 2008

Ferrier Hodgson writes to the Mining Ombudsman stating that it is concerned about the preservation of human rights associated with the project.

18 March 2008

Second meeting of Lafayette creditors is held. Administrators propose the execution of a Deed of Company Arrangement.

8 May 2008

Correspondence sent to Mr Gavin Murray, ANZ, following the release of ANZ's Forest Policy in which they state their commitment to the Equator Principles. Oxfam Australia questions the capacity of the bank to demonstrate its commitment and again requests information relating to steps taken by the bank to ensure a responsible withdrawal from the Rapu Rapu mine.

14 May 2008

Ferrier Hodgson announces the sale of Lafayette's stake in LPI and RRPI to Philco Resources.

4 June 2008

The Filipino management team running the Rapu Rapu mine resigns after negotiations with Philco Resources fall through.²⁹⁷

12 September 2008

The Mining Ombudsman forwards a draft copy of this report to ANZ Bank, Ferrier Hodgson and on 15 September 2008 to Rapu Rapu Processing Inc for information and comment.

24 September 2008

The Mining Ombudsman writes to ANZ highlighting that ANZ has not been forthcoming in responding to community concerns about the Rapu Rapu mine despite representations made on ANZ's website that once social and environmental issues are identified the bank will keep in touch with stakeholders.

Appendix 2: schedule of interviews

The Mining Ombudsman met with senior management of Lafayette and its subsidiaries, including the Chief Executive Officer of Lafayette, the President of RRMI, and Senior Vice President Legal of RRMI. She accepted an invitation to tour the mine site and interviewed operational mine staff including senior geotechnical engineers, safety officers, community relations, human resources and administrative officers, and environmental pollution control management.

She met with representatives of the Department of Environment and Natural Resources, the head of the Mines and Geosciences Bureau, the Bureau of

Internal Revenue, the Governor and Vice Governor of Albay province, local and municipal councillors, as well as independent lawyers and scientists.

The Mining Ombudsman travelled to and met with local community members in seven barangays on Rapu Rapu island as well as several affected barangays in Sorsogon province. Aware that the most outspoken community members were often members of community groups that protest against the mine, the Mining Ombudsman specifically sought the views of other community members. With the assistance of an independent translator, the Mining Ombudsman took to the streets to speak with local residents including fisherfolk, farmers,

shop owners, the wives of fishermen and other women in villages. Wherever possible, she met with individuals known to support the mine and also conducted random selection interviews in public places, calling unplanned community meetings, visiting fishing areas and requesting spot interviews. The Mining Ombudsman also interviewed local and international community organisations and non-government organisations, bishops and priests.

The following is a schedule of interviews and meetings with government officials, company representatives and community groups. Meetings with individual community members have not been listed.

Schedule of Mining Ombudsman interviews

7 March 2007	Quezon City	Former member of the Fact Finding Commission
12 March 2007	Quezon City	Non-government organisation: representatives of Greenpeace, Philippines
12 March 2007	Quezon City	DENR: Jeremias Dolino (Assistant Secretary) Mines and Geosciences Bureau: Horacio Ramos (Director, MGB, DENR), Michael Cabalda (Division Chief, Mines Environment and Safety Division, MGB, DENR)
12 March 2007	Quezon City	Non-government organisation: representatives of Centre for Environmental Concerns (CEC)
13 March 2007	Sorsogon City, Sorsogon	Bishop Arturo Bastes, former head of the Fact Finding Commission
13 March 2007	Sorsogon City, Sorsogon	Community organisations: representatives of SALMON, IRDF, Bacon Resource Management Multipurpose Cooperative, Alyansa Kau Pavasiva Sa Sorsogon, Small Farmers Association for Sorsogon, BIGKIS, Gupat Association of Practitioners and Advocates for Sustainable Agriculture
13 March 2007	Barangay Bato, Bacon, Sorsogon	Approximately 30 community members (wives of fisherfolk) and members of Samahan ng Mangingis da sa Bato
13 March 2007	Barangay Brillante, Prieto Diaz, Sorsogon Province	Barangay council captain Fishermen and representatives of the Organisation of Small Fisherfolk in Muntupar (SAMAMOMU)
15 March 2007	Barangay Poblacion, Rapu Rapu, Albay	Kagawad Jesus Alamir (Barangay Councillor)
15 March 2007	Barangay Poblacion, Rapu Rapu, Albay	Community organisation: representatives of Sagip Isla Sagip Kapwa
15 March 2007	Barangay Poblacion, Rapu Rapu, Albay	Rapu Rapu Municipal Council Officers: Arden Eclao (Municipal Accountant), Shirley Osman, (Social Welfare Officer)
15 March 2007	Barangay Poblacion, Rapu Rapu, Albay	Community organisation: representative of Kadamay (Rapu Rapu Farmers and Fisherfolk)
15 March 2007	Barangay Poblacion, Rapu Rapu, Albay	Community members: group of 6–10 fishermen

Appendix 2: schedule of interviews (continued)

