

# LIBERTY & PROSPERITY JOURNAL

JANUARY TO  
MARCH 2013

VOLUME II  
ISSUE NO. 1

*The Official Publication of the Foundation for Liberty & Prosperity*

## *The Powerful Judiciary and the Concept of Rule of Law in the Philippines*

**D**ean Joan Sarausos-Largo of the University of San Carlos, Cebu School of Law and Governance is the youngest and only lady recipient of the Chief Justice Artemio Panganiban Professorial Chair on Liberty and Prosperity. On 6 March 2013, she delivered her first lecture to a big audience composed of students, faculty, legal minds, and businessmen of Cebu at the Albert van Gansewinkel Hall, in fulfillment of her commitment to conduct original research that may help promote the judicial philosophy of Liberty and Prosperity under the Rule of Law.

Aptly titled **"The Powerful Judiciary and the Concept of Rule of Law in the Philippines: Correlations, Consequences and Implications"**, Dean Largo's discussion probed highly relevant topics such as (1) Rule of Law in Developed Countries and in Asia; (2) Rule of Law in the Philippines, (3) Judicial Review and Rule of Law; (4) The Expanded Certiorari Jurisdiction of Philippine Courts under the 1987 Constitution; and (5) the Powerful Philippine Court, which opened up a brave discussion on the Supreme Court's duty to solely decide matters that encompass "grave abuse of discretion".

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*(Photo) The Lady Dean delivering her first professorial lecture. In June 2012, Dean Joan Largo was named the 8<sup>th</sup> Dean of the USC School of Law and Governance. In 2006, she served as an exchange professor at the Department of Law of Stockholm University and in 2007, she obtained training at Georgetown Law Center in Washington, DC. She is currently pursuing her Doctor of the Science of Jurisprudence (SJD) degree at San Beda College.*

*continued from page 1...*

Her lecture was warmly commended by former Chief Justices Artemio V. Panganiban, now the FLP Chairman of the Board, and former Chief Justice Hilario G. Davide, Jr. Mr. Anecito Sobrepena, President of the Metrobank Foundation; Mr. Gordon Alan Joseph, President of Cebu Business Club; Mr. Philip Tan, President of Mandaue Chamber of Commerce and Industry; and Mr. Efrain Pelaez, Jr., President of Mactan Chamber of Commerce and Industry also expressed their warm remarks and appreciation. The event was also witnessed by the President of IBP Cebu City Chapter Atty. Earl Bonachita, the President of the IBP Cebu Chapter



(Above)  
Retired Chief Justice Hilario Davide Jr. giving his lively introduction to the lecture of fellow Cebuano Dean Largo.



(Group photo)  
From left to right are Mr. Gordon Alan Joseph (President, Cebu Business Club), Mr. Anecito Sobrepena (President, Metrobank Foundation), Fr. Dionisio Miranda, SVD (President, University of San Carlos, Cebu), Retired Chief Justice Artemio Panganiban (Chairman, FLP), Retired Chief Justice Hilario Davide, Jr. (Head, Governance Committee and Trustee, FLP), and Atty. Daryl Bretch Largo (Professor, USC and Dean Joan Largo's husband).

Atty. Ferdinand Pepito, USC President Fr. Dionisio Miranda, SVD, and USC Vice President for Academic Affairs Fr. Anthony Salas, SVD, as well as CA Justices and Judges of Cebu, Mandaue, and Lapu-Lapu.

For the coming semester, Dean Largo will be organizing a debate that will thresh out the issue of "how powerful Philippine courts should be in upholding the Rule of Law in the country." •

## THE UNIVERSITY OF SAN CARLOS

is an institution of higher education that aims to develop the higher faculties of man and the realization of his Christian destiny. Every field of human endeavor, particularly those directly involving human judgment and actuations, is relevant to the function and purpose of a Christian university. The study of law is no doubt one such human endeavor, for the practice of law is in fact as sensitive and critical arena of human experience, where its basic ideal is to render public service and secure justice for all. Since its establishment in 1937, the College of Law has educated men

and women from all over the country upon such basic ideal. Throughout the legal profession, graduates of the College occupy positions of leadership. Throughout the Philippines, Carolinian lawyers serve as members of the judiciary, hold elective and appointive offices in government, and occupy important positions in law firms, corporations, and financial institutions.

True to the University's tradition of academic excellence, the College of Law has always ranked among the top ten out of more than 70 law schools in the country.

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# ATENEO SCHOOL OF LAW HOLDS FIRST EVER LIBERTY & PROSPERITY DEBATE

Spearheaded by Professorial Chair Holder Dean Sedfrey M. Candelaria, the Ateneo Law School held the first ever Chief Justice Artemio V. Panganiban Liberty & Prosperity Debate (Finals) on March 13, 2013 at the Justitia Hall of the Ateneo Law School, Rockwell Center. The debate was conducted in lieu of a formal lecture by Dean Candelaria, and served as an engaging follow-through of his lecture – this time letting the students take the lead in understanding the judicial philosophy of liberty and prosperity under the rule of law.

