



Republic of the Philippines

SENATE

Pasay City

April 25, 2005

FOR : THE SENATE PRESIDENT

**THRU : THE DEPUTY SECRETARY FOR LEGISLATION
THE EXECUTIVE DIRECTOR FOR LEGISLATION
THE BUREAU DIRECTOR FOR COMMITTEE AFFAIRS
THE DIRECTOR FOR LCSS "A"**

FROM : Ms. MA. LOURDES A. JUAN-ALZATE
*Legislative Committee Secretary
Committee on Cultural Communities*

**RE : REPORT ON THE MARCH 8, 2005 HEARING OF THE
COMMITTEE ON CULTURAL COMMUNITIES**

May we respectfully submit the attached Journal of the public hearing that was jointly conducted by the Committees on Cultural Communities and Environment and Natural Resources on Tuesday, March 8, 2005, 9:00 a.m., at the Senator Lorenzo M. Tañada Room, 2nd Floor, Senate of the Philippines, GSIS Bldg., Roxas Blvd., Pasay City.

The agenda of said hearing was **Senate Resolution No. 162**, entitled "Resolution Directing the Committee on Cultural Communities to Conduct an Inquiry, in Aid of Legislation, on the Well Being of the Various Indigenous Cultural Communities of the Philippines and the Enforcement of Their Rights on Their Ancestral Domain" (*Introduced by Sen. Madrigal*)

For your Honor's information.

COMMITTEE ON CULTURAL COMMUNITIES
Joint with
COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

PUBLIC HEARING
Tuesday, March 8, 2005
Sen. Lorenzo M. Tañada Room
9:00 a.m.

Senators Present : Senators Madrigal (Chairperson and presiding), Cayetano and Flavier.

Senators Represented : Senators Enrile, J. Estrada and Pimentel Jr.

Resource Persons/Guests: Atty. REUBEN DASAY A. LINGATING, *Chairperson*, National Commission on Indigenous People (NCIP); Atty. PURIFICACION QUISUMBING, *Chairperson*, Commission on Human Rights (CHR); Undersecretary RADO DIMALIBOT, Mining and Legal Affairs, Department of Environment and Natural Resources (DENR); Mr. EDWIN DOMINGO, *Assistant Director*, DENR; Ms. MUNDITA LIM, PAWB-DENR; Engr. JOAQUIN E. SORIANO, JR., *Chief*, Science Research Specialist Mines and Geosciences Bureau, DENR; Ms. NERIA ANDIN, *Assistant Director*, Forest Management Bureau, DENR; Atty. RONALDO GUTIERREZ, *Executive Director*, Upholding Life and Nature; Mr. TONY ABUSO, *Program Coordinator*, Episcopal Council on Indigenous Peoples; Datu ANGELITO OMOS, SR., *Chairman*, Katutubong Samahan ng Pilipinas, Inc. (KASAPI); Mr. RAMCY ASTOVESA, Katutubong Dumagat; Ka ANDRES MENDIGORIN, *Chairman*, Samahan ng mga Aeta sa Banawe; Atty. MARIA VICENTE P. DE GUZMAN, *Tanggapang Panlegal* ng Katutubong Pilipino; Mr. NONOY GOBRIN, *Kalipunan* ng mga Katutubong Mamamayan ng Pilipinas; Mr. EUGENE MATEO, *President*, Toronto Ventures, Inc. Resource (TVI); Mr. JOHN RIDSDEL, *Adviser for Corporate Affairs*, TVI; Ms. LULLIE MICABALO, *Community Development Manager*, TVI; Atty. PABLO S. BERNARDO, *Legal Counsel*, SSAI

HIGHLIGHTS

The Chairperson, Senator M.A. Madrigal declared that this hearing was called due to the complaints she received and the visits made by various Indigenous Peoples (IPs) on the encroachment of their ancestral domain by logging and mining enterprises. This encroachment, she said, is a total disregard of the rights of the indigenous peoples and a mockery of R.A. 8371 - the Indigenous Peoples Rights Act or IPRA law. It also shows a total disregard for the protection of their environment as there had been violations of existing laws, she said.

A video clip was shown in the hearing. Significant in the presentation are the following:

- tailings pond which releases its tailings into the creek that leading to the main river system when there are heavy rains.

- the pipe which leads to the second tailings pond - still existing despite the alleged decommissioning of the first tailings pond.
- the sedimentation pond made of sand bags only
- the sacred mountains of the Subanons bulldozed by the Toronto Ventures Incorporation's (TVI) mining operations
- an open pit mine, part of TVI's mining facilities
- a ball mill where cyanide is stored
- a titration room

Accordingly, TVI extracts 200 metric tons of ore per day but only extracts 2.5 grams of gold per ton. There is also an allegation that TVI has not met their social responsibility requirements while they are enjoying a tax holiday for eight (8) years; and can even legally send 100% of their profits to their home country.

