

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

FIRST DIVISION

DIDIPIO EARTH-SAVERS' MULTI-PURPOSE
ASSOCIATION, INCORPORATED, ET AL.,
Petitioners,

- versus -

G.R. No. 157882

HON. ELISEA GOZUN, in her capacity as the
Secretary of the Department of Environment and
Natural Resources, ET AL.,

Respondents,

ALEXANDER ABES, JONATHAN ABOGADIL,
SENDO I. AKNA, LEODEGARIO ATILANO, ROMY
AMLOY, CECIL C. BAJOS, APOLINARIO P.
BALAWAG, FEDERICO BALILID, LORY BALILID,
RUBEN BALILID, ROMEO R. BAJOS, DAGA
BANTILLAN, RENOLIE C. BANTILAN, REO M.
BANTILAN, ROSALIO C. BANTILAN, DONALD N.
BUNDAC, BLADYMER CABIGUEN, SONNY
CANAS, FR. ROMEO Q. CATEDRAL, RUDY M.
CAPION, ESCOLASTICA R. CHAVEZ, ANICETO S.
CONCEMINO SR., ELIZABETH DIANGA, LORETO
DIANGA, RAYMOND DIANGA, ROSALIE T.
DOLOJO, NILO ESCUBIN, SUSANA C. FELICIANO,
FR. EDWIN A. GARIGUEZ, BISHOP DINUALDO D.
GUTIERREZ, D.D., BERNADETTE P. HISUAN, ANA
THERESIA HONTIVEROS-BARAQUEL, DANIEL S.
ILAGAN, AUDIE M. ITABLE, BISHOP ZACARIAS
C. JIMENEZ, D.D., IVY JANCILAN, SIANO F.
LAHING, REY C. LAUD, FARINY B. LUMAYONG,
ELISAR C. MALODE, TUDIO F. MASUKAL,
ABRAHAM A. OBAL, LORY R. OBAL, VALENTIN
C. OBAL, LOURDES A. OBERIANO, MOST REV.
NEREO P. ODCHIMAR, EDDIE PADON, DARYL L.
PANDIA, DIONISIO C. PASCUA, EBRAHIM PELES,
BISHOP JUAN DE DIOS M. PUEBLOS, D.D.,
RECTOR RABAGO, NOLITO P. RACILES, GEMMA
MARIE P. SAMBONG, EVELYN B. SANTILLAN,
LORENZA R. SENINA, BELLA C. SISNORIO,
BERDANDINO SOBRETUDO, AGUSTIN
SORONGON, VICTOR D. SUJEDE, JIMMY M.
TAMBUTO, HON. LORENZO R. TAÑADA III,
ARCELIE D. TINA, EFRAIM TREDEZ, TEOFILO
TREDEZ, RICKY D. TUOM, BISHOP ROMULO G.
VALLES, D.D., SALVACION VILLANUEVA, HON.
JOEL G. VIRADOR, COLUMBIO
MULTISECTORAL ECOLOGY MOVEMENT
(CMEM), GAIA EXPLORATION CLUB, and

ALTERNATIVE LAW GROUPS, INC. (ALG),

Intervenors.

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PETITION – IN – INTERVENTION

Intervenors, by counsel, respectfully join petitioners in their motion for reconsideration of the Decision promulgated on 30 March 2006 in the above-captioned case, the dispositive portion of which reads:

“WHEREFORE, the instant petition for prohibition and mandamus is hereby DISMISSED. Section 76 of Republic Act No. 7942 and Section 107 of DAO 96-40; Republic Act No. 7942 and its Implementing Rules and Regulations contained in DAO 96-40 – insofar as they relate to financial and technical assistance agreements referred to in paragraph 4 of Section 2 of Article XII of the Constitution are NOT UNCONSTITUTIONAL.”

Intervenors represent peoples of the Philippines and groups composed of Filipino citizens that are asserting their public right to due process and equal protection of the laws under Section 1 of Article III of the 1987 Philippine Constitution and their public right to a balanced and healthful ecology under Section 16 of Article III of the 1987 Philippine Constitution. These public rights stand to be violated by the Decision quoted above.

The following intervenors have a legal interest in the matter that is of transcendental importance and which is pending before this Honorable Court –

ALEXANDER ABES is a Filipino citizen, of legal age and a resident of Barangay Calategas, Narra, Palawan. He may be served with processes of this Honorable Court through undersigned counsels.

JONATHAN ABOGADIL is a Filipino citizen, of legal age and a resident of Barangay Calategas, Narra, Palawan. He may be served with processes of this Honorable Court through undersigned counsels.

SENDO I. AKNA is a Filipino citizen, of legal age and residing at New Bantangan, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

LEODEGARIO ATILANO is a Filipino citizen, of legal age and a resident of Barangay Calategas, Narra, Palawan. He may be served with processes of this Honorable Court through undersigned counsels.

