

**LONE CONGRESSIONAL DISTRICT OF BENGUET PROVINCE,
REPRESENTED BY HON. RONALD M. COSALAN, REPRESENTATIVE,
PETITIONER, VS. LEPANTO CONSOLIDATED MINING COMPANY AND
FAR SOUTHEAST GOL...**

G.R. No. 244063. June 21, 2022

Ponente: INTING, J.

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INTING, J.:

These consolidated Petitions for Review on Certiorari[1] assail the Decision[2] dated April 30, 2018 and the Resolution[3] dated January 14, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 146806. The CA reversed and set aside the Resolution[4] dated May 6, 2016 of Branch 141, Regional Trial Court, Makati City (RTC Branch 141) in SP Proc. Case No. M-7932 that vacated the Final Award[5] dated November 27, 2015 issued by the Ad Hoc Arbitral Tribunal (Arbitral Tribunal) in favor of Lepanto Consolidated Mining Company (Lepanto) and Far Southeast Gold Resources, Inc. (Southeast) (collectively, respondents).

G.R. No. 244216 was filed by the Republic of the Philippines (the Republic), represented by the Mines and Geosciences Bureau (MGB) of the Department of Environment and Natural Resources (DENR). On the other hand, G.R. No. 244063 was filed by the Lone Congressional District of Benguet Province (District of Benguet), represented by Hon. Ronald M. Cosalan (Cosalan), assailing the CA's denial of its motion to intervene in respondents' case before the CA.

The Antecedents

In Mineral Production Sharing Agreement (MPSA) No. 001-90[6] dated March 3, 1990, the Republic, through the DENR, authorized respondents to conduct mining operations on a vast tract of land located in the Municipality of Mankayan, Province of Benguet.[7] Notably, the land area subject of the MPSA covers part of the ancestral domains of the Mankayan Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs).[8]

Section 3.1 of MPSA No. 001-90 provides for an initial 25-year term, renewable for another period of 25 years "upon such terms and conditions as may be mutually agreed upon by the parties or as may be provided for by law." [9]

The present controversy relates to the sought renewal of MPSA No. 001-90, as affected by laws enacted subsequent to its execution on March 3, 1990.

On March 3, 1995, Congress enacted Republic Act No. (RA) 7942, otherwise known as the Philippine Mining Act of 1995 (Mining Act), regulating the exploration, development, utilization and conservation of mineral resources.

On October 29, 1997, Congress also enacted RA 8371, or the Indigenous People's Rights Act of 1997 (IPRA). The IPRA enjoins all departments and other government agencies from granting, issuing or renewing any

concession, license or lease, or from entering into any production-sharing agreement, without prior certification from the National Commission on Indigenous Peoples (NCIP) that the area affected does not overlap with any ancestral domains.[10] Specifically, the IPRA requires the "Free and Prior Informed and Written Consent" (FPIC) of the affected ICCs/IPs as a condition for the issuance of the certificate. The requirement is herein referred to as "FPIC and NCIP Certification Precondition."

Relatedly, the NCIP Administrative Order No. 1-98[11] was issued outlining the procedures and guidelines for the implementation of the IPRA, more particularly on the requirement of the certification as a pre-condition for the issuance of any mining permits or licenses.[12]

As MPSA No. 001-90 was about to expire on March 18, 2015, respondents wrote the MGB-Cordillera Administrative Region (CAR) a Letter[13] dated May 22, 2014, expressing their intention to renew the agreement for a period of another 25 years under the same terms and conditions pursuant to Section 3.1 thereof.

Controversy arose when the MGB-CAR, while informing Lepanto that it had substantially complied with the requirements for the renewal of MPSA No. 001-90, advised respondents that their joint application for renewal would be endorsed to the NCIP for appropriate action, supposedly for the required FPIC and NCIP Certification Precondition.[14] Respondents questioned the endorsement, arguing that the imposition of the certification as a pre-condition for the issuance of any mining permits or licenses would impair their vested rights to renew MPSA No. 001-90. They invoked the following contract and law provisions:

