

FIRST DIVISION

**DIDIPIO EARTH-SAVERS' MULTI-PURPOSE ASSOCIATION, INCORPORATED (DESAMA), MANUEL BUTIC, CESAR MARIANO, LAURO ABANCE, BEN TAYABAN, ANTONIO DINGCOG, TEDDY B. KIMAYONG, ALONZO ANANAYO, ANTONIO MALAN-UYA, JOSE BAHAG, ANDRES INLAB, RUFINO LICYAYO, ALFREDO CULHI, CATALILNA INABYUHAN, GUAY DUMMANG, GINA PULIDO, EDWIN ANSIBEY, CORAZON SICUAN, LOPEZ DUMULAG, FREDDIE AYDINON, VILMA JOSE, FLORENTINA MADDAWAT, LINDA DINGCOG, ELMER SICUAN, GARY ANSIBEY, JIMMY MADDAWAT, JIMMY GUAY, ALFREDO CUT-ING, ANGELINA UDAN, OSCAR INLAB, JUANITA CUT-ING, ALBERT PINKIHAN, CECILIA TAYABAN, CRISTA BINWAK, PEDRO DUGAY, SR., EDUARDO ANANAYO, ROBIN INLAB, JR., LORENZO PULIDO, TOMAS BINWAG, EVELYN BUYA, JAIME DINGCOG, DINAONAN CUT-ING, PEDRO DONATO, MYRNA GUAY, FLORA ANSIBEY, GRACE DINAMLING, EDUARDO MENCINAS, ROSENDA JACOB, SIONITA DINGCOG, GLORIA JACOB, MAXIMA GUAY, RODRIGO PAGGADUT, MARINA ANSIBEY, TOLENTINO INLAB, RUBEN DULNUAN, GERONIMO LICYAYO, LEONCIO CUMTI, MARY DULNUAN, FELISA BALANBAN, MYRNA DUYAN, MARY MALAN-UYA, PRUDENCIO ANSIBEY, GUILLERMO GUAY, MARGARITA CULHI, ALADIN ANSIBEY, PABLO DUYAN,**

**G.R. No. 157882**

Present:

*PANGANIBAN, C.J.*  
Chairperson, YNARES-SANTIAGO, AUSTRIA-MARTINEZ, CALLEJO SR., and CHICO-NAZARIO, *JJ.*

**PEDRO PUGUON, JULIAN INLAB,  
JOSEPH NACULON, ROGER BAJITA,  
DINAON GUAY, JAIME ANANAYO,  
MARY ANSIBEY, LINA ANANAYO,  
MAURA DUYAPAT, ARTEMEO  
ANANAYO, MARY BABLING, NORA  
ANSIBEY, DAVID DULNUAN,  
AVELINO PUGUON, LUCAS  
GUMAWI, LUISA ABBAC, CATHRIN  
GUWAY, CLARITA TAYABAN,  
FLORA JAVERA, RANDY SICOAN,  
FELIZA PUTAKI, CORAZON P.  
DULNUAN, NENA D. BULLONG,  
ERMELYN GUWAY, GILBERT  
BUTALE, JOSEPH B. BULLONG,  
FRANCISCO PATNAAN, JR.,  
SHERWIN DUGAY, TIRSO  
GULLINGAY, BENEDICT T.  
NABALLIN, RAMON PUN-ADWAN,  
ALFONSO DULNUAN, CARMEN D.  
BUTALE, LOLITA ANSIBEY,  
ABRAHAM DULNUAN, ARLYNDA  
BUTALE, MODESTO A. ANSIBEY,  
EDUARDO LUGAY, ANTONIO  
HUMIWAT, ALFREDO PUMIHIC,  
MIKE TINO, TONY CABARROGUIS,  
BASILIO TAMLIWOK, JR., NESTOR  
TANGID, ALEJO TUGUINAY,  
BENITO LORENZO, RUDY  
BAHIWAG, ANALIZA BUTALE,  
NALLEM LUBYOC, JOSEPH  
DUHAYON, RAFAEL CAMPOL,  
MANUEL PUMALO, DELFIN  
AGALOOS, PABLO CAYANGA,  
PERFECTO SISON, ELIAS NATAMA,  
LITO PUMALO, SEVERINA DUGAY,  
GABRIEL PAKAYAO, GEOFFREY  
SINDAP, FELIX TICUAN, MARIANO  
S. MADDELA, MENZI TICAWA,  
DOMINGA DUGAY, JOE BOLINEY,  
JASON ASANG, TOMMY  
ATENYAYO, ALEJO AGMALIW,  
DIZON AGMALIW, EDDIE ATOS,**

**FELIMON BLANCO, DARRIL DIGOY,  
LUCAS BUAY, ARTEMIO BRAZIL,  
NICANOR MODI, LUIS REDULFIN,  
NESTOR JUSTINO, JAIME CUMILA,  
BENEDICT GUINID, EDITHA ANIN,  
INOH-YABAN BANDA, LUIS  
BAYWONG, FELIPE DUHALNGON,  
PETER BENNEL, JOSEPH T.  
BUNGGALAN, JIMMY B.  
KIMAYONG, HENRY PUGUON,  
PEDRO BUHONG, BUGAN  
NADIAHAN, SR., MARIA EDEN  
ORLINO, SPC, PERLA VISSORO, and  
BISHOP RAMON VILLENA,**

Petitioners,

- *versus* -

**ELISEA GOZUN, in her capacity as  
SECRETARY of the DEPARTMENT  
OF ENVIRONMENT and NATURAL  
RESOURCES (DENR), HORACIO  
RAMOS, in his capacity as Director of  
the Mines and Geosciences Bureau  
(MGB-DENR), ALBERTO ROMULO,  
in his capacity as the Executive Secretary  
of the Office of the President, RICHARD  
N. FERRER, in his capacity as Acting  
Undersecretary of the Office of the  
President, IAN HEATH  
SANDERCOCK, in his capacity as  
President of CLIMAX-ARIMCO Mining  
Corporation.**

Respondents.

Promulgated:

March 30, 2006

## DECISION

CHICO-NAZARIO, *J.*:

This petition for prohibition and *mandamus* under Rule 65 of the Rules of Court assails the constitutionality of Republic Act No. 7942 otherwise known as the Philippine Mining Act of 1995, together with the Implementing Rules and Regulations issued pursuant thereto, Department of Environment and Natural Resources (DENR) Administrative Order No. 96-40, s. 1996 (DAO 96-40) and of the Financial and Technical Assistance Agreement (FTAA) entered into on 20 June 1994 by the Republic of the Philippines and Arimco Mining Corporation (AMC), a corporation established under the laws of Australia and owned by its nationals.

On 25 July 1987, then President Corazon C. Aquino promulgated Executive Order No. 279 which authorized the DENR Secretary to accept, consider and evaluate proposals from foreign-owned corporations or foreign investors for contracts of agreements involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, which, upon appropriate recommendation of the Secretary, the President may execute with the foreign proponent.

On 3 March 1995, then President Fidel V. Ramos signed into law Rep. Act No. 7942 entitled, “An Act Instituting A New System of Mineral Resources Exploration, Development, Utilization and Conservation,” otherwise known as the Philippine Mining Act of 1995.

On 15 August 1995, then DENR Secretary Victor O. Ramos issued DENR Administrative Order (DAO) No. 23, Series of 1995, containing the implementing guidelines of Rep. Act No. 7942. This was soon superseded by DAO No. 96-40, s. 1996, which took effect on 23 January 1997 after due publication.