Schedule of Mining Ombudsman interviews		
15 March 2007	Barangay Poblacion, Rapu Rapu, Albay	Eric De Le Cruz (Municipal Councillor)
16 March 2007	Barangay Binosawan, Rapu Rapu, Albay	Kagawad Jimmy Roxas (Barangay Councillor), Bartolome Ecleo, (Sagip Isla Chapter Leader), Edwin Boticario (former Barangay Councillor), community members
16 March 2007	Rapu Rapu Mine Site, Rapu Rapu, Albay	Attendance at Rapu Rapu mine site: Joey Cubias (Manager, Community Relations, Human Resources and Administration), Carmelita Pacis (Environmental Management and Pollution Control Officer), Alex Limosnero (Manager, Mine Operations), Roy Cervantes (Community Relations Officer), Marco Montes (Senior Goetechnical Engineer), Abdon Paras (Metallurgical Department), Reynold Asuncion (Malobago Barangay Captain), Teodimer Bendal (Tinopan Barangay Treasurer), Manuel Belardo (Pagcolbon Barangay Captain), Nono Bueno (Linao Barangay Captain), Elmer Echague (Viga Barangay Captain), Amabel Gamboa (Sagip Isla Sagip Kapwa), Jon Demelletes (LRC)
16 March 2007	Barangay Malobago, Rapu Rapu, Albay	Reynold Asuncion (Barangay Captain Malobago), and several other Rapu Rapu residents
17 March 2007	Barangay Poblacion, Rapu Rapu, Albay	Community organisation: approximately 40 members of Sagip Isla Sagip Kapwa
18 March 2007	Naga City, Camarines Sur	Dr Emelina Regis (Director for the Institute for Environmental Conservation and Research (INECAR) of the Ateneo de Naga University)
19 March 2007	Quezon City	Bureau of Internal Revenue: Cynthia Santos (Chief of Statistics Division), Tess Idio (Section Chief, Tax Exemption and Incentives Division), Maria Singayan (Supervisor, Large Taxpayers Audit and Investigation Division)
20 March 2007	Quezon City	Rapu Rapu Minerals Inc: Mr Alfredo Non (President), Bayani Agabin (Senior Vice President, Legal)
12 June 2007	Melbourne	Gavin Murray (Director of Institutional and Corporate Sustainability, ANZ Bank), Antonio Casitas (Sagip Isla Sagip Kapwa), Frances Quimpo (Centre of Environmental Concerns-Philippines), (by telephone, Techa Beaumont, Mineral Policy Institute)
2 November 2007	Telephone	David Baker (Managing Director and Chief Executive Officer, Lafayette) Gavin Murray (Director of Institutional and Corporate Sustainability, ANZ Bank)
27 November 2007	Melbourne	Attendance at Lafayette Annual General Meeting. Discussion with David Baker (Managing Director and Chief Executive Officer, Lafayette), Peter Geddes (Non-Executive Director, Lafayette)
27 November 2007	Teleconference	David Baker (Managing Director and Chief Executive Officer, Lafayette), representatives from ANZ, ABN AMRO and Standard Chartered
7 December 2007	Quezon City	Non-government organisations: CEC, Kalikasan
12 December 2007	Legazpi, Albay	Priests of the Redemptorists Church, local chapters of Kalikasan and CEC
12 December 2007	Legazpi, Albay	Brando Sael (Vice Governor of Albay)
12 December 2007	Legazpi, Albay	Protestors outside the Albay Provincial Government Building
12 December 2007	Legazpi, Albay	Joey Salceda (Governor of Albay)
12 December 2007	Legazpi, Albay	Attendance at hearing of protestor's concerns by the Provincial Board and Vice Governor of Albay

Schedule of Mining Ombudsman interviews

12 December 2007	Legazpi, Albay	Community organisations: representatives of SARA, ATM, KMP, Farmers Assistance Resource Management Education and Rehabilitation Inc (FARMER), Alliance Against Lafayette in Sorsogon (AKLAS) and Sagip Isla Sagip Kapwa
13 December 2007	Legazpi, Albay	Community organisations: Coastal Core and SAC
13 December 2007	Legazpi, Albay	Meeting with Bishop Lucilo Quiambao
13 December 2007	Barangay Poblacion, Rapu Rapu, Albay	Rapu Rapu Municipal Council officers – Mrs Arrajo (Municipal Tax Office), Mr Jack Malovega (Municipal Fisheries Inspector), Shirley Osman (Municipal Social Welfare Officer)
13 December 2007	Barangay Poblacion, Rapu Rapu, Albay	11 community members and fisherfolk
14 December 2007	Barangay Poblacion, Rapu Rapu, Albay	Rapu Rapu District Hospital: Mrs Gamboa (Charge Nurse), Dr Abilos (Attending Physician)
14 December 2007	Barangay Poblacion, Rapu Rapu, Albay	Municipal Councillor: name withheld on request
14 December 2007	Barangay Poblacion, Rapu Rapu, Albay	Municipal Council Office: Imelda Arajo (Assistant Treasurer)
14 December 2007	Barangay Viga, Rapu Rapu, Albay	Mr Elmer Echague (Barangay Captain) (NB: follow up interview 15 Dec 2007) Kagawad Elias Guinan (Barangay Councillor) Meeting with 25+ local community members
15 December 2007	Barangay Tinopan, Rapu Rapu, Albay	Barangay Captain and councillors: Ms Heidi Springael (Captain), Kagawad Jesus Dondonilla, Kagawad Venus Apon, Teodimar Bendal (Treasurer), Estrellia Labrador (Secretary) Community members, day care worker, elders, shop owner
15 December 2007	Barangay Linao, Rapu Rapu, Albay	Meeting with 30+ local community members
16 December 2007	Barangay Binosawan, Rapu Rapu, Albay	Barangay Captain and councillors: Enida Bendal (Captain), Kagawad Roland Balinsayo Interview with local community members (6+) Interview with former barangay captain, Efren Ebuenga
16 December 2007	Barangay Pagcolbon, Rapu Rapu, Albay	Local residents, including former barangay captain, Mr Manuel Belardo
16 December 2007	Barangay Malobago, Rapu Rapu, Albay	Local community members Barangay councillor, Kagawad Augusto Bolanos
17 December 2007	Barangay Poblacion, Rapu Rapu, Albay	Community organisation: Sagip Isla Sagip Kapwa
17 December 2007	Legazpi, Albay	Nong Rangasa, former member of the Fact Finding Commission Mac Pavia, Engineer, Province of Albay, Provincial Planning & Development Office
18 December 2007	Quezon City	Mines and Geosciences Bureau, DENR: Horacio Ramos (Director), Leo Jasareno (Regional Director and Chief Mining Tenements Management Division, MGB)

Appendix 3: tailings spills and fish-kills

Mining operations commenced on Rapu Rapu island in July 2005. Four months later, two tailings spills occurred at the site. The first incident occurred between midnight and 2am on 11 October 2005 when the main pumping unit malfunctioned.²⁹⁸ For more than three-and-a-half hours, a combination of slurry materials and process water overflowed from the event pond. The event pond is essentially a sump where occasional processing spillages might collect in an emergency;²⁹⁹ it should have been kept empty but instead was already 40% full and subsequently overflowed.³⁰⁰ Tailings then flowed to the plant's storm water drainage, and to nearby waterways, through the Alma and Pagcolbon creeks to the open sea.