Senator Juan Flavio Velasco, who was the main sponsor of the Indigenous Peoples Rights Act was saddened because of the infringement and the lack of proper implementation of the law, but he is hopeful that this hearing will hasten implementation of laws affecting the IPs ancestral domains.

Atty. Purificacion Quisumbing of the Commission on Human Rights (CHR) declared that the agenda is basic on the rights of indigenous peoples and these must be expressed as human rights. She mentioned about the initiative of CHR, with funding from the European community, in partnership with the National Commission on Indigenous (NCIP). She also affirmed CHR's support for the promotion and protection of human rights of indigenous peoples.

Undersecretary Rado Dimalibot of the Department of Environment and Natural Resources (DENR) mentioned that the Philippine Mining Law specifically states that there should be prior consent of the communities and the indigenous peoples concerned before an area can be opened to mining through the Free and Prior Informed Consent (FPIC) document. He also mentioned their cooperation with NCIP especially as to cases filed in their office.

Mr. Edwin Domingo of the Mines and Geosciences Bureau, DENR affirmed that they have not issued any mining permit or contract without prior endorsement of the NCIP for the certification, precondition, and the free and prior informed consent.

Ms. Mundita Lim of the Protected Areas and Wildlife Bureau, DENR announced that they have been working closely with the IPs in the conservation of biological diversity.

Engineer Joaquin Soriano, Chief/Science Research Specialist, DENR Region IX stated that since the inception of TVI in 1992 and when the permit was issued in 1996, and even up to these days, a team constantly monitors the mining operations. He is optimistic that bringing this into the national level can settle the issues about mining, the indigenous peoples and the environment.

Miss Neria Andin, Assistant Director of the Forest Management Bureau, DENR informed that Administrative Order No. 2, series of 1993 on the recognition of ancestral lands and domains predates the IPRA. She added that the basis of claims of IPs as well as the processing of Certificate of Ancestral Domain Title (CADT) has always been geared on the protection of the rights of communities affected by development projects, mining, forestry, multipurpose projects, etc. She added that this is paramount to the issuance of Environmental Compliance Certificate (ECC). The importance of public participation in broadening the responsibilities for environmental protection, promoting social progress and equity is emphasized accordingly.

Atty. Ronaldo Gutierrez, Executive Director of Upholding Life and Nature believes that the IPs are facing grave threats because of the mining and logging operations and have

actually been violated as to their free and prior informed consent, as evidenced in the cases they are handling.

The Chairperson attested that indeed, the free and prior informed consent has become a mockery of human rights vis-à-vis the mockery of the IPRA.

Mr. Tony Abuso, Program Coordinator of the Episcopal Council on Indigenous Peoples affirmed that the IPs are the aggrieved parties. To date there are about twenty (20) cases involving IPs. He disclosed that most bishops maintain opposition to the Mining Act and are demanding repeal of said law. He divulged that the violation made by TVI is known in Canada, England and the United Nations. He reiterated his suggestion that in the next hearing, all the Timuays (elders) concerned should be invited.

Datu Angelito Omos, Sr., Chairman of the Katutubong Samahan ng Pilipinas informed that they continuously face isolation in view of the ongoing mining activities on their ancestral domains, an infringement of their rights as indigenous peoples. This was affirmed by Mr. Ramsey Estobesa, an Agta-Dumagat. Ka Andres Mendigoren, Chairman, Samahan ng mga Aeta sa Banawe mentioned about harassment to families who failed to leave their ancestral land. They could not understand what Mineral Production Sharing Agreement (MPSA) is, and they claim that there is already a disruption in their way of living because of the destruction in their environment. They expressed gratitude to the Chairperson of the Committee for her commitment to fight for the rights of the IPs.

Atty. Girlie De Guzman, Executive Director of the Tanggapang Panlegal ng Katutubong Pilipino welcomes the opportunity of bringing the cries of the IPs to the Committee level, because of the onerous and burdensome effect to them by the Rio-Tuba Mines in Palawan; Mindex; and Western Mining Corporation.

Mr. Nonoy Gobrin, Kalipunan ng mga Katutubong Mamamayan ng Pilipinas also informed about the situation of the IPs in the Cordillera region, the small-scale mining in Mancayan as against the Lepanto Mining. In Palawan, one of their national council members was killed. The Mangyans in Mindoro are in evacuation sites because of unhampered military operations, he said.