Previously, however, or specifically on 20 June 1994, President Ramos executed an FTAA with AMC over a total land area of 37,000 hectares covering the provinces of Nueva Vizcaya and Quirino. Included in this area is Barangay Dipidio, Kasibu, Nueva Vizcaya.

Subsequently, AMC consolidated with Climax Mining Limited to form a single company that now goes under the new name of Climax-Arimco Mining Corporation (CAMC), the controlling 99% of stockholders of which are Australian nationals.




On 7 September 2001, counsels for petitioners filed a demand letter addressed to then , for the cancellation of the for the primary reason that Rep. Act No. 7942 and its Implementing Rules and Regulations DAO 96-40 are unconstitutional. The Office of the Executive Secretary was also furnished a copy of the said letter. There being no response to both letters, another letter of the same content dated was sent to President Gloria Macapagal Arroyo. This letter was indorsed to the DENR Secretary and eventually referred to the Panel of Arbitrators of the Mines and Geosciences Bureau (MGB), Regional Office No. 02, Tuguegarao, Cagayan, for further action.

On 12 November 2002, counsels for petitioners received a letter from the Panel of Arbitrators of the MGB requiring the petitioners to comply with the Rules of the Panel of Arbitrators before the letter may be acted upon.

Yet again, counsels for petitioners sent another demand letter dated 8 November 2002. Said letter was again forwarded to the DENR Secretary who referred the same to the MGB, Quezon City.

In a letter dated 19 February 2003, the MGB rejected the demand of counsels for petitioners for the cancellation of the CAMC FTAA.

Petitioners thus filed the present petition for prohibition and *mandamus*, with a prayer for a temporary restraining order. They pray that the Court issue an order:

 Joining public respondents from acting on any application for FTAA;  
 Declaring unconstitutional the Philippine Mining Act of 1995 and its Implementing Rules and Regulations;  
 Canceling the FTAA issued to CAMC.

In their memorandum petitioners pose the following issues:

I

WHETHER OR NOT REPUBLIC ACT NO. 7942 AND THE CAMC FTAA ARE VOID BECAUSE THEY ALLOW THE UNJUST AND UNLAWFUL TAKING OF PROPERTY WITHOUT PAYMENT OF JUST COMPENSATION , IN VIOLATION OF SECTION 9, ARTICLE III OF THE CONSTITUTION.

II

WHETHER OR NOT THE MINING ACT AND ITS IMPLEMENTING RULES AND REGULATIONS ARE VOID AND UNCONSTITUTIONAL FOR SANCTIONING AN UNCONSTITUTIONAL ADMINISTRATIVE PROCESS OF DETERMINING JUST COMPENSATION.


III

WHETHER OR NOT THE STATE, THROUGH REPUBLIC ACT NO. 7942 AND THE CAMC FTAA, ABDICATED ITS PRIMARY RESPONSIBILITY TO THE FULL CONTROL AND SUPERVISION OVER NATURAL RESOURCES.

IV

WHETHER OR NOT THE RESPONDENTS' INTERPRETATION OF THE ROLE OF WHOLLY FOREIGN AND FOREIGN-OWNED CORPORATIONS IN THEIR INVOLVEMENT IN MINING ENTERPRISES, VIOLATES PARAGRAPH 4, SECTION 2, ARTICLE XII OF THE CONSTITUTION.

V

WHETHER OR NOT THE 1987 CONSTITUTION PROHIBITS SERVICE CONTRACTS. 

Before going to the substantive issues, the procedural question raised by public respondents shall first be dealt with. Public respondents are of the view that petitioners' eminent domain claim is not ripe for adjudication as they fail to allege that CAMC has actually taken their properties nor do they allege that their property rights have been endangered or are in danger on account of CAMC's FTAA. In effect, public respondents insist that the issue of eminent domain is not a justiciable controversy which this Court can take cognizance of.



A justiciable controversy is defined as a definite and concrete dispute touching on





the legal relations of parties having adverse legal interests which may be resolved by a court of law through the application of a law. Thus, courts have no judicial power to review cases involving political questions and as a rule, will desist from taking cognizance of speculative or hypothetical cases, advisory opinions and cases that have become moot. The Constitution is quite explicit on this matter. It provides that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable. Pursuant to this constitutional mandate, courts, through the power of judicial review, are to entertain only real disputes between conflicting parties through the application of law. For the courts to exercise the power of judicial review, the following must be extant (1) there must be an actual case calling for the exercise of judicial power; (2) the question must be ripe for adjudication; and (3) the person challenging must have the “standing.”



An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.



Closely related to the second requisite is that the question must be ripe for adjudication. A question is considered ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it.

The third requisite is legal standing or *locus standi*. It is defined as a personal or substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged, alleging more than a generalized grievance. The gist of the question of standing is whether a party alleges “such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.” Unless a person is injuriously

affected in any of his constitutional rights by the operation of statute or ordinance, he has no standing.  

In the instant case, there exists a live controversy involving a clash of legal rights as Rep. Act No. 7942 has been enacted, DAO 96-40 has been approved and an FTAA's have been entered into. The FTAA holders have already been operating in various provinces of the country. Among them is CAMC which operates in the provinces of Nueva Vizcaya and Quirino where numerous individuals including the petitioners are imperiled of being ousted from their landholdings in view of the CAMC FTAA. In light of this, the court cannot await the adverse consequences of the law in order to consider the controversy actual and ripe for judicial intervention.   Actual eviction of the land owners and occupants need not happen for this Court to intervene. As held in *Pimentel, Jr. v. Hon. Aguirre*  

By the mere enactment of the questioned law or the approval of the challenged act, the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to  broken judicial duty. 

Petitioners embrace various segments of the society. These include Didipio Earth-Savers' Multi-Purpose Association, Inc., an organization of farmers and indigenous peoples organized under Philippine laws, representing a community actually affected by the mining activities of CAMC, as well as other residents of areas affected by the mining activities of CAMC. These petitioners have the standing to raise the constitutionality of the questioned FTAA as they allege a personal and substantial injury.   They assert that they are affected by the mining activities of CAMC. Likewise, they are under imminent threat of being displaced from their landholdings as a result of the implementation of the questioned FTAA. They thus meet the appropriate case requirement as they assert an interest adverse to that of respondents who, on the other hand, claim the validity of the assailed statute and the FTAA of CAMC.

Besides, the transcendental importance of the issues raised and the magnitude of

the public interest involved will have a bearing on the country's economy which is to a greater extent dependent upon the mining industry. Also affected by the resolution of this case are the proprietary rights of numerous residents in the mining contract areas as well as the social existence of indigenous peoples which are threatened. Based on these considerations, this Court deems it proper to take cognizance of the instant petition.

Having resolved the procedural question, the constitutionality of the law under attack must be addressed squarely.

**First Substantive Issue: Validity of Section 76 of Rep. Act No. 7942 and DAO 96-40**

In seeking to nullify Rep. Act No. 7942 and its implementing rules DAO 96-40 as unconstitutional, petitioners set their sight on Section 76 of Rep. Act No. 7942 and Section 107 of DAO 96-40 which they claim allow the unlawful and unjust "taking" of private property for private purpose in contradiction with Section 9, Article III of the 1987 Constitution mandating that private property shall not be taken except for public use and the corresponding payment of just compensation. They assert that public respondent DENR, through the Mining Act and its Implementing Rules and Regulations, cannot, on its own, permit entry into a private property and allow taking of land without payment of just compensation.