The purpose of the debate finals was to thresh out the constitutionality of the Aurora Pacific Economic Zone and Freeport (APECO) by arguing for or against the proposition to amend R.A. 9490 otherwise known as the Aurora Special Economic Zone Act of 2007 (Republic Act No. 10083). Debate teams impressed the diverse audience, and earned accolades from retired Chief Justice Panganiban.

The teams consisted of Block 1-B's Leo Arman Galang, Christopher Reyes, and Kenneth Varona (affirmative panel); and Block 1-A's Abby Castelo (awarded Best Speaker), Ponce Lopez, and Steffi Sales (negative panel). The former argued the unconstitutionality of R.A. 10083, stressing the negative implications on social justice and human rights, while the latter weighed on the difference between implementation issues as questions of fact and enduring questions of law and justiciable controversies. After more than an hour of energetic exchanges and witty quips between the teams, the judges hailed the negative panel as champion.

The debate was successfully organized in partnership with the St. Thomas More: Society of Advocates of the Ateneo Law School. •

*Reference: Law studies debate on Liberty and Prosperity by Marco V. Sardillo III (Amicus, Vol. 1 No. 3, April 2013)*



*Justitia  
Ateneo School of Law*



*Affirmative opening speaker  
Leo Galang of Block 1-B*



*Block 1-A's Steffi Sales speaks  
for the Negative panel*



*The panel of judges with ANC Debates champions  
Mr. Michael Victoriano and Ms. Kristel Tiu*

# Position Paper: Affirmative Side

Leo Galang, Christopher Reyes, Kenneth Varona  
Liberty & Prosperity Debate Finals, 13 March 2013

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

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

1. RA10083 is unconstitutional because it violates procedural due process. APECO violated Section 1 of Article III of the 1987 Constitution for failure to accord due process of the laws. As held in *Dumlao v. Comelec*, where Batas Pambansa Blg. 52 was declared unconstitutional for making a criterion for disqualification of those filed with charges for commission of crimes before a civil court or military tribunal in violation of due process. Whereas, the free, prior and informed consent of the Agta-Dumagats, as required by Section 3(g) R.A.8371 or the Indigenous Peoples’ Rights Act, was not complied with and secured in creating RA10083 thereby amounting to unlawful encroachment on their ancestral lands and ancestral domain, violates procedural due process guaranteed by the Constitution. Hence, APECO must be declared unconstitutional for illegally transgressing the ancestral lands without free, prior and informed consent.

2. RA 10083 is unconstitutional because it violates substantial due process. Jurisprudence gives us precedence by highlighting classic examples In *U.S. v. Toribio*, the court said that for a law to be a valid exercise of police power, there must be two requirements, namely that of Compelling State interests and that of Reasonable means necessary to achieve its

purpose. In *Ynot v. Intermediate Appellate Court*, the court also held a law unconstitutional for being unreasonable and for being absent of a lawful method. In the case of the APECO, there is no compelling State interest to uphold the constitutionality of RA 10083 and such an initiative was employed with absence of lawful method. First, the interest of the State, as enshrined in Section 22, Article II, Section 12, Article XII and Sections 5, 6 and 7 of Article XIII of the 1987 Constitution. Because the APECO initiative must bow to the superiority of the Constitution and the nation’s obligations to International Law under the UN Declaration on the Rights of Indigenous Peoples, to recognize, protect and preserve the rights of indigenous cultural communities and the environment outweighs, the inherent dangers of applying the APECO greatly outweighs the mere promise of economic benefits. Second, the means employed has been recognized as unreasonable and illegal. The means done was so sweeping as to infringe too many constitutionally protected freedoms of the Indigenous Peoples and of the farmers. Hence, APECO violates substantial due process for being absent in both compelling State interest and reasonable means.

3. RA10083 is unconstitutional because it is given undue delegation of legislative power. Under Section 4(g) of RA10083, APECO is given the power to expand its territory when necessary. As the statute defines the limits of APECO, this constitutes undue delegation of legislative power in contravention of Sections 1 and 24 of Article VI of the Constitution. This must be declared unconstitutional for not having been accorded with a valid delegating power, which is complete and sufficient in standard.

4. RA 10083 is unconstitutional because it allows an SEZ to contract foreign loan in contravention to Section 20 and 21 of Article

VII. Section 20 and 21 of Article VII states that only the President can contract foreign loans and that such need the concurrence of the Monetary Board. In this case, APECO under section 4 (h), may contract loans without the approval of Monetary board and in clear violation of the powers of the President.

5. RA10083 is unconstitutional because it allows foreign investors to operate public utilities in violation of Section 11 of Article XII. Section 11 states that franchises in the operation of public utilities can only be granted to Filipino citizens or corporations. As held in the case of *Tatad v. Garcia*, the court said that the State may allow foreigners to own assets but not to manage and operate public utilities. APECO authorizes the operation of public utilities by foreign investors and hence is unconstitutional.