The Chairperson emphasized that the problems of mining, logging and the indigenous peoples cannot be separated. She believes that the opening of the Cordillera and the Caraga Region to logging is a prelude to mining, to the disenfranchisement of the way of life of the indigenous peoples, leading to the displacement of about 12.5 million people. She maintains her contention that the attachment of the NCIP to the Department of Land Reform is unconstitutional. NCIP, she said must be independent and that it has nothing to do with land reform; that collective ownership cannot be put under land reform and should not be questioned. She informed the Committee that she intends to conduct hearings in the ancestral sites.

In the statement of Bishop Jose Manguiran of Dipolog City (read to the Committee), who heads the consortium of the dioceses of Misamis Occidental and the Zamboanga Peninsula, he said that "TVI has been in Siocon and operating a mining company since 1994 despite opposition by the Subanons, the Municipal Mayor, the Sangguniang Bayan and the civil society groups. They have maintained their oppositions despite being shot and wounded and beaten or arrested by company guards. The operations of the company have allegedly caused grave environmental damage to an important watershed, and also degradation to sacred places. This brought divisiveness among the Subanons and there had been false claims and misinformations about the situation. The problems are grave and urgent as there have been eviction orders and demolition of houses and structures in said areas mined by the company."

Mr. Eugene Mateo, President of TVI denied such insinuations of destruction in Canatuan and violation of rights of the IPs. He also invited everyone to visit the place and welcomes the holding of hearings in such places if only to disprove such allegations. Their company had been operating for eleven years now and that they have been cleaning the environment of small-scale mining prior to the mining and processing of gold and silver in June 2004, producing about 450 tons per day. He stated that they have provided economic benefits to the IPs by way of employment, payment of royalty, free electricity, free potable water and well-maintained roads. They have respected the rights, culture and traditions of the people and they have undergone community development, education, livelihood and health care, maintained peace and order, and protection of the environment.

The Chairperson requested TVI to submit the following documents:

- The company's environmental mitigation measures and how it was implemented
- How the said free and prior consent of the IPs was obtained
- The cost-benefit analysis on the 880 million project in Canatuan especially on the figure invested for the IPs/or a pie chart
- The document signed by the IPs /agreement undertaken
- Names of all the people who turned over their lands

Mr. John Ridsdel, Adviser for Corporate Affairs stated that a lot of problems are actually coming from the small-scale miners. He informed the Committee that they have a number of documents summarizing the benefits to the community and a number of responses to the allegations made, including an open letter and written by the community to the NGOs directing them to cease to misrepresent the community and to depend on the views of a very small and politically motivated minority. He is also providing the Committee with an environmental review because it is his observation that the questions raised were not supported by facts. He explained that the FPIC process is entirely managed and coordinated by NCIP. He reiterated his invitation to the Chairperson in conducting a hearing in said site in view of the adverse publicity and misinformation.

Atty. Girlie De Guzman stated provision on the IPRA on the free and prior informed consent . . . *"the consensus of all concerned"*. She cited the case of/ the agreement between the B'laan group and the Western Mining Corporation. She observed that all documents are in English and was not even explained to the IPs. This document, she said should have been written in a language understood by the people. Free and prior informed consent is the most important part of the IPRA because it grants the indigenous peoples the right to determine the type and manner of development activities undertaken in recognition to their rights to ancestral domain, hence, this should be the most crucial aspect in the process in which the IPs participate in decision-making. This is human rights for the IPs and she was in accord with the Chairperson's statement that to deprive them of their source of survival and development is genocide. It is her observation too that the promised support for economic projects of the community is being managed by whichever company the IPs have contract with.

The Chairperson further queried about what happens in case of conflict between the CADT and MPSA. In response, Atty. De Guzman stated that rights to ancestral domain prevails over any other contract. And even if an ancestral domain is not covered by CADT but it is claimed as ancestral domain, the rights of these IPs to these domains should be respected.

Atty. Pablo S. Bernardo, Legal Counsel of the Siocon Subanon Association (SSA) emphasized that TVI obtained the consent of the IPs in the area and informed the body that the provisions were explained to them in their native dialect. He informed the Committee that he himself is a Subanon and assured that to the Council of Elders and to the leaders of the SSA, the significance as well as the effects of the memorandum of

understanding were properly explained, in the presence of a certain Mr. Ponciano Agbadan of NCIP, before they affixed their signatures. The documents are accordingly in the Visayan dialect and also in English.

Senator Flavier asked if there is veracity on the news that sacred mountains have been bulldozed or desecrated. In reply, Atty. Bernardo stated that the said places are not part of the said sacred mountain. These places in contention are the very same place where small-scale miners operate, where cyanide plants were dismantled upon DENR's order as they are causing environmental problems due to its toxicity levels, he said.