- 1) Section 3.1 of the MPSA No. 001-90 stating that the term of twenty-five (25) years is "renewable for another period of 25 years upon such terms and conditions as may be mutually agreed upon by the parties or as may be provided by law;"
- 2) Section 32 of the Mining Act or RA 7942, which provides that "mineral agreements shall have a term not exceeding 25 years to start from the date of execution thereof, and renewable for another term not exceeding 25 years under the same terms and conditions thereof, without prejudice to changes mutually agreed upon by the parties;"
- 3) Section 14.2 of the MPSA No. 001-90, which provides that "any term and condition more favorable to the production sharing contractors resulting x x x from the enactment of a law, regulation, or administrative order shall inure to the benefit of the contractors and such law, regulation or administrative order shall be considered a part of [the] agreement;" and
- 4) Section 56 of the IPRA mandating that "property rights within the ancestral domains already existing and/or vested upon effectivity of this act, shall be recognized and respected." [15]

On January 22, 2015, respondents wrote the DENR Secretary, reiterating their position that MPSA No. 001-90 is exempt from the IPRA requirement on the FPIC and Certification Precondition.[16] On February 18, 2015, respondents served the Republic, through the DENR, a Demand for Arbitration[17] pursuant to Section XII of MPSA No. 001-90 which pertinently provides:

SECTION XII

ARBITRATION

12.1 THE GOVERNMENT AND THE CONTRACTORS SHALL CONSULT WITH EACH OTHER IN GOOD FAITH AND SHALL EXHAUST ALL AVAILABLE REMEDIES TO SETTLE ANY AND ALL DISPUTES OR DISAGREEMENTS ARISING OUT OF OR RELATING TO THE VALIDITY, INTERPRETATION, ENFORCEABILITY, OR PERFORMANCE OF THIS AGREEMENT BEFORE

RESORTING TO ARBITRATION.[18] (*Italics supplied.*)

Thereafter, arbitration ensued in an Arbitral Tribunal before which the parties submitted the following issues:

A

Whether or not the parties' disagreement regarding the imposition of the FPIC and [NCIP] Certification Precondition as a requirement for the renewal of MPSA 001-90, is under the original and exclusive jurisdiction of the [regular] court[s].

B

Whether or not the parties' disagreement regarding the imposition of the FPIC and [NCIP] Certification Precondition as a requirement for the renewal of MPSA 001-90 is arbitrable or is within the scope of the arbitration agreement.

C

Whether or not the FPIC and [NCIP] Certification Precondition may be validly imposed as a requirement for the renewal of MPSA 001-90.[19]

Meanwhile, on March 18, 2015, respondents obtained a Writ of Preliminary Injunction[20] from Branch 149, RTC, Makati City in Sp. Proc. Case No. M-7767, enjoining the Republic and its agencies, including the DENR, MGB and NCIP, from disturbing respondents' mining operations in the area covered by MPSA No. 001-90, pending the resolution of the dispute.

On November 27, 2015, the Arbitral Tribunal issued a Final Award[21] (Arbitral Award) holding that the issue arising from the FPIC and NCIP certification requirement for the renewal of MPSA 001-90 is arbitrable, thus:

WHEREFORE, after considering the submissions/pleadings and evidence submitted by the parties, the Tribunal has decided, in full and final resolution of the issues submitted for determination in the arbitration, as follows:

- The parties' disagreement regarding the imposition of the FPIC and [NCIP] Certification Precondition as a requirement for the renewal of MPSA is not under the original and exclusive jurisdiction of the court;
- The parties' disagreement regarding the imposition of the FPIC and [NCIP] Certification Precondition as a requirement for the renewal of MPSA is arbitrable or is within the scope of the arbitration agreement; and
- The FPIC and [NCIP] Certification Precondition may not be validly imposed as a requirement for the renewal of MPSA 001-90, and the latter should be renewed under the same terms and conditions, without prejudice to changes mutually agreed upon by the parties.
- [The Republic] must reimburse Claimants the amount of Two Million Six Hundred Thousand Pesos (Php2,600,000.00), which the Claimants have advanced on behalf of the [Republic].

SO ORDERED.[22]

First, ruling for the arbitrability of the disagreement of the parties, the Arbitral Tribunal debunked the Republic's argument that the Arbitral Tribunal has no jurisdiction to settle the controversy calling for the interpretation of laws relating to the MPSA's renewal clause. The Arbitral Tribunal cited the policy on arbitration[23] that arbitral tribunals have jurisdiction to interpret and apply relevant laws in order to resolve the dispute submitted to it by the parties. It underscored that the policy applies even if the referral would tend to oust a court of its jurisdiction.[24]

Second, the Arbitral Tribunal characterized the FPIC and NCIP Certification Precondition requirement as an

