

**INDIGENOUS RIGHTS CONCERNS AND
TVI PACIFIC INC.'S MINING OPERATIONS
IN THE PHILIPPINES**

**A BRIEF FOR: THE SUBCOMMITTEE ON HUMAN RIGHTS AND INTERNATIONAL
DEVELOPMENT OF THE STANDING COMMITTEE ON
FOREIGN AFFAIRS AND INTERNATIONAL TRADE**

SUBMITTED BY: KAIROS: CANADIAN ECUMENICAL JUSTICE INITIATIVES

MAY 18, 2005

Dear Chairperson Bains and Honorable Members of the *Subcommittee*:

KAIROS: Canadian Ecumenical Justice Initiatives represents eleven major Christian churches and church-based organizations across the country. Inspired by a vision of God's compassionate justice, KAIROS strives to be a prophetic voice in the public sphere. KAIROS amplifies and supports the public witness of its partners in Canada and in the Global South in their work for justice.

In matters of social and ecological justice, KAIROS takes a principled, rights based position on extractive industries that promotes and defends the recognition and protection of Indigenous peoples' rights, including the fundamental human right to self-determination, the right to land and resources, and the principle of free and prior informed consent (FPIC). FPIC gives indigenous peoples control over developments affecting them and their lands, territories and resources; enables them to maintain and strengthen their institutions, cultures and traditions.

In response to requests for solidarity and support by church and civil society partners in the Philippines, KAIROS is concerned about the operations of the Canadian mining company, TVI Pacific Inc., on Subanon ancestral land in Canatuan in the Municipality of Siocon, Zamboanga del Norte. It is of utmost importance to KAIROS and its partners that the rights of indigenous peoples and residents of Canatuan and Siocon not be violated, KAIROS staff visited the region with local and Canadian partners in October 2004 to investigate the situation further. During this trip, staff visited the TVI mine site and met with affected communities in the immediate vicinity of the mine, a broad cross-section of downstream residents, various Philippine government and Canadian Embassy officials, and staff of TVI.

KAIROS is aware of widespread opposition to TVI by many Subanon ancestral domain title-holders, leaders and members of local indigenous and Muslim communities, the Siocon municipal government, and farmers, fisher-folk and residents who live downstream from the mine. We have received many well-documented accounts of acts of violence, intimidation and harassment committed by TVI security forces, and anecdotal evidence of the deleterious environmental impact of TVI's mine.

While these issues are of great concern to us, our comments to the *Subcommittee* will be directed to reported violations of indigenous land rights.

It is our understanding that TVI Pacific has failed to obtain the genuine free and prior informed consent of the affected indigenous community as required by Philippine law. Many holders of the Certificate of Ancestral Domain Title (CADT) have consistently opposed the entry of TVI onto their land, and consider mining operations on Mount Canatuan, the sacred place of their ancestors, as a sacrilege. Along with other affected communities, they have called for an immediate halt to TVI's mining activities.

KAIROS joins this call in solidarity with the Subanon and communities that oppose the TVI mine. Our position is based on valid community and local partner reports and testimonies, and corroborating information gathered during KAIROS' October 2004 visit to the Philippines which indicate that genuine free and prior informed consent has not been obtained by the company.

With reference to both these first and second-hand sources of information, we would like to bring the following issues and concerns regarding indigenous land rights in Canatuan to the attention of the *Subcommittee*:

1. TVI's continued mining operations despite the lack of free and prior informed consent of many CADT holders and the community's rightful leader, Timuay Anoy;
2. recognition of Mount Canatuan as a sacred site of the Subanon people;
3. the threat of eviction of local residents against their will; and
4. the need for stronger international and national legal instruments to protect the rights of indigenous peoples and to regulate Canadian corporate activity abroad.

Given Canadian Ambassador Sutherland's public support of TVI, and the Canada Fund's past financial backing of company-sponsored development projects, it is incumbent upon the Canadian government to investigate these pressing concerns and to take immediate action. KAIROS requests that the *Subcommittee* consider the specific recommendations outlined at the end of this document.