With regards to practicality, the APECO considered to be impractical because it primarily collides with constitutional law. Article 7 of the Constitution requires prior concurrence of the Monetary Board for the State to contract foreign loans. On the other hand, APECO does not recognize such requirement. The Constitution prohibits foreigners from operating public utilities, yet APECO allows foreigners operating public utilities. APECO is also deemed impractical because it conflicts with statutory law. The APECO contravenes two important statutes which bear weight with regards to the matter in controversy, namely the SEZ Act of 1995 and the Indigenous Peoples Rights Act. The SEZ Act of 1995 collides with APECO, the general law on SEZs, which applies to APECO, requires (1) that future eco-zones to be built on vacant lands, (2) that nearby lands be used for residential areas of eco-zone workers and (3) that there is an available skilled labor force in and around the zone. APECO fails to comply with the three requisites of the general law on eco-zones. The IPRA collides with APECO, the concept of ownership in the Civil Code and in IPRA is different because the right of ownership for IPs excludes the right to sell, dispose or destroy. With billions of pesos worth of projects over a vast twelve thousand hectare area, IP rights are necessarily violated. Moreover, NCIP authorization and not only LGU concurrence, is required for a project to be built. APECO does not recognize such prior NCIP concurrence. APECO is

impractical because standards of substantive due process will be rendered meaningless. The standard of “public purpose” will be meaningless if APECO is upheld. While it is true that “public purpose” is a flexible concept that evolves over time, upholding the constitutionality of APECO will stretch the definition of public purpose to the limit such that any form of indirect benefit to the public will satisfy the “public purpose” requirement. Perhaps another less legal yet nevertheless substantial argument is that APECO is unreasonable because it is too large in logistical scope considering its purpose, The First Philippine Industrial Park is only 3% the size of APECO yet contributes to 3% of Philippine exports and employs 30,000 people while having no legal or social problems in its creation, in stark contrast to APECO which is mired by controversy and upheaval in every step of its application. APECO is simply too overreaching in scale and too suspect in actual intentions to survive a facial challenge. There is simply no reasonable necessity for the twelve thousand hectares.

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

# Position Paper: Negative Side

Steffi Sales, Ana Isabel Castelo, Ponce Miguel Lopez  
Liberty & Prosperity Debate Finals, 13 March 2013

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

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

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

have the authority to acquire, condemn, or expand the land so long as such authority is provided in their respective charters and that such acquisition is within the necessary bounds of public use.

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

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

The PSEZA states,

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

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

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

Last November 22, 2012, APECO launched the Dumagat Cultural Center for the indigenous communities and Nayon Kalikasan housing project of APECO and the National Housing Authority (NHA) to provide 500 housing units to indigenous and non-indigenous communities. APECO also collaborated with Philippine Fisheries Development Authority (PFDA) provided a five-tonner ice plant and cold storage and Libreng Pangisdaan Para Sa Mga Dumagat for the benefit of the local fisherfolk, and underwent the Seaweed Development Project where 400 beneficiary households will receive 1/4 hectare, an area enough to net about P30,000.00 every 45 days. With such projects, claims of APECO disregarding the rights of the locals are unfounded.

Additionally, declaring the APECO unconstitutional is impractical as it would prejudice the indigenous people and residents of Aurora and

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

A staggering amount of P900 million was already released to fund the APECO, with P700 million already used. To cancel the APECO would negate the influx of employment opportunities for the locals. The ecozone has already provided around 400 jobs at this early stage of the development; 500 more jobs will be created as more projects are expected.

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

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

## Response of Chief Justice Panganiban to USC Dean Largo's Professorial Lecture



“**B**old and forthright was Joan S. Largo, dean of the University of San Carlos (USC) School of Law and Governance in Cebu City, when she characterized the Philippine judiciary as no longer the ‘weakest and least dangerous’ branch of government. In fact, if its powers and duties are compared with those of its counterparts in the United States and other countries, our Supreme Court can be termed the most powerful in the world.”

Chief Justice Panganiban described the first lecture of Dean Largo in these words, noting the daring arguments posed by the first lady recipient of the Liberty & Prosperity Professorial Chair. While her scholarly lecture opened novel ways of interpreting “grave abuse of discretion” and the court’s expanded certiorari power, the retired Chief Justice responded by highlighting the significance of these duties of the courts to safeguard the liberty of our people against the incursions of an intrusive and abusive President.

Meanwhile, with regard to nurturing the prosperity of people, Chief Justice Panganiban strongly agreed with Dean Largo’s position that “utmost judicial restraint is needed in matters involving prosperity and the economy.”

Chief Justice Panganiban’s speech in video is accessible via [www.libpros.com](http://www.libpros.com), FLP’s official website. •

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