

Prior Rights: A Breakout in the RA 7586 Otherwise Known as National Integrated Protected Area System (NIPAS), as Amended by RA 11038 or the Expanded National Integrated Protected Area System (ENIPAS)

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The Philippines has always been considered one of the major biodiversity hotspots in the world. With ecosystems that boasts of one of the highest levels of diversity and endemism of life forms and some of the most unique habitats in the world, it is also home to some of the planet's critically endangered species of wildlife, such as the Philippine eagle – one of the most magnificent raptors in the world and our country's symbol of biodiversity conservation. However, the country's habitats and ecosystems, which play a major role in maintaining ecological balance and in the day-to-day lives of Filipinos, are in constant threat, mainly from unwise resource use and development paradigms that tend to increase pressure on the world's already scarce resources.^[1]

For this reason, the Philippine government, in cooperation and consultation with local and foreign conservation partners, embarked on a mission to establish a system of protected areas in the country. The last remaining representatives of Philippine habitats and ecosystems were set aside for conservation through innovative approaches spelled out in the National Integrated Protected Areas System (NIPAS) Act of 1992, a landmark piece of legislation which provides the framework for a decentralized, community-based reserve management strategy.^[2]

Two landmark laws were enacted for the establishment and management of protected areas, to wit: Republic Act No 7586 or the National Integrated Protected Areas System Act of 1992 and Republic Act No 11038 or the Expanded National Integrated Protected Areas System (E-NIPAS) Act of 2018. With the passage of these laws, priority conservation areas were identified through innovative approaches and the legislation provided the framework for a decentralized, community-based reserve management strategies.

On the one hand, the passage of the Republic Act 7586, otherwise known as NIPAS act, during the Fifth Regular Session of Congress on the 22nd of July 1991 represented a significant move toward the management of the protected areas in the country.

^[1] G. Mayo-Anda, PRIMER on PROTECTED AREAS and the Expanded National Integrated Protected Areas System (ENIPAS) Act of 2018 and its Implementing Rules and Regulations. Oceana Philippines International. 6 (2021) Available at https://ph.oceana.org/wp-content/uploads/sites/16/ENIPAS-Primer_Oceana_For-viewing1.pdf (last visited on May 30, 2025)

^[2] R. Senga, Establishing Protected Areas in the Philippines: Emerging Trends, Challenges and Prospects. 18 The George Wright Forum. No. 2, 56 (2001) Available at <https://www.jstor.org/stable/43597746?seq=1> (last visited on May 30, 2025)

Its Implementing Rules and Regulations were issued as DENR Administrative Order No. 25 (DAO 25) on 29 June 1992. At the heart of the NIPAS Act is the Declaration of Policy that underscore, among other things, “the critical importance of protecting and maintaining the natural biological and physical diversities of the environment, notably of areas with unique features to sustain human life and development, as well as plant and animal life.”^[3]

In view of the magnitude of this task, no less than the powers of the State are invoked in order to secure for present and future generations of the Filipinos “the perpetual existence of all native plants and animals.”^[4] To this end, a comprehensive system of integrated protected areas within the classification of national park has been established, as provided for by the Constitution. This law thereby recognized that these identified areas, although distinct in features, possess common ecological values that may be incorporated into a holistic plan representative of our natural heritage; that effective administration of this area is possible only through cooperation among national government, local government and concerned private organizations; that the use and enjoyment of these protected areas must be consistent with the principles of biological diversity and sustainable development.^[5]

Hence, the lawmakers established a National Integrated Protected Areas System (NIPAS), which shall encompass outstandingly remarkable areas and biologically important public lands that are habitats of rare and endangered species of plants and animals, biogeographic zones and related ecosystems, whether terrestrial, wetland or marine, all of which shall be designated as "protected areas".^[6]

On the other hand, RA No. 11038 otherwise known as Extended National Integrated Protected Area System (ENIPAS) Act of 2018 was passed by the 17th Congress on June 22, 2018, thereby amending RA 7586. It declares numerous protected areas and provides for their management. The law provides that the government secure the existence of all native flora and fauna for all generations of Filipinos, and it specifically aims to achieve a comprehensive approach to biodiversity conservation. The law recognizes the importance of the integrated protected areas system as a powerful mechanism to conserve Philippine biodiversity. It recognizes conservation areas and management regimes implemented by local government units (LGUs), local communities, and indigenous peoples (IPs).^[7]

^[3] Rep. Act. No. 7586 (1992)

^[4] Ibid.

^[5] Ibid.

^[6] Ibid.

^[7] Rep. Act No. 11038 (2018)

Pursuant to DENR Administrative Order 2019-05, Protected Areas should complement each other in terms of taxonomic representation, species migration patterns, maintenance of essential ecological processes and life support systems, and efficiency in conservation costs.^[8] Moreover, the management of the NIPAS is intended to contribute to the significant reduction of biodiversity loss. It shall consider the ability of ecosystems to adapt to the impacts of rapid climate change, reduce disaster risks, and mitigate anthropogenic greenhouse gas emissions.^[9]

It is by virtue of these two laws that the Guiuan Marine Resource Protected Landscape and Seascape (GMRPLS) was established. As early as 1994, the GMRPLS was already as Protected Area under Protected Landscape and Seascape pursuant to the NIPAS Law, as amended. It is a relatively large interconnection of marine, coastal and terrestrial biodiversity. It covers a total area of 66,725.26 hectares which encompasses the neighboring islands – Candulom, Calicoan, Suluan, Manicani, Tubabao, Victory, a portion of Homonhon, and other surrounding islets.

