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**FROM THE MOST REV. BISHOP ARTURO M. BASTES, SVD, DD
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Next week, January 29th, will mark the 20th anniversary of the CBCP Pastoral on Ecology that came to be more popularly known as the Letter that asked: **WHAT IS HAPPENING TO OUR BEAUTIFUL LAND?** In answer to that question then, the Bishops of this country said:

“... Our country is in peril. All the living systems on land and in the seas around us are being ruthlessly exploited. The damage to date is extensive and, sad to say, is often irreversible.... We ask the government not to pursue short-term economic gains at the expense of long-term ecological damage. We suggest that the Government ... promote an awareness of the fragility and limited carrying capacity of our islands' eco-systems and advocate measures designed to support ecologically sustainable development. “

That was twenty years ago.

Less than three years ago, the President of the Philippines appointed me to head the Rapu-Rapu Fact Finding Commission. It was unusual for the President to appoint a Bishop to head an official commission, and probably just as unusual for a Bishop to accept the appointment – which only underscored how both state and church were going out on a limb to resolve creatively what need not be contradictory, namely economic progress and environmental health and preservation. It also augured well for the cooperation we desired between us who are primarily mandated to care for the “soul” and those who are primarily mandated to care for the “body” – if indeed such a dichotomy is possible at all in the one and same human person we both aim to serve – the Filipino people.

The Rapu-Rapu mining project had met with fierce resistance from local communities since its inception, with concerns centred on:

- Inadequacy of environmental and social impact assessment process
- Exposure to typhoons, as the island was quite in the centre of the typhoon belt and heavy rain area
- Serious toxic spills in the past and related findings of negligence and breaches of basic industry practices
- Unresolved community impacts and questionable social acceptability as reflected in widespread opposition to the mine

- Direct and long term environmental impact of the mine, in an island of steep slopes, through Acid Rock Drainage, toxic discharges, long term solidity of tailing dam design, direct impact on island and aquatic biodiversity
- Effect on emerging ecotourism industry based on whale shark watching
- Undue pressure on local government structures and citizens' rights

Following the report of my Commission to the President, which addressed the above concerns, the Department of Environment and Natural Resources said that they agreed with the major points and enumerated them thus:

1. The two tailing spills that occurred at Lafayette were preventable – they could have been prevented.
2. Lafayette was guilty of lapses of an operational/technical and management nature.
3. Lafayette did not measure up to the standards of responsible mining.
4. DENR itself was a failure in monitoring Lafayette and consequently did not detect the violations that would indicate the possibility of environmental accidents.
5. The sharing of benefits from the mineral exploitation of Rapu-Rapu Island had clearly been grossly unfavourable to the Phil govt.

With regard to the long-term environmental risks, beyond the spills, DENR also agreed with our Commission that: *“Two major issues concerning the implementation of the Project remained pending: the integrity of the tailings dam structure and the Acid Mine Drainage, or AMD, problem.”* And DENR explicitly said: *“On the acid mine drainage, or AMD, problem, **Lafayette still has to submit a viable solution.** In fact, an important **ECC (environment clearance) conditionality for the project** is the adequacy and effectiveness of its strategy to control AMD.”* In short, our Commission’s findings on Lafayette’s serious violations of environmental and legal safety standards for responsible mining were not negated by the DENR Review.

The government through the DENR should really just have followed the rule of law rather than the culture of privilege and impunity. In accordance with the spirit and letter of the law, DENR should just have cancelled the Environment Clearance Certificate (ECC) of a recidivist firm, and if allowed to re-apply, let it undertake the drawing up of an Environmental Impact Statement (EIS) and propose an Environmental Management System (EMS), precisely as the law requires, and then let an awakened citizenry watch a reformed DENR do its job. That is what our Commission logically recommended which the DENR so illogically ignored – even as we argued from and agreed on the same major and minor premises.

In addition, we said we were frankly quite dubious about the honesty and financial integrity of the mining firm. The Commission found strong indications to believe that the firm underreported its production of ores and of processed gold and silver to the MGB or Mines and Geosciences Bureau thereby reducing the basis, and ultimately, the value of the excise tax they would have to pay the government. The details are in our formal report.

Lafayette wanted to have DENR hostage in their threat that if their mining permit or ECC were cancelled, they’d just walk away and leave DENR with the mine tailings and the pollution and the crisis. And DENR was just too weak to defend the environment and people’s health and welfare. It surrendered, in the name of attracting more investments – of the credit card variety. This is the type that brags, “Have permit and there will be banks to give you a credit line.” During the term of Secretary Reyes, the state was clearly captive. He could not withhold the mining permit that Lafayette did not deserve, and which clearly constituted a continuing threat to both local people’s health and livelihood and the small island’s fragile ecosystem.

A little more than a year after they were given the green light by Reyes, Lafayette was up and about looking for more funds to expand its operations – activities squarely opposed by the local communities. But as a consequence of both its own management faults and typhoon-caused serious structural damage to Project infrastructure, the Mining Company's financial position “*deteriorated to a point where by mid July 2007 the Board considered it necessary to undertake a significant restructuring and recapitalization of both Lafayette and the Project, to ensure that they remained going concerns. This deterioration was in large part due to the need to progressively cash settle (with additional borrowings from the Bank Group) maturing forward sale positions in circumstances where relevant commodity prices had increased substantially from those on which the original forward sale contracts were based.*” (Directors’ Statement, 20 December 2007)