Interpreting Section 76 of Rep. Act No. 7942 and Section 107 of DAO 96-40, juxtaposed with the concept of taking of property for purposes of eminent domain in the case of *Republic v. Vda. de Castellvi*,<sup>1</sup> petitioners assert that there is indeed a "taking" upon entry into private lands and concession areas.

*Republic v. Vda. de Castellvi* defines "taking" under the concept of eminent domain as entering upon private property for more than a momentary period, and, under the warrant or color of legal authority, devoting it to a public use, or otherwise informally appropriating or injuriously affecting it in such a way as to substantially oust the owner and deprive him of all beneficial enjoyment thereof.

From the criteria set forth in the cited case, petitioners claim that the entry into a private property by CAMC, pursuant to its FTAA, is for more than a momentary period, *i.e.*, for 25 years, and renewable for another 25 years; that the entry into the property is under the warrant or color of legal authority pursuant to the FTAA executed between the government and CAMC; and that the entry substantially ousts the owner or possessor and deprives him of all beneficial enjoyment of the property. These facts, according to the petitioners, amount to taking. As such, petitioners question the exercise of the power of eminent domain as unwarranted because respondents failed to prove that the entry into private property is devoted for public use.

Petitioners also stress that even without the doctrine in the *Castellvi* case, the nature of the mining activity, the extent of the land area covered by the CAMC FTAA and the various rights granted to the proponent or the FTAA holder, such as (a) the right of possession of the Exploration Contract Area, with full right of ingress and egress and the right to occupy the same; (b) the right not to be prevented from entry into private lands by surface owners and/or occupants thereof when prospecting, exploring and exploiting for minerals therein; (c) the right to enjoy easement rights, the use of timber, water and other natural resources in the Exploration Contract Area; (d) the right of possession of the Mining Area, with full right of ingress and egress and the right to occupy the same; and (e) the right to enjoy easement rights, water and other natural resources in the Mining Area, result in a taking of private property.

Petitioners quickly add that even assuming *arguendo* that there is no absolute, physical taking, at the very least, Section 76 establishes a legal easement upon the surface owners, occupants and concessionaires of a mining contract area sufficient to deprive them of enjoyment and use of the property and that such burden imposed by the legal easement falls within the purview of eminent domain.







To further bolster their claim that the legal easement established is equivalent to taking, petitioners cite the case of *National Power Corporation v. Gutierrez*, [link](#)   [link](#)  [link](#)  [link](#)  [link](#) 



that the easement of right-of-way imposed against the use of the land for an indefinite period is a taking under the power of eminent domain.









Traversing petitioners' assertion, public respondents argue that Section 76 is not a taking provision but a valid exercise of the police power and by virtue of which, the state may prescribe regulations to promote the health, morals, peace, education, good order, safety and general welfare of the people. This government regulation involves the adjustment of rights for the public good and that this adjustment curtails some potential for the use or economic exploitation of private property. Public respondents concluded that "to require compensation in all such circumstances would compel the government to regulate by purchase."





Public respondents are inclined to believe that by entering private lands and concession areas, FTAA holders do not oust the owners thereof nor deprive them of all beneficial enjoyment of their properties as the said entry merely establishes a legal easement upon surface owners, occupants and concessionaires of a mining contract area.







### **Taking in Eminent Domain Distinguished from Regulation in Police Power**

The power of eminent domain is the inherent right of the state (and of those entities to which the power has been lawfully delegated) to condemn private property to public use upon payment of just compensation.   the other hand, police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property.   although both police power and the power of eminent domain have the general welfare for their object, and recent trends show a mingling   the two with the latter being used as an implement of the former, there are still traditional distinctions between the two.

Property condemned under police power is usually noxious or intended for a noxious purpose; hence, no compensation shall be paid.   likewise, in the exercise of police power, property rights of private individuals are subjected to restraints and

burdens in order to secure the general comfort, health, and prosperity of the state. Thus, an ordinance prohibiting theaters from selling tickets in excess of their seating capacity (which would result in the diminution of profits of the theater-owners) was upheld valid as this would promote the comfort, convenience and safety of the customers.    
*U.S. v. Toribio*,   court upheld the provisions of Act No. 1147, a statute regulating the slaughter of carabao for the purpose of conserving an adequate supply of draft animals, as a valid exercise of police power, notwithstanding the property rights impairment that the ordinance imposed on cattle owners. A zoning ordinance prohibiting the operation of a lumber yard within certain areas was assailed as unconstitutional in that it was an invasion of the property rights of the lumber yard owners in *People v. de Guzman*.   The Court nonetheless ruled that the regulation was a valid exercise of police power. A similar ruling was arrived at in *Seng Kee S Co. v. Earnshaw and Piatt*.   Here an ordinance divided the City of into industrial and residential areas.

A thorough scrutiny of the extant jurisprudence leads to a cogent deduction that where a property interest is merely restricted because the continued use thereof would be injurious to public welfare, or where property is destroyed because its continued existence would be injurious to public interest, there is no compensable taking.    
However, when a property interest is appropriated and applied to some public purpose, there is compensable taking.  

According to noted constitutionalist, Fr. Joaquin Bernas, SJ, in the exercise of its police power regulation, the state restricts the use of private property, but none of the property interests in the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public.   Use of the property by the owner was limited, but no aspect of the property is used by or for the public.   The deprivation of use can in fact be total and it will not constitute compensable taking if nobody else acquires use of the property or any interest therein.  

If, however, in the regulation of the use of the property, somebody else acquires the use or interest thereof, such restriction constitutes compensable taking. Thus, in *City Government of Quezon City v. ERICTA*,<sup>1</sup><sup>2</sup> was argued by the local government that an ordinance requiring private cemeteries to reserve 6% of their total areas for the burial of paupers was a valid exercise of the police power under the general welfare clause. This court did not agree in the contention, ruling that property taken under the police power is sought to be destroyed and not, as in this case, to be devoted to a public use. It further declared that the ordinance in question was actually a taking of private property without just compensation of a certain area from a private cemetery to benefit paupers who are charges of the local government. Being an exercise of eminent domain without provision for the payment of just compensation, the same was rendered invalid as it violated the principles governing eminent domain.

In *People v. Fajardo*,<sup>3</sup><sup>4</sup> municipal mayor refused Fajardo permission to build a house on his own land on the ground that the proposed structure would destroy the view or beauty of the public plaza. The ordinance relied upon by the mayor prohibited the construction of any building that would destroy the view of the plaza from the highway. The court ruled that the municipal ordinance under the guise of police power permanently divest owners of the beneficial use of their property for the benefit of the public; hence, considered as a taking under the power of eminent domain that could not be countenanced without payment of just compensation to the affected owners. In this case, what the municipality wanted was to impose an easement on the property in order to preserve the view or beauty of the public plaza, which was a form of utilization of Fajardo's property for public benefit.<sup>5</sup><sup>6</sup>

While the power of eminent domain often results in the appropriation of title to or possession of property, it need not always be the case. Taking may include trespass without actual eviction of the owner, material impairment of the value of the property or prevention of the ordinary uses for which the property was intended such as the establishment of an easement.<sup>7</sup><sup>8</sup> *Ayala de Roxas v. City of Manila*,<sup>9</sup><sup>10</sup> was held

that the imposition of burden over a private property through easement was considered taking; hence, payment of just compensation is required. The Court declared:

And, considering that the easement intended to be established, whatever may be the object thereof, is not merely a real right that will encumber the property, but is one tending to prevent the exclusive use of one portion of the same, by expropriating it for public use which, be it what it may, can not be accomplished unless the owner of the property condemned or seized be previously and duly indemnified, it is proper to protect the appellant by means of the remedy employed in such cases, as it is only adequate remedy when no other legal action can be resorted to, against an intent which is nothing short of an arbitrary restriction imposed by the city by virtue of the coercive power with which the same is invested.

