

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



SENATE

P. S. R. No. 979

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Introduced by Senator Aquilino "Koko" Pimentel III

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**RESOLUTION**

**DIRECTING THE COMMITTEES ON NATURAL RESOURCES, LOCAL GOVERNMENTS, AND OTHER APPROPRIATE SENATE COMMITTEES TO CONDUCT AN INVESTIGATION, IN AID OF LEGISLATION, ON THE MINING CONTROVERSY IN THE MUNICIPALITY OF BROOKE'S POINT, PROVINCE OF PALAWAN, WITH THE PURPOSE OF ADDRESSING THE POLICY QUESTIONS RAISED IN THIS RESOLUTION AND RECOMMENDING AMENDMENTS TO EXISTING LAWS OR THE ENACTMENT OF NEW LAWS, AND/OR THE REPEAL OR MODIFICATION OF EXISTING ADMINISTRATIVE ISSUANCES WHICH TEND TO DEFEAT OR WEAKEN THE LOCAL AUTONOMY, JURISDICTION, AND GENERAL WELFARE POWERS GRANTED TO OUR LOCAL GOVERNMENT UNITS BY THE 1987 CONSTITUTION AND VARIOUS LAWS AND FOR OTHER RELATED PURPOSES**

**WHEREAS**, the right of the Filipino people to a balanced and healthful ecology is such a fundamental right that this is recognized in the Declaration of Principles and State Policies under Section 16, Article II of our 1987 Constitution.<sup>1</sup> Furthermore, the Local Government Code (LGC) gave flesh and blood to this constitutional provision at the grassroots level, with its various and consistent provisions on environmental protection and natural resources governance;

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<sup>1</sup> Section 16, Article II of the 1987 Constitution provides that "The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature."

**WHEREAS**, the Province of Palawan is one of the best island groups in our country and in the world. Palawan is considered by many as the "last frontier" in the sense that its over-all natural beauty has not (yet) been tarnished or destroyed by human activities;

**WHEREAS**, mining activity, which is allowed by general law, has found its way into Palawan with one found in the Municipality of Brooke's Point, where the Ipilan Nickel Corporation ("Ipilan") mining concession is located;

**WHEREAS**, according to Atty. Jean Feliciano, Mayor of Brooke's Point ("Mayor Feliciano"), the mining concession area of Ipilan is located entirely within the Municipality of Brooke's Point, yet municipal ordinances, like the requirement for building permit or mayor's permit, are not considered as applicable within the said area by virtue of some alleged regulations of the Department of Environment and Natural Resources;

**WHEREAS**, on 14 December 2016, Ipilan's Environmental Compliance Certificate (ECC), an essential requisite for its lawful continued mining operations and activities in Brooke's Point, Palawan, was "*deemed cancelled by reason of Project's non-implementation*" by the DENR;

**WHEREAS**, on 5 April 2017, Regional Director Roland A. De Jesus (De Jesus) of the Mines and Geosciences Bureau (MGB) directed Engr. Carlo A. Matilac of Ipilan to refrain from conducting any development activities pending the DENR Secretary's resolution on Ipilan's Motion for Reconsideration on the cancellation of Ipilan's ECC;<sup>2</sup>

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<sup>2</sup> The letter by Regional Director De Jesus provides in part:

"Accordingly, it was conveyed that you are undertaking development and rehabilitation activities pursuant to the terms and conditions of the [Mineral Production Sharing Agreement] MPSA and relevant permits, and that the dump trucks are intended to support the company's work program that includes the repair and maintenance of the project road network and construction of siltation pond and check dams to prevent pollution to any stream or river within the contract area.

"Please be reminded that although you have already sought a reconsideration from the Secretary, Department of Environment and Natural Resources of the cancellation of INC's Environmental Compliance Certificate (ECC) denominated as ECC-CO-1006-017, the same has not yet been resolved.

"In view of the foregoing, please refrain from conducting development activities pending resolution of your letter for reconsideration to the Office of the Secretary."

WHEREAS, on 11 April 2017, Notices of Violation were served by the local government of Brooke's Point on Ipilan for the latter's unauthorized construction of nursery with fence projects, renovation of staff house and office, and construction of building with fence without the necessary permits from the Municipal LGU;

WHEREAS, on 12 April 2017, MGB Officer-in-Charge Atty. Danilo U. Uykieng wrote Ipilan's President, Atty. Dante A. Bravo (Atty. Bravo), stating that "*our evaluation shows that Ipilan/Celestial cannot conduct mining operation xxx;*"

WHEREAS, on 28 April 2017, Felizardo Cayatoc, Officer-in-Charge of the Provincial Environment and Natural Resource Office (PENRO), informed Ipilan that "*tree cutting and other related activities within the MPSA must be stopped and held in abeyance until further notice due to the cancellation of the Environmental Compliance Certificate (ECC) issued to Ipilan Nickel Corporation xxx;*"

WHEREAS, on 12 May 2017 (and 17 May 2017), Second Notices of Violation were served on Ipilan for failure to secure building permits and for non-compliance with the Work Stoppage Order imposed by the Municipal Engineer's Office of Brooke's Point. A Third Notice of Violation was served on 17 May 2017 and 23 May 2017;