ROMY AMLOY is a Filipino citizen, of legal age and residing at Barangay Sinapulan, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

CECIL C. BAJOS is a Filipino citizen, of legal age and residing at Libertad, Columbio, Sultan Kudarat. She may be served with processes of this Honorable Court through undersigned counsels.

APOLINARIO P. BALAWAG is a Filipino citizen, of legal age and residing at Libertad, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

FEDERICO BALILID is a Filipino citizen, of legal age and residing at Barangay Sinapulan, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

LORY BALILID is a Filipino citizen, of legal age and residing at Barangay Sinapulan, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

RUBEN BALILID is a Filipino citizen, of legal age and residing at Barangay Sinapulan, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

ROMEO R. BAJOS is a Filipino citizen, of legal age and residing at Libertad, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

DAGA BANTILLAN is a Filipino citizen, of legal age and residing at Barangay Sinapulan, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

RENOLIE C. BANTILAN is a Filipino citizen, of legal age and residing at Barangay Sinapulan, Columbio, Sultan Kudarat. She may be served with processes of this Honorable Court through undersigned counsels.

REO M. BANTILAN is a Filipino citizen, of legal age and residing at Barangay Sinapulan, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

ROSALIO C. BANTILAN is a Filipino citizen, of legal age and residing at Barangay Sinapulan, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

DONALD N. BUNDAC is a Filipino citizen, of legal age and a resident of Barangay Calategas, Narra, Palawan. He may be served with processes of this Honorable Court through undersigned counsels.

BLADYMER CABIGUEN is a Filipino citizen, of legal age and a resident of Barangay Calategas, Narra, Palawan. He may be served with processes of this Honorable Court through undersigned counsels.

SONNY CANAS is a Filipino citizen, of legal age and a resident of Barangay Calategas, Narra, Palawan. He may be served with processes of this Honorable Court through undersigned counsels.

FR. ROMEO Q. CATEDRAL is a Catholic priest assigned at the Social Action Center in Koronadal City. He is a Filipino, of legal age, and residing at Koronadal City, South Cotabato.

RUDY M. CAPION is a Filipino citizen, of legal age and residing at Sitio Mauro, Barangay Maligaya, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

ESCOLASTICA R. CHAVEZ is a Filipino citizen, of legal age and residing at Poblacion, Columbio, Sultan Kudarat. She may be served with processes of this Honorable Court through undersigned counsels.

ANICETO S. CONCEMINO SR. is a Filipino citizen, of legal age and residing at Barangay Libertad, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

ELIZABETH DIANGA is a Filipino citizen, of legal age and residing at Lam-alis, Datal Blao, Columbio, Sultan Kudarat. She may be served with processes of this Honorable Court through undersigned counsels.

LORETO DIANGA is a Filipino citizen, of legal age and residing at Lam-alis, Datal Blao, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

RAYMOND DIANGA is a Filipino citizen, of legal age and residing at Lam-alis, Datal Blao, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

ROSALIE T. DOLOJO is a Filipino citizen, of legal age and residing at Telafas, Columbio, Sultan Kudarat. She may be served with processes of this Honorable Court through undersigned counsels.

NILO ESCUBIN is a Filipino citizen, of legal age and a resident of Barangay Calategas, Narra, Palawan. He may be served with processes of this Honorable Court through undersigned counsels.

SUSANA C. FELICIANO is a Filipino citizen, of legal age and residing at Poblacion, Columbio, Sultan Kudarat. She may be served with processes of this Honorable Court through undersigned counsels.

FR. EDWIN A. GARIGUEZ is a Catholic priest of the St. Augustine Major Seminary along SVD Road, Tagaytay City. He is a Filipino citizen, of legal age and a resident of Calapan, Oriental Mindoro. He may be served with processes of this Honorable Court through undersigned counsels.

BISHOP DINUALDO D. GUTIERREZ, D.D. is the bishop of Koronadal City, South Cotabato. He is a Filipino citizen, of legal age and residing at the Bishop's Residence in Koronadal City, South Cotabato. He may be served with processes of this Honorable Court through undersigned counsels.

BERNADETTE P. HISUAN is a Filipino citizen, of legal age and residing at Telefas, Columbio, Sultan Kudarat. She may be served with processes of this Honorable Court through undersigned counsels.

ANA THERESIA HONTIVEROS-BARAQUEL is a member of Congress, representing the party-list AKBAYAN. She is a Filipino citizen, of legal age and residing at No. 1 Maestranza cor. Escuela Streets, New Intramuros Village, Diliman, Quezon City. She may be served with processes of this Honorable Court through undersigned counsels.

