

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

SENATE



COMMITTEE REPORT NO. 275

Submitted jointly by the Committees on Cultural Communities and on Public Works on
July 19, 2021.

RE : Proposed Senate Resolution No. 76

Recommending the adoption of the recommendations and their immediate implementation.

Sponsor : Senator Imee R. Marcos

MR. PRESIDENT:


The Committees on Cultural Communities and on Public Works, to which was referred **P.S. Res. No. 76**, introduced by Sen. Imee R. Marcos, entitled:

**RESOLUTION
TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE
IMPACT OF THE CONSTRUCTION OF THE KALIWA DAM
PROJECT IN THE QUEZON PROVINCE, THEREBY
SAFEGUARDING THE RIGHTS OF INDIGENOUS PEOPLE**

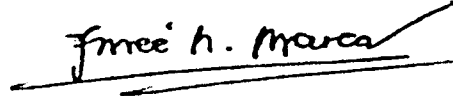
have considered the same and have the honor to submit their report on their inquiry back to the Senate, recommending the adoption of the recommendations as contained therein and their immediate implementation.

Respectfully submitted:

Chairpersons



EMMANUEL D. PACQUIAO
Committee on Public Works
Member, Committee on Cultural Communities



IMEE R. MARCOS
Committee on Cultural Communities

Vice-Chairpersons



RAMON BONG REVILLA JR.
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SONNY ANGARA
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Members



PANFILO M. LACSON
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MANUEL "LITO" M. LAPID
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Committee on Public Works

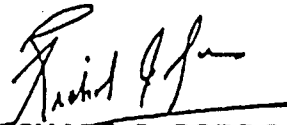
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RALPH G. RECTO
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Minority Leader

HON. VICENTE C. SOTTO III
Senate President


RICHARD J. GORDON
Committee on Cultural Communities
Committee on Public Works

NOTE:
With reservations.
May amend

 *subject to interpellation.*
LEILA M. DE LIMA
Committee on Cultural Communities
Committee on Public Works

I. INTRODUCTION

A. PREFATORY STATEMENT

"Land is important. Indigenous leaders are obligated to protect the ancestral land, ensuring sustainable and secure access to farm lands for the whole community."

Timuey Ronaldo 'Jojo' Ambangan
Sinimburanen, Eruromanen ne Menuvu

Land for the indigenous peoples is not simply a source of livelihood and sustenance, but is integral to their identities as peoples. We, therefore, owe it to our indigenous cultural communities to ensure that they receive their rightful, equitable, and fair share of the resources of the land they have been nurturing not just for generations but from time immemorial.¹

The right of the indigenous cultural communities/indigenous peoples (ICCs/IPs) to their ancestral lands is protected by no less than the supreme law of the land, the *1987 Constitution*.

It is only proper, therefore, that the free and prior informed consent of the ICCs/IPs should first 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, before anything can be done within the territories of the ancestral lands of any ICC/IP.

Thus, *Section 7(c) of Republic Act No. 8371*, also known as "*The Indigenous Peoples' Rights Act of 1997*", provides for the right of the ICCs/IPs "to stay in the territory and not to be removed therefrom. No ICCs/IPs will be relocated without their

¹ Sen. Risa Hontiveros, TSN, January 22, 2020, pp. 62-63.

free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible as determined by agreement or through appropriate procedures, ICCs/IPs shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury”.

Section 57 of the same law provides that the “ICCs/IPs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: Provided, That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally, That the [National Commission on Indigenous Peoples] may exercise visitatorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract.”

This same right is echoed in the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*, which was adopted by the United Nations on September 13, 2007 with 144 States voting in favor, including the Philippines, 4 States voting against, and 11 States abstaining.

Article 32(2) of the *UNDRIP* provides that, “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in

connection with the development, utilization or exploration of mineral, water or other resources.”

Now that activities are being done on the ancestral lands before the conclusion of the free and prior informed consent despite all the laws protecting our ICCs/IPs, who have resisted political, social, and cultural inroads of colonization, non-indigenous religions and cultures since time immemorial, one could not help but raise the question—is this tantamount to modern day oppression of ICCs/IPs?

Aptly put by Sen. Imee R. Marcos, Chairperson of the Committee on Cultural Communities - “... *Gustong-gusto po natin na matapos ang project na ito kung kinakailangan at makakatulong sa bansa. Subalit kung yuyurakan naman ang mga karapatan ng ating mga katutubo, hindi naman tayo papayag. ...*”²

B. BACKGROUND

The main sources of Metro Manila’s water supply are the Angat, Ipo, and La Mesa Dams. The water from these dams are then processed by the La Mesa and Balara Treatment Plants. The La Mesa Water Treatment Plant can only process 2,400 MLD (million liters per day) of raw water, while the Balara Treatment Plant has a full production capacity of 1,600 MLD. Therefore, when both Balara and La Mesa Treatment Plants are in operation, the total processing capacity will be 4,000 MLD.³

As early as 2003, after seeing the demand patterns and population growth projections in their respective concession areas, Manila Water Company, Inc. (Manila Water) and Maynilad Water Services Inc. (Maynilad) communicated to Metropolitan Waterworks and Sewerage System (MWSS) the need to develop new water sources.

² TSN, February 17, 2020, p. 73.

³ Metropolitan Waterworks and Sewerage System, *Metro Manila Water Supply System* [website], <http://mwss.gov.ph/learn/metro-manila-water-supply-system/#:~:text=The%20main%20sources%20of%20Metro,to%20clean%20and%20potable%20water.>, (accessed 22 October 2020).

Demand and supply projections of the MWSS and the concessionaires generally agreed that towards the end of the second decade of privatization since 1997, the gap between raw water supply and customer demand will be uncomfortably tight as summer peak demand equals the available raw water supply.⁴

To address the shortage of water supply in the Metro Manila area, the New Centennial Water Source-Kaliwa Dam Project (Kaliwa Dam Project) was approved by the National Economic and Development Authority (NEDA) Board on May 29, 2014 with its financing to be provided for under a Public-Private Partnership (PPP) scheme worth P18.5 Billion.⁵ The Kaliwa Dam Project aims to provide 600 MLD to help meet future potable water demand of Metro Manila and reduce dependence on the Angat Dam.⁶

A meeting was held on January 6, 2017 among NEDA, the Department of Finance (DOF), and MWSS to discuss projects for possible funding under the China Loan Package. Thus, on January 17, 2017, the Kaliwa Dam Project was submitted by MWSS to NEDA for funding under the package.⁷

Consequently, from PPP, the project will now be financed through the Official Development Assistance (ODA) with China funding 85 percent of the P12.2 Billion project cost. The Philippine Government will be shouldering only 15 percent of the cost, which is estimated to be around P1.8 Billion.⁸

⁴ Manila Water Services, Inc., *Water Crisis in the Manila Concession* [website], <https://reports.manilawater.com/2019/special-reports/water-supply-crisis>, (accessed 22 October 2020).

⁵ Metropolitan Waterworks and Sewerage System, *NEW WATER SOURCE: KALIWA DAM VS INTAKE WEIR (JAPANESE PROPOSAL)* [website], <http://mwss.gov.ph/why-the-ncws-kaliwa-dam-instead-of-the-japanese-proposed-kaliwa-weir-project/>, (accessed 22 October 2020).

⁶ MWSS Comprehensive Community Development Plan, p. 1.

⁷ *Id.*

⁸ *Id.*

The Kaliwa Dam Project was approved by the NEDA Board on June 27, 2017. Under the China ODA, three Chinese firms should take part in the bidding. It was then awarded to China Energy Engineering Corporation, one of three Chinese firms nominated by the China Ministry of Commerce.⁹

The loan agreement for the Kaliwa Dam Project was signed on November 20, 2018 by MWSS Administrator Reynaldo V. Velasco and China Energy Chairman Wang Jian Ping witnessed by President Rodrigo Roa Duterte and PROC President Xi Jinping during the latter's State visit to the Philippines.¹⁰

The headworks will consist of a ± 60-meter high dam across Kaliwa River within the jurisdiction of the municipalities of General Nakar and Infanta, Quezon. Raw water will be conveyed through a 28-kilometer tunnel with its outlet portal in Teresa, Rizal. The Kaliwa Dam Project terminates at a stilling basin just downstream of the tunnel.¹¹

The Kaliwa Dam Project is to be built in the ancestral domain of the Dumagat/Remontado ICCs in General Nakar, Quezon, with Certificate of Ancestral Domain Title (CADT) No. R04-NAK-1208-097 with the scope of location at General Nakar, Quezon and portion of Dingalan Aurora, a total land area of 163,641.46 hectares (has), and with 3,515 IP Right holders; and the ancestral domain of Dumagat/Remontado ICCs in Tanay, Rizal with CADT No. R04-TAN-0709-130 with the scope of location at Tanay, Rizal and portion of Santiago, Laguna, a total land area of 24,664.01 has, and with 6,294 IPs.¹²

In 2019, the water level in La Mesa Dam was at 74.87 meters above sea level, lower by 4.44 meters compared to average end-of-year levels in the past decade. The stored water in La Mesa reservoir was rapidly being depleted and in the first week of

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Supra*, note 4.

¹² NCIP Position Paper, July 14, 2020, p. 2.

March 2019, the water level reached an all-time low, below the bottom gate of the intakes. With water demand growing over the years while raw water allocations from Angat Dam have remained constant, the summer supply deficit reached a level where stored water in La Mesa reservoir can no longer provide enough buffer.¹³ Manila Water can no longer keep up with the demand from 1,600 MLD to 1,740 MLD.

With the Metro Manila water supply crisis looming, the Kaliwa Dam Project and the objections to its implementation were thrust into the spotlight. Thus, on August 6, 2019, Sen. Imee R. Marcos, Chairperson of the Committee on Cultural Communities, filed *Proposed Senate Resolution No. 76*, seeking to inquire, in aid of legislation, on the impact of the construction of The Kaliwa Dam Project in the Quezon Province, thereby Safeguarding the Rights of Indigenous People.¹⁴

II. ACTION OF THE COMMITTEES

Proposed Senate Resolution No. 76, authored by Sen. Marcos, was primarily referred to the Committee on Cultural Communities and secondarily to the Committee on Public Works during the Plenary Session on August 13, 2019.¹⁵

The Committee referral gave the Committee on Cultural Communities, joint with the Committee on Public Works, jurisdiction to conduct the initial public hearing on August 27, 2019, followed by two other public hearings on January 22, 2020 and February 17, 2020.

The first public hearing was called in order to discuss the contract for the Kaliwa Dam Project and to hear the positions of the stakeholders.

¹³ *Supra*, note 2.

¹⁴ Senator Marcos, Proposed Senate Resolution No. 76, p. 1.

¹⁵ Journal of the Senate, August 13, 2019, p. 230.