WHEREAS, on 12 May 2017, MGB Regional Director De Jesus again wrote Ipilan's President Atty. Bravo, reiterating his previous letter to the latter to "*please be reminded to refrain from undertaking any mining or related activity in the area until such time that the resolution of the cancelled Environment Compliance Certificate has been resolved by the DENR*";

WHEREAS, on 13 May 2017, Mayor Feliciano, upon being barred by Ipilan from inspecting the mining premises, actually walked together with concerned residents and other stakeholders to the peak of a nearby hill, around 2 kilometers from the Ipilan campsite, and there saw the horrendous sight of massive environmental degradation where all trees, big and small, were recklessly cut within an area of more or less fifty (50) hectares;

WHEREAS, on 20 May 2017, the Municipal Environment and Natural Resources Office (MENRO) of Brooke's Point received an Order from DENR Secretary Roy Cimatu to conduct an inventory of cut and felled trees and to survey the Ipilan-cleared area to determine the extent of clearing done by the mining company and to plot the actual clearing and cutting operations done within their approved area;

WHEREAS, on 27 June 2017, Mayor Feliciano, based on personal knowledge and documented incidents, and to protect constituents who were afraid to speak up, personally signed an Affidavit-Complaint charging high-ranking officers and employees of Ipilan with violation of Presidential Decree No.1829;<sup>3</sup>

WHEREAS, on 14 July 2017, the City Environment and Natural Resources Office (CENRO), under OIC Conrado Corpuz, filed its own criminal complaint against Ipilan for violation of Section 77 of Presidential Decree No. 705, as amended;<sup>4</sup>

WHEREAS, on 20 July 2017, the DENR issued an Order describing Ipilan's activities undertaken after the cancellation/expiration of the ECC as violative of Section 4 of Presidential Decree No. 1586<sup>5</sup> or the "Philippine Environmental Impact Statement System." The Order emphasized that Ipilan's activities caused the release of pollutants brought about by the silt deposition from the road which might reach water bodies located along the perimeter of the mining tenement. The DENR then noted that such a complication will cause damage to the environment;<sup>6</sup>

WHEREAS, on 21 July 2017, a day after the issuance of the Order highlighting Ipilan's violation, the DENR issued a Cease and Desist Order against

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<sup>3</sup> Presidential Decree Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders.

<sup>4</sup> Revising Presidential Decree No. 380, otherwise known as the Forestry Reform Code of the Philippines.

<sup>5</sup> Presidential Decree Establishing an Environmental Impact Statement System, including other Environmental Management Related Measures and for Other Purposes.

<sup>6</sup> The 20 July 2017 order provides in part, *viz*:

"Activities undertaken after the cancellation/expiration of the ECC are causing the release of pollutants brought about by the silt deposition from the road which might reach water bodies located along the perimeter of the mining tenement. Such a complication will cause damage to the environment.

"Due to the activities conducted by herein respondent it is clear that the respondent has continuously implementing their project without a valid environmental compliance certificate in violation of Section 4 of PD 1586, otherwise known as "Philippine Environmental Impact Statement System" which requires that both government and private entities shall secure an Environmental Compliance Certificate (ECC) before starting a project falling under the system."



Ipilan to stop operation of its project located in Brooke's Point to prevent grave and irreparable damage to the environment;<sup>7</sup>

WHEREAS, on 27 July 2017, the Palawan Council for Sustainable Development (PCSD) cancelled Ipilan's Strategic Environmental Plan (SEP) and recommended the cancellation of Ipilan's Mineral Production Sharing Agreement (MPSA). The PCSD, an environmental regulatory body for Palawan composed of LGU heads, private sector representatives, National Commission on Indigenous Peoples (NCIP) representatives, and the DENR Secretary, among others, was created in 1992 through Republic Act No. 7611, otherwise known as the *Strategic Environmental Plan (SEP) for Palawan Act*;

WHEREAS, despite all of the above developments, Ipilan never complied with the various government directives and instead continued its mining activities thus resulting to several cases being filed against it by various entities. Parenthetically, the ECC issue of Ipilan was resolved by the DENR only in the

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<sup>7</sup> The 21 July 2017 Cease and Desist order provides in part, *viz*:

"In the absence of scientific certainty, the precautionary principle may be adopted in this case. The precautionary principle is premised on the notion that environmental regulators have to act on the frontiers of knowledge and in the absence of full scientific certainty. The lack of scientific certainty should not be considered as a reason for establishing the occurrence of environmental harm. The quantum of evidence to prove potentially hazardous effects on the environment is relaxed and the burden is shifted to proponents of an activity that may cause damage to the environment.

"Further, Article II, Section 16 of the 1987 Constitution provides that every citizen has a right to a balanced and healthful ecology. This right to a healthy environment has been affirmed by the Supreme Court as an enforceable right in the landmark case of *Oposa vs. Factoran*. This right carries with it the correlative duty of not impairing the environment, otherwise, sanctions may be provided for the occurrence of environmental imbalance.