Under Sec. 20 of the NIPAS Act, as amended, “undertaking mineral exploration or extraction within the protected area is prohibited. Any violation of this provision is penalized by a fine of not less than one million pesos (P1,000,000) but not more than five million pesos (P5,000,000) or imprisonment from six (6) years but not more than twelve (12) years, or both.”^[10] However, in the case of GMRPLS, the controversy exist because of the presence of mining activities within the protected area. Accordingly, there are islands within GMRPLS which host mining operations, namely Homonhon Island and Manicani Island, except that in the former, the boundary of the protected area only includes the coastal areas of Barangays Casuguran, Bitaugan, Habag, and Cagusuan. Whereas, the mining activities in said island is outside of the PA. However, in the case of the Manicani Island, mining operations are undeniably within the protected since the whole island is covered by GMRPLS. Hence, it is a big question why such mining operation allowed in the protected area when the very statute itself explicitly prohibits undertaking mineral exploration or extraction within the PA.

Based on available information, the company operating in the area is the Hinatuan Mining Corporation. The subject project is within Mineral Production Sharing Agreement (MPSA) No. 012-92-VIII between Hinatuan Mining Corporation (HMC) and the Republic of the Philippines. The MPSA was signed August 13, 1992 with at total aggregate area of 1,165 hectares. Moreover, an Environmental Compliance Certificate (ECC) for the MNP was

^[8] DENR Adm. Order No. 05 (2019)

^[9] Ibid.

^[10] Rep. Act No. 11038 (2018)

issued in February 8, 1992 covering a mining area of 419.75 hectares and production capacity of 250,000 Wet Metric Tons of nickel ore.

Prior the amendment of the NIPAS Act, the operation of the Hinatuan Mining Corporation was primarily grounded on the fact that their permit on mineral exploration and extraction was approved prior to the proclamation of the GMRPLS as Protected Area. Hence, they were able to justify their operation under the constitutional guarantee of non-impairment of the obligation of contracts.^[11]

However, on 2017, the 25-year MPSA of the Hinatuan Mining Corporation in Manicani Island had expired. But they were able to renew such contract and started again their mining operation on 2024. Again, the big question is: How did the able company able to secure such permit, when the provisions of the NIPAS Act, as amended, is straightforward to its prohibition on mining activity within the protected area.

It should be noted that RA 11038, which amended the RA 7586, inserted in its provision under Section 22 which established the Existing Rights provision. Accordingly, “All property and private rights within the protected area and its buffer zones already existing and/or vested upon the effectivity of this Act shall be protected and respected in accordance with existing laws: Provided, That the exercise of such property and private rights shall be harmonized, as far as practicable, with the provisions of this Act. Notwithstanding this Act, all existing rights, contracts, or agreements entered into by government for utilization of natural resources within protected areas shall continue to be recognized and governed by Philippine laws.”^[12]

This new provision in the amended law, recognizes all existing rights, contracts, or agreements entered into by government for utilization of natural resources within protected areas. This now includes the mining activities. It is remarkable that this provision is not present in RA 7586. In fact, in Senate Bill 1444, which is the Senate version of the ENIPAS LAW, the same provision is nowhere to find. But in the House Bill 6772, it was inserted as a new provision.

This “Prior Rights” provision is actually a strategic breakout of the law. It was introduced in 2017, when the Hinatuan Mining Corporation tried to lobby their cause in the House of the Representatives as their MPSA deemed expired. The company knows very well that upon the expiration of their MSPA, and the effectivity of the NIPAS Act, they would not be able to renew their mining permit in the island as the same is within the protected area. This existing

^[11] Const. (1987), Art. III, Sec. 10

^[12] Rep. Act No. 11038 (2018)

right/prior right was used as an exemption of the law in order to justify mining activities without being tag as illegal or prohibited acts within the protected area.

However, pursuant to DENR Administrative Order 2019-05, the exercise or property and private rights shall be harmonized with the provisions of the NIPAS Act, as amended. The holders of property or private right shall be consulted in the preparation of the Protected Area Management Plan (PAMP). It clear from the provisions and intent of the law, that the establishment of the National Integrated Protected Areas Systems is actually aimed to protect, preserve, conserve and promote sustainable utilization of the country's natural resources.

Therefore, the “Prior Right” provision should only apply to those already existing establishments, private properties and local communities who are already present before the enactment of the aforesaid, provided that, such presence or existence is not detrimental to the protected area. The fact that under Section 22 of the same law states that the exercise of such property and private rights shall be harmonized, as far as practicable, with the provisions of the law,^[13] then such rights is only to protect and respect the already existing and/or vested rights upon the effectivity of the law.

It cannot be applied as an exemption to mining activities despite being already present in the place prior to the enactment of the law. It illogical and futile to consider as exemption such act/s which the law was enacted to suppress. It the NIPAS law, as amended, was crafted to protect and conserved the country's unique and exception habitats and ecosystems, there is no way to interpret the prior rights provision enclosed in the statute as to favor one of the acts which the law ought to suppress being detrimental to the country's ecosystem and biodiversity – Mining.

^[13] Ibid.