The resource persons who attended the first public hearing are the following:

1. Chairman Allen A. Capuyan, National Commission on Indigenous Peoples (NCIP);
2. Dir. Rosenan Almonte, Director IV, Region IVB, NCIP;
3. Ms. Yolanda Tangco, Assistant Regional Director, Department of Public Works and Highways (DPWH), Region IV;
4. Mr. Arturo E. Fadriquela, Department of Environment and Natural Resources (DENR), Region IV-A;
5. Ms. Marquez, Commission on Audit (COA);
6. Ms. Maria Nancy J. Uy, MWSS;
7. Engr. Delfin Sespeñe, MWSS;
8. Engr. Archangel Eugenio, MWSS;
9. Mr. Marcelino S. Tena, Samahan ng mga Katutubong Agta, Dumagat, Remontado na Binabaka at Pinagtatanggol ang Lupaing Ninuno (SAGIBIN-LN);
10. Ms. Ma. Clara R. Dullas, Samahang Uugit sa Karapatan ng mga Katutubong Dumagat-Remontado sa Lupang Ninuno (SUKATAN-LN), Daraitan, Tanay, Rizal;
11. Atty. Aaron Pedrosa, STOP Kaliwa Dam;
12. Ms. Magdalena Iligan, STOP Kaliwa Dam;

13. Mr. Rovik Santiago Obanil, STOP Kaliwa Dam; and
14. Dr. Rene Ofreneo, Freedom from Debt Coalition.

The second public hearing was called so that (1) MWSS can send the responsible legal officer to present the terms of the Kaliwa Dam Project contract, ODA, and the rest of the relevant documents so that the Committees can inquire finally and completely into the legality of the undertaking, (2) COA can furnish the Committees with the reply of the MWSS and the subsequent rejoinder, and (3) the other resource persons will be able to submit the environmental impact assessment studies that show alternative solutions in lieu of the construction of Kaliwa Dam.

The resource persons who attended the second public hearing are the following:

1. Chairman Allen A. Capuyan, NCIP;
2. Commissioner Norberto Navarro, NCIP;
3. Engr. Katherine Gullunan, NCIP;
4. Lt Gen Emmanuel Salamat (Ret), Administrator, MWSS;
5. Engr. Leonor Cleofas, Deputy Administrator, MWSS;
6. Ms. Maria Nancy J. Uy, COA;
7. Ms. Cynthia C. Herrera, Audit Team Leader, COA-MWSS;
8. Engr. Regina Paula Eugenio, Environmental Management Bureau (EMB),
DENR;

9. Mr. John Edward T. Ang, EMB, DENR;
10. Mr. Octavio Pranada, IP Leader of Tanay, Rizal;
11. Ms. Ma. Clara R. Dullas, SUKATAN-LN, Daraitan, Tanay, Rizal;
12. Ms. Conchita Calzado, Indigenous Peoples Leader, General Nakar, Quezon;
13. Ms. Thelma Aumentado, TRIBAL, General Nakar, Quezon;
14. Atty. Aaron Pedrosa, STOP Kaliwa Dam;
15. Father Pete Montallana, STOP Kaliwa Dam;
16. Atty. Pocholo Labog, Legal Rights and Natural Resources Center; and
17. Mr. Ruben Guieb, Environmental Scientist.

The third public hearing was called to inquire more about the reports of ICC/IP rights violations in relation to the Kaliwa Dam Project and to hear the position of the local government units (LGUs) regarding the access road being built for the project.

The resource persons who attended the third public hearing are the following:

1. Dir. Hazel Baliatan, Public Investment Staff, NEDA;
2. Atty. Edward Mananes, Chief Legal, Region IV-A, DPWH;
3. Engr. Katherine Gullunan, NCIP;
4. Mr. Lupo Telan, Region IV-A, DENR;

5. Atty. Archie C. Asuncion, OIC Deputy Executive Director, National Water Resources Board (NWRB), DENR;
6. Engr. Lene Ramboyong, EMB, DENR;
7. Lt Gen Emmanuel Salamat (Ret), Administrator, MWSS;
8. Engr. Leonor Cleofas, Deputy Administrator, MWSS;
9. Engr. Ryan James Ayson, MWSS;
10. Mr. Adolfo Gallanosa Jr., Province of Rizal;
11. Mr. Dino Tanjuatco, Province of Rizal;
12. Engr. Cesar Cortez, Province of Rizal;
13. Mr. Adorable Sunga, Municipal Planning and Development Coordinator (MPDC), Tanay, Rizal;
14. Ms. Conchita Calzado, Indigenous Peoples Leader, General Nakar, Quezon;
15. Ms. Thelma Aumentado, TRIBAL, General Nakar, Quezon;
16. Mr. Rodrigo Piston, Kaksaan Tribe;
17. Atty. Aaron Ryan Roset, STOP Kaliwa Dam;
18. Father Pete Montallana, STOP Kaliwa Dam;

19. Mr. Conrado R. Vargas, STOP Kaliwa Dam; and

20. Mr. Ruben Guieb, Environmental Scientist.

III. ISSUES

The legislative inquiry focuses on whether the laws protecting indigenous peoples rights were followed in the course of implementing the Kaliwa Dam Project, specifically:

1. whether activities in relation to the Kaliwa Dam Project were undertaken prior to the finalization of the free and prior informed consent (FPIC) process in violation of the ICCs/IPs protected rights;

2. whether DPWH should cease and desist in the construction of the access road until the FPIC process is concluded, the environmental compliance certificate (ECC) is issued, and all the other requirements are complete; and

3. whether the current laws and rules and regulations should be amended to align the FPIC process, DENR, and DPWH in relation to projects involving ancestral lands of the ICCs/IPs.

IV. DISCUSSION

A. August 27, 2019 Public Hearing

During the initial public hearing, Dir. Almonte, Director IV of NCIP-Region IVB, informed the Committees that the FPIC process on the Kaliwa Dam Project is still ongoing. He reported that the first community assemblies were already one hundred percent completed.¹⁶

¹⁶ TSN, August 27, 2019, pp. 79-80.

Dir. Almonte stated that for the second community assemblies, the six clusters already completed the consensus-building. Lakbay Aral at Ipo Dam and Angat Dam was also undertaken for four clusters. He added that NCIP plans to do Lakbay Aral for the two remaining clusters the following month.¹⁷

Thereafter, Committee on Cultural Communities Chairperson, Sen. Marcos, asked Atty. Pedrosa of STOP Kaliwa Dam the circumstances surrounding when the Dumagats walked out in one of the meetings, which was a joint consultation with DENR.¹⁸ Atty. Pedrosa answered that during that meeting, they raised the jurisdictional issue of lack of publication prior to the public hearing.¹⁹

When Sen. Marcos asked DENR to comment on the lack of publication issue, Mr. Fradiquela of DENR CALABARZON answered that the hearing was conducted by EMB and that DENR CALABARZON was just a mere invitee.²⁰ This caused Sen. Marcos to comment that the department is too fragmented due to lack of coordination.²¹

Atty. Pedrosa pointed out that the violation is not only the lack of notice because when they cited *DENR Administrative Order 2017-15*, which sets the guidelines for public participation, they cited the instances where the community affected does not have access to written notices or even online. The EMB, DENR, or the proponent (in this case, the MWSS), should have gone to the community seven days before the scheduled hearing and for two consecutive days within the seven-day period, there should have been someone from the EMB, DENR, or MWSS who would have reminded the community of the impending hearing. This issue was raised by the

¹⁷ *Id.*, p. 80.

¹⁸ *Id.*

¹⁹ TSN, August 27, 2019, pp. 81-82.

²⁰ *Id.*, p. 83.

²¹ *Id.*

ICCs/IPs during that hearing that they only knew about the hearing a day before it was conducted.²²

Another violation cited was that according to the DENR website the posting should be twenty (20) days prior to the hearing. However, the notice was only posted on August 14, which was inadequate. When they raised the jurisdictional issues, the hearing still went ahead so they just decided to walk out.²³

Dir. Almonte added that aside from jurisdictional issues being mentioned by Atty. Pedrosa, NCIP requires that an ECC should first be issued. He added, however, that the ECC is already being processed by the DENR.²⁴

Chairman Capuyan of NCIP also clarified that the completion of assemblies and the results of the assemblies are two different matters. NCIP stated that the first assembly, second assembly, and consensus building for all six clusters were already completed but the results of these assemblies are different.²⁵

Mr. Tena of SAGIBIN-LN also stated that even before the assembly was conducted, the *katutubo* already requested that they be furnished with the documents on the Kaliwa Dam Project translated in Tagalog so that they will be able to understand but they still have not received any.²⁶ He also mentioned that when they attend the assemblies, they were prevented from talking. Also, from his understanding of the guidelines, the proponent (MWSS) should not be in the area offering benefits while the FPIC is ongoing. However, he saw that the MWSS was always present.²⁷

²² TSN, August 27, 2019, pp. 84-85.

²³ *Id.*

²⁴ TSN, August 27, 2019, p. 86.

²⁵ *Id.*, p. 87.

²⁶ *Id.*, pp. 87-88.

²⁷ *Id.*, p. 89.

According to Ms. Dullas of SUKATAN-LN, even before the start of the FPIC process, there were already people doing feasibility study and field base investigation inside their ancestral domain without even asking for their permission. Even when the FPIC process is already ongoing, they were not given copies of the results of the FPI report. She added that there will be a public hearing on September 2, 2019 without public scoping being conducted.²⁸

It was stated during the hearing that MWSS incurred expenses for the conduct of feasibility study in the amount of P115 Million.²⁹ However, the feasibility study used during the PPE scheme is the same one used when the Kaliwa Dam Project was converted into ODA.³⁰

Ms. Dullas also objected to not being included in the EMB hearing of August 9, 2019. When it was clarified that the outlet of the Kaliwa Dam Project is in the Municipality of Teresa and not in the Municipality of Tanay, where her community belongs, Ms. Dullas rejected this reasoning because the ancestral domain of Tanay Dumagat-Remontado is indirectly affected.³¹ Engr. Sespeñe of MWSS explained that the scheduling for Municipality of Tanay will be at a later date.³²

Thereafter, the hearing focused on the COA findings.

Ms. Marquez of COA explained that their first observation pertains to the vetting procedures conducted by MWSS. Prior to the conduct of bidding, as required by the clarificatory procedures, MWSS should conduct vetting. So those who will qualify in

²⁸ *Id.*, p. 90.

²⁹ *Id.*, p. 104.

³⁰ *Id.*, p. 105.

³¹ *Id.*, pp. 92-93.

