Republic of the Philippines
Supreme Court
Manila

EN BANC

BAYAN MUNA PARTY-LIST REPRESENTATIVES SATUR C. OCAMPO and TEODORO A. CASIÑO, ANAKPAWIS REPRESENTATIVE CRISPIN B. BELTRAN, GABRIELA WOMEN'S PARTY REPRESENTATIVES LIZA L. MAZA and LUZVIMINDA C. ILAGAN, REP. LORENZO R. TAÑADA III, and REP. TEOFISTO L. GUINGONA III, Petitioners, - versus - **PRESIDENT GLORIA MACAPAGAL-ARROYO,[1] EXECUTIVE SECRETARY EDUARDO R. ERMITA, SECRETARY OF THE DEPARTMENT OF FOREIGN AFFAIRS, SECRETARY OF THE DEPARTMENT OF ENERGY, PHILIPPINE NATIONAL OIL COMPANY, and PHILIPPINE NATIONAL OIL COMPANY EXPLORATION CORPORATION,** Respondents. x----------	**G.R. No. 182734** Present: GESMUNDO,* *C.J.*, LEONEN,** *Acting Chief Justice*, CAGUIOA, HERNANDO, LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, M., GAERLAN, ROSARIO, LOPEZ, J., DIMAAMPAO, MARQUEZ, KHO, JR., *and* SINGH, *JJ.* Promulgated: June 27, 2023

RESOLUTION

GAERLAN, *J.*:

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* On official leave.

** Per Special Order No. 2989 dated June 24, 2023.

1 In Our Decision dated January 10, 2023, We ruled that President Gloria Macapagal-Arroyo should be dropped as one of the respondents in the case considering that she was the incumbent President when the Petition for *Certiorari* and Prohibition was filed on May 21, 2008. *Rollo,* Vol. II, p. 750, Assailed Decision.

This is a Motion for Reconsideration[2] (Motion) of Our Decision[3] dated January 10, 2023 (Assailed Decision), which declared the Tripartite Agreement for Joint Marine Seismic Undertaking (JMSU) in the Agreement Area in the South China Sea By and Among China National Offshore Oil Corporation (CNOOC), Vietnam Oil and Gas Corporation (PETROVIETNAM), and Philippine National Oil Company (PNOC) unconstitutional and void for violation of Section 2, Article XII of the Constitution. The provision mandates that the exploration, development, and utilization (EDU) of natural resources shall be under the full control and supervision of the State.

Facts

To recall, on May 21, 2008, Bayan Muna Party-List Representatives Satur C. Ocampo and Teodoro A. Casiño, Anakpawis Representative Crispin B. Beltran, Gabriela Women's Party Representatives Liza L. Maza and Luzviminda C. Ilagan, Representative Lorenzo R. Tañada III, and Representative Teofisto L. Guingona III (collectively, petitioners), suing as legislators, taxpayers, and citizens, directly filed a petition for *certiorari* and prohibition before Us assailing the constitutionality of the JMSU. In granting the petition, We defined the term "exploration" under Section 2, Article XII of the Constitution as the search or discovery of the existence of natural resources. Since the purpose of the JMSU was to conduct a seismic survey to determine the "petroleum resource potential"[4] of a certain area of the South China Sea which the Philippines claims as part of its territory (Agreement Area), the agreement qualifies as "exploration" under the Constitution.[5]

We held that for the JMSU to be constitutional, it must be executed and implemented under one of the four modes stated in Section 2, Article XII for the EDU of natural resources, which are: (1) directly by the State; (2) through co-production, joint venture or production-sharing agreements with Filipino citizens or qualified corporations; (3) through small-scale utilization of natural resources by qualified Filipino citizens; or (4) through an agreement which the President may enter into with foreign-owned corporations involving technical or financial assistance. The JMSU does not fall under any of the foregoing. Hence, it is unconstitutional.

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2 *Rollo*, Vol. II, pp. 831–877.
3 *Id.* at 743–773.
4 See the Fifth Whereas Clause of the JMSU, *id.* at 78.
5 *Id.* at 761–762, Assailed Decision.

