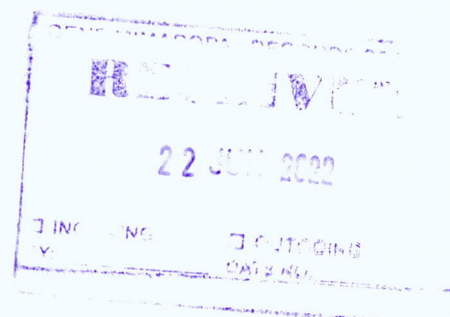




Republic of the Philippines
MIMAROPA Region
Department of Environment and Natural Resources
 Provincial Environment and Natural Resources Office
 Sta. Monica, Puerto Princesa City

MEMORANDUM:

FOR : THE ACTING SECRETARY
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
JIM O. SAMPULNA
Visayas Avenue
Diliman, Quezon City



THROUGH: THE UNDERSECRETARY FOR LEGAL, ADMINISTRATION, HUMAN RESOURCES AND
LEGISLATIVE AFFAIRS
ATTY. ERNESTO D. ADOBO, JR.
CENTRAL OFFICE, VISAYAS AVENUE, DILIMAN, QUEZON CITY

COPY TO : THE REGIONAL EXECUTIVE DIRECTOR (RED)
LORMELYN E. CLAUDIO, CESO IV
1515 L&S BUILDING, ROXAS BOULEVARD, METRO MANILA

THE CHIEF, LEGAL DIVISION
ATTY. GANDHI GAGNI-FLORES
REGION-MIMAROPA,
1515 L&S BUILDING, ROXAS BOULEVARD, METRO MANILA

THE PENRO-PALAWAN
FELIZARDO B. CAYATOC
PENRO COMPOUND, STA. MONICA, PUERTO PRINCESA CITY

THE PLANNING SECTION
PENRO-PALAWAN
STA. MONICA, PUERTO PRINCESA CITY

THE MONITORING AND ENFORCEMENT SECTION
PENRO-PALAWAN
STA. MONICA, PUERTO PRINCESA CITY

FROM : ATTY. LILLIBETH MARY ELVISA S. ABIOG, DENR-MIMAROPA @PENRO-PALAWAN

DATE : June 15, 2022

SUBJECT : PROPOSED DRAFTING OF A LEGISLATIVE BILL TO CLARIFY, DELIMIT, AND DEFINE THE
LAND AND MARITIME TERRITORIAL BOUNDARIES OF THE PROVINCE OF PALAWAN

In 2018, the province of Palawan, in the decided cases of *Republic of the Philippines, Represented by Raphael P.M. Lotilla, Secretary, Department of Energy (DOE), Margarito B. Teves, Secretary, Department of Finance (DOF), and Romulo L. Neri, Secretary, Department of Budget and Management (DBM), Petitioners, v.*

Provincial Government of Palawan, Represented by Governor Abraham Kahlil B. Mitra, Respondent (GR No. 170867, December 4, 2018, EN BANC, Tijam, J.), or Republic of the Philippines vs. Provincial Government of Palawan, for brevity, and in *Bishop Pedro Dulay Arigo, Cesar N. Sarino, Dr. Jose Antonio N. Socrates, Prof. H. Harry L. Roque, Jr., Petitioners, v. Hon. Executive Secretary Eduardo R. Ermita, Hon. Energy Secretary Angelo T. Reyes, Hon. Finance Secretary Margarito B. Teves, Hon. Budget and Management Secretary Rolando D. Andaya, Jr., Hon. Palawan Governor Joel T. Reyes, Hon. Representative Antonio C. Alvarez (1st District), Hon. Representative Abraham Mitra (2nd District), Rafael E. del Pilar, President and CEO, PNOG Exploration Corporation, Respondents (GR No. 185941, December 4, 2018, EN BANC, Tijam, J.), or Bishop Arigo, et.al., vs. Hon. Executive Secretary, et.al.*, for brevity, was denied its claimed 40% share of the government's earnings derived from the Camago-Malampaya natural gas project since October 16, 2001, on the reasoning that: (1) the United Nations Convention of the Law of the Sea (UNCLOS) affects only the right of the Philippines vis-à-vis another sovereign State; (2) Even if the UNCLOS were to be considered to have been transformed to be part of the municipal law, after its ratification by the Batasang Pambansa through Resolution No. 121 on February 27, 1984, the UNCLOS did not automatically amend the Local Government Code and the charters of the local government units. The UNCLOS, transformed into our municipal laws, should be applied as it is worded; (3) an LGU's territorial jurisdiction refers to its territorial boundaries or to its territory. The territory of LGUs, in turn, refers to their land area, unless expanded by law to include the maritime area; and, (4) Section 6 of the Local Government Code empowers Congress to substantially alter their boundaries, subject to the plebiscite requirement (Section 10) where a majority of the votes cast in the directly affected area/s approves the boundary alteration, within 120 days from the date of effectivity of the law or on another date fixed. Stated otherwise, unless Congress, with the approval of the political units directly affected, clearly extends an LGU's