³² *Id.*, p. 93.

the vetting will be shortlisted to the bidding of the project.³³ COA Acting Supervisor Auditor, Ms. Uy continued that the first bidder failed to submit a mayor's permit and other basic requirements. The second bidder made an overbid. Hence, only China Energy remained.³⁴

During the hearing, the stated project cost was also divulged to be P5.2 Billion.³⁵ China Consortium, the second bidder, made an overbid of around P800 Million.³⁶

Senator Marcos then quoted the statement of COA as follows: "And fault to the [technical working group] TWG for conducting a competitive bidding that was a sham", considering that only one bidder remained during the second round.³⁷

Engr. Sespeñe of MWSS clarified that the arrangement between the Philippine Government and the Chinese Government is that the bidding should be a limited competitive bidding among three Chinese contractors nominated.³⁸ Ms. Uy of COA, however, countered that when the two bidders were disqualified, the TWG should have requested for replacement.³⁹

On the environmental aspect, Atty. Pedrosa mentioned that they submitted an environmental impact statement or study from Environmental Law Alliance Worldwide (ELAW).⁴⁰

³³ *Id.*, pp. 97-98.

³⁴ *Id.*, p. 99.

³⁵ *Id.*

³⁶ *Id.*

³⁷ TSN, August 27, 2019, p. 103.

³⁸ *Id.*, p. 109.

³⁹ *Id.*, p. 111.

⁴⁰ *Id.*, p. 113.

Sen. Marcos acknowledged that there were alternatives to the Kaliwa Dam Project that were posited such as rehabilitation of older dams, upgrading to feed the water shed, among others.⁴¹

Atty. Pedrosa also mentioned during the hearing that although the Government looks at the Kaliwa Dam Project as the solution, it will, in fact, arouse prognosis. According to the ELAW paper, the Kaliwa Dam Project does not adopt the cumulative impact assessment process which is now internationally adopted. He stated that the documents of MWSS and technicalities are not based on science.⁴²

Dr. Ofreneo also suggested Wawa Dam as an alternative, which will provide 500 MLD, which is only 100 MLD less than Kaliwa Dam.⁴³ However, Engr. Sespeñe commented that Wawa Dam is a short-term water source. MWSS is looking for the long-term water source which will be in the Kaliwa-Kanan Agus river basin. Kaliwa Dam is part of the road map of water source.⁴⁴ Dr. Ofreneo added that even without Kaliwa Dam, the water supply needs of Metro Manila can still be met because MWSS is also looking at Laguna Lake as a possible water source.⁴⁵

It was also stated during the hearing that the fault line is twelve (12) kilometers away from the dam to be constructed.⁴⁶

The Committees also learned about the scope of affected communities. Based on the report submitted to the EMB, there are forty-six (46) affected households or

⁴¹ *Id.*

⁴² TSN, August 27, 2019, pp. 113-114.

⁴³ *Id.*, p. 114.

⁴⁴ *Id.*, pp. 114-115.

⁴⁵ *Id.*, p. 115.

⁴⁶ *Id.*, p. 116.

1,040 individuals. In terms of hectarage, the dam will occupy around three hundred (300) hectares.⁴⁷ However, Ms. Dullas contradicted the number of affected individuals because the population of Daraitan is 5,182. She also complained that the stated number of households and individuals in the report were not identified.⁴⁸ Chairperson Capuyan clarified that the MWSS report only stated the affected elevation.⁴⁹

Chairperson Capuyan summarized the initial decisions of the community before the Committees: Cluster 1—rejected; Cluster 2—accepted; Cluster 3—rejected; Cluster 4—rejected; Cluster 5—rejected, but if ever the MWSS will release the P20 Million construction fee for the Sumul Transbasin, it seems that Cluster 5 will accept; and Cluster 6—rejected.⁵⁰

On the issue of whether the ECC is necessary before the project is awarded to the bidder, Mr. Manda of COA answered that the ECC is only needed as a condition for the effectivity of the loan agreement. Therefore, after awarding, the project could not be started unless the ECC is issued.⁵¹

The construction of the access road by DPWH was also tackled during the hearing. Ms. Tangco of DPWH Region IV-A stated for the record that the project for the construction of Kaliwa Dam was conceptualized by MWSS and part of the project is the construction of an access road.⁵² Ms. Tangco also verified that the access road was already under construction –

⁴⁷ *Id.*, p. 117.

⁴⁸ *Id.*, p. 118.

⁴⁹ *Id.*

⁵⁰ TSN, August 27, 2019, pp. 118-119.

⁵¹ *Id.*, p. 122.

⁵² *Id.*, p. 123.

MS. TANGCO. Yes, ma'am. So they have downloaded such amount for the construction of the access road that is why we have started the said project. And then it is still ongoing, *ongoing na po talaga, ma'am.* But actually, *kung makikita naman po natin whether matuloy po iyang Kaliwa or iyong Kanan Dam na isa sa pinag-uusapan natin, it will still benefit iyon pong ibang barangay doon tulad po noong Sitio Cablao at saka po ang Sitio Kiborosa. Talaga pong ito ay magpapabilis ng mobility kung ano iyong mga products ninyo at saka hindi na po sila iikot.*⁵³

When Senator Marcos asked if there are oppositors to the construction of the access road, Mr. Tena of SAGIBIN-LN registered his tribe's objection.⁵⁴

Ms. Tangco explained that the budget under the General Appropriations Act (GAA) states for an access road towards Kaliwa Dam but, in actuality, the road is not only for Kaliwa Dam but also for other two barangays.⁵⁵

The Notice to Proceed for the construction of the access road is dated June 22, 2018 and the GAA provided for the amount of P400 Million.⁵⁶

B. JANUARY 22, 2020 PUBLIC HEARING

During the public hearing of January 22, 2020, Administrator Salamat of MWSS opened the discussion by providing the following statements:⁵⁷

1. The Kaliwa Dam Project is a contract worth P12.2 Billion. The project's contractor is China Energy Corporation Limited, and its funding source is from the ODA or China loan with the approval of NEDA. It was originally a PPP project but later

⁵³ *Id.*, p. 124.

⁵⁴ *Id.*, p. 125.

⁵⁵ *Id.*, p. 126.

⁵⁶ *Id.*, p. 127.

⁵⁷ TSN, January 22, 2020, pp. 4-6.

shifted to an ODA project. Its implementation is from November 30, 2019 up to November 2024.

2. As of the date of the hearing, the MWSS has completed its consensus building process with the adoption of resolution of consent during the consensus building and decision-making process of the community. MWSS also has a continuing community assembly with the IP communities in Rizal and Quezon Province.

3. MWSS is now reaching a Memorandum of Agreement (MOA) negotiation and drafting with the Indigenous Peoples Organization (IPO), which MWSS has recognized and assisted in the registration with the Securities and Exchange Commission (SEC) so that the *bona fide* IP organization was being assessed in order for the proponent to address its concerns.

4. MWSS's collaboration and commitment with the NCIP to make sure that MWSS will provide a favorable environment for the IP community and to those who will be affected by the construction of the Angat (*sic*) Dam.

5. The crafting of the MOA negotiations will be a continuing effort to be able to comprehensively include in the holistic approach the package of livelihood support and other support necessary to be able to ensure that the favorable environment for the IP will be met.

6. MWSS has given the notice to proceed for the project and since Kaliwa Dam is a design-and-build project, the contractor is now on its design phase. After the design is approved, the next phase will be construction of the dam itself.

With regard to the allegation on the irregularities of the bidding process, Administrator Salamat defended that MWSS has complied with the requirements of COA and the *note verbale* between the Republic of the Philippines and China wherein it was expressly stated that the bidders will all come from China. Ms. Uy of COA,

however, stated that MWSS should have requested the Government of China to replace the two bidders that were disqualified.⁵⁸

Senator Marcos also stressed that the other issue that the Dumagat representatives and other tribal groups raised was that works had already begun regardless of the awarding or non-awarding of the contract. That, in fact, the DPWH's access road is already being constructed, which allegedly encroached the National Integrated Protected Areas System (NIPAS), without Protected Area Management Board (PAMB) clearance, mayor's permit, among other requirements.⁵⁹

Commissioner Navarro of NCIP admitted that the construction of the access road is ongoing without any FPIC, hence, the NCIP opposed this. However, MWSS insisted that the access road was requested by the community and the LGU since 2012. Despite this reasoning, NCIP still made it clear that there should be a separate FPIC for the access road to have an indication that its construction is not for the dam. He stated that the resolution from the LGU for the construction of the access road is not enough to do away with the FPIC process under *R.A. No. 8371*.⁶⁰

According to Fr. Montallana of STOP Kaliwa Dam, the community at the end of the access road did not request for it. Also, as of January 9, 2020, he observed that the access road is almost finished. According to the MWSS website, it is only thirty-five percent (35%) completed.⁶¹

Senator Marcos asked if the access road passes through the ancestral domain and Fr. Montallana answered in the affirmative and that it is within the ancestral domain of the *katutubo* of Rizal and Infanta [Quezon].⁶²

⁵⁸ *Id.*, p. 8.

⁵⁹ *Id.*, p. 12.

⁶⁰ *Id.*, pp. 13-14.

⁶¹ *Id.*, p. 15.

⁶² *Id.*

In the hearing, the lack of notice of public hearing issue was inquired into by Senator Marcos.⁶³ Hence, Atty. Pedrosa of STOP Kaliwa Dam reiterated the objections they mentioned during the Committees' August 27, 2019 hearing, which is the violation of *Department Administrative Order No. 2017-15* on the posting and notice requirement--seven days prior notice, publication in newspaper of general circulation twice and the last being seven days prior to the public hearing, and for the proponent to go to the community and to explain to the community in a language the latter understands.⁶⁴

Administrator Salamat denied Atty. Pedrosa's allegations and contended that MWSS was not remiss with the requirement of publication as well as going to the community to provide the required explanation. Administrator Salamat added that the group who walked out during the hearing does not reside in the project area and their position is contradictory to the position of those who want to enter into an agreement with MWSS.⁶⁵ Atty. Pedrosa belied the claims of Administrator Salamat and he clarified that their group just deem it prudent to only defer the public hearing until compliance be made.⁶⁶

Senator Marcos then stated that an Environmental Compliance Certificate (ECC) dated October 11, 2019 has been issued by the DENR with the proviso that all permits from the necessary government agencies should first be secured.⁶⁷

Chairperson Capuyan of NCIP emphasized that the process of FPIC is separate from the requirement of ECC. It is NCIP's duty to protect the community and to know

⁶³ TSN, January 22, 2020, p. 16.

⁶⁴ *Id.*, pp. 19-20.

⁶⁵ *Id.*, p. 20.

⁶⁶ *Id.*, p. 21.