"unfavorable future legislation requirement" relative to MPSA No. 001-90, thus making it prejudicial to respondents for being violative of Section 14.2 thereof, as well as Section 56 of the IPRA mandating that "property rights within the ancestral domains already existing and/or vested upon its (IPRA) effectivity shall be recognized and respected." The Arbitral Tribunal noted that the areas affected by MPSA No. 001-90 indeed overlap with ancestral domains. With the imposition of the certification not stipulated by the parties in the agreement, respondents would then be obligated to acquire the consent of the concerned ICCs/IPs, who are not even parties to the MPSA No. 001-90.[25]

Third, the Arbitral Tribunal held that the renewability of MPSA No. 001-90 under its original terms and conditions is a vested right of respondents, anchored on the fact that they heavily spent for and engaged in mining operations over the years with the renewal provision in mind. The Arbitral Tribunal noted that the Republic failed to refute respondents' documents showing that respondents spent billions of pesos as exploration and other pre-development costs, which include the construction of the Tailings Dam. To the Arbitral Tribunal, the imposition of the FPIC and NCIP Certification Precondition, which was not stipulated in MPSA No. 001-90, as a pre-condition for its renewal would amount to an outright confiscation respondents' substantial financial investments.[26]

Fourth, the Arbitral Tribunal found that MPSA No. 001-90 was already deemed renewed on the basis of the correspondence between the parties, indicating that the Republic, through the MGB-CAR, found Lepanto to have substantially complied with all requirements for the joint renewal of the agreement, save for the new imposition of FPIC and NCIP Certification Precondition under the IPRA.[27]

Disagreeing, the Republic filed a Petition to Vacate Arbitral Award[28] with the RTC Branch 141, based on the following grounds: first, the matter of applicability of IPRA imposing the FPIC and NCIP Certification as an additional requirement for the renewal of MPSA No. 001-90 is beyond the scope of the arbitration agreement.[29] Second, the application of IPRA is a matter of public policy which cannot be subject to the will of the parties, or to the determination of the Arbitral Tribunal and this public policy on the protection and promotion of the interests of the ICCs/IPs is deemed written in the MPSA.[30] Third, the renewal of MPSA No. 001-90 is imbued with public interest, and is thus subject to the inherent police power of the State to protect and promote the interests of the ICCs/IPs.[31] Fourth, respondents do not have vested rights to renew the agreement, the same being contingent upon their full compliance with the requirements imposed by laws, more particularly the IPRA's FPIC and NCIP Certification Precondition.[32]

Ruling of the RTC Branch 141

In its Resolution[33] dated May 6, 2016, the RTC Branch 141 sustained the Republic's arguments and vacated the Arbitral Award, viz.:

WHEREFORE, judgment is hereby rendered in favor of the petition. Except for the award of reimbursement of costs, the Final Award dated November 27, 2015 is hereby VACATED for having been rendered in excess of the Tribunal's authority and outward disregard of the law and public policy.

SO ORDERED.[34]

The RTC Branch 141 found that the Arbitral Tribunal exceeded its authority in taking cognizance of the subject controversy.

The RTC Branch 141 ruled that the dispute arising from the interpretation of the renewal clause of the MPSA No. 001-09 cannot be resolved within the confines of the parties' contract because it necessitates the determination of the applicability of the IPRA and related regulations imposing the FICP and NCIP Certification Precondition.

Moreover, the RTC Branch 141 characterized the enactment of the IPRA as the State's exercise of police power promoting and protecting the rights of the ICCs/IPs, which it opined as superior to respondents' invocation of the principle of non-impairment of contracts. To the RTC Branch 141, the parties cannot dispense with the requirement without contravening the underlying public policy embodied in the IPRA on the promotion and protection of the rights of the ICCs/IPs. Thus, citing Rule 19.10[35] of the Special Rules of Court on Alternative Dispute Resolution[36] (Special ADR Rules), the RTC Branch 141 vacated the Arbitral Award on the ground that it contravenes such declared public policy.[37]

In its Order[38] dated July 5, 2016, the RTC Branch 141 denied respondents' motion for reconsideration.

Respondents then elevated the case to the CA via a petition for review under the Special ADR Rules.[39]

Meanwhile, on August 31, 2017, the District of Benguet, represented by Cosalan, filed a Motion for Leave to Intervene.[40]

Ruling of the CA

In the assailed Decision[41] dated April 30, 2018, the CA set aside the Resolution dated May 6, 2016 and Order dated July 5, 2016 of the RTC Branch 141, and denied the Motion for Leave to Intervene of the District of Benguet. Thus, the CA affirmed the Arbitral Award in favor of respondents:

WHEREFORE, the instant petition is hereby GRANTED.