And in the case of *National Power Corporation v. Gutierrez*,<sup>12</sup> despite the NPC's protestation that the owners were not totally deprived of the use of the land and could still plant the same crops as long as they did not come into contact with the wires, the Court nevertheless held that the easement of right-of-way was a taking under the power of eminent domain. The Court said:

In the case at bar, the easement of right-of-way is definitely a taking under the power of eminent domain. Considering the nature and effect of the installation of 230 KV Mexico-Limay transmission lines, the limitation imposed by NPC against the use of the land for an indefinite period deprives private respondents of its ordinary use.

A case exemplifying an instance of compensable taking which does not entail transfer of title is *Republic v. Philippine Long Distance Telephone Co.*<sup>13</sup> Here, the Bureau of Telecommunications, a government instrumentality, had contracted with the PLDT for the interconnection between the Government Telephone System and that of the PLDT, so that the former could make use of the lines and facilities of the PLDT. In its desire to expand services to government offices, the Bureau of Telecommunications demanded to expand its use of the PLDT lines. Disagreement ensued on the terms of the contract for the use of the PLDT facilities. The Court ruminated:

Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why said power may not be availed of to impose only a burden upon the owner of the condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation, be subjected to an easement right of way.<sup>14</sup>

In *Republic v. Castellvi*,<sup>1</sup><sup>2</sup> the Court had the 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 public use or otherwise informally appropriated or injuriously affected;
- 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. Section 75 of the law in question reads:

Easement Rights. - When mining areas are so situated that for purposes of more convenient mining operations it is necessary to build, construct or install on the mining areas or lands owned, occupied or leased by other persons, such infrastructure as roads, railroads, mills, waste dump sites, tailing ponds, warehouses, staging or storage areas and port facilities, tramways, runways, airports, electric transmission, telephone or telegraph lines, dams and their normal flood and catchment areas, sites for water wells, ditches, canals, new river beds, pipelines, flumes, cuts, shafts, tunnels, or mills, the contractor, upon payment of just compensation, shall be entitled to enter and occupy said mining areas or lands.

Section 76 provides:

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 concessionaires when conducting mining operations therein.

The CAMC FTAA grants in favor of CAMC the right of possession of the Exploration Contract Area, the full right of ingress and egress and the right to occupy the same. It also bestows CAMC the right not to be prevented from entry into private

lands by surface owners or occupants thereof when prospecting, exploring and exploiting minerals therein.

The entry referred to in Section 76 is not just a simple right-of-way which is ordinarily allowed under the provisions of the Civil Code. Here, the holders of mining rights enter private lands for purposes of conducting mining activities such as exploration, extraction and processing of minerals. Mining right holders build mine infrastructure, dig mine shafts and connecting tunnels, prepare tailing ponds, storage areas and vehicle depots, install their machinery, equipment and sewer systems. On top of this, under Section 75, easement rights are accorded to them where they may build warehouses, port facilities, electric transmission, railroads and other infrastructures necessary for mining operations. All these will definitely oust the owners or occupants of the affected areas the beneficial ownership of their lands. Without a doubt, taking occurs once mining operations commence.

### **Section 76 of Rep. Act No. 7942 is a Taking Provision**

Moreover, it would not be amiss to revisit the history of mining laws of this country which would help us understand Section 76 of Rep. Act No. 7942.

This provision is first found in Section 27 of Commonwealth Act No. 137 which took effect on , *viz*:

Before entering private lands the prospector shall first apply in writing for written permission of the private owner, claimant, or holder thereof, and in case of refusal by such private owner, claimant, or holder to grant such permission, or in case of disagreement as to the amount of compensation to be paid for such privilege of prospecting therein, the amount of such compensation shall be fixed by agreement among the prospector, the Director of the Bureau of Mines and the surface owner, and in case of their failure to unanimously agree as to the amount of compensation, all questions at issue shall be determined by the Court of First Instance.

Similarly, the pertinent provision of Presidential Decree No. 463, otherwise known as “The Mineral Resources Development Decree of 1974,” provides:







SECTION 12. Entry to Public and . — A person who desires to conduct prospecting or other mining operations within public lands covered by concessions or rights other than mining shall first obtain the written permission of the government official concerned before entering such lands. In the case of private lands, the written permission of the owner or possessor of the land must be obtained before entering such lands. In either case, if said permission is denied, the Director, at the request of the interested person may intercede with the owner or possessor of the land. If the intercession fails, the interested person may bring suit in the Court of First Instance of the province where the land is situated. If the court finds the request justified, it shall issue an order granting the permission after fixing the amount of compensation and/or rental due the owner or possessor: Provided, That pending final adjudication of such amount, the court shall upon recommendation of the Director permit the interested person to enter, prospect and/or undertake other mining operations on the disputed land upon posting by such interested person of a bond with the court which the latter shall consider adequate to answer for any damage to the owner or possessor of the land resulting from such entry, prospecting or any other mining operations.

Hampered by the difficulties and delays in securing surface rights for the entry into private lands for purposes of mining operations, Presidential Decree No. 512 dated was passed into law in order to achieve full and accelerated mineral resources development. Thus, Presidential Decree No. 512 provides for a new system of surface rights acquisition by mining prospectors and claimants. Whereas in Commonwealth Act No. 137 and Presidential Decree No. 463 eminent domain may only be **exercised** in order that the mining claimants can build, construct or install roads, railroads, mills, warehouses and other facilities, this time, the power of eminent domain may now be **invoked** by mining operators for the entry, acquisition and use of private lands, *viz*:

SECTION 1. Mineral prospecting, location, exploration, development and exploitation is hereby declared of public use and benefit, and for which the power of eminent domain may be invoked and exercised for the entry, acquisition and use of private lands. x x x.



The evolution of mining laws gives positive indication that mining operators who are qualified to own lands were granted the authority to exercise eminent domain for the entry, acquisition, and use of private lands in areas open for mining operations. This grant of authority extant in Section 1 of Presidential Decree No. 512 is not expressly repealed by Section 76 of Rep. Act No. 7942; and neither are the former statutes impliedly repealed by the former. These two provisions can stand together even if





Section 76 of Rep. Act No. 7942 does not spell out the grant of the privilege to exercise eminent domain which was present in the old law.



It is an established rule in statutory construction that in order that one law may operate to repeal another law, the two laws must be inconsistent.   The former must be so repugnant as to be irreconcilable with the latter act. Simply because a latter enactment may relate to the same subject matter as that of an earlier statute is not of itself sufficient to cause an implied repeal of the latter, since the new law may be cumulative or a continuation of the old one. As has been the ruled, repeals by implication are not favored, and will not be decreed unless it is manifest that the legislature so intended.   Laws are presumed to be passed with deliberation and with full knowledge of all existing ones on the subject, it is but reasonable to conclude that in passing a statute it was not intended to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is not only irreconcilable, but also clear and convincing, and flowing necessarily from the language used, unless the later act fully embraces the subject matter of the earlier, or unless the reason for the earlier act is beyond peradventure removed.   Hence, every effort must be used to make all acts stand and if, by any reasonable construction, they can be reconciled, the latter act will not operate as a repeal of the earlier.