According to the company and a DENR report, approximately 20 cubic metres of slurry materials flowed out.³⁰¹ However, the Fact Finding Commission compared the duration of the overflow up to the time the slurry materials reached Alma and Pagcolbon creeks and the distance between the events pond and these creeks, and reported that the volume was likely to have been far greater.³⁰²

In the afternoon of the same day, more than two kilograms of dead fish and crustaceans were observed floating at the mouths of the two creeks.³⁰³ Lafayette and its subsidiaries claimed the spill was contained by filters and that only process water flowed into the creeks.³⁰⁴ However, according to the Fact Finding Commission and the DENR the slurry was not only higher than the DENR standards for cyanide³⁰⁵ but also contained other toxic heavy metals and chemicals that should have been analysed for proper and adequate remedial measures.³⁰⁶

A number of recommendations were made by the DENR as to steps required for Lafayette to comply with sound environmental standards. These included immediate measures to contain the spill, informing affected barangays and suspending grinding and milling operations. The DENR also imposed conditions to address the causes and prevent a recurrence; this included repair of the pumps, improvement in the mill's storm drainage and regular draining of the events pond.³⁰⁷

Six days after the first tailings incident, the DENR approved Lafayette's resumption of operations.³⁰⁸ The DENR admits they "focused solely on the immediate cause of the first spill, but did not conduct a more comprehensive assessment of the company's entire environmental infrastructures, and their deficiencies (the causes of the second spill)".³⁰⁹

Just three weeks later, on 31 October 2005, a second spill occurred when heavy rainfall resulted in an overflow from the lower tailings storage facility. This led to further fish-kills in Ungay and Hollowstone creeks. Samples from the surrounding creeks conducted on 4 and 5 November 2005 showed higher than acceptable cyanide levels, which was confirmed as the cause of death of approximately 15 kilograms of marine organisms.³¹⁰

Following the first two fish-kill incidents in 2005, President Gloria Macapagal Arroyo established the Rapu Rapu Fact Finding Commission to "get the facts and circumstance surrounding the alleged health and environmental hazards brought about by the operations of Lafayette Philippines Inc and to make appropriate recommendations".³¹¹ The two-month independent fact finding mission involved numerous scientists and non-government organisations and was headed by Catholic Bishop Arturo Bastes. The commission released its report in May 2006. It accused the company of gross negligence for failing to establish environmental safeguards.³¹² Further to company negligence, the commission stated that the responsible government department, the DENR, had been noticeably consistent in allowing Lafayette to violate the agreed environmental protection requirements.

According to the Fact Finding Commission, Lafayette had violated 10 of the 29 conditionalities and sub-conditionalities of its Environmental Compliance Certificate (ECC).³¹³ Serious violations of the ECC included a reduction of the dosage of chemical reagent used to reduce cyanide levels to below industry standards.³¹⁴ The commission found that some environmental protection requirements approved by the DENR were not implemented by the company.

In the DENR-approved designs, the tailings from the Carbon in Leach (CIL) process, used for processing gold, should have been pumped toward the upper tailing storage pond rather than the lower one that was designed for emergency purposes. Also the freeboard capacity of the dam was less than approved in the plans. These deviations were said to have contributed to the disaster caused by the two spills in 2005.³¹⁵ According to the Fact Finding Commission, the second tailings incident was foreseeable as the level of rainfall was common and warning had been given by the Institute for Environmental Conservation and Research that such heavy rainfall could occur.³¹⁶ The Fact Finding Commission called for the cancellation of RRMI/RRPI's ECC.

Despite accepting that their acts had caused the spills, Lafayette and its subsidiaries rejected the Fact Finding Commission's conclusions and called the report "unscientific" and "biased".³¹⁷ The National Government also questioned some facets of the report. Director of the Bureau of Mines and Geosciences, Mr Horacio Ramos, said, "not all the findings were based on facts — we therefore adopted the facts and disregarded the fiction".³¹⁸ Of the nine-member commission, one member submitted a dissenting opinion stating that the report fell short of the standard for determining facts.³¹⁹ There were also questions raised by the dissenting member that the commission went beyond its mandate when it discussed PEZA, tax and the process of the issuance of the ECC.³²⁰

Bishop Bastes, charged with leading the investigation, said that the government response was not surprising given the degree to which the National Government wishes to pursue mining in the Philippines, but noted the report could not be ignored because of all the scientists and non-government organisations which supported it.³²¹ Another member of the commission questioned whether the government established the commission without the intention of following its recommendations, but rather to pacify critics.³²²

Following the 2005 spills, the DENR issued a Cease and Desist Order (CDO) and imposed a fine of PHP 10.4 million (AUD \$266,000) on the company.³²³

The company was required to:

- submit a geotechnical evaluation of the integrity of the tailings dam;
- ensure that the cyanide level at discharge points was within the DENR standards at all times;
- ensure that the dam could accommodate the tailings volume and surface run-off;
- submit a detailed rehabilitation plan for the affected drainage system;
- correct the deficiency in the detoxification circuit; and
- compensate the affected fishermen.³²⁴

On 10 July 2006, the DENR issued a Temporary Lifting Order (TLO) to Lafayette to operate, sample and test its environmental management systems. The test run consisted of three stages.