⁶⁷ *Id.*, pp. 21-22.

whether the community truly provided their consent to the project.⁶⁸ Even if NCIP issues a certificate of precondition, it does not mean to say that the other requirements are taken for granted simply because NCIP, as a commission, so granted the desire of the community to grant such.⁶⁹

Chairperson Capuyan continued to elaborate the FPIC process: in their first assembly, the community is reminded of their rights; the second assembly is the proponent's presentation; the third assembly is the decision. Later on, there will be negotiations for the MOA. But all of these do not mean to say that there will be an imposition of total approval. Thus, a completed and approved FPIC process does not guarantee a solid basis for the grant of project to the proponent if the latter is not compliant. Also, Chairperson informed the Committees that Administrator Salamat and the people of MWSS entertains the issues of the community.⁷⁰

Chairperson Capuyan also explained that the NCIP's legal affairs office and ancestral domain office will check the documentations.⁷¹

Administrator Salamat likewise manifested that the project is still in the design phase and that survey of the project site is ongoing. He emphasized that no construction of the dam has taken place.⁷²

Fr. Montallana stated that he has pictures that there are already "*muhon*" or boundary stones in the area, including in the ground zero of the Kaliwa Dam Project.⁷³

⁶⁸ *Id.*, pp. 22.

⁶⁹ *Id.*, p. 23.

⁷⁰ *Id.*, pp. 23-24.

⁷¹ *Id.*, pp. 25-26.

⁷² *Id.*, pp. 26-27.

⁷³ *Id.*, p. 28.

Ms. Calzado, Tribal Leader of the Indigenous Peoples of General Nakar, echoed the sentiment that the access road is not a farm-to-market road as claimed by the LGU. She likewise expressed her dismay over the confusion on different orientations being conducted in the community, thus:⁷⁴

Hindi na nga po naming maintindihan, ma'am. Iba-iba po iyong orientation na dumadating sa aming mga community. Kaya sa simpleng kaugalian po naming mga katutubo ay naliligaw na kami. Saan ba talaga ang totoo? Ano ba talaga ang totoo? Ang nakikita nga, ang sabi nga po ng mas mararaming nakakakita ngayon ay pumapasok na ang mga Intsik. At parang naniniwala na rin kami na ito ay bahagi na ng proyekto ng Kaliwa dahil ang alam namin, ang pagkaintindi namin ay Intsik iyong may kontrata. Parang ganoon lang po.

She added that boundary stones are being placed in the project site on a weekly basis.⁷⁵

However, Ms. Aumentado of the Dumagat tribe of General Nakar expressed the sentiments of her tribe. According to her, the ancestral domain of General Nakar belongs to her tribe and they do not allow any representatives to speak in their name because they know how to explain their position. She stated that the *sangguniang barangay ng mga katutubo* requested for the tourism road, which has nothing to do with the FPIC [of the Kaliwa Dam Project]. She also clarified that as member of the IPs and IPO that support the process of the NCIP, they appoint tribe members to accompany and observe the Chinese in the survey of the project site to determine what really is going on. They concluded that indeed the surveying being done is for research purposes only considering that the FPIC is still ongoing. She also added that for the ECC, the DENR aptly explained to them that MWSS still has to submit an indigenous development plan (IDP), which they will scrutinize during MOA negotiations in order to determine whether MWSS complied with all requirements and

⁷⁴ *Id.*, pp. 30-31.

⁷⁵ *Id.*, p. 31.

for their tribal leaders to decide upon. She made it clear that she speaks only on behalf of the Dumagat-Remontados of General Nakar.⁷⁶

Ms. Calzado stressed that her tribe has yet to issue a resolution of consent and they are nervous because a notice to proceed has been issued despite lack of resolution of their consent.⁷⁷

Administrator Salamat explained that the compliances stated in the ECC are continuing compliances that MWSS will fulfill. The notice to proceed is a requirement and without the issuance of the ECC by November 22, 2019, the loan agreement will lapse and everything will be back to zero. He likewise reiterated that the notice to proceed is only for the design of the dam and not the construction. Hence, the survey being done was to ensure that the design is right, strong, and fits the specifications provided by the Philippine Government.⁷⁸

Atty. Pedrosa raised the issue of the contingency nature of the ECC and whether this is really allowed by the DENR, thus:

MR. PEDROSA. Madam Chair, if I may? *Kuwestionable po iyong buong proseso. Iyon ay paulit-ulit naming sinasabi, mula sa procedural, iyong lack of notice, pati iyong technicalities, iyong substantive content nitong EIS na project, we raised critical questions. Kasi yaman din lamang at pinag-uusapan pa natin iyong ECC, mismo iyong ECC—That's why we would like to ask DENR, with your permission, Madam Chair, is it normal or ordinary ba sa DENR na mag-issue ng ECC na ginagawang contingent? Meaning, dapat ginawa prior, ginawa nila, in-issue iyong ECC at saka nila i-comply. Halimbawa, iyong punto sa Condition No. 8, iyong actual inventory and assessment of threatened species and land cover; Condition No. 11, iyong detailed geological assessment; Condition No. 7, iyong quantitative risk assessment. Ito ay mga kondisyon na hindi ginagawa ni project proponent prior to the study pero may ECC na sila.*⁷⁹

⁷⁶ *Id.*, pp. 31-34.

⁷⁷ *Id.*, p. 34.

⁷⁸ *Id.*, pp. 35-36.

⁷⁹ *Id.*, pp. 36-37.

It was pointed out by Engr. Eugenio of the EMB, however, that in terms of the EIA process, MWSS underwent through the process from scoping up to review and evaluation. And subsequently, the recommendation of the EIARC review committee members for the issuance of the ECC of the Kaliwa Dam Project.⁸⁰

Mr. Ang of EMB Legal Division, the hearing officer for the Kaliwa Dam Project during its EIA proceedings, also stated that after conducting four different public hearings and based on the submissions of MWSS, which are all fully documented in all stages of the process, MWSS was able to satisfy the requirements.⁸¹

The topic of placing of *muhon* was again raised when Chairperson Capuyan informed the Committees that NCIP requested MWSS to stop the delivery of said boundary stones because of the ongoing FPIC. He emphasized that the sensitivity of the community should be taken into consideration.⁸² Chairperson Capuyan added that he would like that the next meetings of the NCIP *en banc* is to include ECC as part of NCIP's internal rules.⁸³

Senator Marcos deemed Chairperson Capuyan's idea to be a valuable input because it will help in the drafting of a new law or amendment to the current law to include NCIP if the project involves ancestral domain. The DENR's process should require the consultation of NCIP.⁸⁴

Atty. Labor of Legal Rights and Natural Resources commented on the access road and the FPIC process. He suggested that NCIP should issue a cease and desist

⁸⁰ *Id.*, p. 37.

⁸¹ *Id.*, pp. 38-39.

⁸² *Id.*, pp. 39-41.

⁸³ *Id.*, p. 41.

⁸⁴ *Id.*, p. 42.

order considering that its initial opinion, an FPIC process should take place regardless if the access road is a tourism project or part of the Kaliwa Dam Project.⁸⁵

Commissioner Navarro reiterated that NCIP requested MWSS to stop the construction of the access road. However, the complication arose because of the request of the ICCs to build the same road. Commissioner Navarro opined that an FPIC should be conducted with regard to the road leading to the Kaliwa Dam Project but the construction of the road leading to the ICCs may continue.⁸⁶

Ms. Dullas described the destruction caused by the access road, thus:

MS. DULLAS. *Madam Chair, mayroon po. Lalung-lalo na po iyong—siya po ay saklaw ng CADT, saklaw din po siya ng watershed, iyon pong 1636, nasasaklaw siya, at kung pong mabibisita ito at makikita mismo ay ito ay napakalaki ang kanyang nasira. Marami pong mga puno na natanggal na doon at Malaki po iyong ginawang kalsada. Kung sasabihin po natin ito ay isang kalsada papunta sa market ng mga nasa upland sa kabundukan ay ito po ay hindi akma dahil siya ay napakaluwang na kalsada, ...*⁸⁷

Administrator Salamat informed the Committees that the MOA will provide the comprehensive integrated development plan that will expressly state the package of assistance, livelihood, and other framework that they agreed with the IP community. He promised that he will not leave the IPs until the dam is constructed and in operation. The vision of MWSS is for everyone who were affected by the Kaliwa Dam Project will be able to benefit from it as well.⁸⁸

⁸⁵ *Id.*, p. 43.

⁸⁶ *Id.*, p. 44.

⁸⁷ *Id.*, p. 47.

⁸⁸ *Id.*, p. 49.

Ms. Dullas reported to the Committees that the project site has sacred places and she answered in the affirmative when Senator Marcos inquired whether there are burial sites in the area.⁸⁹

It can be observed during the hearing that there are conflicting ICCs of General Nakar. One group is in favor of the Kaliwa Dam Project while the other group is objecting to the ongoing activities. This was confirmed by Ms. Aumentado when she said that they have different views of their customary laws.⁹⁰ The scope of the ancestral domain of General Nakar is 144,000 hectares.⁹¹

Senator Marcos inquired as to why there was an issuance of ECC when there is insufficient studies with regard to the 15-kilometer fault line, geophysical studies, soil analysis, and whether it encroaches on the watershed area. This was answered by Engr. Eugenio by stating that the matters mentioned are included in the detailed engineering design that the contractor of MWSS will provide. What EMB is asking is the actual. Hence, in the EIA process, the EMB will only get the baseline data and not the entire area but only a representative of the area.⁹²

Engr. Eugenio also informed the Committees that the ECC does not cover the access road.⁹³

At this juncture, Senator Hontiveros mentioned in her opening statement that “[I]and for the IP is not simply a source of livelihood and sustenance, but is integral to their identities as peoples. We, therefore, owe it to our IP communities to ensure that they receive their rightful, equitable and fair share of the resources of the land

⁸⁹ *Id.*, pp. 51-52.

⁹⁰ *Id.*, pp. 52-54.

⁹¹ *Id.*, p. 54.

⁹² *Id.*, pp. 58-59.

⁹³ *Id.*, p. 60.

they have been nurturing not just for generations but, as they say, from time immemorial.⁹⁴

Mr. Guieb, a retired environmental scientist, reviewed the EIS document of the Kaliwa Dam Project. He informed the Committees that he and a lot of scientists have issues with the project. He complained that he submitted with the DENR thirty-four (34) pages of technical issues, in addition to the reviews of other scientists, and none of these issues were responded to.⁹⁵ He concluded that the EIS document “was a technically deficient document which did not use good science and did not clearly show the significant impact of the project. And based on the mitigations that they suggested, they could not demonstrate that their mitigations and enhancements would reduce—as required by the EIS system, that the significant impact would have been reduced to residual level...”⁹⁶ He added that the EIS document’s conclusion that the Kaliwa Dam Project as the preferred alternative in solving the water supply issue of Metro Manila has no scientific basis because there was no clear explanation of the non-feasibility of the other options.⁹⁷ He requested that there should be an open and transparent discussion among experts. He claimed that his engagement was ignored.⁹⁸

Ms. Herrera of COA stated that COA also requested the comment of Director Solidum of PHIVOLCS. He said that there are six active faults in the nearby location of the Kaliwa Dam and that it is safe for ground rupture. However, he mentioned that it is important that the structure of the dam is designed to withstand deformations due to ground shakings to avoid collapse. He added that the project site is prone to earthquake-induced landslide as a result of strong ground shaking.⁹⁹

⁹⁴ *Id.*, pp. 62-63.

