

NEGATIVE SIDE ARGUMENTS

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The claims of human rights and procedural process violations must be taken with a grain of salt, especially since these are mere allegations that solely have on their side constant negative publicity created by media. These are all factual misconceptions, since testimonies of the people on the ground have been made in Senate, land titles have been duly registered and signed through private contracts, and rightful lands under the public domain have been validly used by their owner—the government. The entire land coverage of Aurora Pacific Economic Zone (APECO) has therefore been legally claimed for this project.

But more importantly, these factual claims should not even be the central issue in the debate. In *Sabri v. United States*, the Court has held that questions of fact—matters of truths and non-truths—all fall under the realm of the implementation of a law, but these are not essential when questioning the constitutionality of such. This is because current infirmities in the implementation of a law do not bar pre-existing safeguards to be utilized instead to cure these implementation problems. The standard to follow when analyzing its constitutionality is the substantive and procedural due process of law, and we have to question whether or not these standards have been met.

With regard to substantive due process, it is important to look at the provisions of RA 10083 and see if there is anything in the law itself that may be an encroachment to people's right to life, liberty, and property without due process. The power afforded to APECO in **Section 4(G) of RA 10083**, or the power to acquire, condemn, or expand land as necessary is not an illegal delegation of arbitrary power: APECO has been categorized as a Government Owned and Controlled Corporation (GOCC) by the Commission on Audit (COA) and the Department of Environment and Natural Resources (DENR), and according to the **Philippine Special Economic Zone Act of 1995 (PSEZA)**, such GOCC economic zones have the authority to acquire, condemn, or expand the land so long as such authority is provided in their respective charters and that such acquisition is within the necessary bounds of public use.

On the issue of ancestral domain that will be affected by the metes and bounds designated by the law, APECO has never conducted infrastructure development activities in any of the Dumagat settlements within its area of coverage. There is therefore no ripe controversy for adjudication. Yet even if the government does decide to use such lands to be part of APECO, they are still acting within the bounds of law, since government purchases of ancestral domain is allowed according to **Indigenous Peoples Rights Act (IPRA) Section 8(B)**. In fact, they have even already sought the help of the National Commission on Indigenous Peoples (NCIP) to facilitate Free and Prior Informed Consent (FPIC) for the affected Dumagats and Agtas.

With regard to procedural due process, the standard of acquiring free, prior, and informed consent has been met. The **Local Government Code (LGC) of 1991 Section 27** requires periodic consultations with LGUs and other affected stakeholders. This legal requirement has been met by APECO, and is being continued in different barangay assemblies in order to promote as well the SEZ's development and livelihood programs, as evidenced in the Senate Press Conference held on December 4 last year.

The PSEZA states,

“x x x In pursuance of the of these policies, the government shall actively encourage, promote, induce, and accelerate a sound and balanced industrial, economic and social development of the country in order to provide jobs to the people especially in the rural areas, x x x”

The programs and projects created by APECO aim to benefit the local communities in the region. Also, if RA 10083 is declared unconstitutional, such would result in damaging consequences on present and future investments in the area, therefore impairing public interest.

APECO already has at least five investors, among them Asia Pacific Resource Recovery and Tiger Carbon, Aurora Fastbuild Corporation, and Marine Colloids, which have each invested millions in the area. Special Economic Zones (SEZs) also create stimulus for the economy through foreign investments. The bulk of Foreign Direct Investment applications in 2011 came from the Philippine Economic Zone Authority (PEZA) cutting in 87.3 percent of total FDIs in Q4 2011 and 75.6 percent of the total pledges in 2011. The APECO has a strategic location, given that it has the only airport and seaport complex in the Pacific Rim in the Philippines, and will allow for additional investments in an otherwise untapped area. With this there will be additional road infrastructure for development of the region, such as the SCTEX extension. Additionally, tax benefits in APECO help expand the country's industrial base by luring foreign industries that will also aid in the improvement of local facilities and infrastructure.

Last November 22, 2012, APECO launched the Dumagat Cultural Center for the indigenous communities and Nayon Kalikasan housing project of APECO and the National Housing Authority (NHA) to provide 500 housing units to indigenous and non-indigenous communities. APECO also collaborated with Philippine Fisheries Development Authority (PFDA) provided a five-tonner ice plant and cold storage and Libreng Pangisdaan Para Sa Mga Dumagat for the benefit of the local fisherfolk, and underwent the Seaweed Development Project where 400 beneficiary households will receive ¼ hectare, an area enough to net about P30,000.00 every 45 days. With such projects, claims of APECO disregarding the rights of the locals are unfounded.

Additionally, declaring the APECO unconstitutional is impractical as it would prejudice the indigenous people and residents of Aurora and would cause our government substantial financial losses. It is a misconception that APECO gives economic benefit primacy over the right to life; on the contrary, APECO sternly upholds the rights of indigenous people as shown in several projects dedicated to the welfare of the indigenous people and residents of Aurora, each specifically tailored for the needs of the IPs.

A staggering amount of P900 million was already released to fund the APECO, with P700 million already used. To cancel the APECO would negate the influx of employment opportunities for the

locals. The ecozone has already provided around 400 jobs at this early stage of the development; 500 more jobs will be created as more projects are expected.

Aside from this, there is an abundance of unutilized natural resources in the province, like gold and copper, which were previously accessible only by sea. By having a port and the APECO site near these areas, access to these resources will be provided because of the roads that will necessarily be built. It will be the country's gateway and nearest port to the Benham Plateau, which is potentially rich in both minerals and natural gas. Without such port, the Philippines will have no ready means with which to access the Benham Plateau.

As a final point, according to the **International Labor Organization**, in 1986 there were 176 ecozones in 47 Countries; by 2006, there were already 3,500 zones in 130 Countries. As of 2008, ecozones accounted for more than \$200 billion in global exports. These numbers are proof of the productivity of ecozones. It is worth stating that the biggest ecozone success stories like China and Malaysia took only 5 to 10 years before they began to build momentum and reap huge profits. If given the chance, APECO will also achieve the same or even greater. It must be said that the nature of investments will always entail risks and costs at least at the onset. However, such costs should not always necessarily deter the long-term benefits that are ultimately in line with public interest.