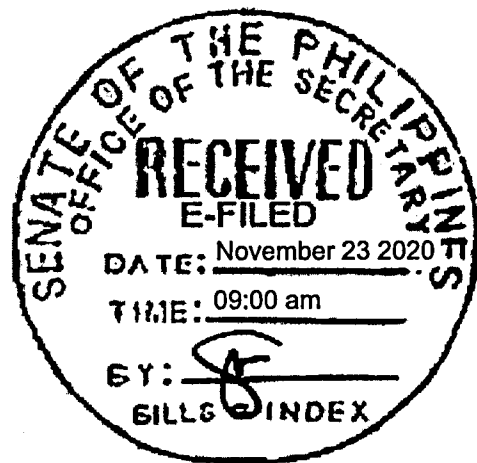


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)



SENATE

P.S. Res. No. 578

Introduced by **SENATOR LEILA M. DE LIMA**

RESOLUTION
DIRECTING THE APPROPRIATE SENATE COMMITTEE TO CONDUCT
AN INQUIRY, IN AID OF LEGISLATION, ON THE REPORTED
DEFICIENCIES FLAGGED BY THE COMMISSION ON AUDIT (COA) IN
THE REQUIREMENTS REQUIRED TO OBTAIN THE CONSENT OF
INDIGENOUS PEOPLES, AND OTHER IRREGULARITIES, IN THE
IMPLEMENTATION OF THE KALIWA DAM PROJECT

1 WHEREAS, Section 2(b) of Republic Act (R.A.) No. 8371, otherwise known as
2 the “Indigenous Peoples’ Rights Act of 1997” declares that “[t]he State shall protect the
3 rights of ICCs/IPs to their ancestral domains to ensure their economic, social and
4 cultural well-being and shall recognize the applicability of customary laws governing
5 property rights or relations in determining the ownership and extent of ancestral
6 domain”;

7 WHEREAS, Section 3(g) of the same defines free and prior informed consent
8 (FPIC) as “the consensus of all members of the indigenous cultural
9 communities/indigenous peoples (ICCs/IPs) to be determined in accordance with
10 their respective customary laws and practices, free from any external manipulation,
11 interference and coercion, and obtained after fully disclosing the intent and scope of
12 the activity, in a language and process understandable to the community”;

13 WHEREAS, the idea of FPIC was conceptualized as an instrument of
14 empowerment which enables ICCs/IPs to exercise self-determination and freely
15 pursue their economic, social and cultural development while remaining within
16 constitutional parameters;

17 WHEREAS, Rule IV, Part III, Section 3 of the Implementing Rules and
18 Regulations of the Indigenous Peoples’ Rights Act of 1997 declares, in part, that

1 “ICCs/IPs shall, within their communities, determine for themselves policies,
2 development programs, projects and plans to meet their identified priority needs and
3 concerns. The ICCs/IPs shall have the right to accept or reject a certain development
4 intervention in their particular communities”;

5 WHEREAS, the New Centennial Water Source-Kaliwa Dam Project is one of
6 several projects being pursued by the Metropolitan Waterworks and Sewerage System
7 (MWSS) under its Water Security Plan for 2018-2023. A flagship project under the
8 Duterte administration’s “Build, Build, Build” (BBB) program, it will be built within
9 the jurisdiction of Brgy. Pagsangahan, General Nakar municipality, and Brgy.
10 Magsaysay, Infanta municipality, both in Quezon Province. The project is expected to
11 provide redundancy of water source and augment supply from Angat Dam and prevent
12 water shortage problems for the ever-growing population of Metro Manila;¹

13 WHEREAS, despite its purported benefits, issues and controversies have
14 surrounded the project since its inception. With 85 percent of the project to be
15 financed through a loan from China, critics have pointed out the onerous terms of the
16 deal as a “debt trap”² which could force the Philippine government to surrender its
17 patrimonial assets to China should it default on its payments;³

18 WHEREAS, in an audit observation memorandum dated 10 June 2019, the
19 Commission on Audit (COA) noted several irregularities in the awarding of the
20 contract for construction of the Kaliwa Dam Project. The report noted that the
21 technical working group (TWG) of the MWSS failed to observe proper bidding and
22 vetting procedures before it awarded the project to China Energy Engineering Corp.
23 (CEEC) in December 2018;⁴