On the query of the Chairperson why the list of those who surrendered their lands/ those who agree to the CADTs were not complete, Atty. Bernardo explained that the CADT is issued under the name of the Subanon of Siocon, Zamboanga del Norte, represented by a Council of Elders. This was affirmed by Atty. De Guzman explaining that the CADT is issued in the name of the tribe precisely to reflect collective ownership and a census which is updated every five (5) years accompanies the CADT.

Atty. Gutierrez shared similar experiences in Mindoro Occidental where NCIP found out that FPIC was fraudulently obtained. Ka Andres Mendigoren was actually assaulted by illegal loggers and they have assisted him in the filing of appropriate charges.

On whether or not TVI had indeed been cleared by the Commission on Human Rights, Secretary Quisumbing stated that they investigate on the basis of specific complaints and has not done so, but, they are ready to submit reports to the Committee. CHR has the objective of promotion and protection of human rights, and further elaborated on the importance of civil and political rights. She also reported that they have been in close coordination with NCIP especially on the possibility of joining their regional offices.

DENR was also required by the Chairperson to submit the following documents:

- Rules and regulations on small-scale mining
- Areas where small-scale miners are actually operating -geographic areas
- Protection and mitigation measures required of small-scale miners re: environmental damage
- Provincial Mining Boards
- Places of reforestation
- Documents issued – IFMAs and TLAs

Atty. Gutierrez suggested that DENR's emphasis should be towards protection of human rights and the rights of the indigenous peoples and not on the use of resources.

Senator Madrigal then asked if indeed there is conflict in DENR's mandate. She also took cognizance of the fact that the government has now declared war with the IPs who have the right to life and to environment. This, she added, is a prelude to large-scale mining. She added that there is encroachment on a national scale, and of the 800,000 hectares of virgin forests left, about a hundred thousand hectares a year are cut, and in places where ancestral domains are located. However, Undersecretary Dimalibot explained that the regions declared open for legal logging are not the areas actually identified as having potential mineral wealth or being feasible for mining. He added that the holders of the logging agreements are in fact assessed by the department and by nongovernment organizations and they have been replanting trees in exchange of the trees cut.

NCIP Chairperson Atty. Reuben Lingating divulged that his father is a lawyer in Zamboanga who comes from the Subanon tribe and has been extending legal assistance to different Subanon communities and even to the Moro communities in Zamboanga del Sur and Zamboanga Del Norte. He also informed the Committee that

NCIP has distributed and awarded 29 CADTs since 2002. For 2005, they have projected and targeted about 50 CADTs, he said. On the query of Senator Madrigal re: standard used by NCIP in determining how many CADTs and which areas to award/to prioritize, Atty. Lingating stated that they base their targets on the availability of funds. They tied-up with the nongovernment organizations and the local government units in funding the costs needed to delineate the ancestral domain claims. He also declared that there are existing guidelines in validating claims for ancestral domain, that in every province, the different claimants agree among themselves on who NCIP deals with first in view of the meager resources. He submitted a list of existing CADTs, its coverage and the rules and regulations and the process of issuance to Senator Madrigal.

Senator Madrigal asked Atty. Lingating about their intervention in cases of conflict. He replied that NCIP exercises quasi-judicial functions. He said that he submitted a memorandum for the Secretary of DENR requesting review of the MPSA of TVI since there is a question on whether FPIC was properly obtained. He presented the result of the report submitted by the investigation team (CHR, DENR and NCIP). However, no response was received by him yet, he said. The Senator likewise directed submission of said document/report. Undersecretary Dimalibot explained that they are in the process of resolving the said case.

Senator Madrigal asked Atty. Lingating why of the 2.5 million aligned to NCIP, only 1 million was retained and the rest of the amount went to DENR. It was explained that there was an agreement between NCIP and DENR to fund continuing policy dialogues to reconcile policies issued by both agencies. However, the Senator was not convinced since DENR was already given half a billion budgetary increase. She intimated that she was indeed embarrassed for having fought hard for such realignment.

On the issue of shortening the FPIC, it was explained by Miss Andin that it is not on the procedure, rather, to thresh things out on what should be settled prior to the issuance of FPIC. This is done between the NCIP, DENR, the local government units and other stakeholders accordingly. Senator Madrigal then requested submission of the said proposed amendments to the FPIC.

The Chairperson of the Committee on Environment and Natural Resources, Senator Pia Cayetano articulated that this is the proper avenue to solve problems and find potential solutions to help our indigenous peoples.

Senator Madrigal reiterated immediate submission of requested documents and suspended the hearing after informing the Committee that succeeding hearings will be held even in the areas concerned, like in Siocon, as well as in other ancestral domain sites. She thanked the resource persons especially TVI for coming and shedding light to the issues and problems cited.

The hearing was suspended at 12:45 p.m.

*Prepared and submitted by Ma. Lourdes A. Juan-Alzate, Legislative Committee
Secretary, Committee on Cultural Communities*