Considering that Section 1 of Presidential Decree No. 512 granted the qualified mining operators the authority to exercise eminent domain and since this grant of authority is deemed incorporated in Section 76 of Rep. Act No. 7942, the inescapable conclusion is that the latter provision is a taking provision.

While this Court declares that the assailed provision is a taking provision, this does not mean that it is unconstitutional on the ground that it allows taking of private property without the determination of public use and the payment of just compensation.



The taking to be valid must be for public use.   Public use as a requirement for the valid exercise of the power of eminent domain is now synonymous with public

interest, public benefit, public welfare and public convenience.   includes the broader notion of indirect public benefit or advantage. Public use as traditionally understood as “actual use by the public” has already been abandoned.  



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

Irrefragably, mining is an industry which is of public benefit.

That public use is negated by the fact that the state would be taking private properties for the benefit of private mining firms or mining contractors is not at all true. In *Heirs of Juancho Ardon v. Reyes*,   petitioners therein contended that the promotion of tourism is not for public use because private concessionaires would be allowed to maintain various facilities such as restaurants, hotels, stores, etc., inside the tourist area. The Court thus contemplated:

The rule in *Berman v. Parker* [348 U.S. 25; 99 L. ed. 27] of deference to legislative policy even if such policy might mean taking from one private person and conferring on another private person applies as well in the Philippines.





“ . . . Once the object is within the authority of Congress, the means by which it will be attained is also for Congress to determine. Here one of the means chosen is the use of private enterprise for redevelopment of the area. Appellants argue that this makes the project a taking from one businessman for the benefit of another businessman. But the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established. x x x”  

Petitioners further maintain that the state’s discretion to decide when to take private property is reduced contractually by Section 13.5 of the CAMC FTAA, which reads:

If the CONTRACTOR so requests at its option, the GOVERNMENT shall use its offices and legal powers to assist in the acquisition at reasonable cost of any surface areas or rights required by the CONTRACTOR at the CONTRACTOR's cost to carry out the Mineral Exploration and the Mining Operations herein.

All obligations, payments and expenses arising from, or incident to, such agreements or acquisition of right shall be for the account of the CONTRACTOR and shall be recoverable as Operating Expense.

According to petitioners, the government is reduced to a sub-contractor upon the request of the private respondent, and on account of the foregoing provision, the contractor can compel the government to exercise its power of eminent domain thereby derogating the latter's power to expropriate property.

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 by which surface rights can be acquired other than expropriation. The FTAA provision under attack merely facilitates the implementation of the FTAA given to CAMC and shields it from violating the Anti-Dummy Law. Hence, when confronted with the same question in *La Bugal-B'Laan Tribal Association, Inc. v. Ramos*,   Court answered:

Clearly, petitioners have needlessly jumped to unwarranted conclusions, without being aware of the rationale for the said provision. That provision does not call for the exercise of the power of eminent domain -- and determination of just compensation is not an issue -- as much as it calls for a qualified party to acquire the surface rights on behalf of a foreign-owned contractor.

Rather than having the foreign contractor act through a dummy corporation, having the State do the purchasing is a better alternative. This will at least cause the government to be aware of such transaction/s and foster transparency in the contractor's dealings with the local property owners. The government, then, will not act as a subcontractor of the contractor; *rather, it will facilitate the transaction and enable the parties to avoid a technical violation of the Anti-Dummy Law.*

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:



Section 76. xxx Provided, that any damage to the property of the surface owner, occupant, or concessionaire as a consequence of such operations shall be *properly compensated* as may be provided for in the implementing rules and regulations.

Section 107. Compensation of the Surface Owner and Occupant- Any damage done to the property of the surface owners, 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 104 above *shall be properly and justly compensated*.


Such compensation shall be based on the agreement entered into between the holder of mining rights and the surface owner, occupant or concessionaire thereof, where appropriate, in accordance with P.D. No. 512. (Emphasis supplied.)

### **Second Substantive Issue: Power of Courts to Determine Just Compensation**

Closely-knit to the issue of taking is the determination of just compensation. It is contended that Rep. Act No. 7942 and Section 107 of DAO 96-40 encroach on the power of the trial courts to determine just compensation in eminent domain cases inasmuch as the same determination of proper compensation are cognizable only by the Panel of Arbitrators.

The question on the judicial determination of just compensation has been settled in the case of *Export Processing Zone Authority v. Dulay*   wherein the court declared that the determination of just compensation in eminent domain cases is a judicial function. Even as the executive department or the legislature may make the initial determinations, the same cannot prevail over the court's findings.

Implementing Section 76 of Rep. Act No. 7942, Section 105 of DAO 96-40 states that holder(s) of mining right(s) shall not be prevented from entry into its/their contract/mining areas for the purpose of exploration, development, and/or utilization. That in cases where surface owners of the lands, occupants or concessionaires refuse to

allow the permit holder or contractor entry, the latter shall bring the matter before the Panel of Arbitrators for proper disposition. Section 106 states that voluntary agreements between the two parties permitting the mining right holders to enter and use the surface owners' lands shall be registered with the Regional Office of the MGB. In connection with Section 106, Section 107 provides that the compensation for the damage done to the surface owner, occupant or concessionaire as a consequence of mining operations or as a result of the construction or installation of the infrastructure shall be properly and justly compensated and that such compensation shall be based on the agreement between the holder of mining rights and surface owner, occupant or concessionaire, or where appropriate, in accordance with Presidential Decree No. 512. In cases where there is disagreement to the compensation or where there is no agreement, the matter shall be brought before the Panel of Arbitrators. Section 206 of the implementing rules and regulations provides an aggrieved party the remedy to appeal the decision of the Panel of Arbitrators to the Mines Adjudication Board, and the latter's decision may be reviewed by the Supreme Court by filing a petition for review on *certiorari*. 

An examination of the foregoing provisions gives no indication that the courts are excluded from taking cognizance of expropriation cases under the mining law. The disagreement referred to in Section 107 does not involve the exercise of eminent domain, rather it contemplates of a situation wherein the permit holders are allowed by the surface owners entry into the latter's lands and disagreement ensues as regarding the proper compensation for the allowed entry and use of the private lands. Noticeably, the provision points to a voluntary sale or transaction, but not to an involuntary sale.

The legislature, in enacting the mining act, is presumed to have deliberated with full knowledge of all existing laws and jurisprudence on the subject. Thus, it is but reasonable to conclude that in passing such statute it was in accord with the existing laws and jurisprudence on the jurisdiction of courts in the determination of just compensation and that it was not intended to interfere with or abrogate any former law relating to the same matter. Indeed, there is nothing in the provisions of the assailed law

and its implementing rules and regulations that exclude the courts from their jurisdiction to determine just compensation in expropriation proceedings involving mining operations. Although Section 105 confers upon the Panel of Arbitrators the authority to decide cases where surface owners, occupants, concessionaires refuse permit holders entry, thus, necessitating involuntary taking, this does not mean that the determination of the just compensation by the Panel of Arbitrators or the Mines Adjudication Board is final and conclusive. The determination is only preliminary unless accepted by all parties concerned. There is nothing wrong with the grant of primary jurisdiction by the Panel of Arbitrators or the Mines Adjudication Board to determine in a preliminary matter the reasonable compensation due the affected landowners or occupants. The original and exclusive jurisdiction of the courts to decide determination of just compensation remains intact despite the preliminary determination made by the administrative agency. As held in *Philippine Veterans Bank v. Court of Appeals*

The jurisdiction of the Regional Trial Courts is not any less “original and exclusive” because the question is first passed upon by the DAR, as the judicial proceedings are not a continuation of the administrative determination.