territorial boundaries beyond its land area, to include marine waters, the seabed and the subsoil, it cannot rightfully share in the proceeds of the utilization of national wealth found therein. Thus, Service Contract No. 38 was entered into between the Republic of the Philippines through the Department of Energy, with Shell Philippines Exploration B.V. (Shell) and Occidental Philippines, Inc. (Occidental) for the drilling of a natural gas reservoir in the Camago-Malampaya area,¹ located about 80 kilometers from the mainland of Palawan, situated not in the marine waters, but in the continental shelf, and specifically located 93.264 kilometers or 50.3585 nautical miles from the Kalayaan Island Group (KIG); 55.476 kilometers or 29.9546 nautical miles from Mainland Palawan, particularly from Nacpan Point, south of Patuyo Cove of the Municipality of El Nido; or 48.843 kilometers or 25.[3731] nautical miles from Tapiutan Island of the Municipality of El Nido.

While the baseline points of the Philippines have been laid down in Republic Act No. 9522 on March 12, 2009, amending Republic Act No. 3046, which originally defined the baselines of the territorial seas of the Republic of the Philippines, nothing was done to substantially alter the boundaries of the province of Palawan to conform to the historical basis that the province of then province of Paragua already anchored its borders on the bodies of water surrounding it. Particularly, Act No. 567, approved on December 22, 1902, amended Act 422, to provide the boundaries of then Paragua to include –

“The Province of Paragua shall consist of all that portion of the Island of Paragua north of a line beginning in the middle of the channel at the mouth of the Ulugan River in the Ulugan Bay, thence following the main channel of the Ulugan River to the village of Bahile, thence along the

¹ It is said that the Camago-Malampaya area consists of two reservoirs connected via saddle, roughly 54 kilometers off El Nido in a water depth of 820 meters. Wells were drilled for another 3.5 to 4 kilometers deep to reach the producing sections.

There are 7 producing wells and according to the depletion curve, there are still extractable gas until 2027 to 2029, depending on the extraction rate. However, there are near infrastructure and near field reservoir which can be drilled and connected to the subsea distribution unit that can add to the extractable reserves in the Service Contract 38 Area, and in this regard, work needs to be undertaken to determine what these additional extractable reserves are.

main trail leading from Bahile to the Tapul River, thence following the course of the Tapul River to its mouth in the Honda Bay; xxx xxx There shall be included in the Province of Paragua the small islands adjacent thereto, including Dumaran and the island forming the Calamianes group and the Cuyos group.” (Section 1, Act No. 567, An Act Amending Act Numbered Four and Twenty-Two, Providing For the Organization of A Provincial Government in the Province of Paragua and Defining the Limits of That Province, By Fixing New Boundaries For The Province of Paragua, Approved on December 22, 1902)

While there were still subsequent laws that amended the definition of the boundaries of Paragua, Act No. 1363, which was approved on June 28, 1905, changed the name of the province of Paragua to Palawan.

Section 26(a) of Act No. 1396 provides that –

*“the **Province of Palawan** shall include: (1) the **entire island of Palawan**; (2) the **Islands of Dumaran and Balabac**; (3) the **Calamianes Islands**; (4) the **Cuyos Islands**; (5) the **Cagayanes Islands**; and (6) **all other islands adjacent to these islands and not included within the limits of any other province**. The **capital** of the Province of Palawan, which was the township of Cuyo, was changed to the township of **Puerto Princesa** on the island of Palawan.”*

Subsequently, on June 11, 1978, Presidential Decree No. 1596 was issued by then President Ferdinand E. Marcos, to create the municipality of Kalayaan in the province of Palawan. Thus,

“From a point [on the Philippine Treaty Limits] at latitude 7°40’ North and longitude 116°00’ East of Greenwich, thence due West along the parallel of 7° 40’ N to its intersection with the meridian of longitude 112°10’ E, thence due north along the meridian of 112°10’ E to its intersection with the parallel of 9°00’ N, thence northeastward to the inter-section of the parallel of 12°00’ N with the meridian of longitude 114° 30’ E, thence, due East along the parallel of 12°00’ N to its intersection with the meridian of 118°00’ E, thence, due South along the meridian of longitude 118° 00’ E to its intersection with the parallel of 10°00’ N, thence Southwestwards to the point of beginning at 7°40’ N, latitude and 116° 00’ E longitude;

including the sea-bed, sub-soil, continental margin and air space shall belong and be subject to the sovereignty of the Philippines. Such area is hereby constituted as a distinct and separate municipality of the Province of Palawan and shall be known as “Kalayaan.”