Stage 1 involved the circulation of water in the system to test for leakages. Lafayette stated that the stage was completed in three days, two days ahead of the schedule contemplated by the TLO.³²⁵

Stage 2 involved processing of non-ore-bearing materials to test the electro-mechanical systems of the plant.³²⁶

Stage 3 allowed the operation to ramp up production while continuing to test monitoring environmental systems.

However during this testing period in July 2006, residents reported more dead fish in Mirikpitik Creek,³²⁷ one of the creeks leading out of the mine premises. The Mines and Geosciences Bureau of the DENR collected nine kilograms of dead marine species along the coastal areas of Pagcolbon. The water from the creek was tested and found to be below detection levels for cyanide but had elevated levels of lead, zinc, cadmium and iron.³²⁸ The Mines and Geosciences Bureau said that the mine was operating under test conditions at the time and only water and non-ore materials were being used but did conclude that the remediation measures to address acid-mine drainage at the site were insufficient.³²⁹

Dr Aloysius Baes, an environmental chemist, consultant to CEC and member of the Rapu Rapu Fact Finding Commission, insists that he personally saw that the tailings dam was still filled with tailings. Dr Baes' view is that although the company may have only been using water, they may have flushed out the contents of the tailings dam which would include untreated waste water.³³⁰

In early September 2006, the company received a 60-day extension of the trial period which enabled them to operate at commercial level of production while continuing testing of environmental management systems. Later the same month, the area was struck by Typhoon Milenyo with only damage to non-critical areas reported. Two months later, in November 2006, the plant took a direct hit from super-typhoon Reming. Commissioning operations were suspended during the typhoon and again the plant withstood the strong rains and cyclonic wind. The plant remained closed while restoration from the typhoons was performed. Due to this disruption, the DENR issued another 30-day extension of the trial period. The mine was in full operation again by February 2007.

In October 2007, local residents observed dead fish along the shore of Barangay Poblacion in Rapu Rapu.³³¹ An investigation led by the Mines and Geosciences Bureau and the Environmental Management Bureau confirmed 20 kilograms or more of dead fish were collected. Although DENR data showed acid levels beyond DENR standards in the waters between the collection point of the dead fish and the mine, the DENR concluded the results were within DENR standards.³³² Local officials as well as non-government investigations contradicted the DENR findings and claimed the mine was the cause.³³³ The Agricultural Technologist and Municipal Fisheries Coordinator of Rapu Rapu, Mr Malovega, informed the Mining Ombudsman that the Bureau of Fisheries and Aquatic Resources (BFAR) did not collect and test samples of the 2007 fish-kill as the samples were too decomposed. Instead, BFAR directed him to collect live fish samples some nine days after the reported fish-kill. These fish tested negative for cyanide and were not tested for any other elements. Despite ongoing investigations by BFAR and the MGB, the cause of the 2006 and 2007 fish-kills has not been indisputably determined.

Glossary

Endnotes

AFP	Armed Forces of the Philippines
AMD	acid mine drainage
ASX	Australian Securities Exchange
BFAR	Bureau of Fisheries and Aquatic Resources
BIR	Bureau of Internal Revenue
CAO	Compliance Adviser/Ombudsman
CDO	Cease and Desist Order
CEC	Center for Environmental Concerns
CIL	Carbon in Leach
DENR	Department of Environment and Natural Resources
ECC	Environmental Compliance Certificate
EIA	Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative
EPEP	Environmental Protection and Enhancement Program
FLO	Final Lifting Order
GDP	gross domestic product
IFC	World Bank's International Finance Corporation
Kores	Korea Resources
LPI	Lafayette Philippines Inc
LGI	LG International
MGB	Mines and Geosciences Bureau
MIGA	Multilateral Investment Guarantee Agency
MMT	Multi-partite Monitoring Teams
MSC	Malaysian Smelting Corporation
NPA	New People's Army
OECD	Organisation for Economic Cooperation and Development
PAB	Pollution Adjudication Board
PEZA	Philippine Economic Zone Authority
PHP	Philippine pesos
PLO	Permanent Lifting Order
PWYP	Publish What You Pay
RRMI	Rapu Rapu Minerals Inc
RRPI	Rapu Rapu Processing Inc
SDMP	Social Development and Management Program
TLO	Temporary Lifting Order