Key Issues and Concerns Regarding Indigenous Land Rights in Canatuan

1. TVI's continued mining operations despite the lack of genuine free and prior informed consent by the affected indigenous community

Both the Philippine Mining Act of 1995 and the 1997 Indigenous Peoples' Rights Act of the Philippines require mining companies to obtain the free, prior and informed consent (FPIC) of affected indigenous communities before operating on ancestral land. While TVI claims to have fulfilled this legal requirement, KAIROS has strong reason to believe that it has not obtained the free and prior informed consent of many Certificate of Ancestral Domain Title holders and the community's rightful leader, Timuay Anoy.

1a. The legitimacy of opposition to the mine.

TVI Pacific dismisses opposition to its mine by Timuay Boy Anoy and others by contesting Anoy's status as "Timuay" or chieftain, and his legitimacy as representative and spokesperson of the Subanon. However, KAIROS has gathered evidence clearly indicating that he is widely recognized as a rightful, traditional, and long-time "Timuay" of the affected Subanon community.

Most importantly, Boy Anoy is recognized as a Timuay by the most senior elder and members of the Subanon traditional law making body (*Gokum*) of the southern part of the Zamboanga Peninsula. Boy Anoy is recognized as a Timuay by officials of the Philippine national government, and indigenous and non-indigenous community members in Canatuan, the municipality of Siocon, and the surrounding area.

On behalf of his community, Timuay Anoy received the Certificate of Ancestral Domain Title (CADT) on June 12, 2003 from President Gloria Macapagal Arroyo.

Jose Anoy's status as Timuay was also unquestionably recognized during meetings that he attended with KAIROS, MiningWatch Canada and various government officials. On October 19 and 20, 2004 he attended meetings in his capacity as Timuay with Commissioner Dominador Calamba of the Philippine Commission on Human Rights (CHR), representatives from the National Commission on Indigenous Peoples (NCIP), including the Head of the Ancestral Domain office, and the Assistant Director of the Philippine Mines and Geosciences Bureau, Edwin Domingo, who affirmed that "no one contests Boy Anoy's leadership." When Timuay Anoy met with officials of the Canadian Embassy, one explicitly expressed how much of an honour it was to meet such a famous Timuay.

On October 16, staff of KAIROS, MiningWatch Canada and local partner organizations accompanied Timuay Anoy for a visit to his home Canatuan, from which he had been barred entry by TVI's security personnel since April 2004. The visit only lasted a few hours, but when community members heard news of Boy Anoy's arrival, approximately 40 adults and many more children gathered to welcome and greet the "exiled" Timuay. Both the NCIP and CHR representatives we met expressed dismay when they heard that Timuay Anoy and several other Subanon and local residents who oppose TVI's operations had been denied or restricted from accessing their homes and ancestral land.

1b. TVI Alignment

TVI negates Boy Anoy's rightful status as Timuay and recognized leader of his community with the support of TVI employee Juanito Tumangkis, President of the current configuration of the Siocon Subano Association Inc (SSAI). TVI entered into a memorandum of agreement the Tumangkis-led SSAI in November 2003, in an apparent effort to demonstrate that it has obtained the community's free, prior and informed consent as required by Philippine law (IPRA-RA 8371).

Mr. Tumangkis and a number of current SSAI members also derive authority from their membership in a non-traditional "Council of Elders" created by the Philippine government in 2002 that voted in favour of open-pit mining on Mount Canatuan. Most recently, Tumangkis has also claimed Timuay status for himself.

However, the most senior elder of the aforementioned Subanon traditional judicial body, or *Gokum*, refutes Tumangkis claim to Timuay status. Moreover, the entire *Gokum* declared illegitimate the Council of Elders to which Tumangkis belongs. The *Gokum* issued an official decree in April 2004 pronouncing that 19 out of the 30 members of this council, including Mr. Tumangkis, are neither legitimate representatives of the Canatuan people, nor legitimate CADT holders because they do not have Timuay ancestry and/or are from regions remote from Canatuan.