24 WHEREAS, in terms of viability, the Kaliwa Dam Project barely hurdled the
25 evaluation study conducted by the National Economic and Development Authority
26 (NEDA) back in 2013. In a separate study conducted by the World Bank in 2012, the

¹ Mayuga, J. L. (28 May 2020). *All eyes on the Kaliwa Dam project: Will its benefits outweigh the costs?* Retrieved November 18, 2020, from <https://businessmirror.com.ph/2020/05/28/all-eyes-on-the-kaliwa-dam-project-will-its-benefits-outweigh-the-costs/>

² IBON Media & Communications. (26 March 2019). *Gov’t designed Kaliwa loan to favor China—IBON.* Retrieved November 18, 2020, from <https://www.ibon.org/govt-designed-kaliwa-loan-to-favor-china-ibon/>

³ Buan, L. (29 March 2019). *Carpio warns against similar waivers to China in Kaliwa dam project.* Retrieved November 18, 2020, from <https://www.rappler.com/nation/carpio-warns-against-similar-waivers-china-kaliwa-dam-project>

⁴ Marcelo, E. (20 August 2019). *COA spots irregularities in Kaliwa Dam deal.* Retrieved November 18, 2020, from <https://www.philstar.com/headlines/2019/08/20/1944865/coa-spots-irregularities-kaliwa-dam-deal>

1 project altogether failed to pass the decision criteria for the economic viability test.
2 The World Bank also provided evidence that the Kaliwa Dam could prove
3 disadvantageous for consumers;⁵

4 WHEREAS, in a statement by the Catholic Bishops' Conference of the
5 Philippines (CBCP), the project also figures to have an impact on biodiversity as it will
6 submerge almost 300 hectares of forest ecosystems in the Sierra Madre, endangering
7 126 endemic and endangered species of plants and wildlife, and destroying the
8 biodiversity of the area. It further added that more than 100,000 people downstream
9 will be adversely affected by possible flooding if the dam were constructed;⁶

10 WHEREAS, the people most affected by this project are the local Dumagat-
11 Remontado IPs who are facing dislocation and displacement from their ancestral
12 domains and the destruction of their cultural identities and way of life. In September
13 2019, it was reported that the IPs of General Nakar overwhelmingly rejected the
14 project in a series of assemblies intended to obtain the FPIC of the local communities;⁷

15 WHEREAS, back in August, amid the worsening COVID-19 pandemic, it was
16 reported that construction of the access road leading to the planned reservoir in
17 General Nakar town in Quezon had already begun despite the fact that the project still
18 has neither prior consent from the indigenous communities nor an environmental
19 clearance;⁸

20 WHEREAS, in its 2019 Annual Audit Report on the MWSS released earlier in
21 September, the COA once again raised issues regarding the Kaliwa Dam Project over
22 the issuance of a notice to proceed (NTP), which included "deficiencies" in some of the
23 requirements related to consent from affected indigenous peoples;⁹

⁵ Cruz, J. (1 June 2019). *[ANALYSIS] Is the Kaliwa Dam actually viable?* Retrieved November 18, 2020, from <https://www.rappler.com/voices/thought-leaders/development-is-kaliwa-dam-actually-viable>

⁶ Santos, T. G. (28 February 2020). *Stop Kaliwa Dam construction - CBCP*. Retrieved November 18, 2020, from <https://newsinfo.inquirer.net/1234441/stop-kaliwa-dam-construction-cbc>

⁷ Conde, M. (8 September 2019). *Quezon province's IPs reject Kaliwa Dam project*. Retrieved November 18, 2020, from <https://www.rappler.com/nation/quezon-province-indigenous-people-reject-kaliwa-dam-project>

⁸ Rappler.com. (11 August 2020). *As Kaliwa Dam project continues, IP leaders urge gov't prioritize pandemic response*. Retrieved November 18, 2020, from <https://www.rappler.com/moveph/indigenous-people-leaders-urge-government-prioritize-coronavirus-pandemic-response>

⁹ Mercado, N. A. (11 September 2020). *Questions over Kaliwa Dam Project: COA cites 'deficiencies' in IPs' consent*. Retrieved November 18, 2020, from <https://newsinfo.inquirer.net/1334246/questions-over-kaliwa-dam-project-coa-cites-deficiencies-in-ips-consent>

1 WHEREAS, the COA noted deficiencies in the *Resolusyon ng Pagpayag* which
2 is a precondition for the granting of the Environmental Compliance Certificate (ECC)
3 and would signify the IPs' acceptance of the proposed project;¹⁰