- Aside from two fish-kills resulting from spillages on 11 and 31 October 2005, at least two other fish-kills have been reported. These latter fish-kills have never been accepted by the mine operators as being connected with the mine.
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- For example see: Serapio Jr, Manolo, "S.Koreans to work Philippine mine from Oct 1-official", Reuters, <http://www.reuters.com/article/rbssIndustryMaterialsUtilitiesNews/idUSMAN12099220080915?sp=true> [at 15 September 2008].
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- Avila, Charles R, *Findings and Recommendations of the Fact-Finding Commission on the Mining Operations in Rapu-Rapu Island*, 19 May 2006, p 5.
- Department of Environment and Natural Resources, above n 7, p 4.
- Lafayette Mining Ltd, above n 3.
- Avila, Charles R., above n 8.
- Lafayette Mining Ltd, above n 3.
- Letter from Frances Quimpo (Center for Environmental Concerns) to Shanta Martin (Oxfam Australia Mining Ombudsman), 12 September 2006.
- Rapu Rapu Processing Inc, *Dead Fish in Poblacion*, <http://www.rapu-rapumining.com/fish-kills.html>, [at 25 September 2008].
- See Avila, Charles R, above n 8, p 60. Note that the Philippines Constitution requires that mining (extraction) companies be 60% Filipino owned, while the Mining Act allows 100% foreign ownership. Many commentaries say that this corporate set up is required under the constitution and it would appear that some companies, including Lafayette, adopted this structure to satisfy that requirement.
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- Ibid.
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- Reyes, Angelo T. (Department of Environment and Natural Resources Secretary), *Mining: Flagship Industry in the Philippines*, Speech delivered at the Prospectors and Developers Association of Canada Mining Investment Show, Toronto, Canada, 7 March 2006, <http://www.mgb.gov.ph/presentations/2006-0317pdac.htm>.
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- Reyes, Angelo T., above n 23.
- Gamolo, Nora O., "Resistance to mining can derail the boom", *The Manila Times*, 24 June 2007, http://www.manilatimes.net/national/2007/june/24/yehey/top_stories/20070624top5.html
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- Ibid.
- Philippines Mines and Geosciences Bureau, *Accomplishment Report CY 2004*, (2004), p 2, www.mgb.gov.ph/mgb2004.pdf.
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- 36 Risk Asia Consulting Inc, *above n 32*, p 17.
- 37 Ibid.
- 38 Infomine Inc, <http://www.infomine.com/minesite/minesite.asp?site=rapurapu> [at 9 May 2008].
- 39 Rapu Rapu Minerals Inc/ Rapu Rapu Processing Inc, *above n 6*.
- 40 Lafayette Mining Ltd, "Lafayette secures favourable debt funding", Press release, Melbourne, 1 March 2004.
- 41 Financial institutions have recognised these issues in their internal policies and procedures for many years now. In *The Materiality of Environmental Risk to Australia's Finance Sector (2003)*, prepared for the Commonwealth Department of Environment and Heritage – Environment Australia, it was noted that there was "a growing recognition within the sector of the need to encapsulate environmental risks in mainstream investment decision-making to ensure a balanced commercial view of the entire risk investment profile." Ernst and Young, *The Materiality of Environmental Risk to Australia's Finance Sector (2003)*, <http://www.environment.gov.au/settlements/industry/finance/publications/environmental-risk/index.html> [at 22 September 2008].
- 42 For example, Navigator Project Finance provides financial modeling services to ANZ Investment Bank and states, "Project Financing is all about identifying risks, allocating them appropriately and ensuring that the responsible parties are adequately incentivised to manage their risks efficiently. With often billions of dollars on the line, multiple parties involved, including sponsors, contractors, suppliers, host governments and global financiers, it is no surprise that from the inception of an idea to Financial Close, a Project Finance deal can take years to negotiate. Just some of the risks usually considered are:
- Construction time, costs & specification;
 - Operational cost, reliability;
 - Supply reliability, quality, cost;
 - Off-take volume, price;
 - Political environment, war, local hostility, currency inconvertibility;
 - Labour quality, availability;
 - Socio-environmental responsibilities;
 - Legal, documentary and tax risk;
 - Modeling and analytical risk;
 - Macroeconomic risks":
- Navigator Project Finance, "What is Project Finance", http://www.navigatorpf.com/Current_Topics/Financial_Modelling_for_Project_Finance/What_is_Project_Finance?/ [at 21 Sept 2008].
- 43 The 2003 ANZ Annual Report states for example, "[Sustainability] means embedding society's environmental and social concerns into our core business practices, products and services to ensure we stay aligned with the society in which we operate." ANZ, *Annual Report*, 2003, p 14.
- 44 ANZ, "Environment: Screening Our Clients", <http://www.anz.com/aus/About-ANZ/Corporate-Responsibility/Environment/Responsible-Business-Banking/Responsible-Business-Decisions/Screening-Our-Clients.asp>
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- 50 Ibid, Section V Environment, par 2.
- 51 Ibid, Section X Taxation.
- 52 In March 2007, ANZ reported "the ANZ Board has supported the OECD Guidelines for Multi-National Enterprises as a framework to guide our approach to responsible business management" and "our policies, screening processes and industry advisory notes have been enhanced to ensure explicit consideration to human rights issues in our Institutional lending decisions", *ANZ Interim Corporate Responsibility Report*, March 2007, p 4.
- 53 ANZ, "ANZ and Human Rights", June 2007, http://www.anz.com/aus/About-ANZ/Corporate-Responsibility/pdf/Human_rights_statement.pdf
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- 55 Oxfam Australia, *Mining Ombudsman Annual Report 2003*; Oxfam Australia, *Mining Ombudsman Annual Report 2004*; Oxfam Australia, *Mining Ombudsman Case Report: Marinduque Island*, 2005.
- 56 For example, see Transparency International 2004 Corruption Perceptions Index, http://www.transparency.org/policy_research/surveys_indices/cpi/2004.
- 57 Avila, Charles R, *above n 8*.
- 58 Department of Environment and Natural Resources, *above n 7*, Executive Summary.
- 59 Letters from Oxfam Australia Mining Ombudsman to Mr Gavin Murray, ANZ Bank, 20 July 2007, 26 November 2007, 8 May 2008, and teleconference 12 June 2007.
- 60 Meeting between Mr Gavin Murray of ANZ, Mr Antonio Casitas of community based organisation Sagip Isla Sagip Kapwa Rapu Rapu Island, Frances Quimpo of the Centre for Environmental Concerns-Philippines, Ms Shanta Martin Oxfam Australia Mining Ombudsman and (by telephone) Ms Techa Beaumont of Mineral Policy Institute, Oxfam Australia office, Melbourne, 12 June 2007.
- 61 Lafayette Mining Limited, *Annual Report 2007*, p 81.
- 62 Ibid, p 24.
- 63 Circular to creditors from Ferrier Hodgson, 10 January 2008, attaching affidavit of Peter Damien McClusky and Rodderick John Sutton, par 11.
- 64 Minutes of meeting of creditors of Lafayette Mining Ltd, 18 March 2008.
- 65 Ferrier Hodgson, *above n 4*.
- 66 Ibid.
- 67 ANZ, *Environment: Engaging Our Clients*, <http://www.anz.com/aus/About-ANZ/Corporate-Responsibility/Environment/Responsible-Business-Banking/Responsible-Business-Decisions/Engaging-Our-Clients.asp>, [at 21 September 2008].
- 68 ANZ, *What's the Difference? Corporate Responsibility Report*, 2006, p 6 and 36.
- 69 Letter from Frances Q. Quimpo, *above n 13*.
- 70 Letters from Oxfam Australia, *above n 59*.
- 71 Letters from Oxfam Australia Mining Ombudsman to Mr David Baker, Lafayette, 26. November 2007, teleconference 27 November 2007, attendance at Lafayette Annual General Meeting 27 November 2007.