The *Gokum's* ruling refutes the authority of this Council and members thereof to enter into a contract with TVI that permits open-pit mining on Mount Canatuan. As stated in the *Gokum's* published ruling (capitals in original): "...the Council of Elders organized and constituted in gross violation of Subanon customs, traditions and practices is declared abolished. Furthermore, all acts entered into by said group of persons be declared NULL AND VOID...There was not FREE PRIOR and INFORMED CONSENT of the Subanon residents of Canatuan."

1c. Opposition to TVI mining operations by many CADT holders

KAIROS has received information that many, if not the majority of CADT holders oppose the TVI mine. It is they, with Timuay Anoy's leadership, who have consistently opposed all mining operations on their land through petitions and pickets, court cases, and presentations at the United Nations Commission on Human Rights. Timuay Anoy and other long-time recognized leaders and CADT holders have also protested TVI's use of Subanon from outside the CADT area as employees and signatories to a Memorandum of Agreement with the company.

In support of the concerns expressed by Timuay Anoy and other indigenous and non-indigenous community members, the National Council of Indigenous Peoples (NCIP) issued an urgent request for a temporary halt to TVI's operations and immediate action on a pending petition for the cancellation of TVI's mining permit. This memo was issued in May 2004, shortly after TVI's open-pit mining operations began. (see attached copy of NCIP memo)

When Timuay Anoy and staff from KAIROS, MiningWatch and local partners met with Commissioner Dominador Calamba of the Philippine Commission on Human Rights (CHR) on October 20, 2004, the Commissioner said that he would ask his colleagues to request the cancellation of TVI's mining permit and call for dialogue between TVI and CHR. Commissioner Calamba also insisted that Timuay Anoy press the National Commission on Indigenous Peoples (NCIP) National office to take action on this and other matters because the local NCIP office in Zamboanga was "not credible" according to the director of CHR Region 9.

During our meeting on October 19 with NCIP National representatives, they also expressed concerns about the NCIP local office's credibility, and assured us that NCIP National would not recognize non-traditional and illegitimate decision-making processes and bodies that appear to have been sponsored by TVI.

2. Recognition of Mount Canatuan as a sacred site of the Subanon people

The tip of Mount Canatuan had already been bulldozed and completely destroyed by the time KAIROS visited the mining site in October 2004.

The primary reason for which Timuay Anoy and many Subanon oppose TVI's mining operations is that Mount Canatuan is regarded as one of their community's most sacred places. The mountain is steeped in historical, cultural and religious significance for the Subanon. Since the time that their ancestors settled in the area, the traditional offering prayer has been performed at the highest peak of the mountain.

Although there is abundant evidence to support wide recognition of this mountain as a sacred place for the Subanon people, TVI completely denies the claim.

As noted in the aforementioned May 2004 Urgent Memo issued by the NCIP (see COPY ATTACHED), "Mount Canatuan in Zamboanga del Norte is considered a sacred place for the Subanon community, descendants of Timuay Manglang." Inclusion of this assertion in this NCIP memo lends credence to legitimacy of Mount Canatuan's cultural significance. Furthermore, during the October 19 meeting with NCIP National representatives, one official stated that the CADT process was fast-tracked for the Subanon of Canatuan and surrounding area precisely because Mount Canatuan is sacred ground.

During KAIROS' visit with communities in Canatuan and Siocon, staff heard detailed accounts from both indigenous and non-indigenous residents of traditional Subanon rites and rituals performed on Mount Canatuan in which they took part. Community members lamented the fact that TVI's open-pit mining operation has permanently disrupted Subanon cultural and traditional practices.