Subsequently, We also noted that under the JMSU, the PNOC and/or the Government of the Republic of the Philippines (Government) illegally allowed the sharing of information to CNOOC and PETROVIETNAM about the existence or non-existence of petroleum in the Agreement Area. In doing so, the PNOC and/or the Government bargained away the State's full control of all the information acquired from the seismic survey.[6]

Respondents, through the Office of the Solicitor General, filed the present Motion seeking the reversal of Our Assailed Decision on the following grounds: (1) violation of the hierarchy of courts; (2) petition's mootness; (3) petitioners' lack of legal standing; (4) encroachment on the powers and prerogatives of the President in relation to foreign and economic policies; (5) the activities under the JMSU did not amount to exploration under the Constitution; and (6) the State did not lose full control and supervision under the JMSU.[7]

Issue

The issues before Us may be divided into two: (1) procedurally, whether We correctly took cognizance of the petition; and (2) substantively, whether the JMSU is constitutional.

The Court's Ruling

The Motion is denied for lack of merit.

At the outset, We observe that the Motion merely repleaded the issues raised in respondents' Comment and Memorandum, which We already passed upon in Our Assailed Decision. The Motion also echoed the points raised in the respective Dissenting Opinions of Associate Justices Amy C. Lazaro-Javier and Rodil V. Zalameda. We shall address the arguments in *seriatim*.

I.
The Court correctly took cognizance of the petition

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6 *Id.* at 772, Assailed Decision.

7 *Id.* at 833–835, Motion for Reconsideration.

A

No violation of the hierarchy of courts

In *GIOS-Samar, Inc. v. Department of Transportation and Communications*,[8] We held that the doctrine of hierarchy of courts dictates that direct recourse to the Supreme Court is allowed only to resolve questions of law, notwithstanding the invocation of paramount or transcendental importance of the action.[9]

Respondents claim that the petition raises questions of facts. They allege, among others, that the location of JMSU's activities had not been established with certainty, and expert witnesses as well as documentary evidence should be presented. They argue that a determination of where the Agreement Area lies is critical in the resolution of the case, as any activity outside the Philippine jurisdiction falls outside the scope of Article XII of the Constitution. Thus, respondents pray for the dismissal of the petition because the Court is not a trier of facts.[10]

Respondents are mistaken.

There is a question of law when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; meanwhile, there is a question of fact when the issue pertains to the truth or falsity of the alleged facts. Simply put, if there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is a question of law.[11] In this case, respondents do not dispute the location or the Agreement Area of the JMSU. In their Memorandum, they argue that the JMSU does not at all impinge on the Philippines' ownership over the islands, waters, and resources in the South China Sea. They referred to the Ninth Whereas Clause of the JMSU, which states that, "the Parties recognize that the signing of this Agreement shall not undermine the basic position held by the Government of each Party on the South China Sea."[12] They also stated that the "the agreement respects the Republic's full ownership, control, and supervision of its territory and natural resources over the area."[13] Clearly, respondents agreed with petitioners that the JMSU involved an area in the South China Sea which the Philippines claims to be part of its territory. Therefore, there is no question of fact over the location of the agreement.

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8 849 Phil. 120 (2019) [Per J. Jardeleza, *En Banc*].

9 *Id.* at 131.

10 *Rollo*, Vol. II, pp. 835–840, Motion for Reconsideration.

11 *Spouses Miano v. Manila Electric Co.*, 800 Phil. 118, 127 (2016) [Per J. Leonen, Second Division], citing *Bases Conversion Dev't Authority v. Reyes, et al.*, 711 Phil. 631, 639 (2013) [Per J. Perlas-Bernabe, Second Division].

12 *Rollo*, p. 665.

13 *Id.*

Significantly, under Section 8, Rule 11 of the Rules of Court, allegations not specifically denied are deemed admitted. This applies to actions for *certiorari* and prohibition, which are also governed by the rules for ordinary civil actions subject to the specific rules prescribed for special civil actions.[14]

Since respondents did not refute petitioners' allegation that the Agreement Area of the JMSU is part of the Philippine territory, the same is deemed admitted. As stated in Our Assailed Decision, there is no question of fact raised in the petition. Whether JMSU is constitutional is a question of law. We only need to determine whether JMSU complied with Section 2, Article XII of the Constitution. There are no warring factual allegations between petitioners and respondents that must be resolved first before We could rule on the legal issue presented.