- 72 Letters from Oxfam Australia Mining Ombudsman to Ferrier Hodgson, 24 December 2007 and 2 January 2008.
- 73 Interview with Mr Antonio Casitas, Rapu Rapu elder and leader of Sagip Isla Sagip Kapwa (Poblacion, 15 March 2007)
- 74 Sagip Isla Sagip Kapwa Signature Campaign, "Petition to ABN AMRO, Standard Chartered, ANZ and all financiers of Lafayette Inc. seeking termination of financial assistance to Lafayette Philippines Inc. and its sister companies in the Rapu-Rapu Polymetallic Project in Albay, Philippines", copy on file with Oxfam Australia.
- 75 Interview with Enida Bandal, Barangay Captain Binowan (Binowan, 16 December 2007).
- 76 Interviews with Elmer Echague, Barangay Captain Viga (Viga, 14 and 15 December 2007).
- 77 Interview with Reynold Asuncion, Barangay Captain Malobago (Rapu Rapu Mine Site, 16 March 2007).
- 78 Regis, E., Medrano, I., Azurin-Conde, A. and Regis, M., above n 54.
- 79 Ibid. p 62.
- 80 Department of Environment and Natural Resources, above n 7, Executive Summary. The company and many in the community disagree on the quantity of dead fish and the number of affected waterways. The company claims that one to two kilograms (kg) of thumb-sized fish and marine creatures were found after the first spill and 15-17 kg after the second, whereas many in the community claim that the numbers of dead fish were much higher: Avila, Charles R, above n 8, p. 30.
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- 82 Lafayette accepted responsibility for the 2005 fish-kills; Interview with Joey Cubias (Manager, Community Relations, Human Resources and Administration), Carmelita Pacis (Environmental Management and Pollution Control Officer), Alex Limosnero (Manager, Mine Operations), Roy Cervantes (Community Relations Officer), Marco Montes (Senior Goetechnical Engineer), Abdon Paras (Metallurgical Department), (Rapu Rapu Mine Site, 16 March 2007)
- 83 Avila, Charles R, above n 8.
- 84 Rapu Rapu Processing Inc, above n 14.
- 85 Interview with Jack Malovega, Agricultural Technologist and Municipal Fisheries Coordinator (Poblacion, 13 December 2007).
- 86 For example, interview with community elders (Tinopan, 15 December 2007).
- 87 Interview with Governor Joey Salceda, Governor of Albay (Legazpi, 12 December 2007).
- 88 Doyle, C., Wicks, C. and Nally, F., *Mining in the Philippines Concerns and Conflicts: Report of a Fact Finding Mission to the Philippines July-August 2006, 2007*, p 11
- 89 Acid drainage from both closed and operating mines is the largest environmental liability facing the mining industry worldwide. The liability of acid drainage in Canada, for example, is estimated at between \$2 billion and \$5 billion: Natural Resources Canada, *Use of Inhibitors to Prevent Acid Mine Drainage*, at <http://www.nrcan.gc.ca/mms/canmet-mtb/mmsl-lmsm/enviro/effluents/effspecserv-e.htm#inhibitors> [at 27 Aug 2008].
- 90 For example, a mine site in the Iberian Pyrite Belt in Spain has been generating AMD for more than 2000 years: Australian Government Department of Industry Tourism and Resources, *Leading Practice Sustainable Development Program for the Mining Industry: Managing Acidic and Metalliferous Drainage*, (Australian Government publication), 2007, p 2.
- 91 The website homepage of the International Network for Acid Prevention (www.inap.com.au), an industry association whose members include some of the world's largest mining companies, notes that "Effectively dealing with acid drainage is a formidable challenge for which no global solutions currently exist."
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- 93 Regis, E., Medrano, I., Azurin-Conde, A. & Regis, M., above n 54, p 62.
- 94 In its assessment of the project following the 2005 spills, the DENR commented that experts think that contact of the acidic rock with rainwater may result in the formation of AMD and subsequently will cause permeability problems at the dam. For this and other reasons, the methods used at the mine "have not been fully accepted by some experts and the public as safe": Department of Environment and Natural Resources, above n 7, p 10. The Center for Environmental Concerns and Defend Patrimony Alliance requested scientists to review the DENR's basis for lifting the Cease and Desist Order (CDO) placed on the company after the 2005 tailings spills. These scientists found that AMD was not specifically mentioned in the objectives of the Permanent Lifting Order and that the AMD problem was not taken as seriously as it should have been; 'The report failed to consider how the AMD in the open pit would be managed and contained during and after the mining operations, considering its size and potential for contaminating groundwater'; Barril, C, Regis, E, Saturay, R, *An Initial Probe of the DENR's Basis for the Permanent Lifting Order (PLO) of the Cease and Desist Order (CDO) of the Rapu Rapu Polymetallic Project*, March 2007.
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- 97 Interview with Joey Cubias, above n 82.
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- 103 Lafayette Mining Ltd, above n 100.
- 104 Barril, C, Regis, E, Saturay, R, *An Initial Probe of the DENR's Basis for the Permanent Lifting Order (PLO) of the Cease and Desist Order (CDO) of the Rapu Rapu Polymetallic Project*, March 2007.
- 105 Interview with Mrs Vilma Tapaganao, local resident (Viga, 14 December 2007).
- 106 Department of Environment and Natural Resources, above n 7, Executive Summary.