As it now stands, the province of Palawan consists of the following municipalities:

(1) the MAIN ISLAND OF PALAWAN consisting of the municipalities of:

(1.1.) BATARAZA, which should be Batarasa according to Republic Act No. 3425
which created the municipality;

(1.2.) BROOKE’S POINT;

(1.3.) SOFRONIO ESPAÑOLA;

(1.4.) RIZAL;

(1.5.) QUEZON;

(1.6.) NARRA;

(1.7.) ABORLAN;

(1.8.) the CITY OF PUERTO PRINCESA, which was created a city under Republic Act No. 5906 on June 21, 1969, and was declared highly urbanized city on March 26, 2007, under Presidential Proclamation No. 1264 by then President Gloria Macapagal Arroyo;

(1.9.) ROXAS;

(1.10.) SAN VICENTE;

(1.11.) TAYTAY; and,

(1.12.) EL NIDO;

(2) the **TWELVE (12) ISLAND MUNICIPALITIES** of:

(2.1.) CALAMIANES GROUP of island-municipalities of:

(2.1.1.) CORON (13);

(2.1.2.) CULION (14);

(2.1.3.) LINAPACAN (15);

(2.1.4.) BUSUANGA (16);

(2.2.) the island-municipality of ARACELI (17), which was changed to its name on June 15, 1954 by Republic Act No. 1111 on June 15, 1954;

(2.3.) the island-municipality of DUMARAN (18), which was created on June 18, 1961 under Republic Act No. 3418;

(2.4.) the Cuyo island-municipalities of:

(2.4.1.) CUYO (19);

(2.4.2.) MAGSAYSAY (20);

(2.4.3.) AGUTAYA (21);

(2.5.) the island municipality of BALABAC (22);

(2.6.) the islands- municipality of CAGAYANCILLO (23); and,

(2.7.) the municipality of KALAYAAN (24), which is also known as the Kalayaan (Spratly Islands) Island Group (KIG) under Presidential Decree Number (PD) 1596.

In the municipality of Cagayancillo is the **Tubbataha Reef National Park**, pursuant to Republic Act (R.A.) No. 10067, known as the **Tubbataha Reefs Natural Park (TRNP)** Act of 2009, and it covers an approximate area of ninety-seven thousand thirty (97,030) hectares, including its islets, seabed and airspace, the Tubbataha Reefs and the Jessie Beazley Reef, and is declared as a protected area.

The **Local Government Code**, as explained by its main proponent, the former Senator Aquilino Pimentel, Jr., **was enacted to: (1) share power between the national government and local government; and (2) to share resources between the national government and local government.** It is on this belief, according to Senator Pimentel, Jr., that **countryside development will become a reality in the nation.**

The passage of the Local Government Code in 1991 thus provides a framework in support of increased local autonomy.² The LGUs assumed principal responsibility for the delivery of basic services and the operation of facilities in the areas of: agricultural extension and research, social forestry, environmental management and pollution

² Manasan, Rosario. (2002). "Devolution of Environmental and Natural Resource Management in the Philippines: Analytical and Policy Issues." *Philippines Journal of Development*, Number 53, Volume XXIX, No. 1, First Semester 2002.

control, primary health care, hospital care, social welfare services, water supply, communal irrigation, land use planning, and repair and maintenance of local infrastructure facilities. The devolution is substantial in the functions shifted, in the number of personnel transferred and the corresponding reductions implied in the budgets of affected national government agencies. Most heavily affected by the devolution are the Department of Agriculture (DA), the Department of Health (DoH), and the Department of Social Welfare and Development (DSWD).³

On this basis alone, *there is a significant disparity between the availability of public funds to defray the devolved functions to the local government units and the denial for Palawan to share in the proceeds of the Camago-Malampaya Service Contract No. 38 natural gas project.*

Despite the obvious proximity of the Camago-Malampaya area to the municipalities of Kalayaan and El Nido, the Supreme Court ruled that “*the territory of LGUs, in turn, refers to their land area, **unless expanded by law to include the maritime area (emphasis supplied).** Accordingly, only the utilization of natural resources found within the land area as delimited by law (which is RA 9522) is subject to the LGU’s equitable share under Section 290 and 291 of the Local Government Code. xxx.” Section 6 of the Local Government Code (**RA 7160**, approved on October 10, 1991) *empowers Congress to create, divide, merge and abolish LGUs, and to substantially alter their boundaries, subject to the plebiscite requirement* under Section 10 of the law which reads: “Section 10. *Plebiscite Requirement. – **No creation, division, merger, abolition or substantial alteration of boundaries of local government units shall take effect unless approved by a majority of the votes cast in a plebiscite called for the purpose in the political unit****

³ *Ibid.*

or units directly affected. Such plebiscite shall be conducted by the Commission on Elections (COMELEC) within one hundred twenty (120) days from the date of effectivity of the law or ordinance effecting such action, unless said law or ordinance fixes another date.”

