

AFFIRMATIVE SIDE
(Galang, Reyes, Varona)

Those who seek through judicial means to have the highest and most honorable Court in the land to adjudge and declare R.A. 10083 or “the Act Creating and Expanding the Coverage of the Aurora Pacific Economic Zone and Freeport Authority” focus their attacks through the prism of three fronts, mainly that of the law’s unconstitutionality, its impracticability, and the benefits of rendering it inoperative.

On the level of unconstitutionality, the law is deemed to be odious to application and statutory recognition of the basis of five arguments as posited by those opposing the RA 10083:

1. RA10083 is unconstitutional because it violates procedural due process. APECO violated Section 1 of Article III of the 1987 Constitution for failure to accord due process of the laws. As held in *Dumlao v. Comelec*, where Batas Pambansa Blg. 52 was declared unconstitutional for making a criterion for disqualification of those filed with charges for commission of crimes before a civil court or military tribunal in violation of due process. Whereas, the free, prior and informed consent of the Agta-Dumagats, as required by Section 3(g) R.A.8371 or the Indigenous Peoples’ Rights Act, was not complied with and secured in creating RA10083 thereby amounting to unlawful encroachment on their ancestral lands and ancestral domain, violates procedural due process guaranteed by the Constitution. Hence, APECO must be declared unconstitutional for illegally transgressing the ancestral lands without free, prior and informed consent.
2. RA 10083 is unconstitutional because it violates substantial due process. Jurisprudence gives us precedence by highlighting classic examples In *U.S. v. Toribio*, the court said that for a law to be a valid exercise of police power, there must be two requirements, namely that of Compelling State interests and that of Reasonable means necessary to achieve its purpose. In *Ynot v. Intermediate Appellate Court*, the court also held a law unconstitutional for being unreasonable and for being absent of a lawful method. In the case of the APECO, there is no compelling State interest to uphold the constitutionality of RA 10083 and such an initiative was employed with absence of lawful method. First, the interest of the State, as enshrined in Section 22, Article II, Section 12, Article XII and Sections 5, 6 and 7 of Article XIII of the 1987 Constitution. Because the APECO initiative must bow to the superiority of the Constitution and the nation’s obligations to International Law under the UN Declaration on the Rights of Indigenous Peoples, to recognize, protect and preserve the rights of indigenous cultural communities and the environment outweighs, the inherent dangers of applying the APECO greatly outweighs the mere promise of economic benefits. Second, the means employed has been recognized as

unreasonable and illegal. The means done was so sweeping as to infringe too many constitutionally protected freedoms of the Indigenous Peoples and of the farmers. Hence, APECO violates substantial due process for being absent in both compelling State interest and reasonable means.

3. RA10083 is unconstitutional because it is given undue delegation of legislative power. Under Section 4(g) of RA10083, APECO is given the power to expand its territory when necessary. As the statute defines the limits of APECO, this constitutes undue delegation of legislative power in contravention of Sections 1 and 24 of Article VI of the Constitution. This must be declared unconstitutional for not having been accorded with a valid delegating power, which is complete and sufficient in standard.
4. RA 10083 is unconstitutional because it allows an SEZ to contract foreign loan in contravention to Section 20 and 21 of Article VII. Section 20 and 21 of Article VII states that only the President can contract foreign loans and that such need the concurrence of the Monetary Board. In this case, APECO under section 4 (h), may contract loans without the approval of Monetary board and in clear violation of the powers of the President.
5. RA 10083 is unconstitutional because it allows foreign investors to operate public utilities in violation of Section 11 of Article XII. Section 11 states that franchises in the operation of public utilities can only be granted to Filipino citizens or corporations. As held in the case of *Tatad v. Garcia*, the court said that the State may allow foreigners to own assets but not to manage and operate public utilities. APECO authorizes the operation of public utilities by foreign investors and hence is unconstitutional.

With regards to practicality, the APECO considered to be impractical because it primarily collides with constitutional law. Article 7 of the Constitution requires prior concurrence of the Monetary Board for the State to contract foreign loans. On the other hand, APECO does not recognize such requirement. The Constitution prohibits foreigners from operating public utilities, yet APECO allows foreigners operating public utilities. APECO is also deemed impractical because it conflicts with statutory law. The APECO contravenes two important statutes which bear weight with regards to the matter in controversy, namely the SEZ Act of 1995 and the Indigenous Peoples Rights Act. The SEZ Act of 1995 collides with APECO, the general law on SEZs, which applies to APECO, requires (1) that future eco-zones to be built on vacant lands, (2) that nearby lands be used for residential areas of eco-zone workers and (3) that there is an available skilled labor force in and around the zone. APECO fails to comply with the three requisites of the general law on eco-zones. The IPRA collides with APECO, the concept of ownership in the Civil Code and in IPRA is different because the right of ownership for IPs excludes the right to sell, dispose or destroy. With billions of pesos worth of projects over a vast twelve thousand hectare area, IP rights are necessarily violated. Moreover, NCIP authorization and not only LGU concurrence, is required for a project to be built. APECO does not recognize such prior NCIP concurrence. APECO is impractical because standards of substantive due process will be rendered meaningless. The standard of "public purpose" will be meaningless if APECO is upheld. While it is true that "public purpose" is a flexible concept that evolves over time, upholding the constitutionality of APECO will stretch the definition of public purpose to the limit such that any form of indirect benefit to the public will satisfy the "public purpose" requirement. Perhaps another less legal yet nevertheless substantial argument is that APECO is unreasonable because it is too large in logistical scope

considering its purpose, The First Philippine Industrial Park is only 3% the size of APECO yet contributes to 3% of Philippine exports and employs 30,000 people while having no legal or social problems in its creation, in stark contrast to APECO which is mired by controversy and upheaval in every step of its application. APECO is simply too overreaching in scale and too suspect in actual intentions to survive a facial challenge. There is simply no reasonable necessity for the twelve thousand hectares.

As for the benefits, while proponents of the APECO claim that the project will invigorate the province of Aurora and provide for economic opportunities, none of these can make up for the glaring human rights violations and contraventions to the 1987 Constitution which the Aquino Administration risks incurring by continually supporting its existence. Yes, the APECO can generate financial gains but it would do so at the expense of undermining the human rights thrust which the country has adopted since the end of the Marcos Administration. The Philippines will benefit more from turning away from the APECO because it will send a statement locally and internationally that it intends to maintain a very firm and uncompromising stance on the protection of human and environmental rights in the country. This will in turn create a positive attraction with foreign investors because foreign corporations and companies will see that the Philippines is worth investing in generally, because it run by government which is imbued with integrity, principle, and transparency. Just like how the economy boomed when President Aquino embarked on a crusade to battle corruption, the APECO will have the same effect to a lesser extent because its rejection will symbolize that the State is making a conscious effort to respect the rule of law in all matters. With everything said, Republic Act 10083 should be stricken down.