### **Third Substantive Issue: Sufficient Control by the State Over Mining Operations**

Anent the third issue, petitioners charge that Rep. Act No. 7942, as well as its Implementing Rules and Regulations, makes it possible for FTAA contracts to cede over to a fully foreign-owned corporation full control and management of mining enterprises, with the result that the State is allegedly reduced to a passive regulator dependent on submitted plans and reports, with weak review and audit powers. The State is not acting as the supposed owner of the natural resources for and on behalf of the Filipino people; it practically has little effective say in the decisions made by the enterprise. In effect, petitioners asserted that the law, the implementing regulations, and the CAMC FTAA cede beneficial ownership of the mineral resources to the foreign contractor.

It must be noted that this argument was already raised in *La Bugal-B'Laan Tribal Association, Inc. v. Ramos*,<sup>11</sup><sup>12</sup> where the Court answered in the following manner:

RA 7942 provides for the state's control and supervision over mining operations. The following provisions thereof establish the mechanism of inspection and visitorial rights over mining operations and institute reportorial requirements in this manner:

1. Sec. 8 which provides for the DENR's power of over-all supervision and periodic review for "the conservation, management, development and proper use of the State's mineral resources";
2. Sec. 9 which authorizes the Mines and Geosciences Bureau (MGB) under the DENR to exercise "direct charge in the administration and disposition of mineral resources", and empowers the MGB to "monitor the compliance by the contractor of the terms and conditions of the mineral agreements", "confiscate surety and performance bonds", and deputize whenever necessary any member or unit of the Phil. National Police, barangay, duly registered non-governmental organization (NGO) or any qualified person to police mining activities;
3. Sec. 66 which vests in the Regional Director "exclusive jurisdiction over safety inspections of all installations, whether surface or underground", utilized in mining operations.
4. Sec. 35, which incorporates into all FTAA's the following terms, conditions and warranties:
  - "(g) Mining operations shall be conducted in accordance with the provisions of the Act and its IRR.
  - "(h) Work programs and minimum expenditures commitments.  
  
x x x x
  - "(k) Requiring proponent to effectively use appropriate anti-pollution technology and facilities to protect the environment and restore or rehabilitate mined-out areas.
  - "(l) The contractors shall furnish the Government records of geologic, accounting and other relevant data for its mining operation, and that books of accounts and records shall be open for inspection by the government. x x x.

“(m) Requiring the proponent to dispose of the minerals at the highest price and more advantageous terms and conditions.

x x x x

“(o) Such other terms and conditions consistent with the Constitution and with this Act as the Secretary may deem to be for the best interest of the State and the welfare of the Filipino people.”

The foregoing provisions of Section 35 of RA 7942 are also reflected and implemented in Section 56 (g), (h), (l), (m) and (n) of the Implementing Rules, DAO 96-40.

Moreover, RA 7942 and DAO 96-40 also provide various stipulations confirming the government’s control over mining enterprises:

- The contractor is to relinquish to the government those portions of the contract area not needed for mining operations and not covered by any declaration of mining feasibility (Section 35-e, RA 7942; Section 60, DAO 96-40).
- The contractor must comply with the provisions pertaining to mine safety, health and environmental protection (Chapter XI, RA 7942; Chapters XV and XVI, DAO 96-40).
- For violation of any of its terms and conditions, government may cancel an FTAA. (Chapter XVII, RA 7942; Chapter XXIV, DAO 96-40).
- An FTAA contractor is obliged to open its books of accounts and records for inspection by the government (Section 56-m, DAO 96-40).
- An FTAA contractor has to dispose of the minerals and by-products at the highest market price and register with the MGB a copy of the sales agreement (Section 56-n, DAO 96-40).
- MGB is mandated to monitor the contractor’s compliance with the terms and conditions of the FTAA; and to deputize, when necessary, any member or unit of the Philippine National Police, the barangay or a DENR-accredited nongovernmental organization to police mining activities (Section 7-d and -f, DAO 96-40).
- An FTAA cannot be transferred or assigned without prior approval by the President (Section 40, RA 7942; Section 66, DAO 96-40).
- A mining project under an FTAA cannot proceed to the construction/development/utilization stage, unless its Declaration of Mining Project Feasibility has been approved by government (Section 24, RA 7942).

- The Declaration of Mining Project Feasibility filed by the contractor cannot be approved without submission of the following documents:
  1. Approved mining project feasibility study (Section 53-d, DAO 96-40)
  2. Approved three-year work program (Section 53-a-4, DAO 96-40)
  3. Environmental compliance certificate (Section 70, RA 7942)
  4. Approved environmental protection and enhancement program (Section 69, RA 7942)
  5. Approval by the Sangguniang Panlalawigan/Bayan/Barangay (Section 70, RA 7942; Section 27, RA 7160)
  6. Free and prior informed consent by the indigenous peoples concerned, including payment of royalties through a Memorandum of Agreement (Section 16, RA 7942; Section 59, RA 8371)
  
- The FTAA contractor is obliged to assist in the development of its mining community, promotion of the general welfare of its inhabitants, and development of science and mining technology (Section 57, RA 7942).
  
- The FTAA contractor is obliged to submit reports (on quarterly, semi-annual or annual basis as the case may be; per Section 270, DAO 96-40), pertaining to the following:
  1. Exploration
  2. Drilling
  3. Mineral resources and reserves
  4. Energy consumption
  5. Production
  6. Sales and marketing
  7. Employment
  8. Payment of taxes, royalties, fees and other Government Shares
  9. Mine safety, health and environment use
  11. Social development
  12. Explosives consumption
  
- An FTAA pertaining to areas within government reservations cannot be granted without a written clearance from the government agencies concerned (Section 19, RA 7942; Section 54, DAO 96-40).
  
- An FTAA contractor is required to post a financial guarantee bond in favor of the government in an amount equivalent to its expenditures obligations for any particular year. This requirement is apart from the representations and warranties of the contractor that it has access to all the financing, managerial and technical expertise and technology necessary to carry out the objectives of the FTAA (Section 35-b, -e, and -f, RA 7942).
  
- Other reports to be submitted by the contractor, as required under DAO 96-40, are as follows: an environmental report on the rehabilitation of the mined-out area and/or mine waste/tailing covered area, and anti-pollution measures undertaken (Section 35-a-2); annual reports of the mining operations and records of geologic

accounting (Section 56-m); annual progress reports and final report of exploration activities (Section 56-2).

- Other programs required to be submitted by the contractor, pursuant to DAO 96-40, are the following: a safety and health program (Section 144); an environmental work program (Section 168); an annual environmental protection and enhancement program (Section 171).

The foregoing gamut of requirements, regulations, restrictions and limitations imposed upon the FTAA contractor by the statute and regulations easily overturns petitioners' contention. The setup under RA 7942 and DAO 96-40 hardly relegates the State to the role of a "passive regulator" dependent on submitted plans and reports. On the contrary, the government agencies concerned are empowered to approve or disapprove -- hence, to influence, direct and change -- the various work programs and the corresponding minimum expenditure commitments for each of the exploration, development and utilization phases of the mining enterprise.