DANIEL S. ILAGAN is a Filipino citizen, of legal age and residing at Poblacion, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

AUDIE M. ITABLE is a Filipino citizen, of legal age and residing at Poblacion, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

BISHOP ZACARIAS C. JIMENEZ, D.D. is the bishop of Butuan City. He is a Filipino citizen, of legal age and residing at Sto. Niño Shrine Parish, Barangay Libertad, Butuan City. He may be served with processes of this Honorable Court through undersigned counsels.

IVY JANCILAN is a Filipino citizen, of legal age and residing at Barangay Maligaya, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

SIANO F. LAHING is a Filipino citizen, of legal age and residing at Barangay Eday, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

REY C. LAUD is a Filipino citizen, of legal age and residing at Libertad, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

FARINY B. LUMAYONG is a Filipino citizen, of legal age and residing at New Bantangan, Columbio, Sultan Kudarat. She may be served with processes of this Honorable Court through undersigned counsels.

ELISAR C. MALODE is a Filipino citizen, of legal age and residing at Barangay Sinapulan, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

TUDIO F. MASUKAL is a Filipino citizen, of legal age and residing at Barangay Eday, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

ABRAHAM A. OBAL is a Filipino citizen, of legal age and residing at Poblacion, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

LORY R. OBAL is a Filipino citizen, of legal age and residing at Mayo, Columbio, Sultan Kudarat. She may be served with processes of this Honorable Court through undersigned counsels.

VALENTIN C. OBAL is a Filipino citizen, of legal age and residing at Mayo, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

LOURDES A. OBERIANO is a Filipino citizen, of legal age and residing at Poblacion, Sinapulan, Columbio, Sultan Kudarat. She may be served with processes of this Honorable Court through undersigned counsels.

MOST REV. NEREO P. ODCHIMAR is the bishop of Surigao Del Sur. He is a Filipino citizen, of legal age and residing at the Bishop's Residence in Tandag, Surigao Del Sur. He may be served with processes of this Honorable Court through undersigned counsels.

EDDIE PADON is a Filipino citizen, of legal age and a resident of Barangay Calategas, Narra, Palawan. He may be served with processes of this Honorable Court through undersigned counsels.

DARYL L. PANDIA is a Filipino citizen, of legal age and residing at Barangay Sinapulan, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

DIONISIO C. PASCUA is a Filipino citizen, of legal age and residing at Poblacion, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

EBRAHIM PELES is a Filipino citizen, of legal age and residing at Lam-alis, Datal Blao, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

BISHOP JUAN DE DIOS M. PUEBLOS, D.D. is the bishop of Butuan City. He is a Filipino citizen, of legal age and residing at the Bishop's Home, Barangay Ampayon, Butuan City. He may be served with processes of this Honorable Court through undersigned counsels.

RECTOR RABAGO is a Filipino citizen, of legal age and residing at Sitio New Ilocos, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

NOLITO P. RACILES is a Filipino citizen, of legal age and residing at Sitio New Ilocos, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

GEMMA MARIE P. SAMBONG is a Filipino citizen, of legal age and residing at Lamalis, Datal Blao, Columbio, Sultan Kudarat. She may be served with processes of this Honorable Court through undersigned counsels.

EVELYN B. SANTILLAN is a Filipino citizen, of legal age and residing at Telefas, Columbio, Sultan Kudarat. She may be served with processes of this Honorable Court through undersigned counsels.

LORENZA R. SENINA is a Filipino citizen, of legal age and residing at Libertad, Columbio, Sultan Kudarat. She may be served with processes of this Honorable Court through undersigned counsels.

BELLA C. SISNORIO is a Filipino citizen, of legal age and residing at Lasak, Columbio, Sultan Kudarat. She may be served with processes of this Honorable Court through undersigned counsels.

BERDANDINO SOBRETOD0 is a Filipino citizen, of legal age and a resident of Barangay Calategas, Narra, Palawan. He may be served with processes of this Honorable Court through undersigned counsels.

AGUSTIN SORONGON is a Filipino citizen, of legal age and residing at Poblacion, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

VICTOR D. SUJEDE is a Filipino citizen, of legal age and residing at Libertad, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

JIMMY M. TAMBUTO is a Filipino citizen, of legal age and residing at New Bantangan, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

HON. LORENZO R. TAÑADA III is a member of Congress, representing the 4th district of Quezon Province. He is a Filipino, of legal age and a resident of Quezon Province. He may be served with processes of this Honorable Court through undersigned counsels.

ARCELIE D. TINA is a Filipino citizen, of legal age and residing at Barangay Sinapulan, Columbio, Sultan Kudarat. She may be served with processes of this Honorable Court through undersigned counsels.

EFRAIM TREDEZ is a Filipino citizen, of legal age and a resident of Barangay Calategas, Narra, Palawan. He may be served with processes of this Honorable Court through undersigned counsels.

TEOFILO TREDEZ is a Filipino citizen, of legal age and a resident of Barangay Calategas, Narra, Palawan. He may be served with processes of this Honorable Court through undersigned counsels.