B

The case falls under the exceptions to the moot and academic principle

Time and again, We have decided cases, otherwise moot and academic, under the following exceptions:

(1) There is a grave violation of the Constitution;

(2) The exceptional character of the situation and the paramount public interest is involved;

(3) The constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and

(4) The case is capable of repetition yet evading review.[15]

Respondents assert that the JMSU had already expired on June 30, 2008, so there is no longer any actual case or controversy to resolve. They insist that none of the exceptions to the moot and academic principle are present.[16] We are not persuaded.

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14 Rule 1, Section 3 of the Rules of Court, which states:

SECTION 3. *Cases Governed.* — These Rules shall govern the procedure to be observed in actions, civil or criminal, and special proceedings.

(a) A civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.

A civil action may either be ordinary or special. Both are governed by the rules for ordinary civil actions, subject to the specific rules prescribed for a special civil action.

15 *Kilusang Mayo Uno, et al. v. Hon. Aquino, et al.*, 850 Phil. 1168, 1202 (2019) [Per J. Leonen, *En Banc*], citing *Prof. David v. Macapagal-Arroyo*, 522 Phil. 705, 754 (2006) [Per J. Sandoval-Gutierrez, *En Banc*].

16 *Rollo*, Vol. II, pp. 841–847, Motion for Reconsideration.

The expiration of the term of JMSU does not prevent Us from ruling on the case. At the risk of repetition, We quote the portion of Our Assailed Decision, which addressed the issue of mootness, to wit:

> x x x We rule that all the four exceptions to the moot and academic principle obtain in this case.
>
> **First**, the petition alleged that the JMSU gravely violated Section 2, Article XII of the 1987 Constitution since the agreement allowed foreign-owned corporations to explore the country's petroleum resources. Thus, in *Chavez v. Public Estates Authority*, We declared that supervening events, whether intended or accidental, cannot prevent Us from rendering a decision if there is a grave violation of the Constitution. Therein petitioner's principal basis for assailing the renegotiation of the Joint Venture Agreement between PEA and AMARI is its violation of Section 3, Article XII of the Constitution, which prohibits the government from alienating lands of the public domain to private corporations.
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> **Second,** the issue in this case is of paramount public interest as it involves the alleged exploration of a portion of the South China Sea which the Philippines considers to be part of its territory. In *Miners Association of the Phils., Inc. v. Factoran, Jr.*, We declared that the EDU of the country's natural resources are matters vital to the public interest and the general welfare of the people. Furthermore, the JMSU and its execution by PNOC is of exceptional character as it was worded as a "pre-exploration" activity among national oil corporations of three countries. In *Narra Nickel Mining & Development Corp. v. Redmont Consolidated Mines Corp,* We found that the intricate corporate layering utilized by the Canadian company is of exceptional character and involves paramount public interest because it undeniably affects the exploitation of the country's natural resources.
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> **Third**, We have the duty to resolve the novel issue of what constitutes exploration under Section 2, Article XII of the 1987 Constitution for the guidance of the bench and the bar. In *Salonga v. Paño*, We stated that:
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> > The setting aside or declaring void, in proper cases, of intrusions of State authority into areas reserved by the Bill of Rights for the individual as constitutionally protected spheres where even the awesome powers of Government may not enter at will is not the totality of the Court's functions.
> >
> > **The Court also has the duty to formulate guiding and controlling constitutional principles, precepts, doctrines, or rules. It has the symbolic function of educating bench and bar on the extent of protection given by constitutional guarantees.**
>
> More, in *Kilusang Mayo Uno v. Aquino III,* We noted that the third exception to the mootness principle is corollary to Our power under Article VIII, Section 5 (5) of the 1987 Constitution. We may determine when there is a need to formulate guiding and controlling constitutional principles or

rules in the cases brought before Us. Clamor from party-litigants is not a requirement before We could exercise Our function of educating the bench and the bar.