⁹⁵ *Id.*, pp. 63-64.

⁹⁶ *Id.*, p. 65.

⁹⁷ *Id.*, pp. 65-66.

⁹⁸ *Id.*, pp. 66-67.

⁹⁹ *Id.*, p. 71.

C. FEBRUARY 17, 2020 PUBLIC HEARING

During the public hearing of February 17, 2020, Engr. Cleofas of MWSS stated that under the Kaliwa Dam Project, the local counterpart shoulders 15 percent of the project cost. The total project cost is P12.2 Billion and 15 percent thereof is around P2 Billion, which MWSS will pay for.¹⁰⁰

Senator Marcos observed that according to the loan agreement on governing laws, the law that will prevail in case of a dispute is the law of China and not the Philippines. She perceived that this may be the root of the problem of the Dumagats and the other ICCs/IPs because it makes no reference to the laws of the Philippines.¹⁰¹

Administrator Salamat of MWSS stated that MWSS had conducted a series of consultation and dialogue to the affected barangays of General Nakar, Quezon and Rizal from 2014 until they have arrived to the consensus building last December 2019. He defended MWSS by stating that the ICCs/IPs who claim to have not been consulted probably failed to have heard MWSS's position because they always walked out. MWSS then emphasized that they are engaging with the *bona fide* IP organization, which is the IP structure that the IP community created. However, he added that MWSS is still open to talk to those they need to communicate with.¹⁰²

Atty. Mananes of DPWH described the access road being constructed. He stated that with the alignment, wherein a part of the access road is considered for tourism and then a part of the road is going to the dam itself.¹⁰³

¹⁰⁰ TSN, February 17, 2020, p. 9.

¹⁰¹ *Id.*, pp. 11-12.

¹⁰² *Id.*, pp. 13-14.

¹⁰³ *Id.*, p. 16.

Senator Marcos wanted to hear from EMB because under the GAA, the request for the access road is from MWSS. She wanted to know why the access road was being constructed despite lack of PAMB Clearance or ECC when the NIPAS was encroached upon.¹⁰⁴

Engr. Ramboyong of EMB stated that the ECC for the access road will be different from the one for the dam and that the ECC is already with the region.¹⁰⁵

Atty. Mananes informed the Committees that DPWH was already granted a PAMB clearance issued on October 4, 2019.¹⁰⁶

Engr. Cleofas clarified that when MWSS talked with the LGUs of Quezon for the Kaliwa Dam Project, MWSS discovered that the LGU of General Nakar already requested for an ecotourism road in 2012.¹⁰⁷ Hence, when the LGU of General Nakar had knowledge of MWSS's project, the LGU requested MWSS to assist them before the DPWH for the construction of the ecotourism road. She added that the request was way back in 2012 and that the NEDA Board's approval of the Kaliwa Dam Project is 2014. Through this cooperation, the access road was finally being constructed.¹⁰⁸

At this juncture, Senator Marcos recognized Director Baliatana of NEDA and stated that NEDA identified sacred sites and burial grounds of the Dumagats and Remontados within the boundary of the project. This was affirmed by Director Baliatana.¹⁰⁹

¹⁰⁴ *Id.*, p. 19.

¹⁰⁵ *Id.*, p. 20.

¹⁰⁶ *Id.*, p. 21.

¹⁰⁷ *Id.*, p. 22.

¹⁰⁸ *Id.*, pp. 22-23.

¹⁰⁹ *Id.*, p. 23.

Senator Marcos then proceeded to ask the DENR to clarify the statement on the ECC: “No implementation until after securing all permits”, when the access road was already implemented.¹¹⁰

General Salamat of MWSS answered the query to clarify that it was DPWH that started the construction of the access road and as to the Kaliwa Dam Project, construction has yet to start.¹¹¹ Senator Marcos then followed up by asking him whether the construction of the access road leading to Kaliwa Dam is tantamount to beginning the project, to which General Salamat answered that MWSS just “rode on” the construction of the ecotourism road.¹¹² Senator Marcos disagreed with this because MWSS, as proponent stated in the GAA, clearly did not just “ride on” the construction of the access road, thus –

THE CHAIRPERSON (SEN. MARCOS). *Hindi. Hindi kayo-nag-ride on, General. With all due respect...With all due respect, ang sabi sa GAA at sa records ng Public Works ang proponent kayo. Kayo ang humingi, so hindi naki-ride on. Kung may naki-ride on, malamang iyong General Nakar kasi nakisingit na lang sila. Kung puwede na lang dagdagan ng access mula sa kanila, bahagi naman ng maliliit lang. Pero iyong on record na maliwanag ay MWSS ang talagang humingi. Bakit ninyo sinimulan iyong project, the whole process of asking funds from Public Works and so on, when it was clear that there were oppositors and that your compliances were incomplete? I think that perhaps is the real question.*¹¹³

Senator Marcos also expressed her observation that the access road is not an ordinary road with a P400 Million budget in 2018 and additional amounts were inserted for the access road in 2019 and 2020. Also, she stated that the access road is not a farm-to-market road considering that it climbs the mountain.¹¹⁴

¹¹⁰ *Id.*, p. 25.

¹¹¹ *Id.*

¹¹² TSN, February 17, 2020, p. 26.

¹¹³ *Id.*, pp. 26-27.

¹¹⁴ *Id.*, p. 27.

Fr. Montallana of STOP Kaliwa Dam informed the Committees that the access road is already 58 percent completed per MWSS website last January 28, 2020.¹¹⁵

Senator Marcos continued that the access road being constructed will lead to nowhere if the Kaliwa Dam Project will not push through. Hence, the access road is an integral part of the project. Because of its construction, it cannot be claimed that the project has yet to start with the construction phase. Thus, the Kaliwa Dam Project commenced without securing all the licenses, including the consultation and free consent of the IPs.¹¹⁶

When Engr. Cleofas submitted that there are ongoing talks with the ICCs/IPs, Senator Marcos expressed her dismay because the construction of the access road is ongoing without the proper licenses, FPIC, and even NEDA recognized sacred sites, burial grounds, baptism, springs and water sources. Senator Marcos added that although the 0.3 percent commitment fee from the \$200 Million is heavy, the ICCs/IPs should have first been consulted because they are the ones residing there.¹¹⁷ She said

—

THE CHAIRPERSON (SEN. MARCOS). *Hindi kasi puwedeng continuing. Dapat nagtapos, nagkasundo, nagkaunawaan at nagpirmahan. Dapat tapos, hindi dapat tuloy-tuloy lang.*¹¹⁸

...

THE CHAIRPERSON (SEN. MARCOS). *Ang sabi kasi doon "prior." Dapat nauna iyon. Bakit nauna iyong kalsada, nasa 58 percent?*¹¹⁹

¹¹⁵ *Id.*, p. 28.

¹¹⁶ *Id.*, pp. 29-30.

¹¹⁷ *Id.*, pp. 30-31.

¹¹⁸ *Id.*, p. 31.

¹¹⁹ *Id.*, p. 33.

...

THE CHAIRPERSON (SEN. MARCOS). *So hindi pa nagkakaisa iyong ating IP, NCIP at DENR, nagsimula na iyong public works.*¹²⁰

Mr. Piston of Kaksaan Tribe reported to the Committees the situation of his tribe. He complained that they are feeling miserable because they cannot even search for viand as their movement around the forest is impaired due to the presence of soldiers and policemen everywhere. He believes that they were there to pressure them.¹²¹

Atty. Mananes clarified that the presence of the military was due to the safety and security situation because of the burning of equipment—three backhoes and one bulldozer.¹²² Senator Marcos commented that if a project was started without the consent of the IPs residing in the area, there will be risks of burning of equipment.¹²³

Mr. Piston also complained that the military and police presence resulted to halting of his tribe's livelihood, the raw materials of which can be gathered from the forest to produce handicrafts. Aside from this, Mr. Piston reported that the police and military pass by his crops despite setting up boundaries. He added that the police and military were also safely escorting the Chinese to the tribe's territory.¹²⁴ To add to his list of complaints, Mr. Piston also raised that the Chinese have yet to pay three months' worth of rent for the accommodation where they were staying in the tribe's community.¹²⁵

¹²⁰ *Id.*, p. 35.

¹²¹ *Id.*, p. 36.

¹²² *Id.*, p. 37.

¹²³ *Id.*

¹²⁴ TSN, February 17, 2020, pp. 38-39.

¹²⁵ *Id.*, p. 39.

Atty. Roset of STOP Kaliwa Dam commented that –

MR. ROSET. It's not an issue of access road. It's an issue of *iyong* ancestral domain. *Bakit sila gumagawa sa ancestral domain nang walang FPIC? So iyon iyong issue po doon.*¹²⁶

According to Engr. Ayson of MWSS, technically, they cannot establish whether the access road is within the ancestral domain. What they can establish is that the dam itself and the reservoir are indeed within the CADT of General Nakar. MWSS is still awaiting the technical description of Province of Rizal CADT.¹²⁷

Mr. Vargas narrated a version of events in relation to the construction of the access road, thus –

MR. VARGAS. ...

Unang-una po, iyong para siguro sa kaliwanagan ng lahat, ay nagsimula po iyong construction ng access road, kasi access road ang pinag-uusapan natin, ay January 18, 2018. ...

...

Pero iyong pagbutas kasi ng kalsada nangyari po—Kasi in-invite po ang LGU ng Infanta, ang nakalagay po sa invitation is magkakaroon ng assessment. Nagtataka sila, assessment ng gagawin pero binubuldozer (bulldoze) na po iyong umpisa ng kalsada. Mayroon po kaming picture—January 18, 2018 po.

...

Tapusin ko lang po. Pagkatapos po noon ay unang-una, dahil nga iyong pinag-umpisahan niya sakop ng Infanta, hindi rin po sila kumatok sa Infanta, jurisdiction ng Infanta iyong lugar, hindi rin sila nagpaalam. Nagtaka po ang LGU ng Infanta bakit nagsimula na kinonstruct (construct) iyan at ang sinabi nga lang na invitation ay magkakaroon ng assessment, pero mayroon na pong sinimulan na pagbubutas doon sa kalsada.

...

¹²⁶ *Id.*, p. 43.

¹²⁷ *Id.*, p. 44.

Ganito nga po kasi iyong nangyari at iyon iyong kinukuwestiyon namin. Pagkatapos po kasi ng iyong ginawang—ang invitation is to assess the place, nakita po ay na-bulldoze na po iyong kalsada. Pinagsimulan po Kilometer 92 ng Infanta, Marikina Road, sa Sitio Kamagong, Infanta, Quezon. Sakop po ng Infanta iyong lugar na iyan. Pagkatapos po noon, dahil—hindi nga po invited ang DENR noon, pero may nagpunta pong isang representative at nakatawag po ito ng pansin at nagkaroon po ng pagbuo ng tinatawag na composite team para pag-aralan po iyong nangyari.