The Resolution dated May 6, 2016 and Order dated July 5, 2016 in SP. Proc. Case No. M-7932 rendered by Branch 141, Regional Trial Court of Makati City are SET ASIDE.

Accordingly, the Award dated November 27, 2015 of the Arbitral Tribunal is hereby AFFIRMED.

SO ORDERED.[42]

The CA underscored that the District of Benguet could no longer intervene in respondents' petition for review for the reason that it failed to intervene during the arbitration proceedings, or in the Republic's action to vacate the Arbitral Award before the RTC Branch 141. The CA added that the intervention would only cause undue delay of proceedings.[43]

As regards the main case, the CA found that the RTC Branch 141 committed grave abuse of discretion amounting to excess of jurisdiction when it vacated the Arbitral Award.[44]

First, the CA characterized as a legal conflict the parties' disagreement regarding the imposition by the IPRA of the FPIC and NCIP Certification Precondition for the renewal of MPSA No. 001-90. Underscoring that the IPRA itself states that property rights within the ancestral domains already existing and/or vested upon its effectivity shall be recognized and respected, the CA held that the conflict relates to the correct interpretation and enforceability of the MPSA's renewal provision; hence, it is a proper subject of arbitration pursuant to the MPSA Arbitration Clause. The CA added that the Arbitral Tribunal has authority and jurisdiction to interpret and apply relevant laws in resolving the disputes presented before it.[45]

Second, the CA debunked the Republic's argument that a complete, final and definite award was not made by the Arbitral Tribunal upon the subject matter before it, with the NCIP not being impleaded as a party to the arbitration proceedings. The CA ruled that the Republic is deemed to have acted for and in behalf of the entire government machinery, including its agency, the NCIP.[46]

Third, the CA held that the RTC Branch 141 acted in excess of jurisdiction when it explored the merits of the Arbitral Award and passed upon the issue of whether or not the FPIC and NCIP Certification Precondition may

validly be imposed as a precondition for the renewal of MPSA No. 001-90, when the same issue was specifically submitted by the parties to the Arbitral Tribunal for resolution. It added that the grounds for vacating an arbitral award are not concerned with the correctness of the award, but only with the validity of the arbitration agreement or the regularity of the arbitration proceedings.[47]

Fourth, the CA ruled that courts are without power to amend or overrule the Arbitral Award merely because of disagreement on matters of law or facts as determined by the arbitrators. It added that the RTC Branch 141, in interfering with the Arbitral Tribunal's determination of facts and/or interpretation of the law, assumed the existence of violation of law and public policy. Emphasizing that the RTC Branch 141 questioned the correctness of the Arbitral Award and not the validity of the arbitration agreement or the regularity of the arbitration proceedings, the CA found no ground to vacate the award. To the CA, the consequence of the interpretation and application by the Arbitral Tribunal of the parties' renewal clause, as well as the relevant provisions of the Mining Act and IPRA itself respecting the rights of respondents in MPSA No. 001-90 vis-à-vis the IPRA FPIC and NCIP Certification Precondition, cannot be challenged under the pretext of a public policy violation.[48]

In a subsequent Resolution[49] dated January 14, 2019, the CA denied the Republic's motion for reconsideration.

Hence, the consolidated petitions.[50]

In G.R. 244063, the District of Benguet assigns as error the CA's denial of its sought intervention in respondents' petition.[51]

On the other hand, in G.R. No. 244216, the Republic raises the following issues:[52]

A

THE COURT OF APPEALS ERRED IN RULING THAT THE RTC ACTED IN EXCESS OF JURISDICTION WHEN IT PASSED UPON THE ISSUE OF WHETHER THE FPIC AND CERTIFICATE PRECONDITION MAY BE VALIDLY IMPOSED AS REQUIREMENTS FOR THE RENEWAL OF MPSA 001-90.

B

THE COURT OF APPEALS ERRED IN RULING THAT THE RTC MAY NOT SET ASIDE THE ARBITRAL AWARD ON THE GROUND THAT IT AMOUNTS TO A VIOLATION OF LAW AND PUBLIC POLICY.

C

THE COURT OF APPEALS ERRED IN RULING THAT THE ARBITRAL TRIBUNAL MADE A COMPLETE, FINAL AND DEFINITE AWARD UPON THE SUBJECT MATTER SUBMITTED TO THEM.