4 WHEREAS, in its examination of the *Resolusyon ng Pagpayag* of the
5 Dumagat-Remontado tribe of General Nakar, Quezon, the COA revealed several
6 "deficiencies which cast doubts on the validity of the Resolution as well as the
7 acceptability and legitimacy of the signatures gathered";¹¹

8 WHEREAS, the COA also noted the "dubious/questionable character of the
9 consent of the IP members is bolstered" by a Senate hearing conducted earlier in
10 January where several stakeholders and groups from various sectors, including the
11 tribal groups located in the affected areas, were invited. These groups testified that
12 they were neither consulted nor informed on the implementation of the project and
13 their voices were disregarded in the dialogues conducted during the community
14 assemblies conducted. They had even cast doubts on the eligibility of the members
15 who had signed the *Resolusyon ng Pagpayag* ;¹²

16 WHEREAS, these COA findings are altogether alarming as these indicate that
17 the consent of the IPs was ill-obtained and did not follow standard operating
18 procedure required by law. Unfortunately, these incidents of fraudulent compliance
19 with the FPIC requirement are not uncommon. Unscrupulous persons, and in some
20 cases even State agents, made use of devious and unlawful methods aimed at obtaining
21 FPIC of ICCs/IPs in order to evict them from their ancestral lands. These methods
22 range from falsification of records of consent and the bribery of local elites to the
23 militarization of communities, all of which have led to extortion, coercion, and, at
24 times, outright violence against indigenous peoples and their communities;¹³

25 WHEREAS, the situation of indigenous peoples worldwide has been described
26 as that of centuries' worth of deprivation, assimilation, and genocide. Deprivation
27 comes in terms of rights, specifically, the non-recognition of the right to traditionally-
28 owned and managed land, territories and resources, in addition to development.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Oxfam America. (September 2013). *Free Prior and Informed Consent in the Philippines: Regulations and Realities*. Retrieved November 18, 2020, from <https://s3.amazonaws.com/oxfam-us/www/static/media/files/fpic-in-the-philippines-september-2013.pdf>

1 Internal colonization of indigenous peoples by the State is seen through the lens of
2 majority rule and national development and security to decide the future of indigenous
3 peoples, catalyzing a worldwide move to displace indigenous peoples by forcing them
4 out from their ancestral lands in order to facilitate this change;¹⁴

5 WHEREAS, the World Commission on Dams states that “[l]arge dams have had
6 serious impacts on the lives, livelihoods, cultures and spiritual existence of indigenous
7 and tribal peoples. Due to neglect and lack of capacity to secure justice because of
8 structural inequities, cultural dissonance, discrimination and economic and political
9 marginalization, indigenous and tribal peoples have suffered disproportionately from
10 the negative impacts of large dams, while often being excluded from sharing in the
11 benefits”;¹⁵

12 WHEREAS, the social, cultural, environmental, and economic costs of the
13 Kaliwa Dam Project appear to outweigh its purported benefits yet the government
14 remains steadfast in its commitment to push forward without regard for the issues and
15 controversies that have recently surfaced;

16 WHEREAS, these irregularities cast doubt on the validity and legality of
17 implementation of the project and there is a need to investigate these issues and
18 determine once and for all the viability of the Kaliwa Dam Project and the impacts it
19 will have on its primary stakeholders;

20 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE, to direct the
21 appropriate Senate Committee to conduct an inquiry, in aid of legislation, on the
22 reported deficiencies flagged by the Commission on Audit (COA) in the requirements
23 required to obtain the consent of indigenous peoples, and other irregularities, in the
24 implementation of the Kaliwa Dam Project.

Adopted,


HEILA M. DE LIMA

¹⁴ Asia Indigenous Peoples Pact (AIPP) Foundation. (2012). *Development aggression as economic growth: A report by the Asia Indigenous Peoples Pact* (pp. 19-20, Publication). Asia Indigenous Peoples Pact (AIPP) Foundation. Retrieved November 18, 2020, from https://iphndefenders.net/wp-content/uploads/2015/11/AIPP_Report_4web_final.pdf

¹⁵ World Commission on Dams. (November 2000). *Dams and development: A new framework for decision-making*. Retrieved November 18, 2020, from http://awsassets.panda.org/downloads/wcd_dams_final_report.pdf