Once these plans and reports are approved, the contractor is bound to comply with its commitments therein. Figures for mineral production and sales are regularly monitored and subjected to government review, in order to ensure that the products and by-products are disposed of at the best prices possible; even copies of sales agreements have to be submitted to and registered with MGB. And the contractor is mandated to open its books of accounts and records for scrutiny, so as to enable the State to determine if the government share has been fully paid.

The State may likewise compel the contractor's compliance with mandatory requirements on mine safety, health and environmental protection, and the use of anti-pollution technology and facilities. Moreover, the contractor is also obligated to assist in the development of the mining community and to pay royalties to the indigenous peoples concerned.

Cancellation of the FTAA may be the penalty for violation of any of its terms and conditions and/or noncompliance with statutes or regulations. This general, all-around, multipurpose sanction is no trifling matter, especially to a contractor who may have yet to recover the tens or hundreds of millions of dollars sunk into a mining project.

Overall, considering the provisions of the statute and the regulations just discussed, we believe that the State definitely possesses the means by which it can have the ultimate word in the operation of the enterprise, set directions and objectives, and detect deviations and noncompliance by the contractor; likewise, it has the capability to enforce compliance and to impose sanctions, should the occasion therefor arise.

In other words, the FTAA contractor is not free to do whatever it pleases and get away with it; on the contrary, it will have to follow the government line if it wants to stay in the enterprise. Ineluctably then, RA 7942 and DAO 96-40 vest in the government more than a sufficient degree of control and supervision over the conduct of mining operations.

## **Fourth Substantive Issue: The Proper Interpretation of the Constitutional Phrase “Agreements Involving Either Technical or Financial Assistance”**


In interpreting the first and fourth paragraphs of Section 2, Article XII of the Constitution, petitioners set forth the argument that foreign corporations are barred from making decisions on the conduct of operations and the management of the mining project. The first paragraph of Section 2, Article XII reads:

x x x The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty five years, renewable for not more than twenty five years, and under such terms and conditions as may be provided by law x x x.

The fourth paragraph of Section 2, Article XII provides:

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country x x x.

Petitioners maintain that the first paragraph bars aliens and foreign-owned corporations from entering into any direct arrangement with the government including those which involve co-production, joint venture or production sharing agreements. They likewise insist that the fourth paragraph allows foreign-owned corporations to participate in the large-scale exploration, development and utilization of natural resources, but such participation, however, is merely limited to an agreement for either financial or technical assistance only.

Again, this issue has already been succinctly passed upon by this Court in *La Bugal-B’Laan Tribal Association, Inc. v. Ramos*.  discrediting such argument, the Court ratiocinated:

Petitioners claim that the phrase “*agreements x x x involving either technical or financial assistance*” simply means technical assistance or financial assistance.

agreements, nothing more and nothing else. They insist that there is no ambiguity in the phrase, and that a plain reading of paragraph 4 quoted above leads to the inescapable conclusion that what a foreign-owned corporation may enter into with the government is merely an agreement for *either financial or technical assistance only*, for the large-scale exploration, development and utilization of minerals, petroleum and other mineral oils; such a limitation, they argue, excludes foreign management and operation of a mining enterprise.

This restrictive interpretation, petitioners believe, is in line with the general policy enunciated by the Constitution reserving to Filipino citizens and corporations the use and enjoyment of the country's natural resources. They maintain that this Court's Decision of correctly declared the WMCP FTAA, along with pertinent provisions of RA 7942, void for allowing a foreign contractor to have direct and exclusive management of a mining enterprise. Allowing such a privilege not only runs counter to the "full control and supervision" that the State is constitutionally mandated to exercise over the exploration, development and utilization of the country's natural resources; doing so also vests in the foreign company "beneficial ownership" of our mineral resources. It will be recalled that the Decision of January 27, 2004 zeroed in on "management or other forms of assistance" or other activities associated with the "service contracts" of the martial law regime, since "*the management or operation of mining activities by foreign contractors, which is the primary feature of service contracts, was precisely the evil that the drafters of the 1987 Constitution sought to eradicate.*"

x x x x

We do not see how applying a strictly literal or *verba legis* interpretation of paragraph 4 could inexorably lead to the conclusions arrived at in the *ponencia*. *First*, the drafters' choice of words -- their use of the phrase *agreements x x x involving either technical or financial assistance* -- does not indicate the intent to *exclude* other modes of assistance. The drafters opted to use *involving* when they could have simply said *agreements for financial or technical assistance*, if that was their intention to begin with. In this case, the limitation would be very clear and no further debate would ensue.

In contrast, the use of the word "involving" signifies the **possibility of the inclusion of other forms of assistance or activities** having to do with, otherwise related to or compatible with financial or technical assistance. The word "involving" as used in this context has three connotations that can be differentiated thus: *one*, the sense of "concerning," "having to do with," or "affecting"; *two*, "entailing," "requiring," "implying" or "necessitating"; and *three*, "including," "containing" or "comprising."

Plainly, none of the three connotations convey a sense of exclusivity. Moreover, the word "involving," when understood in the sense of "including," as in *including technical or financial assistance*, necessarily implies that there are activities other than those that are being included. In other words, if an agreement *includes* technical or financial assistance, there is apart from such assistance -- something else already in, and covered or may be covered by, the said agreement.





In short, it allows for the possibility that matters, other than those explicitly mentioned, could be made part of the agreement. Thus, we are now led to the conclusion that the use of the word "involving" implies that these agreements with

foreign corporations are not limited to mere financial or technical assistance. The difference in sense becomes very apparent when we juxtapose “agreements *for* technical or financial assistance” against “agreements *including* technical or financial assistance.” This much is unalterably clear in a *verba legis* approach.

*Second*, if the real intention of the drafters was to confine foreign corporations to financial or technical assistance and nothing more, their language would have certainly been so unmistakably restrictive and stringent as to leave no doubt in anyone’s mind about their true intent. For example, they would have used the sentence *foreign corporations are absolutely prohibited from involvement in the management or operation of mining or similar ventures* or words of similar import. A search for such stringent wording yields negative results. ***Thus, we come to the inevitable conclusion that there was a conscious and deliberate decision to avoid the use of restrictive wording that bespeaks an intent not to use the expression “agreements x x x involving either technical or financial assistance” in an exclusionary and limiting manner.***

### **Fifth Substantive Issue: Service Contracts Not Deconstitutionalized**

Lastly, petitioners stress that the service contract regime under the 1973 Constitution is expressly prohibited under the 1987 Constitution as the term service contracts found in the former was deleted in the latter to avoid the circumvention of constitutional prohibitions that were prevalent in the 1987 Constitution. According to them, the framers of the 1987 Constitution only intended for foreign-owned corporations to provide either technical assistance or financial assistance. Upon perusal of the CAMC FTAA, petitioners are of the opinion that the same is a replica of the service contract agreements that the present constitution allegedly prohibit.