Fourth, agreements of the same character as the JMSU may be entered into again by the government or any of its agencies and/or instrumentalities.[17] (Emphasis in the original; citations omitted)

There is no compelling reason to disturb Our ruling.

C

Petitioners have legal standing

As a rule, We apply the direct injury test in determining whether a party has *locus standi*, that is, the party challenging the constitutionality of a law, statute, or act should establish that they have sustained or is in immediate or imminent danger of sustaining some direct injury as a result of their enforcement.[18] Nevertheless, We have also recognized the standing of "non-traditional suitors" or those who were not personally injured by operation of law or any other government act provided they comply with certain requirements, namely:

1.) For taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;

2.) For voters, there must be a showing of obvious interest in the validity of the election law in question;

3.) For concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and

4.) For legislators, there must be a claim that the official action complained of infringes their prerogatives as legislators.[19]

Here, respondents argue that petitioners have no legal standing because they did not pass the direct injury test in view of the expiration of JMSU. Petitioners also failed to establish that: (1) JMSU is an agreement that ought to be submitted by the executive branch to Congress for the latter's review, or (2) its implementation involved the disbursement of public monies.[20]

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17 *Id.* at 755–756, Assailed Decision.

18 *Ifurung v. Carpio-Morales*, 831 Phil. 135, 154 (2018) [Per J. Martires, *En Banc*].

19 *Id.* at 155, citing *Funa v. Agra*, 704 Phil. 205, 218 (2013) [Per J. Bersamin, *En Banc*].

20 *Rollo*, Vol. II, p. 852, Motion for Reconsideration.

Respondents are incorrect. We sustain Our finding in Our Assailed Decision that petitioners have legal standing to assail the legality of JMSU.

As then-incumbent members of the House of Representatives (HOR), petitioners have standing to sue as legislators. The fifth paragraph of Section 2, Article XII of the Constitution mandates the President to notify Congress of every contract entered into with foreign-owned corporations involving large-scale EDU of natural resources. In *La Bugal-B'laan Tribal Association, Inc. v. Ramos*,[21] We noted that the Congress may review the action of the President once it is notified of the contract within 30 days from its execution. In this case, petitioners were deprived of their prerogative as members of the Congress to review an exploration contract. This is because JMSU, in violation of the Constitution, was not entered into by the President. Rather, it was executed by PNOC's President and Chief Executive Officer (CEO) and was not submitted for review.

More, petitioners have legal standing to sue as taxpayers. Article 3 of the JMSU states that each party shall be responsible for the cost of its personnel designated for the implementation of the agreement,[22] while the expenses for the seismic work and other activities of the Joint Operating Committee shall be shared by the parties in equal shares. Considering that the funds of the PNOC, a government-owned and-controlled corporation, are appropriated by Congress, the implementation of an unconstitutional contract, such as the JMSU, constitutes illegal disbursement of public funds.

Moreover, petitioners have legal standing to sue as concerned citizens given the transcendental importance of the case. The determinants for the application of the transcendental importance doctrine are: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised.[23] Here, it is foremost undeniable that the asset involved—the country's natural resources found in the Agreement Area which respondents do not dispute to be within the Philippines' exclusive economic zone—is of vital interest. Second, PNOC clearly disregarded Section 2, Article XII of the Constitution. Third, there is no other party with a more direct and specific interest to assail JMSU's legality.

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21 486 Phil. 754, 773 (2004) [Per J. Panganiban, *En Banc*].

22 *Rollo*, Vol. I, pp. 79-80, JMSU.

23 *Francisco, Jr. v. House of Representatives*, 460 Phil. 830 (2003) [Per J. Carpio-Morales, *En Banc*].