- 107 Interview with community organisations (Sorsogon, 13 March 2007).
- 108 Interview with community members (Poblacion, 15 March and 13 December 2007, Viga, 14 December 2007 and Bacon, 13 March 2007).
- 109 Interview with members of Samahan ng Mangingisda sa Bato and wives of fisherfolk (Bacon, 13 March 2007).
- 110 Interview with community organisations, above n 107.
- 111 Interview with members of Samahan ng Mangingisda sa Bato and wives of fisherfolk, above n 109.
- 112 Ibon Foundation, above n 35, p 13.
- 113 Interview with Amabel Gamboa (Poblacion, 15 March 2007).
- 114 Interview with members of Samahan ng Mangingisda sa Bato and wives of fisherfolk, above n 109.
- 115 Interview with Eric De Le Cruz, Municipal Councillor (Poblacion, 15 March 2007).
- 116 Interview with Rapu Rapu Minerals Inc staff, above n 82.
- 117 Interview with Jesus Alamir Jr, Barangay Captain (Poblacion, 15 March 2007).
- 118 Interview with Carmelita Pacis, above n 82.
- 119 Interview with members of Samahan ng Mangingisda sa Bato and wives of fisherfolk, above n 109.
- 120 Ibid.
- 121 Interview with Shirley Osman, Municipal Social Welfare Development Officer, Rapu Rapu Municipal Council (Rapu Rapu Island, 13 December 2007).
- 122 Interview with Jack Malovega, above n 85.
- 123 Interview with Perfecto Banaynal, local fisherman (Poblacion, 15 March 2008).
- 124 Name withheld on request, interview with Municipal Councillor (Poblacion, 14 December 2007).
- 125 Interview with community members (Viga, 14 December 2007).
- 126 Interview with SAMAMOMU – Organisation of small fisherfolk in Muntupar (Prieto Diaz, 13 March 2007)
- 127 Risk Asia Consulting Inc, above n 32, p 18.
- 128 Interview with Iris Villanueva, community member (Poblacion, 15 March 2007), interview with community organisations, above n 107.
- 129 Interview with community organisations, above n 107.
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- 132 Interview with Beata Ebuenga, local resident, fisher woman and mother of four (Poblacion, 13 December 2007).
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- 134 Ibid.
- 135 Interview with Samahan ng Mangingisda sa Bato and wives of Fisherfolk, above n 109.
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- 145 Interview with Rapu Rapu Minerals Inc staff, above n 82.
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- 147 Interview with Carmelita Pacis, above n 82.
- 148 Interview with Kagawad Jimmy Roxas and Bartolome Ecleo (Binosawan, 16 March 2007).
- 149 Interview with Ces Quimpo, Executive Director and Cesar Manzes, officer responsible for Rapu Rapu, Centre for Environmental Concerns (Quezon City, 12 March 2007).
- 150 Interview with Kagawad Jimmy Roxas and Bartolome Ecleo, above n 148.
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- 154 Interview with Mr Antonio Casitas, above n 73.
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- 168 Interview with community organisations, above n 107.
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- 183 Letter from Oxfam Australia Mining Ombudsman to Mr David Baker, Chief Executive Officer, Lafayette, 26 November 2007.
- 184 Rapu Rapu Processing Inc, <http://www.rapu-rapumining.com/social-responsibility.html> [at 27 August 2008].
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- 186 Interview with Rapu Rapu Minerals Inc staff, above n 82 and interview with Horacio Ramos, Director of the Mines and Geoscience Bureau, and Leo Jasareno, Regional Officer, Chief, Mining Tenements Management Division (Quezon City, 18 December 2007).
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- 193 Interview with Efen Dubuenga (Binosawan, 16 December 2007).
- 194 Visual observation and interview with Alfredo Dondonilla (Tinopan, 15. December 2007).
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- 198 Community Relations Department, Rapu-Rapu Polymetallic Project, *A Brief Presentation on Social Development Management Program*, presented on 16 March 2007. Prior to the suspension of the mine as a result of the 2005 spillages, the majority of Lafayette's subsidiaries' management team were Australian. Following the spills, the management team was replaced with a mostly Filipino team, resulting in less than six expatriates. Mr Carlos Dominguez was appointed chairman and president of Lafayette Philippines Inc. In April 2008, Dominguez and his entire team announced their resignation.
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- 200 Interview with Governor Joey Salceda, above n 87.
- 201 Interview with Elias Guianan, Barangay Councilor Viga (Viga, 14 December 2007)
- 202 Interview with Kagawad Reynold Asuncion and community members (Malobago, 16 March 2007).
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- 206 Interview with Kagawad Jimmy Roxas and Bartolome Ecleo, above n 148, and interview with community members (Linao, 15 December 2007).
- 207 Interview with Reynold Asuncion, above n 77; interview with community members (Malobago, 16 December 2007).
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- 217 Letter to President Macapagal-Arroyo from R.D. Watt, Country Manager, Lafayette, 26 February 2004, copy on file with Oxfam Australia.
- 218 Rules and Regulations to Implement Republic Act No 7916, otherwise known as The Special Economic Zone Act of 1995, http://www.peza.gov.ph/about_irr.htm
- 219 Centre for Environmental Concerns (CEC), above n 215.