Again, this contention is not well-taken. The mere fact that the term service contracts found in the 1973 Constitution was not carried over to the present constitution, sans any categorical statement banning service contracts in mining activities, does not mean that service contracts as understood in the 1973 Constitution was eradicated in the 1987 Constitution.   The 1987 Constitution allows the continued use of service contracts with foreign corporations as contractors who would invest in and operate and manage extractive enterprises, subject to the full control and supervision of the State; this time, however, safety measures were put in place to prevent abuses of the past regime.   We ruled, thus:

To our mind, however, such intent cannot be definitively and conclusively established from the mere failure to carry the same expression or term over to the new Constitution, absent a more specific, explicit and unequivocal statement to that effect. What petitioners seek (a complete ban on foreign participation in the management of mining operations, as previously allowed by the earlier Constitutions) is nothing short of bringing about a momentous sea change in the economic and developmental policies; and the fundamentally capitalist, free-enterprise philosophy of our government. We cannot imagine such a *radical shift* being undertaken by our government, to the great prejudice of the mining sector in particular and our economy in general, merely on the basis of the *omission* of the terms *service contract* from or the failure to carry them over to the new Constitution. There has to be a much more definite and even unarguable basis for such a drastic reversal of policies.

X X X X

The foregoing are mere fragments of the framers' lengthy discussions of the provision dealing with *agreements x x x involving either technical or financial assistance*, which ultimately became paragraph 4 of Section 2 of Article XII of the Constitution. Beyond any doubt, the members of the ConCom were actually debating about the martial-law-era **service contracts** *for which they were crafting appropriate safeguards*.

In the voting that led to the approval of Article XII by the ConCom, the explanations given by Commissioners Gascon, Garcia and Tadeo indicated that they had voted to reject this provision on account of their objections to the "constitutionalization" of the "service contract" concept.

Mr. Gascon said, "*I felt that if we would constitutionalize any provision on **service contracts**, this should always be with the concurrence of Congress and not guided only by a general law to be promulgated by Congress.*" Mr. Garcia explained, "**Service contracts** are given constitutional legitimization in Sec. 3, even when they have been proven to be inimical to the interests of the nation, providing, as they do, the legal loophole for the exploitation of our natural resources for the benefit of foreign interests." Likewise, Mr. Tadeo cited *inter alia* the fact that service contracts continued to subsist, enabling foreign interests to benefit from our natural resources. **It was hardly likely that these gentlemen would have objected so strenuously, had the provision called for mere technical or financial assistance and nothing more.**


The deliberations of the ConCom and some commissioners' explanation of their votes leave no room for doubt that the service contract concept precisely underpinned the commissioners' understanding of the "agreements involving either technical or financial assistance."

X X X X

From the foregoing, we are impelled to conclude that the phrase *agreements involving either technical or financial assistance*, referred to in paragraph 4, are in fact *service contracts*. But unlike those of the 1973 variety, the new ones are between foreign corporations acting as contractors on the one hand; and on the other, the government as principal or "owner" of the works. In the new service contracts, the foreign contractors provide capital, technology and technical know-how, and managerial

expertise in the creation and operation of large-scale mining/extractive enterprises; and the government, through its agencies (DENR, MGB), actively exercises control and supervision over the entire operation.

x x x x

It is therefore reasonable and unavoidable to make the following conclusion, based on the above arguments. As written by the framers and ratified and adopted by the people, the Constitution allows the continued use of service contracts with foreign corporations -- as contractors who would invest in and operate and manage extractive enterprises, subject to the full control and supervision of the State -- sans the abuses of the past regime. The purpose is clear: to develop and utilize our mineral, petroleum and other resources on a large scale for the immediate and tangible benefit of the Filipino people. 

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.

**SO ORDERED.**

**MINITA V. CHICO-NAZARIO**  
Associate Justice

WE CONCUR:

**ARTEMIO V. PANGANIBAN**  
Chief Justice

Chairperson

**CONSUELO YNARES-SANTIAGO**  
Associate Justice

**MA. ALICIA AUSTRIA-MARTINEZ**  
Associate Justice

**ROMEO J. CALLEJO, SR.**

Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ARTEMIO V. PANGANIBAN**

Chief Justice



*Rollo*, pp. 595-596.



*Velarde v. Social Justice Society*, G.R. No. 159357, , 428 SCRA 283, 291.



Philippine Political Law, Isagani Cruz, p. 23 (1995 ed.).



Article VIII, Section 1.xxx Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.



*Guingona, Jr. v. Court of Appeals*, 354 Phil. 415, 425 (1998).



*Board of Optometry v. Hon. Colet*, 328 Phil. 1187, 1206 (1996).



*Intregrated Bar of the v. ,* 392 Phil. 618, 632-633 (2000).



*Dumlao v. Commission on Elections*, G.R. No. L-52245, , 95 S392, 402.



*Integrated Bar of the v. ,* supra note 7, p. 633.



*Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of ,* 128 Phil. 473, 480-481 (1967).



*Cruz v. Secretary of Environment & Natural Resources*, G.R. No. 135385, 6 December 2000, 347 SCRA 128, 256.



391 Phil. 84 (2000).



*Id.*, p. 107.



*La Bugal-B'Laan Tribal Association, Inc. v. Ramos*, G.R. No. 127882, , 421 SCRA 148, 179.



157 Phil. 329, 344 (1974). It defines “taking” under the concept of eminent domain as entering upon private property for more than a momentary period, and, under the warrant or color of legal authority, devoting it to a public use, or otherwise informally appropriating or injuriously affecting it in such a way as substantially to oust the owner and deprive him of all beneficial enjoyment thereof.



G.R. No. 60077, , 193 SCRA 1, 7.



*Robern Development Corporation v. Quitain*, 373 Phil. 773, 792-793 (1999).



*v. Toribio*, 15 Phil. 85, 93 (1910); *Rubi v. The Provincial Board of ,* 39 Phil. 660, 708 (1919).



*Association of Small Landowners of the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, 14 July 1989, 175 SCRA 343, 371.



*v. Toribio*, supra note 18, p. 370.



*People v. Chan*, 65 Phil. 611 (1938).



Supra note 18, p. 97.



90 Phil. 132 (1951).



56 Phil. 204 (1931).



THE 1987 CONSTITUTION OF THE REPUBLIC OF THE : A COMMENTARY, Bernas, p. 420.



Id.



Id., p. 421.



Id.



Id.



207 Phil. 648 (1983).



104 Phil. 443 (1958).



THE 1987 CONSTITUTION OF THE REPUBLIC OF THE , supra note 24, p. 422.



CONSTITUTIONAL LAW, Cruz, p. 66 (1995 ed.).



9 Phil. 215, 221 (1907).



Supra note 16.



136 Phil. 20 (1969).



Id., pp. 29-30.



Supra note 15, pp. 345-347.



*v. Tuason, Jr.*, 80 Phil. 823, 827 (1998).



*v. Palacio*, 33 Phil. 208, 216 (1916).



Id.



*Heirs of Juancho Ardon v. Reyes*, 210 Phil. 187, 197 (1983).



Id.



Id., p. 198.



Executive Order No. 211.



Supra note 42.



Id., p. 201.



*La Bugal-B'Laan Tribal Association, Inc. v. Ramos*, G.R. No. 127882, , 445 SCRA 1, 228.



Id., p. 150.



G.R. No. L-59603, , 149 SCRA 305, 312.



Section 211 of DAO 96-40 provides: The decision of the Board may be reviewed by filing a petition for review with the Supreme Court within thirty (30) days from receipt of the order or decision of the Board.



*Philippine Veterans Bank v. Court of Appeals*, 379 Phil. 141, 147 (2000).



Id., p. 149.



Supra note 48, pp. 132-137.



Id., pp. 101-105.



Id.



Id.



Id., pp. 105-128.