

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 7741



**INTRODUCED BY REPRESENTATIVES MAXIMO, JR. Y. DALOG,
SOLOMON R. CHUNGALAO AND ALLEN JESSE C. MANGAOANG**

EXPLANATORY NOTE

This bill seeks to protect, recognize and implement the rights of Indigenous Peoples or Indigenous Cultural Communities affected by renewable energy investments in their ancestral lands/domains amending for the purpose Republic Act No. 9513, Otherwise known as "The Renewable Energy Act of 2008."

In 1997, the Tenth Congress passed the Indigenous Peoples Rights Act of 1997 (IPRA) primarily to correct historical injustice. It was labeled as a radical policy reform as it introduced provisions which recognized rights of IPs/ICCs like rights to their ancestral lands/domain, the right to participate and be consulted in matters that affect them and the priority right in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains.

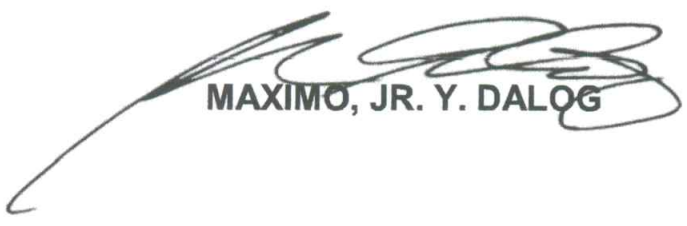
However, to this day, these rights continue to be ignored. This is evident in the implementation of the Renewable Energy Act of 2008 where the Free and Prior Informed Consent (FPIC) comes only after the Renewable Energy Contracts have been awarded by the Department of Energy. This leaves little room for the affected IPs/ICCs to choose which corporation to do the project should they consent. Or worse, they are deprived of the opportunity to develop the project should they reject the project proponent.

In addition, the communities near watershed areas where IPs/ICCs are mostly located are not even recognized or considered in the definition of host communities in hydropower projects in the Implementing Rules and Regulation of the Electric Power Industry Reform Act of 2001 (EPIRA).

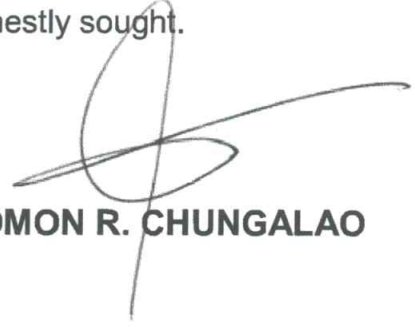
Finally, a careful study also of the FPIC-MOAs that have been forged between RE developers and ICCs specifically on hydroelectric power projects would reveal that the agreement on royalty payments vary from as little as a quarter of a centavo per kilowatt hour (PhP.0025/kwh) to as high as more than eleven centavos per kilowatt hour (.PhP.1142/kwh). To prevent any confusion and abuse, it is also imperative that a minimum royalty payment be stated in the law.

Thus, this bill seeks to recognize the rights of IPs/ICCs laid down in the IPRA and harmonize it with the provisions of the Renewable Energy Act of 2008

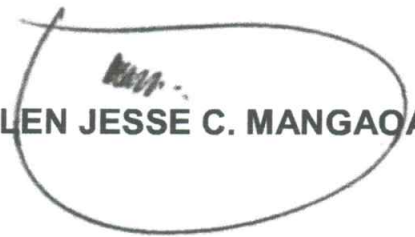
In view of the foregoing, the passage of this bill is earnestly sought.



MAXIMO, JR. Y. DALOG



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**INTRODUCED BY REPRESENTATIVES MAXIMO, JR. Y. DALOG,
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AN ACT
PROTECTING THE RIGHTS OF INDIGENOUS PEOPLES AND
INDIGENOUS CULTURAL COMMUNITIES AFFECTED BY RENEWABLE
ENERGY INVESTMENTS IN THEIR ANCESTRAL LANDS, AMENDING
CERTAIN PROVISIONS OF REPUBLIC ACT 9513, OTHERWISE KNOWN
AS "THE RENEWABLE ENERGY ACT OF 2008"

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. A new subsection denominated as subsection 4(A) before the word "Biomass Energy Systems" in Section 4 of Republic Act 9513, is hereby inserted to read as follows:

"SEC. 4. *Definition of Terms.* - As used in this Act, the following terms are herein defined:

"(A) ANCESTRAL DOMAINS REFER TO ALL AREAS GENERALLY BELONGING TO INDIGENOUS CULTURAL COMMUNITIES OR INDIGENOUS PEOPLES COMPRISING LANDS, INLAND WATERS, COASTAL AREAS, AND NATURAL RESOURCES THEREIN, HELD UNDER A CLAIM OF OWNERSHIP, OCCUPIED OR POSSESSED BY THEMSELVES OR THROUGH THEIR ANCESTORS, COMMUNALLY OR INDIVIDUALLY SINCE TIME IMMEMORIAL, CONTINUOUSLY TO THE PRESENT EXCEPT WHEN INTERRUPTED BY WAR, FORCE MAJEURE OR DISPLACEMENT BY FORCE, DECEIT, STEALTH OR AS A CONSEQUENCE OF GOVERNMENT PROJECTS OR ANY OTHER VOLUNTARY DEALINGS ENTERED INTO BY GOVERNMENT AND PRIVATE INDIVIDUALS, CORPORATIONS, AND WHICH ARE NECESSARY TO ENSURE THEIR ECONOMIC, SOCIAL AND CULTURAL WELFARE. IT SHALL INCLUDE ANCESTRAL LAND, FORESTS, PASTURE, RESIDENTIAL, AGRICULTURAL, AND OTHER LANDS INDIVIDUALLY OWNED

WHETHER ALIENABLE AND DISPOSABLE OR OTHERWISE, HUNTING GROUNDS, BURIAL GROUNDS, WORSHIP AREAS, BODIES OF WATER, MINERAL AND OTHER NATURAL RESOURCES, AND LANDS WHICH MAY NO LONGER BE EXCLUSIVELY OCCUPIED BY INDIGENOUS CULTURAL COMMUNITIES OR INDIGENOUS PEOPLES BUT TRADITIONALLY HAD ACCESS FOR THEIR SUBSISTENCE AND TRADITIONAL ACTIVITIES, PARTICULARLY THE HOME RANGES OF INDIGENOUS CULTURAL COMMUNITIES OR INDIGENOUS PEOPLES WHO ARE STILL NOMADIC OR SHIFTING CULTIVATORS;"

SEC. 2. A new subsection denominated as Subsection 4(a-1) after the word "ancestral domain" in the immediately preceding subsection, is hereby inserted and the old Subsection 4(a) is hereby renumbered as Subsection 4(A-2), to read as follows:

"(A-1) *ANCESTRAL LANDS* REFER TO LAND OCCUPIED, POSSESSED AND UTILIZED BY INDIVIDUALS, FAMILIES AND CLANS WHO ARE MEMBERS OF THE INDIGENOUS CULTURAL COMMUNITIES OR INDIGENOUS PEOPLES SINCE TIME IMMEMORIAL, BY THEMSELVES OR THROUGH THEIR PREDECESSORS-IN-INTEREST, UNDER CLAIMS OF INDIVIDUAL OR TRADITIONAL GROUP OWNERSHIP, CONTINUOUSLY, TO THE PRESENT EXCEPT WHEN INTERRUPTED BY WAR, FORCE MAJEURE OR DISPLACEMENT BY FORCE, DECEIT, STEALTH, OR AS A CONSEQUENCE OF GOVERNMENT PROJECTS AND OTHER VOLUNTARY DEALINGS ENTERED INTO BY GOVERNMENT AND PRIVATE INDIVIDUALS [/CORPORATIONS] OR JURIDICAL ENTITIES, INCLUDING RESIDENTIAL LOTS, RICE TERRACES OR PADDIES, PRIVATE FORESTS, SWIDDEN FARMS AND TREE LOTS;"

SEC. 3. A new subsection denominated as Subsection 4(n-1) after the word "Energy Regulatory Commission," is hereby inserted to read as follows:

"(N-1) *FREE AND PRIOR INFORMED CONSENT* REFERS TO THE CONSENSUS OF ALL MEMBERS OF THE INDIGENOUS CULTURAL COMMUNITIES OR INDIGENOUS PEOPLES TO BE DETERMINED IN ACCORDANCE WITH THEIR RESPECTIVE CUSTOMARY LAWS AND PRACTICES, FREE FROM ANY EXTERNAL MANIPULATION, INTERFERENCE AND COERCION, AND OBTAINED AFTER FULLY DISCLOSING THE INTENT AND SCOPE OF THE ACTIVITY, IN A LANGUAGE AND PROCESS UNDERSTANDABLE TO THE COMMUNITY;"

SEC. 4. A new subsection denominated as Subsection 4(bbb-1) after the word "Transmission of Electricity," is hereby inserted to read as follows:

"(BBB-1) "WATERSHED" IS A LAND AREA DRAINED BY A STREAM OR FIXED BODY OF WATER AND ITS TRIBUTARIES HAVING COMMON OUTLET FOR SURFACE RUN-OFF. IT ENCOMPASSES THE TOPOGRAPHIC AND HYDROLOGICAL BOUNDARIES OF THE TOTAL LAND AREA THAT CONTRIBUTES TO THE FLOW OF THE WATER BODY, UPSTREAM OF THE WATER TAPPING POINT, SUCH AS THE DAM CREST.