The Statement continued: “*On 4 October 2007, Lafayette announced that non-binding term sheets had been executed by the Company and the Bank Group with a Special Purpose Vehicle (“SPV”) owned by a prospective Cornerstone Investor (“CI”) and the South East Asian Strategic Asset Fund LP (“SEASAF”). These term sheets outlined the basis of a series of transactions designed to recapitalize and restructure both the Company and the Project. As part of these arrangements, a binding Option Deed was executed by the Bank Group and the SPV under which the SPV was granted the right but not the obligation to purchase the Bank Group's debt exposure of approximately US\$269 million (which included a significant amount of debt needed to cash settle outstanding hedge contracts) at a discounted price.*”

But, as the saying goes, “the best laid plans of mice and men...” do not always work out as hoped for. “*On 17 December 2007, Rapu Rapu Minerals Inc (‘RRMI’), an associate of Lafayette, received a default notice from its mining contractor Leighton Contractor (Philippines) Inc (‘Leighton’). Lafayette is a co-guarantor of the payment of money due under the mining contract with Leighton and while there was a cure period for default provided under the terms of the contract, Lafayette could not be certain that either RRMI or Lafayette would be in a position to settle this claim by Leighton at the expiry of the cure period, given the delayed nature and inherent uncertainty in the Bank Group's processes.*”

“*By 17 December 2007, it was also evident that Lafayette’s cash reserves would be insufficient to meet corporate expenses beyond 31 December 2007. While the Bank Group had in the past provided the necessary financial support to Lafayette to continue to meet its obligations, (including as recently as 11 December 2007 when a further US\$300,000 was made available to the Company to fund expenses expected to be incurred in December 2007) the availability of this continued support was uncertain, creating further doubt for Directors about the ability of the Company to continue to meet its obligations.*”

“*Given all of the above, the Board of Lafayette met on 18 December 2007, and being of the view that they no longer had reasonable grounds to believe that the Company could meet its obligations as and when they fell due resolved to voluntarily appoint Messrs Sutton and McCluskey of Ferrier Hodgson to the role of Administrator. In making this appointment, the Board expected that the Administration process would allow all options for either the sale of the Project or a restructure and recapitalization of the Lafayette group to be fully explored.*” (Directors’ Statement) A very neat way of saying they had gone bankrupt!

What we feared would happen has now happened. The flagship mining foreign investor of this country, certified so by no less than DENR Secretary Reyes, was all along a financial bluff.

Those of us from the area, together with Albay Governor Joey Salceda, are asking a new DENR, if “new” it can be called since Reyes is no longer there, and Atienza has taken his place, to PLEASE, finally, suspend the mining operation of Lafayette Mining Corp. in Rapu-Rapu following the firm's move to go under voluntary administration – a euphemism for declaration of bankruptcy. DENR should immediately suspend the permits to mine, mill and transport chemicals granted to Lafayette. The firm's financial distress is absolute proof of bad management and could sacrifice or compromise environmental standards. We and the Albay Governor are asking: who will maintain the mines tailing pond once the mining firm ceases to operate? Who will pay the people of Rapu-Rapu the P16 million arrears in social development programs?

The DENR has the responsibility for the integrity of the mine's facilities to prevent any mishap especially if some mining chemicals are misplaced. Given the poor track record of Lafayette, we ask the DENR Environment Management Bureau (EMB) to conduct compliance audit on all environmental concerns – NOW.

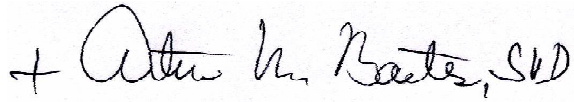
We know that Carlos Dominguez, chairman and president of Lafayette Philippines, has filed a petition with the courts for rehabilitation to continue “normal” operations to protect all its stakeholders. The courts may then instruct all creditors and suppliers to continue their services and transactions with the local companies for as long as they are paid on cash basis. How much cash do they have? How long can they last? Understandably they will have to have a fire sale - sell whatever they can to have the cash they need till a knight in shining armour rides in. Meantime, courtesy of a kindly local court, payment for existing debts will be suspended until a rehabilitation plan can be agreed on what will fairly settle all outstanding debts to give hope for continued operations.

But has the important lesson been learned? A company that fails to obtain and retain a social licence to operate, in other words one that operates without community approval, is simply not viable – even if one has the Reyeses' and whole armies' arbitrary license to be illogical and insane, as clearly happened in the Lafayette Rapu-Rapu experience.

The Lafayette mine is more than a financial mess. It is an environmental and social failure. How many of us forewarned the Administration and the DENR that the project is not socially, technically, environmentally and financially feasible but, still, they allowed it to proceed. Should they not be held accountable along with Lafayette to rehabilitate the island and compensate the local residents for the damages done by the mine? They also must ensure that enough rehabilitation funds are available for the affected people in the Island.

Will not ANZ and the other banks that have signed the Equator Principles use this opportunity to demonstrate their commitment to social and environmental responsibility? Sharing responsibility would be the Banks that now operate the mine through their Administrator. These banks include the consortium of lenders (ABN AMRO, ANZ, Investec, SC First Bank, Standard Chartered, Standard Bank), LG International and KORES, Korean state companies, and Lafayette's shareholders. ANZ and the banks that supported Lafayette should show the communities of Rapu-Rapu, who will live with the consequences of the failed investment, what "corporate social responsibility" means in practice. They can demonstrate this by ensuring that sufficient funds are set aside for the environmental rehabilitation of the mine and a sustainable development program for the communities of Rapu-Rapu.

To date, the company has not been required by DENR to set aside money for the final rehabilitation of the mine. Cannot this terrible Reyes negligence be remedied by Atienza now? Madame President, it's your turn to speak.



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