D

JMSU is not a foreign relations instrument

In *Pangilinan v. Cayetano*,[24] We declared that in our system of government, it is the President who is regarded as the sole organ and authority in external relations and the country's sole representative with foreign nations. The President is the chief architect of our foreign policy and the country's mouthpiece with respect to international affairs.[25]

Respondents contend that JMSU involves matters of foreign relations and economic policy since it delves into the Philippines' relations with other states concerning economic cooperation. Hence, JMSU's adoption and implementation should be left to the sound wisdom of the executive branch.[26]

Respondents misappreciated the facts of the case. JMSU is not a foreign relations instrument. It was not entered into by the President of the Philippines with foreign states and/or international organizations. Respondents, in their Comment and Memorandum before Us, vehemently denied the involvement of then President Gloria Macapagal-Arroyo in the execution and implementation of the JMSU. They underscore that JMSU is exclusively the corporate act of PNOC. They aver that:

> **In an attempt to implicate the President and her Cabinet members in the execution of the JMSU despite the fact that they are non-parties to the agreement**, petitioners assert that the doctrine of qualified political agency presupposes that the President has authorized the execution of the agreement.
>
> **Petitioners' arguments are flawed and fail to account for the fact that the JMSU was executed by a government corporation which possesses a personality that is distinct and separate from the Republic which the Chief Executive represents. All the respondents in this case, save for the PNOC, are not even parties to the agreement.**
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> **The agreement was executed by PNOC, a government corporation that is possessed of the power to enter into contracts under its charter. Accordingly, the PNOC executed the agreement as a public corporation with a personality and existence distinct from that of the Republic**. Since the Republic, like any individual, may form a corporation with personality and existence distinct from its own (*National Development Company v. Cebu City*), **the execution of the JMSU is exclusively the corporate act of the PNOC and may not be imputed to the Republic.** The PNOC as a government corporation, like other government

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24 898 Phil. 522 [Per J. Leonen, *En Banc*].

25 *Id.* at 573, citing *Pimentel, Jr. v. Office of the Executive Secretary*, 501 Phil. 303, 318 (2005) [Per J. Puno, *En Banc*].

26 *Rollo*, p. 856, Motion for Reconsideration.

> corporations, is not a mere agency of the government but a corporate body performing proprietary functions as it has its own assets and liabilities as well as its own corporate powers to be exercised by a Board of Directors [See Presidential Decree No. 334 (PNOC Charter); *Savellano v. Commission on Audit.*] Hence, its acts cannot be imputed to the Office of the President, much more to the President herself.
>
> **The President only executes contracts in behalf of the Republic of the Philippines. Those contracts in behalf of corporate agencies and instrumentalities, such as the JMSU, are executed by their respective executive heads**. x x x[27] (Emphasis supplied)

The JMSU was not signed by the President. This is an undisputed fact. How could the JMSU be a foreign relations instrument if the chief architect of the country's foreign policy has no hand in its execution?

It is ironic that respondents are asserting the powers and prerogatives of the President yet their previous pleadings and submissions before Us belie the participation of the President in the JMSU. Clearly, respondents' claim that We committed judicial overreach and encroached on the powers of the executive branch is utterly misplaced.

Even assuming *arguendo* that the JMSU was signed by the President to foster international cooperation and to prevent the escalation of conflict in the South China Sea, the Court, as the final arbiter, cannot be prevented from exercising its power to determine the law and to declare executive and legislative acts void if violative of the Constitution.[28] For Us to exercise judicial restraint under the circumstances of the case is to abdicate Our role as the guardian of the Constitution. We cannot just observe on the sidelines and allow the Constitution to be sacrificed on the altar of foreign relations.

II.
The JMSU is unconstitutional

A
JMSU involves the exploration of natural resources

In Our Assailed Decision, We addressed the novel issue of what constitutes "exploration" in Section 2, Article XII of the Constitution, which reads:

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27 *Id.* at 449-450.

28 *Angara v. The Electoral Commission*, 63 Phil. 139, 187 (1936) [Per J. Laurel, *En Banc*].

> Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.**

Employing *verba legis* or the plain meaning rule and referring to the Petroleum Act of 1949 (R.A. No. 387) and the Philippine Mining Act of 1995 (R.A. No. 7942), We declared that "exploration" is the search or discovery of natural resources. Consequently, since the objective of the JMSU as stated in its Fifth Whereas Clause is "to engage in a joint research of petroleum resource potential" in the Agreement Area, the agreement clearly involved exploration.[29]

Nevertheless, respondents still insist JMSU does not involve exploration. First, respondents attack the definition[30] of exploration under R.A. No. 387, arguing that it was already repealed by Presidential Decree (P.D.) No. 87 or the Oil and Exploration and Development Act of 1972. Second, respondents claim that in *Resident Marine Mammals of the Protected Seascape Tañon Strait, et al. v. Secretary Reyes, et al.*[31] *(Resident Marine)*, We allegedly understood exploration in the concept of exploitation of oil resources.[32]

Respondents are grasping at straws. Foremost, P.D. No. 87 does not provide a contrary definition for the term "exploration." In fact, it does not at all define "exploration." Further, there is nothing in P.D. No. 87 that expressly repeals R.A. No. 387. Quite the contrary, a cursory review of the text of P.D. No. 87 even shows that it refers to R.A. No. 387, *viz.*:

> SECTION 4. *Government may undertake petroleum exploration and production.* — Subject to the existing private rights, the Government may directly explore for and produce indigenous petroleum. It may also indirectly undertake the same under service contracts as hereinafter provided. These contracts may cover free areas, national reserve areas and/or petroleum reservations, **as provided for in the Petroleum Act of 1949**, whether on-shore or off-shore. In every case, however, the contractor

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29 *Rollo*, Vol. II, pp. 761–762, Assailed Decision.

30 ARTICLE 38. *Definition of Exploration.* — The term "Exploration" means **all work that have for their object the discovery of petroleum**, including, but not restricted to, surveying and mapping, aerial photography, surface geology, geophysical investigations, testing of subsurface conditions by means of borings or structural drillings, and all such auxiliary work as are useful in connection with such operations. (Emphasis supplied)

31 758 Phil. 724 (2015) [Per J. Leonardo-De Castro, *En Banc*].

32 *Rollo*, Vol. I, p. 367, Motion for Reconsideration.

must be technically competent and financially capable as determined by the Board to undertake the operations required in the contract.

SECTION 12. *Privileges of contractor.* — The provisions of any law to the contrary notwithstanding, a contract executed under this Act may provide that the Contractor shall have the following privileges:

x x x x

(h) The privileges and benefits granted to a contractor under the provisions of this Act together with any applicable obligations shall likewise be made available to concessionaires **under the Petroleum Act of 1949** and their authorized contractors and/or service operators, whether local or foreign, if they so elect.

SECTION 30. *Provisions of Petroleum Act applicable.* — The provisions of the Petroleum Act of 1949, as amended, shall not be applicable to the service contract provided in this Act, except the following Articles:

(a) Article 16, referring to public easements on lands covered by concessions;

(b) Article 17, providing that petroleum operations are subject to existing mining rights, permits, leases and concessions in respect of substances other than petroleum and to existing petroleum rights;

(c) Article 18, referring to the right of the Government to establish reservations or grant mining rights on petroleum concessions;

(d) Article 20, granting exploration and exploitation concessionaires the right to enter private lands covered by their concessions;

(e) Article 21, referring to easement and the exercise of the right of eminent domain over private lands for the purpose of carrying out any work essential to petroleum operations;

(f) Article 22, providing for easements over public land for the purpose of carrying out any work essential to petroleum operations; and

(g) Article 23, which grants concessionaires the right to utilize for any of the work to which the concession relates, timber, water, and clay from any public lands within their concessions. (Emphases supplied)

Significantly, there is also no case law that declares the repeal of R.A. No. 387. In this jurisdiction, implied repeals are not lightly presumed. It is a

settled rule that when laws are in conflict with one another, every effort must be exerted to reconcile them.[33]

Meanwhile, We cannot subscribe to the submission of respondents that We construed "exploration" as equivalent to "exploitation." Respondents anchored their argument on the following paragraph in *Resident Marine*:

> In this case, the public respondents have failed to show that the President had any participation in SC-46. Their argument that their acts are actually the acts of then President Macapagal-Arroyo, absent proof of her disapproval, must fail as the requirement that the President herself enter into these kinds of contracts is embodied not just in any ordinary statute, but in the Constitution itself. **These service contracts involving the exploitation, development, and utilization of our natural resources** are of paramount interest to the present and future generations. Hence, safeguards were put in place to insure that the guidelines set by law are meticulously observed and likewise to eradicate the corruption that may easily penetrate departments and agencies by ensuring that the President has authorized or approved of these service contracts herself.[34] (Emphasis supplied)