Right after po ng mga one week—kasi alam ko po February 1 nakapag-submit na po ng report iyong composite team na nag-aral diyan. Ang sinasabi po talaga diyan, ang nakalagay doon sa report, the construction is iyong fuel, iyong ginastos sa fuel ay funded ng MWSS; ang ginamit na equipment ay bulldozer ng General Nakar at kasama po ang DPWH doon sa survey pero hindi po iyon ang sinasabi talaga na nag-construct. Sa pagsu-survey po. Iyon po iyong nakalagay doon sa report.

...

Iyon na nga po ang pinagtataka namin. Kaya po hanggang ngayon iyan po iyong kinukuwestiyon namin. At nito pong last—ito po para to cut the long story short, kasi ako po’y member din po ng PAMB, noon pong last meeting, regular PAMB meeting namin at iyong pong binabanggit na hawak-hawak nilang sinasabing PAMB clearance issued noong October 4, ang nakalagay po doon kung pag-aaralan ninyo tingnan ninyo baka po ibang PAMB clearance ang pinapakita nila—ang nakalagay po diyan ay hindi po sakop ang construction ng access road. For EIA study po ang ibinibigay na clearance.¹²⁸

Senator Marcos commented that the EIA is only for the study and not the access road that is clearly part of the Kaliwa Dam Project. Also, PAMB only gave an environment impact assessment. She then asked DPWH if it can consider suspending the access road project once again until the proponent is compliant with all requirements given considering that the project was once suspended due to the same reason.¹²⁹

¹²⁸ *Id.*, pp. 44-47.

¹²⁹ *Id.*, p. 48.

Ms. Aumentado of the tribe of General Nakar stressed that there were actually consultations conducted contrary to the complaints of STOP Kaliwa Dam. She added that the FPIC went through the proper process with the NCIP.¹³⁰ Ms. Calzado from another tribe of General Nakar rebutted that there were indeed consultations but she claims that the process of the consultation was wrong.¹³¹

Engr. Gullunan of NCIP explained that in the clustering, they were able to reach a consensus building but the validation of the decision meeting during the first community assembly, it was stated that if they will not reach a consensus decision, the matter will be elevated based on their traditional and customary laws or to their traditional leaders. This was done last December 2019 in Real Quezon. There were series of validations being conducted by the traditional leaders and elders of the community to reach a genuine decision.¹³²

Senator Marcos proceeded to ask whether the DENR acted on the appeal made by Mr. Guieb, an environmental scientist, last November 2019.¹³³ According to Mr. Guieb, the general gist of his concern is the technical issues and compliance to the EIS system. There are a lot of procedural aspects of the EIS system that were not complied with and those were all laid out in the 37-paged appeal. He likewise highlighted his number one concern—the ECC’s certification that the project will not cause a negative impact on the environment. He added that the proponent will not be able to establish that there will be no negative impact because the project lacks science. According to him, there was a failure to quantify the biodiversity, endangered species, among others that should be quantified.¹³⁴ Thereafter, one of the most

¹³⁰ *Id.*, pp. 54-55.

¹³¹ *Id.*, pp. 55-56.

¹³² *Id.*, pp. 56-57.

¹³³ *Id.*, p. 59.

¹³⁴ *Id.*, p. 62.

important parts is that one where you were able to qualify the impact and what is the mitigation based on good science. Mr. Guieb claimed that all these were not demonstrated.¹³⁵

According to Engr. Cleofas, MWSS was able to receive the letter of the EMB on the issues raised by the NGOs and that they were able to submit their answers to the EMB.¹³⁶

On the compensation aspect, Engr. Cleofas informed the Committees that MWSS hired LandBank for the appraisal of the identified lots that will be affected by the tunnel outlet. It is also there that the water treatment plants will be constructed. She added that MWSS already partially paid based on the appraisal of the LandBank. Out of the eleven lot owners, only one lot is fully paid, two is fifty (50) percent paid, and the others are still undergoing exploration. The payment is deposited with the bank because the mode of acquisition is through expropriation.¹³⁷

Senator Marcos closed the hearing on the Kaliwa Dam inquiry with the following statement: "... *Gustong gusto po natin na matapos ang project na ito kung kinakailangan at makakatulong sa bansa. Subalit kung yuyurakan naman ang mga karapatan ng ating mga katutubo, hindi naman tayo papayag. ...*"¹³⁸

V. CONCLUSION

After a thorough analysis of the statements presented by the various resource persons, the Committees concluded that the laws protecting indigenous peoples rights were not complied with in the course of implementing the Kaliwa Dam Project.

¹³⁵ *Id.*, p. 63.

¹³⁶ *Id.*, pp. 63-64.

¹³⁷ *Id.*, pp. 69-71.

¹³⁸ *Id.*, p. 73.

Activities in relation to the Kaliwa Dam Project were undertaken prior to the finalization of the FPIC process in violation of the ICCs/IPs protected rights.

Section 3(g) of R.A. No. 8371, defines “free and prior informed consent” as the consensus of all members of the ICCs/IPs 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.

Aptly put by MWSS in its *Position Paper and Other Supporting Documents in relation to PSR No. 76 entitled, “Resolution to Conduct an Inquiry, in Aid of Legislation, on the impact of the Construction of the Kaliwa Dam Project in Quezon Province, Thereby Safeguarding the Rights of Indigenous Peoples”* dated July 8, 2020 (MWSS Position Paper), the conduct of the FPIC process is a mechanism required by law as a vital safeguard to avoid social or environmental harm a proposed project might cause on the ICCs/IPs within their ancestral domain. It is an essential and environmental measure to protect their rights and guarantees, their meaningful participation, and requires the participation of all ICCs/IPs.

NCIP Administrative Order No. 3, series of 2012, classifies the Kaliwa Dam Project as “large scale/extractive project” that must undergo the following mandatory activities of the FPIC process, as follows:

1. First Community Assembly;
2. Second Community Assembly;
3. Consensus Building and Decision Meeting;
4. MOA Negotiation and Preparation; and

5. MOA Validating, Ratification, and Signing.¹³⁹

According to NCIP, the first and second assemblies, consensus building, and decision meeting processes were duly completed with regard to the ancestral domain of the Dumagat/Remontado ICCs in General Nakar, Quezon (R04-NAK-1208-97), representing 953 households clustered into six clusters.¹⁴⁰ The general assembly of traditional leaders/elders on December 15-17, 2019 in Real, Quezon yielded 68% of acceptance of the Kaliwa Dam Project, while the remaining 32% rejected the same.¹⁴¹

For the FPIC of the ancestral domain of the Dumagat/Remontado ICCs in Rizal (R04-TAN-0709-130), which covers ten barangays and inhabited by 1,749 IP Households clustered into three clusters, the first and second assemblies, consensus building, and decision meeting processes were also completed. The decision meeting of the Dumagat/Remontado ICC of Rizal reveals that 62% of the 58 total number of traditional leaders/elders who attended and accepted the project, while the remaining 29% are not amenable.¹⁴²

The NCIP stated that the scheduled of the MOA negotiation for Quezon is set on March 24 to 26, 2020 while March 31 to April 2, 2020 for Rizal. However, the schedules were overtaken by the lockdown caused by the pandemic.¹⁴³ Thereafter, MOA negotiations with IPs of Quezon Province and of Rizal Province, conducted on October 13 to 15, 2020 and November 3 to 5, 2020, respectively, were concluded through the facilitation of the NCIP.¹⁴⁴ However, the last step of the FPIC process,

¹³⁹ NCIP Position Paper, July 14, 2020, p. 3.

¹⁴⁰ *Id.*, pp. 3-4.

¹⁴¹ *Id.*, p. 5.

¹⁴² *Id.*, p. 6.

¹⁴³ *Id.*, p. 7.

¹⁴⁴ Metropolitan Waterworks and Sewerage System, *FPIC process for the Kaliwa Dam Project: 3 years on and still going* [website], <https://mwss.gov.ph/fpic-process-for-the-kaliwa-dam-project-3-years-on-and-still-going/> (access 17 March 2021)

which is the validation and signing of the MOA, followed by the issuance of Certificate of Precondition are still wanting.

Considering that the MOA has yet to be validated and signed and the Certificate of Precondition has yet to be issued, activities such as the construction of the access road, uprooting crops planted by the IPs, placing "*muhon*" in the project site, surveying activities of the Chinese contractor, and even mobilizing police and military presence in the area in connection with the project, among others, were already undertaken even before the finalization of the FPIC process. Thus, in violation of the rights of the IPs/ICCs to freely give their informed consent before any activities should proceed within their ancestral domains.

MWSS posited that it exerted diligent efforts to comply with the FPIC process, such as the Cultural Sensitivity Workshop with the ICCs/IPs and NCIP on August 6 to 7, 2018,¹⁴⁵ FPIC-related activities were interspersed with IP Chieftains Summit, Dialogues with NCIP Management, End Local Communist Armed Conflict (ELCAC)¹⁴⁶ Meetings, Public Hearings for the Environmental Impact Statement (EIS) for the issuance of an ECC,¹⁴⁷ and Educational Trip (Lakbay Aral) in Angat-Ipo Dam in Norzagaray, Bulacan on June 12 to 14, 2019.¹⁴⁸ MWSS added that during the Community Assemblies, the NCIP and MWSS collaborated and explained the technical, physical infrastructure, social and economic activities the Kaliwa Dam Project would pursue to mitigate any environmental social impacts on the ICCs/IPs. According to them, tarpaulins, flyers, powerpoint presentations, small group activities, courtesy calls, key informant interviews, participatory situation analysis, were employed to generate deeper appreciation of their situation and help allay their fears as regards the project.¹⁴⁹ MWSS also emphasized that it was strictly enjoined from participating

¹⁴⁵ MWSS Position Paper, July 8, 2020, Annex "G".

¹⁴⁶ *Id.*, Annex "H".

¹⁴⁷ *Id.*, Annex "I" and Annex "J".

¹⁴⁸ *Id.*, July 8, 2020, p. 2.

¹⁴⁹ *Id.*

in the consensus-building activity or interfering in any manner in the decision-making process.¹⁵⁰

MWSS likewise submitted that on top of the MOA, it also formulated the Indigenous Peoples Development Plan¹⁵¹, which contains the mechanisms to ensure the social safeguards, safety and mitigating measures to protect the way of life and livelihood of the ICCs/IPs in the project's host communities, subject to the review of the NCIP.

