

On the Recognition of the Ancestral Domain of Indigenous Cultural Minorities

The incident that occurred in the Municipality of Siocon, Zamboanga del Norte concerning the rights of Subanens, an indigenous cultural community, on the ancestral domain over an area of almost 6, 000 hectares, has prompted the Commission on Human Rights to issue this Human Rights Advisory. The Commission on Human Rights, Region IX, which took cognizance of the complaint of the Subanen people, found that Toronto Ventures, Inc., a Canadian mining corporation, was operating in the area claimed to be within the ancestral domain of the said tribe without their prior consent as required under Section 16 of the Mining Act of 1995 (*Republic Act 7942*) and Section 3 of Republic Act 7381, known as the "Indigenous Peoples Rights Act of 1997 (IPRA)." A number of the picketeers and demonstrators who opposed and resisted the mining operations in the area suffered physical injuries caused by police authorities who forcibly dispersed the picket and even placed them under detention.

The rights of indigenous and tribal peoples have been recognized in the Convention of the International Labor Organization (ILO), Convention 169, dated June 27, 1989, setting a general policy recognizing the right of indigenous and tribal peoples to enjoy the full measures of human rights and fundamental freedoms. Among the rights mentioned in said Convention are the rights of ownership and possession of the peoples over lands, which they traditionally occupy. Article 14 of the Convention reads:

- 1. The rights of ownership and possession of the peoples concerned over the lands, which they traditionally occupy, shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.*
- 2. Government shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession."*

Accordingly, the Philippines declared among its State Policies in Section 22, Article II of the Philippine Constitution, which reads:

"The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development."

Implementing said state policy is Republic Act No. 8371 entitled, " An Act To Recognize, Protect, and Promote the Rights of Indigenous Cultural Communities, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Thereof, and for Other Purposes." The said law defines ancestral domains, which covers not only the physical environment but also the total environment including the spiritual and cultural bonds to the areas, which the ICCs/IPs possess, occupy and use and to which they have claim of ownership. (*Section 4, RA No. 8371*)

Republic Act No. 8371 recognizes, among others, the right to ownership of land, bodies of water traditionally occupied by the International Cultural Communities (ICCs). They have the right to develop lands and natural resources and the right to stay in said territories. (*Section 7, RA No. 8371*)

The constitutional validity of ancient domains has been sustained by the Supreme Court of the Philippines in *CRUZ, et. al. vs. NCIP, G.R. No. 135385*, promulgated on December 6, 2000. The petitioners in said case have questioned the constitutional validity of RA No. 8371 and its implementing regulations.

The Commission on Human Rights, pursuant to its constitutional function of monitoring

Philippine government's compliance with international treaty obligations in human rights (Art. XIII, Sec. 18[7]), issues this human rights advisory to remind all concerned, especially government authorities and agencies, to respect the aforesaid international instruments on human rights and the constitutional policy and its implementing legislations, RA No. 8371, including its rules and regulations, for their information and guidance.

Quezon City, 13 September 2001