Nowhere in the quoted text above can We soundly deduce that the Court understood "exploration" to be the same as "exploitation." It appears that the use of the word "exploitation" in the subject paragraph in lieu of the term "exploration" is simple inadvertence. At most, it is *obiter dictum*. We cannot substitute the term "exploration" with "exploitation" as the Constitution itself employs the term "exploration" together with the terms "development" and "utilization." Furthermore, We defined "exploitation" in *Apex Mining Co. Inc. v. Southeast Mindanao Gold Mining Corporation*[35] to pertain to the extraction and utilization of natural resources. Exploration does not include the utilization of natural resources.

In a last ditch attempt to convince Us that the seismic surveys under the JMSU does not involve exploration, respondents invoke the doctrine of contemporaneous construction. They submit that the knowledge and expertise of the Department of Energy (DOE) on matters of petroleum exploration are beyond question. Hence, the DOE's approval of JMSU carries with it its expert determination that the seismic surveys contemplated under JMSU constitute mere pre-exploration activities.[36] We reject respondents' theory.

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33 *Resident Marine Mammals of the Protected Seascape Tañon Strait, et al v. Secretary Reyes, et al.*, 758 Phil. 724, 764 (2015) [Per J. Leonardo-De Castro, *En Banc*]

34 *Id.*

35 620 Phil. 100, 174 (2009) [Per J. Chico-Nazario, First Division].

36 *Rollo*, Vol. II, pp. 869-870, Motion for Reconsideration.

We are not bound by the contemporaneous construction given by the executive officers of the government, especially in this case where such construction is clearly erroneous.[37]

B

JMSU is unconstitutional

We reiterate Our pronouncement in Our Assailed Decision that for JMSU to be valid, it must be executed and implemented under any of the following modes under Section 2, Article XII of the Constitution: (1) directly by the State; (2) through co-production, joint venture or production-sharing agreements with Filipino citizens or qualified corporations; (3) through small-scale utilization of natural resources by Filipino citizens; and (4) through agreements entered into by the President with foreign-owned corporations involving technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils.[38]

For obvious reasons, JMSU does not fall into the first three modes since it involves foreign-owned corporations. We now focus on the fourth mode, which is an exception to the general rule that the EDU of natural resources is reserved to Filipino citizens and corporations at least 60% owned by such citizens.[39] The fourth mode is found in the fourth paragraph of Section 2, Article XII of the Constitution to wit:

> SECTION 2. x x x
>
> **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. In such agreements, the State shall promote the development and use of local scientific and technical resources.
>
> The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution. (Emphasis supplied)

Based on the foregoing, for an agreement/contract under the fourth mode to be valid, it must foremost be entered into by the President himself/herself. The text of the provision is clear. Here, the President is neither a party nor a signatory to the JMSU. The contracting party is PNOC represented by

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37 *See Municipality of Corella v. Philkonstrak Development Corp.*, G.R. No. 218663, February 28, 2022 [Per J. Hernando, Second Division].

38 *La Bugal-B'laan Tribal Association, Inc. v. Ramos,* 465 Phil. 860, 921 (2004) [Per J. Carpio-Morales, *En Banc*].

39 *Id.*

its President and CEO. As eloquently stated by Chief Justice Alexander G. Gesmundo in his *Separate Concurring Opinion* to the Assailed Decision, neither the PNOC nor the DOE is authorized to enter into agreements pertaining to large-scale exploration of natural resources in the exclusive economic zone. Only the President is given such authority. For this reason alone, JMSU should be held unconstitutional.[40]

Additionally, We stated in Our Assailed Decision that the fourth mode is not restricted to Financial and Technical Assistance Agreements (FTAAs) but also pertains to service contracts albeit with safeguards to avoid the abuses prevalent under the 1973 Constitution.[41] We then noted that JMSU does not qualify as an FTAA or a service contract. PNOC, CNOOC, and PETROVIETNAM will each shoulder the cost of their own personnel designated for the implementation of JMSU and as to the seismic work, they will share the cost in equal shares.[42] There is also`` no provision in the agreement relating to any technical assistance. Respondents also admitted that the JMSU is not a service contract.[43] Even if JMSU is a service contract, it would be invalid since it was not signed by the President and was not reported to Congress within 30 days from its execution.