"WHEREFORE, premises considered, pursuant to Section 16 of the Implementing Rules and Regulations (IRR) for the Presidential Environmental Impact Statement (EIS) Law, and Item 29 and 30 of the Revised Procedural Manual for DENR Administrative Order No. 30, series of 2003, and I order to prevent grave and irreparable damage to the environment, Respondent Ipilan Nickel Corporation is Ordered to CEASE AND DESIST from operating its project located at Barangays Ipilan, Mambalot, Maasin,, and Calasaguen, Municipality of Brooke's Point, Province of Palawan.

"Failure on the part of the respondent to abide by this lawful Order shall constrain this Office to issue the necessary sanction which may include among others the imposition of other fines and/or institution of appropriate action in the regular court of law.

"SO ORDERED."

year 2020. Latest information reveals that the mining company is still actively operating in Brooke's Point;

WHEREAS, Mayor Feliciano also became the target of multiple cases filed against her by Ipilan. In fact, Mayor Feliciano was suspended for one (1) year last 19 February 2021 by the Office of the Ombudsman for Oppression. The Ombudsman ruled that her acts of issuing notices of violation and related orders were oppressive because at the time she issued these orders, the issue of cancellation of the ECC of Ipilan was still pending;

WHEREAS, Section 16 of the Local Government Code (LGC), otherwise known as the General Welfare Clause, expressly mandates LGUs to enhance the right of the people to a balanced ecology;<sup>8</sup>

WHEREAS, Section 5 of the LGC states that "*any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit. Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned;*"

WHEREAS, again under Section 444(b)(3)(vii) of the LGC, the municipal mayor, as the chief executive of the municipal government, shall exercise the power and perform the duty and function to adopt adequate measures to safeguard and conserve land, mineral, marine, forest and other resources of the municipality;<sup>9</sup>

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<sup>8</sup> "Sec. 16. *General Welfare.* — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, **enhance the right of the people to a balanced ecology**<sup>8</sup>, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants." (Emphasis and underscoring supplied)

<sup>9</sup> Section 444(b)(3)(vii), Local Government Code provides:

Section 444. The Chief Executive: Powers, Duties, Functions and Compensation – The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and perform such duties and functions as provided by this code and other laws:

WHEREAS, the LGC also provides that no project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of cropland, rangeland, or forest cover, and extinction of animal or plant species, shall be implemented unless (1) the consultations with appropriate LGUs, NGOs and other concerned sectors of the community are complied with, and (2) prior approval of the sanggunian concerned (Section 27<sup>10</sup> in relation with Section 26<sup>11</sup>);

WHEREAS, Mayor Feliciano may have been suspended from office for her efforts to fulfill her mandate under the Constitution and the LGC to provide her constituents as well as the Municipality itself with a balanced and healthful ecology. Her suspension was based on the legal argument that an ECC exempts a mining company from complying with local requirements such as a Building Permit;

WHEREAS, the suspension of Mayor Feliciano is a result of her acting for the welfare of her constituents and her Municipality;

WHEREAS, this particular incident between the Municipality of Brooke's Point in Palawan and Ipilan Nickel Corporation presents Congress with very compelling legislative policy issues:

- In cases where the MPSA or mining concession of a mining company is located entirely within the territory of an LGU like a Municipality, to what extent are the Municipal ordinances and

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(b)(3)(vii) . adopt adequate measures to safeguard and conserve land, mineral, marine, forest and other resources of the municipality;

<sup>10</sup> Sec. 27. *Prior Consultations Required.* – No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2(c) and 26 hereof are complied with, and prior approval of the sanggunian concerned is obtained: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

<sup>11</sup> Sec. 26. *Duty of National Government Agencies in the Maintenance of Ecological Balance.* – It shall be the duty of every national agency or government-owned or -controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of cropland, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

other requirements applicable within the area of coverage of the MPSA?

- Can the unelected technocrats and bureaucrats within the DENR issue regulations and other rules which provide that (or could be construed to mean that) within the MPSA or mining concession, Municipal ordinances are not applicable?
- Is the MPSA or mining concession area deemed as "technically outside of the LGU" that the local chief executive, the Mayor, can be barred from conducting even a harmless ocular inspection meant to determine what is going on within the territorial limits of her LGU?
- In a case like this, can the Municipality no longer enact proactive measures, applicable within the MPSA or mining concession area, to protect its own environment?
- If the MPSA or mining concession spans more than one LGU, then would our positions to the above issues need to change?

**NOW THEREFORE**, be is **RESOLVED** by the Senate of the Philippines, as it is hereby **RESOLVED**, to direct the Senate Committee on Natural Resources, Local Governments, and other appropriate Senate committees to conduct an investigation, in aid of legislation, on the mining controversy in the Municipality of Brooke's Point, Province of Palawan, with the purpose of addressing the policy questions raised in this Resolution and recommending amendments to existing laws or the enactment of new laws, and/or the repeal or modification of existing administrative issuances which tend to defeat or weaken the local autonomy, jurisdiction, and general welfare powers granted to our Local Government Units by the 1987 Constitution and various laws.

Adopted,

  
AQUILINO "KOKO" PIMENTEL III