RICKY D. TUOM is a Filipino citizen, of legal age and residing at Barangay Eday, Columbio, Sultan Kudarat. He may be served with processes of this Honorable Court through undersigned counsels.

BISHOP ROMULO G. VALLES, D.D. is the bishop of Kidapawan City. He is a Filipino citizen, of legal age and residing at the Bishop's Residence in Balindog, Kidapawan City. He may be served with processes of this Honorable Court through undersigned counsels.

SALVACION VILLANUEVA is a Filipino citizen, of legal age and a resident of Barangay Calategas, Narra, Palawan. He may be served with processes of this Honorable Court through undersigned counsels.

HON. JOEL G. VIRADOR is a member of Congress, representing the party-list BAYAN MUNA. He is a Filipino citizen, of legal age and a resident of Davao City. He may be served with processes of this Honorable Court through undersigned counsels.

COLUMBIO MULTISECTORAL ECOLOGY MOVEMENT (CMEM) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It is a municipal alliance of various sectoral organizations in Columbio, Sultan Kudarat, affected by the FTAA of Sagittarius Mines, Inc. It is represented by its Chairperson, Audie M. Itable and may be served with processes of this Honorable Court through undersigned counsels.

GAIA EXPLORATION CLUB is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It is represented by its attorney-in-fact, Leonard G. Soriano and may be served with processes of this Honorable Court through undersigned counsels.

ALTERNATIVE LAW GROUPS, INC. (ALG) is a non-stock, non-profit corporation duly organized and existing under Philippine laws, with address at Room 215, Institute of Social Order, Ateneo de Manila University, Loyola Heights, Quezon City. The petitioner is a coalition of seventeen (17) legal resource non-governmental organizations that engage in developmental or alternative lawyering and work with the poor and marginalized groups in different parts of the country. It is represented by its Council Chairperson, Atty. Arlene J. Bag-ao and may be served with processes of this Honorable Court through undersigned counsels.

This intervention neither intends nor will it unduly delay or prejudice the adjudication of rights of the original parties herein. Lastly, there can be no separate and independent proceeding through which intervenors' rights may be fully protected.

In support hereof, intervenors respectfully state:

I GROUNDS

Section 76 of Republic Act No. 7942 insofar as it appropriates property for mining is an unlawful exercise of the sovereign power of eminent domain.

Section 76 of Republic Act No. 7942 allows unlawful taking since it does not provide for determination of payment of just compensation.

The Decision violates the public right to due process in summarily declaring and deriving the public benefit of mining.

The Decision violates the public right to equal protection of the law.

The Mining Act and its provisions violate the public right to healthful ecology.

II

DISCUSSION

Section 76 of Republic Act No. 7942 insofar as it appropriates property for mining is an unlawful exercise of the sovereign power of eminent domain.

This Honorable Court in its Decision promulgated on 30 March 2006 (hereinafter “the Decision”) declared that Section 76 of Republic Act No. 7942 or the Philippine Mining Act of 1995 (hereinafter “the Mining Act”), is a taking provision. It declared that the taking done pursuant to Section 76 is by virtue of the power of eminent domain in that --

“In *Republic vs. Castellvi*, this Court had occasion to spell out **the requisites of taking in eminent domain**, to wit:

- (1) the expropriator must enter a private property;
- (2) the entry must be for more than a momentary period;
- (3) the entry must be under warrant or color of legal authority;
- (4) the property must be devoted to the public use or otherwise informally appropriated or injuriously affected; [and]
- (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of beneficial enjoyment of the property.

As shown by the foregoing jurisprudence, a regulation which substantially deprives the owner of his proprietary rights and restricts the beneficial use and enjoyment for public use amounts to compensable taking. In the case under consideration, **the entry referred to in Section 76 and the easement rights under Section 75 of Rep. Act No. 7942 as well as the various rights to CAMC under its FTAA are no different from the deprivation of proprietary rights in the cases discussed which this Court considered as taking.**¹ (Emphasis ours)

Clearly, this Court acknowledges that the taking under Section 76 cannot be other than by virtue of the power of eminent domain of the State. This power, however, is subject to strict Constitutional pre-conditions. It is a power that is used to appropriate private property only when there is a public purpose or use to be served and only upon payment of just compensation.² Succinctly put, “...the power of eminent domain is merely the means to an end”³.

This Honorable Court, therefore, erred when it stated that –

“The provision of the FTAA in question lays down the ways and means by which the foreign-owned contractor, disqualified to own land, identifies to the government the specific surface areas within the FTAA contract area to be acquired for the mine infrastructure. The government then acquires ownership of the surface land areas on behalf of the contractor, through a voluntary transaction in order to enable the latter to proceed to fully implement the FTAA. **Eminent domain is not yet called for at this stage since there are still various avenues**

¹ *Decision* at 19.