In its position paper, MWSS claimed that "there is as yet no basis at this point to make generalizations about the conduct of the process. The FPIC Process requires participant observation, considering the need to thresh out the issues/concerns of the Indigenous Peoples *while actually living with them and looking at the process and the impact of the project from their point of view*. Anything short of this actual immersion into the process and with the IP stakeholders would render observations about the process, at best, merely conjectural, tentative – thus, inconclusive."¹⁵²

The Committees find this statement irrelevant when it comes to the issue with regard to the ongoing activities being conducted on the ground. MWSS may indeed be lauded for their painstaking efforts to comply with the FPIC process, it does not remove the fact that there are movements related to the Kaliwa Dam Project that are being implemented within the ancestral domains of the ICCs/IPs prior to the issuance of the Certification of Precondition by the NCIP. Moreover, the issuance of an ECC in favor of the Kaliwa Dam Project still does not give the MWSS the right to conduct activities within the ancestral domains without the Certification of Precondition. In fact, even the EMB's *Position to the PSR No. 76 Entitled "Resolution to Conduct an Inquiry, in Aid of Legislation, on the Impact of the Construction of the Kaliwa-Dam*

¹⁵⁰ MWSS Position Paper, July 8, 2020, p. 4.

¹⁵¹ *Id.*, Annex "U".

¹⁵² *Id.*, p. 5.

Project in the Quezon Province, Thereby, Safeguarding the Rights of Indigenous Peoples" stated that an "**ECC is not a permit but a planning tool** in order for the proponent to implement its project in rhythm and harmony with nature, as well to the community where the project lies." (emphasis supplied)

Construction of the access road within the Dumagat ancestral domains started in June 2018 without going through the consent process. There has also been increased militarization within and around the proposed dam site, disrupting important livelihood activities of the Dumagat communities.¹⁵³

The Committees agree with the NCIP when it elaborated that "FPIC means the right of indigenous peoples to be informed of development activities on a timely basis with view to providing approvals for commencement, and this means the participation of IPs in development projects. 'Free' means that it is free from any form of coercion or manipulation. '**Prior**' means that it is done before any project is undertaken, while 'informed' means that all information about the project has been brought to the attention of IPs. Consent finally means IPs agreeing to the development project to take place on their land having understood all about it."¹⁵⁴ (emphasis supplied)

The DPWH should have ceased and desist in the construction of the access road until the issuance of the certification of precondition after the FPIC process, the ECC, and all the other requirements are complete.

The Committees echo the sentiment of Atty. Roset of STOP Kaliwa Dam during the hearing of February 17, 2020. Whether the construction of the road is for eco-tourism as requested by the LGU or for the Kaliwa Dam Project is a non-issue.¹⁵⁵ **The**

¹⁵³ STOP Kaliwa Dam Position Paper, p. 2.

¹⁵⁴ NCIP Position Paper, July 14, 2020, pp. 7-8.

¹⁵⁵ TSN, February 17, 2020, p. 43.

crux of the matter is that a road was constructed traversing the ancestral domain without FPIC from the ICCs/IPs in clear violation of the law.

THE CHAIRPERSON (SEN. MARCOS). *Dumadaan ba iyong kalyeng iyan sa ancestral domain na tinatawag natin?*

MR. MONTALLANA. *Opo. Nasa ancestral domain po iyon ng mga katutubo ng Rizal and Infanta rin.*¹⁵⁶

Therefore, regardless of the position from MWSS and DPWH that the construction of the road is separate and distinct from the Kaliwa Dam Project, an FPIC process should still first be concluded before the construction of the access road commenced.

Be that as it may, the Committees do not agree with the position of MWSS that the road being constructed is not part of the Kaliwa Dam Project as befittingly observed by the Chairperson of the Committee on Cultural Communities, thus –

THE CHAIRPERSON (SEN. MARCOS). *Okay. Kung ganoon, sabihin na natin na talagang hindi kumpleto iyong proseso sa pagkokosulta at sa pagkakaisa ng ating mga IP, mukhang maliwanag iyon na hindi pa kumpleto. At maliwanag din na iyong ating kalsada na sinimulan ng Public Works ay talagang bahagi ng Kaliwa Dam kasi mismo iyong title ng project ay "New Centennial Kaliwa Dam Access Road." Kung ganoon, naumpisahan iyong project na hindi sumunod sa batas. (Emphasis supplied)*¹⁵⁷

When MWSS insisted that the Kaliwa Dam Project just "rode on" the request of the LGU for the construction of the eco-tourism road, Senator Marcos did not accept this excuse and stated –

THE CHAIRPERSON (SEN. MARCOS). *Hindi. Hindi kayo-nag-ride on, General. With all due respect...With all due respect, ang sabi sa GAA at sa records ng Public Works ang proponent kayo. Kayo*

¹⁵⁶ TSN, January 22, 2020, p. 15.

¹⁵⁷ TSN, February 17, 2020, p. 53.

ang humingi, so hindi naki-ride on. Kung may naki-ride on, malamang iyong General Nakar kasi nakisingit na lang sila. Kung puwede na lang dagdagan ng access mula sa kanila, bahagi naman ng maliliit lang. Pero iyong on record na maliwanag ay MWSS ang talagang humingi. Bakit ninyo sinimulan iyong project, the whole process of asking funds from Public Works and so on, when it was clear that there were oppositors and that your compliances were incomplete? I think that perhaps is the real question.¹⁵⁸

The access road formally began construction in June 2018¹⁵⁹ without a PAMB Clearance nor an ECC, which was eventually issued only on February 5, 2020, a clear violation of *Presidential Decree No. 1586*, otherwise known as the "*Environmental Impact Statement System Law*", which prohibits anyone from undertaking a project in an "environmentally critical area without first securing an ECC."

The STOP Kaliwa Dam also raised the point that the Composite Team mandated to assess, inspect, and verify the area of Kaliwa Dam access road construction in January to February 2018 reported that the construction of the access road commenced without a tree cutting permit as required by *Presidential Decree No. 705* or the "*Revised Forestry Code*" and violated *R.A. No. 9147* for destroying Critically Endangered, Endangered, and Threatened species.¹⁶⁰

It should also be emphasized that DPWH admitted that the primary cause of the construction of the access road last July 2019 was due to the fact that they failed to secure permits.¹⁶¹ However, as of date, the construction of the access road is ongoing despite the pending FPIC process.

¹⁵⁸ *Id.*, pp. 25-27.

¹⁵⁹ *Id.*, p. 29.

¹⁶⁰ Position Paper for the Senate Committee on Cultural Communities On the Impacts of the Proposed Kaliwa Dam Project, p. 14; Composite Team, per RSO 2018-031, February 2, 2020. *Report of the Composite Team on the Conducted Assessment, Inspection and Verification of the Area Regarding the Construction of the New Water Source – Kaliwa Dam.*

¹⁶¹ *Id.*, p. 37.

Per the official website of the MWSS, the access road to tunnel outlet portal of Teresa, Rizal is already 100 percent completed; access road to dam site (Km. 92) is 35 percent; and the access road at Daraitan is 7 percent complete.¹⁶²

The Committees, however, note that the NCIP should have exercised its injunctive powers to enjoin the construction of the access road in order to safeguard the rights and interest of the ICCs/IPs affected thereby.

Alignment of the awarding of projects, FPIC process, DENR issuances, and commencement of DPWH projects involving ancestral domains of the ICCs/IPs is necessary.

The Committees agree with the NCIP when it stated that there is strong expression of dissent to the construction of Kaliwa Dam due to its perceived social, environmental and economic impact to the host communities. Results of community consultations reveal the apprehensions of massive displacement of communities; destruction of forests and watersheds; immense disturbance of the ecosystem's capacity to sustain biodiversity; restricted access to water supply drastically affecting households, traditional farm systems, fish sanctuaries, and other systems that sustain the ICCs/IPs' way of life; among other things.¹⁶³

Therefore, it is understandable that the environmental and cause-oriented groups strongly condemned the issuance of the ECC by the DENR prior to the completion of the process for the conduct of public consultations with would-be affected communities, and the approval of the IPs' FPIC as required by law.¹⁶⁴

¹⁶² Metropolitan Waterworks and Sewerage System, *New Centennial Water Source – Kaliwa Dam Project* [website], <http://mwss.gov.ph/projects/new-centennial-water-source-kaliwa-dam-project/> (accessed 17 March 2021).

¹⁶³ *Id.*, p. 8.

¹⁶⁴ *Id.*

In the EMB's position paper, it stated that the ECC requires the proponent to "continuously communicate with the proponent on the progress of the project implementation. As condition of the ECC, the Social Development Program for those who will be directly affected by the project must be complied with by the project proponent, otherwise its failure shall warrant the imposition of administrative sanctions..."¹⁶⁵

The issuance of an ECC, in general, poses a problem if the project requiring an ECC is within the ancestral domain of an ICC/IP because the latter will not only be subjected to numerous consultations, hearings, and processes that aside from being redundant, the ECC might be construed as a permit to allow activities to be implemented within the ancestral domain even if the FPIC is still ongoing such as the incident subject of the inquiry.

Chairperson Capuyan of NCIP raised a sound suggestion during the public hearing of January 22, 2020 on the inclusion of the ECC in the FPIC process:

MR. CAPUYAN. I think it's on the access road—But anyway, ma'am, ang point *namin* is right now based on our regulations, *hindi puwedeng ikabit iyong ECC doon sa FPIC process*. But I'm talking to my commissioner on the side and I was saying, in our next meetings en banc as part of our internal rules, I suggest *na isama natin iyong ECC*.

...

MR. CAPUYAN. *Kasi ang point ko, wala sa situation ng community na mabasa niya ang kabuuan. So sabi ko, "Saan kaya na parte? Doon kaya sa MOA negotiation, doon kaya sa decision—"*¹⁶⁶

...

THE CHAIRPERSON (SEN. MARCOS). *Pero, Secretary, that's a very valuable input. Makakatulong iyon sa paggawa ng bagong batas o amyendahan iyong mga batas natin na kahit papaano kasali dapat ang ating NCIP kapag may ancestral domain na sasakupin ng*

¹⁶⁵ EMB Position Paper, July 27, 2020.

¹⁶⁶ TSN, January 22, 2020, p. 41.

*bawat project. At dapat requirement rin siguro sa proseso ng DENR na talagang kokonsultahin. Although pinipilit ninyo na apat na beses, four rounds kayong nakipag-usap. Tama ba?*¹⁶⁷

Not only is the non-alignment of FPIC and ECC processes a problem but also the fragmented system in the issuance of ECC. During the hearing of the Committees last August 27, 2019, Senator Marcos inquired about the hearings for the issuance of the ECC from the DENR, to which the latter answered that they were just mere invitees to the hearings because the proceedings were before the EMB.¹⁶⁸ This is an absurdity because EMB is a bureau under the DENR. The latter should be able to receive reports and updates regarding the issuance of the ECCs.

Another matter raised is that the ECC was a condition for the effectivity of the loan agreement but it was not among the requisites during the bidding.¹⁶⁹ One should question why a bidding was conducted for a project located within an ancestral domain and which requires an ECC prior to any actual works being conducted at the site without first securing the Certificate of Precondition and the ECC. As aptly put by Senator Marcos during the January 12, 2020 hearing –

THE CHAIRPERSON (SEN. MARCOS). *Nalilito ako kasi bakit binid (bid) out na hindi pa nakapagbuo ng plano? Hindi ba ang normal may program of work bago magbi-bid? Ito, na-award na, nasimulan na yata at saka lang pag-aaralan.*¹⁷⁰

It should be noted that the ECC was issued for the purpose of meeting the deadline for the loan agreement and not because the proponent was able to comply with all the requirements necessary for the issuance thereof; hence, its contingency nature.