All told, We affirm Our Assailed Decision declaring JMSU unconstitutional for allowing wholly-owned foreign corporations to participate in the exploration of the country's natural resources without observing the safeguards provided in Section 2, Article XII of the Constitution.[44]

C

The State has no full control and supervision under JMSU

Respondents take issue with Our ruling that the State had lost full control and supervision under JMSU. Specifically, they aver that although the parties to JMSU will have possession of information acquired from the seismic surveys, mere possession is not tantamount to a claim of ownership. Neither can it be interpreted as conceding or forfeiting ownership over the natural resources in the area.[45]

Respondents' view does not hold water. We reiterate that information regarding the existence/non-existence of petroleum in the Agreement Area is a

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40 *Rollo*, Vol. II, p. 780, Separate Concurring Opinion of Chief Justice Alexander G. Gesmundo.

41 *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, 465 Phil. 860, 921 (2004) [Per J. Carpio-Morales, *En Banc*].

42 *See* Article 3 of JMSU.

43 *Rollo*, Vol. II, p. 673.

44 *Id.* at 756, Assailed Decision.

45 *Id.* at 875, Motion for Reconsideration.

product of exploration. It is part of the exploration itself inasmuch as the petroleum discovered.[46] As brilliantly stated by Senior Associate Justice Marvic Mario Victor F. Leonen in his *Concurring Opinion*, our country's sovereign rights not only extend to the natural resources found there but also to the information about its existence. The use and enjoyment of natural resources may only be possible if resources are found to exist in a particular area. With access to correct and reliable information, the State would have an improved bargaining position with foreign entities that want to enter into large-scale technical or financial agreements for the EDU of our natural resources.[47]

Conversely, under Articles 11.2 and 11.4 of JMSU, the PNOC illegally allowed joint ownership of information about our natural resources in the Agreement Area with CNOOC and PETROVIETNAM. Such is clear as daylight in the following text of JMSU:

> **11.2 All the data and information acquired for the fulfillment of the Seismic Work referred to in Article 4 hereof and their interpretation shall be jointly owned by the Parties**. In the event any Party wishes to sell or disclose the above-mentioned data and information after the expiration of the confidentiality term, **prior written consent thereof shall be obtained from the rest of the Parties.**
>
> x x x x
>
> 11.4 **The Parties' rights, interest and obligations under the Agreement shall be on equal basis.**[48] (Emphasis supplied)

Respondents' claim that the State did not lose control and supervision over information about our natural resources crumbles in light of the JMSU's provision stating that the parties to the agreement shall have equal rights, interests, and obligations. PNOC and/or the Government would even need the prior written consent of CNOOC and PETROVIETNAM before it could disclose any of the information acquired under JMSU.

In fine, We see no cogent reason to reverse Our Assailed Decision.

WHEREFORE, the motion is **DENIED with FINALITY**. The Decision dated January 10, 2023 declaring the Tripartite Agreement for Joint Marine Seismic Undertaking in the Agreement Area in the South China Sea By and Among China National Offshore Oil Corporation and Vietnam Oil and Gas Corporation and Philippine National Oil Company unconstitutional and void is **AFFIRMED**.

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46 *Id.* at 770, Assailed Decision.

47 *Id.* at 803, Concurring Opinion of Senior Associate Justice Marvic Leonen.

48 *Id.* at 85-87.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:

(On official leave)
ALEXANDER G. GESMUNDO
Chief Justice

I maintain my concurrence, as separate opinion

MARVIC M.V.F. LEONEN
Acting Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

I maintain my dissent

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

I maintain my dissent

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARVIC M.V.F. LEONEN
Acting Chief Justice