² Section 9 of Article III of the 1987 Constitution.

³ *Association of Small Landowners vs. Secretary of Agrarian Reform*, G.R. No. 78742, 14 July 1989.

by which surface rights can be acquired other than expropriation.”⁴
(Emphasis ours)

The foregoing pronouncement is contrary to the concept of taking in the valid exercise of the power of eminent domain. The use of the coercive power of eminent domain presumes that the same is involuntary on the part of the surface owner because if the surface owner is willing to part with his/her land, it will just be an ordinary sale to the government or the mining contractor or the mining concessionaire. There will be no need for the government to “take” for and in behalf of the mining concessionaire.

In Section 76 of the Mining Act, the coercive power of the State is illustrated by the requirement of mere notice to the surface owner and does not require compliance with the Constitutional requirements, in that:

“Section 76. Entry into Private Lands and Concession Areas – Subject to prior notification, holders of mining rights shall not be prevented from entry into private lands and concession areas by surface owners, occupants or concession areas when conducting mining operations therein; x x x.”

The Constitutional grant of the power of eminent domain, however plenary and paramount on the part of State, is however restricted by the requirements of taking (1) for public use and (2) upon payment of just compensation. Thus, the requirements for the exercise of the State’s power of eminent domain must be strictly enforced.⁵ As one commentator explained, “[t]he story of constitutional jurisprudence is the story of great minds striving to strike a balance between governmental power and personal freedom”⁶. Also --

“The exercise of the right of eminent domain, whether directly by the State or by its authorized agents, is necessarily in derogation of private rights. It is one of the harshest proceedings known to the law. Consequently, when the sovereign delegates the power to a political unit or agency, a strict construction will be given against the agency asserting the power. The authority to condemn is to be strictly construed in favor of the owner and against the condemnor. When the power is granted, the extent to which it may be exercised is limited to the express terms or clear implication of the statute in which the grant is contained.”⁷

In the case of eminent domain, the limitations as mandated by Section 9 of Article III of the Constitution are (1) that the taking is for public use, and (2) that the owner of the property be justly compensated therefore. The Mining Act fails to comply with both.

The taking under the Mining Act does not provide for just compensation.

⁴ *Decision* at 23.

⁵ *J.M. Tuazon & Co., Inc. vs. Land Tenure Administration*, 31 SCRA 413.

⁶ Bernas, Joaquin, SJ. *The 1987 Philippine Constitution of the Republic of the Philippines: A Commentary* [1996], at 95.

⁷ *Jesus is Lord Christian School Foundation, Inc. vs. Municipality (now City) of Pasig*, G.R. No. 152230, 9 August 2005.

In order to comply with the Constitutional requirement of the determination of payment of just compensation under Section 9, Article III of the Constitution, this Honorable Court ruled that –

“There is also no basis for the claim that the Mining Law and its implementing rules and regulations do not provide for just compensation in expropriating private properties. Section 76 of Rep. Act No. 7942 and Section 107 of DAO 96-40 provide for the payment of just compensation.”⁸

Such argument is untenable. Section 107 of DAO 96-40 only provides for compensation for damages, to wit:

“Any damage done to the property of the surface owner, occupant or concessionaire thereof as a consequence of the mining operations or as a result of the construction or installation of the infrastructure mentioned in section 104 above shall be properly and justly compensated...”

This is essentially different from the compensation contemplated in the exercise of eminent domain.

“Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. It has been repeatedly stressed by this Court that the measure is not the taker's gain but the owner's loss. The word ‘just’ is used to intensify the meaning of the word ‘compensation’ to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.”⁹

No such compensation is referred to in the Mining Act or in its implementing rules and regulations. Without any such provision, Section 76 allows unlawful taking and must therefore be declared as illegal and unconstitutional.

The public purpose of the taking must be specifically stated in the law being questioned.

In trying to justify the taking of private property under Section 76 of the Mining Act, this Honorable Court averred –

“Mining industry plays a pivotal role in the economic development of the country and is a vital tool in the government’s thrust of accelerated recovery [citing Executive Order No. 211]. The importance of the mining industry for national development is expressed in Presidential Decree No. 463:

“WHEREAS, mineral production is a major support of the national economy, and therefore the intensified discovery, exploration, development and

⁸ *Decision* at 26.

⁹ *Association of Small Landowners vs. Secretary of Agrarian Reform*, supra note 2.

wise utilization of the country's mineral resources are urgently needed for national development.