- 220 Department of Environment and Natural Resources, above n 7, p 28.
- 221 Avila, Charles R, above n 8, p. 75.
- 222 Department of Environment and Natural Resources, above n 7, p 2.
- 223 Ibid, p 27.
- 224 Avila, Charles R, above n 8, p 11.
- 225 Department of Environment and Natural Resources, above n 7, pp 38, 53.
- 226 Interview with Horacio Ramos, Director, Mines and Geosciences Bureau and Leo Jasareno, Regional Director and Chief Mining Tenements Management Division (Quezon City, 18 December 2007).
- 227 Interview with Tess Idio, above n 214; Interview with Ms Maria Singayan , Supervisor of the Large Taxpayers Audit and Investigation Division of the Bureau of Internal Revenue, (Quezon City, 19 March 2007).
- 228 Meeting with Mr Alfredo Non, President , Rapu Rapu Mining Inc, and Bayani Agabin, Senior Vice-President Legal, Rapu Rapu Mining Inc, (Quezon City, 20 March 2007).
- 229 Name withheld on request, interview with Municipal Councillor (Poblacion, 14 December 2007). Copies of documents on file with Oxfam Australia. It should be noted that Governor Joey Salceda, Governor of Albay, highlighted the absence of a compliance officer and stated the Lafayette should have a compliance officer to ensure it doesn't engage in corrupt practices: Interview with Governor Joey Salceda, above n 87.
- 230 Letter from Maria Teresa Mahiwo, Provincial Prosecutor, to Hon. Marino E Barranta, Chairman, Committee on Laws, Municipality of Rapu Rapu, 17 September 2007.
- 231 Interview with Imelda Araojo, Assistant Treasurer, Rapu Rapu Municipal Office (Poblacion, 14 December 2007).
- 232 Letter from Oxfam Australia Mining Ombudsman to Mr David Baker, CEO, Lafayette 26 November 2007.
- 233 Interview with Arden Eclao, Rapu Rapu Municipal Accountant (Poblacion, 15 March 2007).
- 234 Letter from Mr Reynulfo Juan, Department of Environment and Natural Resources, to Mr Vergilio Perdigon Jr, Aquinas University, dated 3 March 2008.
- 235 Interview with Jeremias Dolino, Assistant Secretary Department of Environment and Natural Resources (Quezon City, 12 March 2007).
- 236 Ibid.
- 237 Department of Environment and Natural Resources, above n 7, p 28.
- 238 Interview with Tata Felix Paz, Regional Chairman of Kilusang Magbubukid ng Pilipinas, (Peasant Movement of the Philippines) (Legazpi, 12 December 2007).
- 239 Mines and Geosciences Bureau, *Philippines Principal Policies*, <http://www.mgb.gov.ph/asomm/policy.htm> [at 11 September 2008].
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- 241 <http://www.theDENR.gov.ph/about> [at 15 May 2008]
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- 244 Department of Environment and Natural Resources, above n 7, p 14.
- 245 Interview with Jeremias Dolino, above n 235.
- 246 Interview with Mr Alfredo Non and Bayani Agabi, above n 228.
- 247 Interview with Rapu Rapu Minerals Inc staff, above n 82.
- 248 Department of Environment and Natural Resources, above n 7, p 20.
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- 254 Interview with Horacio Ramos and Leo Jasareno, above n 226. See also Mines and Geosciences Bureau, *Philippines Principal Policies*, <http://www.mgb.gov.ph/asomm/policy.htm> [at 11 September 2008].
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- 257 Dorente E. B., above n 253.
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- 262 Jonathan L. Mayuga, above n 2.
- 263 Bishop Bastes, as quoted in Alave, Kristine L., "Sorsogon bishop calls for 'total closure' of Rapu-Rapu mine", *Philippine Daily Inquirer*, 13 June 2008, <http://newsinfo.inquirer.net/breakingnews/regions/view/20080613-142499/Sorsogon-bishop-calls-for-total-closure-of-Rapu-Rapu-mine>
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- 265 Rapu Rapu Processing Inc, <http://www.rapu-rapumining.com/the-companies.html> [at 10 July 2008].
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- 287 Lafayette Mining Ltd, above n 3.
- 288 Letter from Frances Quimpo, above n 13.
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- 290 Ibid.
- 291 Ibid.
- 292 Ibid.
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- 294 Rapu Rapu Processing Inc, above n 14.
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- 299 Department of Environment and Natural Resources, above n 7, Executive Summary.
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- 304 Lafayette Mining Ltd, above n 301.
- 305 Department of Environment and Natural Resources, above n 7, Executive Summary.
- 306 Avila, Charles R, above n 8.
- 307 Department of Environment and Natural Resources, above n 7, p 19.
- 308 Avila, Charles R, above n 8. p. 5.
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- 312 Ibid.
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- 322 Interview with former member of Fact Finding Mission, name withheld (Quezon City, 7 March 2007).
- 323 Department of Environment and Natural Resources, *Evaluation Report on the Rapu Rapu Polymetallic Project under the Test Run Condition*, 14 December 2006.
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- 326 Ibid.
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- 328 Mines and Geosciences Bureau, Department of Environment and Natural Resources, *Evaluation report on the Rapu Rapu Polymetallic Project under test run conditions*, 14 December 2006, p 15.
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- 332 Memorandum from Mines and Geosciences Bureau and Environmental Management Bureau to the DENR, above n 331.
- 333 Regis, E, Institute for Environmental Conservation and Research, Ateneo de Naga University, *Report on the initial investigation conducted in the Island of Rapu-Rapu on the recent fishkill*, 7 November 2007. See also, Executive Summary Report to Governor Joey Sarte Salceda, above n 331.

Right: Treated waste water from Lafayette mine flows down Pagcolbon Creek into the ocean. The yellow staining of the rocks is a characteristic sign of acid mine drainage (AMD).
Photo: Alex Felipe.

Back cover: Fishermen spend the morning in the shade while their boats lie idle on the shores of Rapu Rapu island. Many fisherfolk report they are no longer able to sell their catch.
Photo: Alex Felipe.





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