¹⁶⁷ *Id.*, p. 42.

¹⁶⁸ TSN, August 27, 2019, p. 83.

¹⁶⁹ *Id.*, p. 122.

¹⁷⁰ TSN, January 22, 2020, pp. 58-59.

Moreover, *Section 13 of R.A. No. 7586*, otherwise known as the "*National Integrated Protected Areas System (NIPAS) Act of 1992*", as amended by *R.A. No. 11038*, also known as the "*Expanded National Integrated Protected Areas System Act of 2018*" (ENIPAS), provides that the ICCs and IPs concerned shall have the responsibility to govern, maintain, develop, protect, and conserve such areas, in accordance with their indigenous knowledge systems and practices and customary law, with full and effective assistance from the NCIP, DENR, and other concerned agencies.

Noteworthy are the following provisions of *DENR Administrative Order No. 2019-05* dated May 30, 2019 with the subject, "*IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 7586, OR THE NATIONAL INTEGRATED PROTECTED AREAS SYSTEM (NIPAS) ACT OF 1992, AS AMENDED BY REPUBLIC ACT NO. 11038, OR THE EXPANDED NATIONAL INTEGRATED PROTECTED AREAS SYSTEM (ENIPAS) ACT OF 2018*", in the matter at hand:

"Rule 11-A.2 In protected areas that share common areas with ancestral territories covered by CADT/CALT, pursuant to Section 13 of the NIPAS Act, as amended, and Rule 13.7 hereof, the PAMB shall convene a Coordination and Complementation Committee, which shall include as members, the representatives of ICCs/IPs in the PAMB, indigenous traditional leaders, holders of the Certificate of Ancestral Domain Title (CADT) or Certificate of Ancestral Land Title (CALT), or their duly authorized representatives. The Committee may invite resource persons from concerned agencies such as, but not limited to, the NCIP and the Department of Agrarian Reform (DAR).

"Rule 13. 3 The PAMP [Protected Area Management Plan] shall be harmonized with the ADSDPP [Ancestral Domain Sustainable Development and Protection Plan], or in the event that the ICC/IPs determine the need to enhance the current iteration of their ADSDPP to fully incorporate their sustainable traditional resource rights and IKSP, and to strengthen their governance, development, and conservation of their ancestral territories, the ICCs/IPs, shall craft their CCP [Community Conservation Plan], which shall, in turn, be harmonized with the PAMP.

The CCP may include, *inter alia*, the community's profile, the description of their territories, their sustainable traditional resource rights, IKSP, and protection policies. It shall be in a form and language

that is understandable and accessible to the ICCs/IPs and shall form an integral part of the PAMP.

The PAMO shall assist the ICCs/IPs concerned in their identification, mapping, and documentation of the areas to be included in the CCP.

“Rule 13.4 All policies, rules, regulations, and guidelines shall be subjected to notice and hearing, with the full and engaged participation of the community, and the assistance of the NCIP, in consonance with their customary laws and practices, and in a language they understand.

“Rule 13.5 Development interventions in a protected area that shares common areas with the ancestral territories covered by CADT/CALT, and any activity that will affect ICCs/IPs, shall require the Free Prior Informed Consent (FPIC) of the concerned ICCs/IPs, in compliance with the IPRA, and other applicable laws, rules and regulations. The ICCs/IPs shall determine the FPIC process, based on their customs and governance structure.

Bioprospecting in a protected area sharing common areas with ancestral territories covered by CADT/CALT shall be in accordance Joint DENR-DA-PCSD-NCIP Administrative Order No. 01 series of 2005, otherwise known as Guidelines for Bioprospecting Activities in the Philippines along with other relevant existing guidelines.

“Rule 13.7 In protected areas that share common areas with ancestral territories covered by CADT/CALT, the PAMB shall convene a Coordination and Complementation Committee which shall have the following functions:

- a. Conduct regular meetings and consultations in the community’s traditional meeting places;
 - b. Coordinate between the PAMB and the community for the purposes of:
 1. Ensuring that the concerns of the community are communicated to the PAMB;
 2. Promoting awareness of the agenda ahead of the PAMB meetings;and
 3. Facilitating discussion on issues affecting the community and ensuring active participation of the ICCs/IPs representatives concerned;
 - c. Contribute to the harmonization of the PAMP and the ADSDPP;
 - d. Assist in the planning and implementation of the community’s ADSDPP or CCP, as the case may be;
 - e. Foster intercultural understanding between ICCs/IPs and the PAMB;
- and

f. Perform functions as may be required by the ICCs/IPs, or directed by the PAMB, and such other acts as may be necessary for the accomplishment of the purposes and objectives of the Committee.”

The Kaliwa Watershed Forest Reserve is within the NIPAS having been proclaimed as National Park and Wildlife Sanctuary and Game Refuge Reservation by virtue of *Proclamation No. 1636* in 1977. Moreover, a more recent proclamation is the CADT awarded to the Dumagat-Remontado IPs, a part of which lies inside the Watershed.¹⁷¹

Although a PAMB Clearance was only issued on October 4, 2019,¹⁷² FPIC process has yet to be concluded with the signing of the MOA. FPIC is also a requirement under *Rule 13.5* of *DENR Administrative Order No. 2019-05* dated May 30, 2019.

With an unaligned DENR-EMB, PAMB, NCIP, and conflicting IP groups, DPWH entered into the fray and commenced construction of an access road without PAMB Clearance, ECC, and completion of FPIC process.

To reiterate, DPWH even admitted during the hearing of February 17, 2020 that it had to cease construction of the access road last July 2019 primarily due to lack of permits.¹⁷³

The Committees conclude that the non-alignment of the processes of different departments, agencies, and other bodies tasked to hear and issue clearances, certifications, and permits is one of the main factors that causes confusion and sows misunderstanding amongst the ICCs/IPs. This non-alignment of processes also causes delay in projects such as the Kaliwa Dam Project.

¹⁷¹ Department of Environment and Natural Resources Environmental Management Bureau [website], *Environment Impact Statement (EIS) (July 2019) Main Report* by MWSS, https://emb.gov.ph/wp-content/uploads/2019/08/Kaliwa-Dam_EIS.pdf (accessed 18 March 2021).

¹⁷² *Supra*, note 106.

¹⁷³ *Supra*, note 158.

VI. RECOMMENDATIONS

After careful considerations of the issues and discussions on the subject matter, the Committees hereby recommend the following:

A. ADMINISTRATIVE ACTIONS

1. ***The Government to cease and desist from using the tunnel boring machine expected to arrive in May 2021 unless the MOA is signed by the concerned IPs and a Certification of Precondition has been issued by the NCIP.***

2. ***DPWH to cease and desist from further construction of the access road; NCIP should exercise its injunctive power under Section 69 (d) of R.A. No. 8371, to enjoin MWSS and DPWH from continuing with the construction of the access road and any other activities within the ancestral domain in connection with the Kaliwa Dam Project such as placing of boundary markers and *muhon*, uprooting of trees and planted crops, deployment of military and police, among others. This is without prejudice to activities that are necessary to the slope protection to avoid any erosion during rains and maintenance of temporary draining to minimize collapse that may be the consequence of the constructed works already done within the site.***

Sensitivity of community is of utmost concern. There should be no movement while FPIC process is ongoing.

3. ***DENR should have a centralized system that will monitor and update its Central office about ECC issuances by the EMB.*** This centralized system should also be used by Central office to review irregularities in the ECCs issued by the EMB.

4. ***EMB should defer the first hearing for the issuance of ECC if jurisdictional issues are raised and substantiated*** such as failure to faithfully comply with the publication requirement or failure to personally notify the ICCs/IPs seven days prior to the scheduled hearing.

5. ***EMB should refrain from issuing contingent ECCs.*** One of the strong objections against the Kaliwa Dam Project is that the ECC was issued but with terms that the proponent MWSS must comply with instead of the other way around. One example pointed out is that the requirements for actual inventory and assessment of threatened species and land cover, detailed geological assessment, and quantitative risk assessment should have been done by MWSS prior to the issuance of the ECC.

6. ***Papers in local dialect, materials, and flow charts should be prepared as early as project proposal and prior to bidding and execution of contract.*** The proponent should ensure that all documents in connection with the project should already have local dialect counterpart copies. In addition, the proponent should also provide materials and flow chart in simplest terms. Therefore, once proposed project site has known ICCs/IPs, all documents related thereto should automatically have translated versions already.

7. ***No notice to proceed shall be issued and no bidding shall take place without the completion of the FPIC process.***

8. ***There should be rules against walk outs during consultations.*** This is so as not to hold the proceedings hostage. However, there should likewise be rules to ensure that all individuals or groups are properly heard and their objections acted upon.

9. ***A disinterested third party mediator/arbitrator should be appointed in foreign loan agreements entered into by the Government.*** The foreign loan agreement in connection with the Kaliwa Dam Project shows that the

Government is at a complete disadvantage because the laws of China will govern and disputes will be submitted to the Hong Kong Arbitration Center, also in China.

10. ***A bond should be posted for the board and lodging of foreign employees/contractors leasing the rooms or houses of the ICCs/IPs in relation to the project being proposed or implemented.*** One of the issues raised by the ICCs/IPs is the non-payment of rental by the employees of the Chinese contractor.

B. LEGISLATIVE ACTIONS

1. A proposed legislation should be drafted mandating the alignment of all requirements and compliances necessary under the different government departments, agencies, and instrumentalities for projects involving ancestral domains of the ICCs/IPs, including, but not limited to the conflicts between IPs and national government agencies on programs implemented inside ancestral domains, such as agrarian reform, energy projects, forest reserves, NIPAS Act, and the proper and effective implementation of the same.

2. A proposed legislation should be drafted mandating to complete the FPIC process by the NCIP and the complete study of the environmental impact prior to the issuance of the ECC by EMB prior to bidding out of any project involving ancestral domains.

3. A proposed legislation requiring open discussion among experts for the Environmental Impact Assessment. Moreover, the Environmental Impact Statement should not be vague and must state the feasibility of other alternatives.

4. A proposed amendment of *R.A. No. 9184* or the *Government Procurement Reform Act* to include rules for the bidding of projects under ODA by requiring contractors from origin country to still undergo the bidding process under the Government Procurement Policy Board rules. Amendments should include that if

only one bidder remains due to the disqualification of other bidders, the bidding should again be open to other qualified bidders from the origin country.

"We have a mother, and that mother is our territories, our common home of all the Indigenous peoples and everyone who inhabits the earth."

Maximiliano Ferrer
General Secretary
National Coordination of Indigenous Peoples of Panama