“Irrefragably, mining is an industry which is of public benefit.”¹⁰

It must be emphasized that inasmuch as the Constitutional requirements for the exercise of eminent domain has to be strictly enforced so must the determination of the public use for such exercise be clearly and indubitably determined.¹¹

The basis for the Court's determination is not the Mining Act itself. It referred and derived the alleged public purpose of mining from other laws like Presidential Decree No. 463 (1974) and Executive Order No. 211 (1987). Reference to these laws are unnecessary simply because they are irrelevant to the case at bar. For instance, Executive Order No. 211, although not expressly repealed, should be read to have been superseded by the Mining Act since the former was enacted into law in 1987, years before the Mining Act went into effect. Moreover, it was intended to merely prescribe “interim procedures in the processing and approval of applications for the exploration, development and utilization of minerals” which obviously means that upon the enactment of the *permanent* procedures for the processing and approval of applications for the exploration, development and utilization of minerals, the interim procedures will cease to be in effect. The Mining Act already provides for such permanent procedures.

The Court should not have looked further than the law being challenged. It is beyond imagination how the Court was able to read and derive the public-use character of mining from the laws it referred to. The fact that it did so only means one thing – that, the public-use character of mining is not expressly stated in nor can it be implied from the law being challenged and therefore it fails to comply with one of the Constitutional requirements for a valid exercise of the power of eminent domain.

The Decision violates the public right to due process in summarily declaring mining as of public benefit.

Even moving beyond the law being questioned and using other criteria on which basis the public-use character of mining is derived, the Court erred in summarily declaring mining as an industry imbued with public benefit. The Court MUST make its own judicial determination of public use by referring to laws that can shed light and clarify the matter since the issue of taking cannot be treated lightly because real people are going to be deprived of ownership and enjoyment of their property. The situation being imposed by the Mining Act affects and will affect a large number of people who will actually be displaced from their own homes.

¹⁰ *Decision* at 23.

¹¹ *Republic vs. La Orden de P.P. Benedictinos de Filipinos*, 1 SCRA at 649.

While it can be argued that the State owns mineral resources and can enter into contracts over them, the truth is that such ownership and authority is held merely in trust for the people. Furthermore, any such contract affects proprietary rights of individuals who have been given the Constitutional right to question any legislative determination that a contract is for a public purpose.

“The due process clause cannot be rendered nugatory every time a specific decree or law orders the expropriation of somebody’s property and provides its own particular manner of taking the same. Neither should the courts adopt a hands-off policy just because the public use has been ordained as existing by the decree of the just compensation has been fixed and determined beforehand by a statute.

x x x

“The basis for the exercise of the power of eminent domain is necessity. This Court stated in *City of Manila v. Chinese Community of Manila* (40 Phil 349) that ‘(t)he very foundation of the right to exercise eminent domain is a genuine necessity and that necessity must be of a public character.’”¹²

The Mining Act and the Decision as it interprets Section 76 of the Mining Act allow the taking of private property by mere notice to surface owners, in violation of the basic Constitutional right to due process. Individual rights, and it bears emphasis, may be adversely affected only to the extent that may fairly be required by the legitimate demands of public interest or public welfare.¹³ In this case, due process was denied by the automatic characterization of the taking for mining purposes as indeed for public use.

The alleged gains from mining do not even constitute “real contributions to economic growth,” as required by Section 2 of Article XII of the Constitution, which can be sufficient enough to justify taking as allowed by Section 76 of the Mining Act. In *Mining Association of the Philippines vs. Factoran, et. al.*,¹⁴ for instance, the Supreme Court clarified that:

“The economic policy on the exploration, development and utilization of the country’s natural resources under Article XII, Section 2 of the 1987 Constitution could not be any clearer. As enunciated in Article XII, Section 1 of the 1987 Constitution, the exploration, development and utilization of natural resources under the new system mandated in Section 2, is geared towards a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.”

The State partakes of the profits from service contracts such as financial and technical assistance agreements because it holds in trust the mineral resources of the country and it has the

¹² *Manotok, et al. vs. NHA, et al.*, G.R. No. L-55166, 21 May 1987.

¹³ *Homeowners' Asso. of the Phil., Inc. v. Municipal Board of the City of Manila*, 133 Phil. 903, 907 (1968).

¹⁴ G.R. No. 98332, January 16, 1995.

exclusive duty of exploring, developing and utilizing natural resources¹⁵ as a means of maximizing the potential of mining to have real contributions to economic growth.

A look at Section 81 of the Mining Act, however, reveals that the government share in financial and technical assistance agreements consists of “among other things, the contractor’s corporate income tax, excise tax, special allowance, withholding tax due from the contractor’s foreign stockholders in case of a foreign national and all such other taxes, duties and fees as provided for under existing laws.” While it is true that the list is non-exclusive by inserting the phrase “among other things”, it must be admitted that the enumeration in Section 81 **becomes exclusive** in the absence of any additional provision in law or in the contract to state otherwise.