The inclusion of any land or water as part of any geographical place must be expressly provided by law and not merely inferred by vague and ambiguous construction. (G.R. No. 170867, December 4, 2018, En Banc, *Republic of the Philippines vs. Provincial Government of Palawan*; G.R. 185941, En Banc, *Bishop Pedro Arigo, et.al. vs. Hon. Executive Secretary, et.al.*, page 11). Thus, the boundaries of a province, Palawan in this instance, may be altered according to law, and subject to the plebiscite held for the purpose. **“No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.”** (Section 10, Article X, 1987 Constitution of the Philippines).

In addition, therefore, to the significant volume of devolved functions to local governments, the historical reference to bodies of water to define the boundaries of Palawan as early as 1902 and on the basis, too, of PD 1596, in keeping with the archipelagic principle, **there is sufficient basis for the Congress of the Philippines to justify the substantial alteration of the boundaries of the Province of Palawan to include the maritime area, in accordance with the decision in the cases of *Republic of the Philippines vs Government of Palawan*⁴ and *Bishop Arigo, et.al. vs. Hon. Executive Secretary, et.al.*⁵**

⁴ GR No. 170867, December 4, 2018, EN BANC, *Republic of the Philippines, Represented by Raphael P.M. Lotilla, Secretary, Department of Energy (DOE), Margarito B. Teves, Secretary, Department of Finance (DOF), and Romulo L. Neri, Secretary, Department of Budget and Management (DBM), Petitioners, v. Provincial Government of Palawan, Represented by Governor Abraham Kahlil B. Mitra, Respondent*

⁵ GR No. 185941, December 4, 2018, EN BANC. *Bishop Pedro Dulay Arigo, Cesar N. Sarino, Dr. Jose Antonio N. Socrates, Prof. H. Harry L. Roque, Jr., Petitioners, v. Hon. Executive Secretary Eduardo R. Ermita, Hon. Energy*

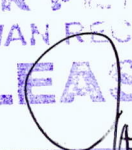
Towards this end, it is recommended at this time for the Department to map out already the budgetary requirements and allocation for the delineation of the metes and bounds on ground of the entire province of Palawan, consisting of its terrestrial, fluvial, and aerial domain, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas, and the waters, around, between, and connecting the islands of the Palawan islands. Such delimitation of land and maritime boundaries have been done already,⁶ to illustrate, in 1997-1998 in the Saudi Arabia-Qatar border.

FOR CONSIDERATION.



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June 15, 2022
Memorandum for the Secretary Through The USEC for Lega and Legislative Affairs.doc

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PALAWAN RECORDS
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Secretary Angelo T. Reyes, Hon. Finance Secretary Margarito B. Teves, Hon. Budget and Management Secretary Rolando D. Andaya, Jr., Hon. Palawan Governor Joel T. Reyes, Hon. Representative Antonio C. Alvarez (1st District), Hon. Representative Abraham Mitra (2nd District), Rafael E. del Pilar, President and CEO, PNOC Exploration Corporation, Respondents

⁶ Cosquer_Hangouet%20DELIMITATION%20OF%20LAND%20AND%20MARITIME%20BOUNDARIES.pdf. Gérard COSQUER and Jean-François HANGOUËT, France. **Delimitation of Land and Maritime Boundaries: Geodetic and Geometric Bases** SUMMARY "State-of-the-art technology is beneficial to the construction of geographic lines and borders, both on the ground on land, and on the map at sea. The paper first explores the usefulness of real time kinematics GPS technique for the setting up of primary and particularly intermediate markers for land borders where the positions have to fulfill two conditions, viz. being lined up and inter-visible, a process which was experimented by IGN (French Institut Géographique National) in the demarcation of the Saudi Arabia – Qatar border in 1997-1998. The second section addresses what Computational Geometry calls Voronoï diagrams, and shows that such geometrical structures, computed on coastlines, provide an elegant computation tool for the delineation of geometric median lines and of maritime zone boundaries."