KAIROS staff could fully appreciate the community's deep sense of loss because Given that their identity is so closely intertwined with the land, the very real fear of Timuay Anoy and many Subanon is that TVI's mining operation will result in the destruction of their traditional society, culture and economy.

3. Threat of eviction of local residents against their will

During the KAIROS visit to Canatuan, staff also heard testimonies from several residents that they had been visited by the company and threatened with eviction and legal action if they did not leave.

Then in February 2005, KAIROS received reports that TVI had taken measures to evict local residents against their will. We have seen copies of formal eviction notices that were issued and delivered by TVI which read (emphasis in original): "We **DEMAND** you vacate the company premises and/or mining area within a non-extendible period of FIFTEEN[15] days from receipt hereof. We request your urgent and preferential action on this matter or you will leave us with no other option but to initiate Court action that may result in your criminal and civil liability."

In response to this eviction notice, 110 people of whom some are Subanon, issued a letter of complaint to the Provincial governor of Zamboanga del Norte on Feb. 8 2005. The council of traditional Subanon leaders, Apu' Manglang Glupa' Pusaka', attached a certification to the petition, verifying that the signatories are legal and legitimate residents of Canatuan and the ancestral domain area. Since then, we have been informed that the company continues to expand its open-pit mine, and bulldozers are moving closer to the homes of villagers who have not agreed to relocation.

4. The need for national and international and legal instruments and to regulate Canadian corporate activity abroad and protect the rights of indigenous peoples

KAIROS calls on both the Philippine and Canadian governments to adequately safeguard the rights of local indigenous peoples and other affected community members.

Although the Indigenous Peoples Rights Act of the Philippines upholds FPIC, our partners report that indigenous land and identity rights in the Philippines are most threatened by international large-scale mining interests that do not fully or genuinely comply with this legal requirement and important principle. Based on the information and reports outlined above, KAIROS believes that the TVI case is one example of this. KAIROS has also received reports of indigenous peoples' land rights being violated in other parts of the Philippines and by other Canadian mining companies throughout the world.

As stated in the UN Draft Declaration on the Rights of Indigenous Peoples, there is an urgent need to defend and promote the inherent rights of indigenous peoples, especially their rights to their lands, territories and resources. The need to protect indigenous land rights was also identified by the Canadian Royal Commission on Aboriginal Peoples to govern Canada's relationship with indigenous peoples. Both nationally and internationally, Canada is consistently encouraged to apply the recommendations of the Royal Commission's report. Legislation to regulate Canadian corporate activity abroad is also urgently needed to protect indigenous rights, human rights more broadly, and the environment.

Recommendations to the Subcommittee:

- 1) We urge Subcommittee members and the Canadian government to take leadership in defending and protecting indigenous land rights and the right to control developments on their land (FPIC) through the UN Draft Declaration on the Rights of Indigenous Peoples.
- 2) Given that Canadian companies such as TVI Pacific are involved in controversial projects that are promoted or supported by the Canadian government, we urge subcommittee members to press for Canadian support of international norms, such as the UN Norms for Business, and national legislation to address Canadian corporate activity abroad that would include monitoring and compliance mechanisms to ensure corporate accountability and adherence to environmental and human rights principles.

3) We call on the Subcommittee to recommend to the Canadian government

3.1 Withhold support to TVI's mining activities in Canatuan

3.2 Call on the Philippine government to protect indigenous people and others who are threatened with forcible eviction and mining operations that are rapidly encroaching on their homes and property.

3.3 Consider participation in an independent Fact Finding Mission to Canatuan. Such a mission could be organized in the near future, and possibly include representatives from Canada's indigenous and church community and individuals with expertise in assessing social and environmental impacts of mining operations.

3.4 Encourage TVI Pacific to cooperate with a Human Rights Impact Assessment (HRIA). This would provide an independent, third party assessment of the human rights impact of TVI's mining operation in Canatuan.

KAIROS thanks the Subcommittee on Human Rights and International Development for the opportunity to present this brief.