For all intents and purposes, therefore, the allocation of government share under the Mining Act refers **solely** to taxes, duties and fees under existing laws. This means that mining operations generate no more income for the government than any other enterprise.¹⁶

According to the Court in the *La Bugal* case¹⁷, despite the provisions of the Mining Act allowing for the total management and operations of mining concessions to private entities, the State retains control and ownership over mineral resources even under such service contracts. The Court also recognized that, like any other profit-oriented operation, mining companies are allowed a return on investment but the government is allocated a share in the undertaking. What then is the alleged benefit that comes from mining not found in any other business? Given the dismal share of the State in mining ventures under an FTAA, the alleged public benefit of mining loses credibility.

Furthermore, if reference be made to Republic Act No. 8974 which governs the expropriation of private properties for national government projects including service contracts, it will belie any argument asserting the public benefit that mining allegedly offers. To illustrate, Republic Act No. 8974 amends the procedure on expropriation under Rule 67 of the Rules of Court in that (1) it requires IMMEDIATE payment of just compensation to the surface owner and (2) the compensation is based on 100% of the zonal valuation of the property by the BIR and the value of the improvements on the land.¹⁸

Reading Republic Act 7942 and Republic Act 8794 together, there can be no “real contributions to economic growth” under an FTAA because the compensation of the lands under the FTAA must be immediately paid which the government will be unable to do considering the fiscal crisis.¹⁹ Even if private mining contractors take on this burden of immediate payment for

¹⁵ Section 2 of Article XII of the 1987 Philippine Constitution.

¹⁶ Sections 23 and 27 of the National Internal Revenue Code.

¹⁷ G.R. No. 127882, 1 December 2004.

¹⁸ Republic of the Philippines vs. Gingoyn, G.R. No. 166429, 19 December 2005.

¹⁹ The Court had already taken judicial notice of the fiscal crisis in the *La Bugal* case.

the properties, such burden will still be borne by the State because the Mining Act allows full recovery of pre-operating expenses by the mining company prior to the government's getting its share.²⁰

The provisions of the Mining Act governing FTAAAs clearly violate Section 2 of Article XII of the Constitution. To argue otherwise would be to propose the absurd interpretation that real contributions to economic growth referred to in the Constitution means the mere expectation of income in the future.

Corollarily, the taking of private properties under Section 76 of the Mining Act is not for any public benefit and does not provide for just compensation. It is patently unlawful.

The Decision violates the public right to equal protection of the law.

Even assuming *arguendo* that mining is of public benefit, Section 76 and the Decision as it interprets it deny the surface owner the right to question the necessity of the taking of his private property for the alleged public use or purpose of mining.

Note that the present case is originally brought by petitioners who are residing within the contract area of the subject FTAA. Even assuming that their displacement and the destruction of their homes, ancestry and source of livelihood could be justified by the public benefit of mining, the taking must still be struck down for its violation of the right to equal protection under the law.

For any taking under the Mining Act to be valid, all mineral lands must be subject to taking under the power of eminent domain. Applying the ruling of this Court in *Aninao vs. Asturias*²¹, mineral lands must be all lands in which minerals are present.

The absurdity of this proposition is meant only to highlight the inequity of allowing the taking of a few private properties under the guise of mining's public benefit. The question becomes: who chooses what private properties will be taken?

Looking carefully at the Decision, it appears that the discretion is left to the mining contractor, a private entity.

“The provision of the FTAA in question lays down the ways and means by which the foreign-owned contractor, disqualified to own land, identifies to the government the specific surface areas within the FTAA contract area to be acquired for the mine infrastructure. The government

²⁰ Section 81, Republic Act 7942.

²¹ G.R. No. 160420, 28 July 2005.

then acquires ownership of the surface land areas on behalf of the contractor, through a voluntary transaction in order to enable the latter to proceed to fully implement the FTAA. Eminent domain is not yet called for at this stage since there are still various avenues by which surface rights can be acquired other than expropriation.”²² (Emphasis ours.)

The Mining Act thereby allows mining contractors to unlawfully and unjustly exercise the exclusive sovereign power of eminent domain by giving it the authority to define arbitrarily which properties to take.

While this Honorable Court may not find fault in that, it must be pointed out that, once again, this procedure excludes the surface owner from raising any objection to the choice of his property against others in violation of his right to due process and equal protection of the law.

To underline further the incongruity of the situation, we bring to the attention of this Honorable Court, Section 94 of the Mining Act which states –

“Section 94. Investment Guarantees – The contractor shall be entitled to the basic rights and guarantees provided in the Constitution and such other rights recognized by the government as enumerated hereunder:

x x x

“(d) Freedom from expropriation – The right to be free from expropriation by the Government of the property represented by investments or loans, of the property of the enterprise except for public use or in the interest of national welfare or defense and upon payment of just compensation. X x x.”

Not only are surface owners inequitably treated amongst themselves under the law, they are also unfairly situated as compared to mining contractors. The blatant disregard of due process and equality under the law should be reason enough for this Honorable Court to declare unconstitutional the Mining Act, particularly the above-mentioned provisions.