SEC. 5. A new section denominated as Section 13-A is hereby inserted after Section 13 of the same Act to read as follows:

"SEC. 13-A. **ECOLOGICAL FEES.** TO ENSURE THE CONTINUOUS SUPPLY OF WATER IN HYDROPOWER INVESTMENTS, THE CONCERNED GENERATION COMPANY SHALL PAY AN ECOLOGICAL FEE EQUAL TO ONE-HALF PERCENT (0.5%) OF THE GROSS RECEIPTS OF THE RENEWABLE ENERGY RESOURCE DEVELOPER FROM THE SALE OF RENEWABLE ENERGY PRODUCED AND SUCH OTHER INCOME INCIDENTAL TO AND ARISING FROM THE RENEWABLE ENERGY GENERATION, TRANSMISSION, AND SALE OF ELECTRIC POWER SOLD PER YEAR TO BE USED EXCLUSIVELY FOR THE MAINTENANCE AND PRESERVATION OF THE WATERSHED WHICH SUPPLIES WATER TO THE HYDROPOWER PLANT. SAID ECOLOGICAL FEE SHALL BE GIVEN DIRECTLY TO THE LOCAL GOVERNMENT UNITS WHERE THE WATERSHED IS LOCATED."

SEC. 6. A new section denominated as Section 14-A is hereby inserted after Section 14 of the same Act to read as follows:

"SEC. 14-A. *COMPLIANCE WITH FREE AND PRIOR INFORMED CONSENT.* – NO RE APPLICATION OF ANY RE DEVELOPER SHALL BE ACCEPTED WITHOUT THE FREE AND PRIOR INFORMED CONSENT OF THE INDIGENOUS CULTURAL COMMUNITY OR INDIGENOUS PEOPLES CONCERNED AND A CERTIFICATION PRECONDITION ISSUED BY THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES, AS SPECIFIED UNDER SECTION 59 OF REPUBLIC ACT NO. 8371, OTHERWISE KNOWN AS THE "*INDIGENOUS PEOPLES RIGHTS ACT OF 1997*," UPON VERIFICATION BY THE DOE, THAT A CONTRACT AREA OR A PREDETERMINED AREA IS WITHIN OR COVERS AN ANCESTRAL LAND/DOMAIN

SEC. 7. A new section denominated as Section 14-B is hereby inserted after Section 14-A of the immediately preceding section to read as follows:

"SEC. 14-B. *ROYALTY PAYMENTS FOR INDIGENOUS CULTURAL COMMUNITIES.* – IN THE EVENT OF AN AGREEMENT BETWEEN THE GENERATION COMPANY AND THE INDIGENOUS CULTURAL COMMUNITIES OR INDIGENOUS PEOPLES PURSUANT TO THE

PRECEDING SECTION, THE GENERATION COMPANY SHALL PAY THE INDIGENOUS CULTURAL COMMUNITIES OR INDIGENOUS PEOPLES CONCERNED, A ROYALTY PAYMENT EQUAL TO THREE FOURTHS PERCENT (.75%) OF THE GROSS RECEIPTS OF THE RENEWABLE ENERGY RESOURCE DEVELOPER FROM THE SALE OF RENEWABLE ENERGY PRODUCED AND SUCH OTHER INCOME INCIDENTAL TO AND ARISING FROM THE RENEWABLE ENERGY GENERATION, TRANSMISSION, AND SALE OF ELECTRIC POWER SOLD PER YEAR. THIS ROYALTY PAYMENT SHALL FORM PART OF A TRUST FUND FOR THE SOCIO-ECONOMIC WELL-BEING OF THE INDIGENOUS CULTURAL COMMUNITIES OR INDIGENOUS PEOPLES.”

SEC. 8. ***Implementing Rules and Regulations.*** – Within ninety (90) days from the effectivity of this Act, the Secretary of the Department of Energy, in coordination with the Chairperson of the National Commission on Indigenous People, Indigenous Cultural Communities or Indigenous Peoples’ Representatives, and relevant stakeholders, promulgate the rules and regulations necessary for the effective implementation of the provisions of this Act.

SEC. 9. ***Repealing Clause.*** – All laws, decrees, executive orders, administrative orders or parts thereof inconsistent with the provisions of this Act are hereby repealed, amended, or modified accordingly.

SEC. 10. ***Effectivity Clause.*** – This Act shall effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,