The Mining Act and its provisions violate the public right to healthful ecology.

Apart from being violative of the right to due process and equal protection of the law, the Mining Act sanctions the unlawful delegation (and possible disregard) of the duty of the State “to protect and advance the right of the people to a balanced and healthful ecology”²³.

In ruling that “the power of eminent domain may now be invoked by mining operators for the entry, acquisition and use of private lands²⁴,” this Honorable Court refers to Section 1 of Presidential Decree 512. It is allowing the **delegation by the President of a legislative power**

²² *Supra* note 3.

²³ Section 16 of Article II of the 1987 Constitution.

²⁴ *Decision* at 21.

to a private entity. This is an affront to the time-honored legal principle that a power that has been delegated cannot be further delegated.²⁵

The recognized exceptions to the non-delegation rule are as follows: (1) Delegation of tariff powers to the President under Section 28(2) of Article VI of the Constitution; (2) Delegation of emergency powers to the President under Section 23(2) of Article VI of the Constitution; (3) Delegation to the people at large; (4) Delegation to local governments; and (5) Delegation to administrative bodies.²⁶ The delegation to private mining contractors of the power of eminent domain does not fall under any exception and must, therefore, be deemed unconstitutional.

Apart from the prohibition on double delegation, a sovereign power may only be delegated subject to certain conditions, which are:

“There are two accepted tests to determine whether or not there is a valid delegation of legislative power, viz., the completeness test and the sufficient standard test. Under the first test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate the only thing he will have to do is enforce it. Under the sufficient standard test, there must be adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. Both tests are intended to prevent a total transference of legislative authority to the delegate, who is not allowed to step into the shoes of the legislature and exercise a power essentially legislative.”²⁷

Presidential Decree 512, as referred to by the Court, provides no such standard. Neither does the Mining Act or its implementing rules and regulations. The Court illustrated this delegation as follows: “the foreign-owned contractor, disqualified to own land, identifies to the government the specific surface areas within the FTAA contract area to be acquired for the mine infrastructure.”²⁸ Clearly, when a sovereign power is to be exercised upon the discretion of the delegate (in this case, a private entity), no sufficient standard or limitation exists by which such delegated power is to be exercised.

Therefore, assuming the delegation by the President of a power merely delegated to its office by the Legislature is allowed, the delegation sanctioned by this Court of the sovereign power of eminent domain to pursue the private enterprise of mining is still illegal.

This delegation is even more repugnant by the object of the exercise of this sovereign power – natural resources that are necessary to our survival. The Court has stated in *Oposa vs.*

²⁵ *People v. Rosenthal*, 68 Phil. 328 [1939]; ISAGANI A. CRUZ, *Philippine Political Law* [1996]

²⁶ *People v. Vera*, 65 Phil. 56 [1937].

²⁷ *Eastern Shipping Lines, Inc. vs. POEA, et al.*, G.R. No. L-76633, 18 October 1988.

²⁸ *Decision* at 25.

*Factoran*²⁹ --

“While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation – aptly and fittingly stressed by the petitioners – the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, **it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come – generations which stand to inherit nothing but parched earth incapable of sustaining life.**” (Emphasis supplied)

Thus, while the delegation of any of the sovereign powers of the State raises doubt as to its legality, no question lies in the clear task of this Honorable Court to uphold the more important sovereign **duty** to protect and preserve the very life of the State and its constituents and declare any delegation of such primary duty to any private profit-oriented entity as null and void.

PRAYER

WHEREFORE, in view of the foregoing, it is most respectfully prayed that this Motion for Reconsideration-in-Intervention be given due course, and, that after notice and hearing, this Honorable Court render judgment as follows:

1. Setting aside the Decision promulgated on March 30, 2006;
2. Declaring Republic Act 7942 and its implementing rules and regulations unconstitutional;
3. Declaring all agreements entered into pursuant to Republic Act 7942 and its implementing rules and regulations unconstitutional.

Such other reliefs just and equitable under the premises are likewise prayed for.

Pasig City for the City of Manila,
24 April 2006.

WIGBERTO E. TAÑADA

²⁹ G.R. No. 101083, 30 July 1993.

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NOTICE OF HEARING

The Clerk of Court
First Division
Supreme Court

Kindly submit the foregoing **Petition-in-Intervention** for the consideration of the Court immediately upon receipt hereof.

GRIZELDA MAYO-ANDA

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Please take notice that the foregoing **Petition-in-Intervention** is submitted for the consideration of the Court immediately upon receipt hereof.

GRIZELDA MAYO-ANDA

EXPLANATION

Copies of this **Petition-in-Intervention** were filed and served by registered mail to this Honorable Court and the public and private respondents, respectively, due to lack of personnel and material time to effect personal service.

GRIZELDA MAYO-ANDA

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