D

THE COURT OF APPEALS ERRED IN RULING THAT THE ARBITRAL TRIBUNAL DID NOT EXCEED ITS AUTHORITY IN RENDERING THE ARBITRAL AWARD.[53]

Issues

Submitted for resolution are the following core issues:

- Whether the CA erred in denying the motion for leave to intervene of the District of Benguet in respondents' petition against the RTC Branch 141 Resolution vacating the Arbitral Award.

- Whether the CA correctly sustained the Arbitral Award.

The Court's Ruling

G.R. No. 244216: The CA correctly denied District of Benguet's sought intervention.

The District of Benguet faults the CA in denying its motion for leave to intervene based on a procedural technicality; that is, it failed to timely intervene in the arbitration and RTC proceedings. The District of Benguet maintains that it has legal interest in the case, asserting that it represents the interests of its constituents falling as ICCs/IPs, whose rights are claimed to be affected by the renewal of MPSA No. 001-90.[54]

The arguments of the District of Benguet fail to persuade.

It is apparent that the provisions of the Rules of Court are being referred to in the arguments of the District of Benguet, as well as in the CA's reason for denying its sought intervention. However, the remedy of intervention does not extend to arbitration cases.

A.M. No. 07-11-08-SC was promulgated setting forth the Special ADR Rules as a procedure for achieving speedy and efficient means of resolving cases pending before all courts in the Philippines.[55] The distinguishing feature of arbitration as an alternative mode of dispute resolution is party autonomy or the freedom of the parties to make their own arrangements in the resolution of disputes with the greatest cooperation of and the least intervention from the courts.[56]

Notably, the Special ADR Rules do not include a mechanism for intervention provided under the Rules of Court. Rule 1.1 of the Special ADR Rules enumerates the instances when the Special ADR Rules shall apply, namely: "(a) Relief on the issue of Existence, Validity, or Enforceability of the Arbitration Agreement; (b) Referral to Alternative Dispute Resolution; (c) Interim Measures of Protection; (d) Appointment of Arbitrator; (e) Challenge to Appointment of Arbitrator; (f) Termination of Mandate of Arbitrator; (g) Assistance in Taking Evidence; (h) Confirmation, Correction or Vacation of Award in Domestic Arbitration; (i) Recognition and Enforcement or Setting Aside of an Award in International Commercial Arbitration; (j) Recognition and Enforcement of a Foreign Arbitral Award; (k) Confidentiality/Protective Orders; and (l) Deposit and Enforcement of Mediated Settlement Agreements." [57]

That a resort to the rule on intervention under the Rules of Court even in a suppletory manner is not allowed [58] is evident from Rule 22.1 of the Special ADR Rules, which explicitly states that "[t]he provisions of the Rules of Court that are applicable to the proceedings enumerated in Rule 1.1 of [the] Special ADR Rules have either been included and incorporated in [the] Special ADR Rules or specifically referred to [therein]." [59] Further, Rule 1.13 thereof provides that "[i]n situations where no specific rule is provided under the Special ADR Rules, the court shall resolve such matter summarily and be guided by the spirit and intent of the Special ADR Rules and the ADR Laws."

The lack of a mechanism for intervention in arbitration proceedings must necessarily be interpreted according to the spirit or intent of the Special ADR Rules and ADR Laws. This flows from the principle "ratio legis est anima," which provides that "a thing which is within the intent of the lawmaker is as much within the statute as if within the letter; and that which is within the letter but not within the spirit is not within the statute." [60] Thus, every interpretation of the Special ADR Rules and ADR Laws should be made consistent with their objectives, i.e., to respect party autonomy or the freedom of the parties to make their own arrangements in the resolution of disputes, as well as to achieve speedy and efficient resolution of disputes, and curb a litigious culture. [61]

In any event, the District of Benguet failed to timely intervene in the RTC proceedings where the Republic sought

to vacate the Arbitral Award.

Section 2, Rule 19 of the Rules of Court provides that a "motion to intervene may be filed at any time before rendition of judgment by the trial court." [62] Here, the District of Benguet filed its motion for leave to intervene only before the CA in respondent mining companies' petition seeking to reverse and set aside the Decision of the RTC Branch 141, which vacated the Arbitral Award. As noted by the CA, the motion was filed only after it directed respondent mining companies and the Republic to file their respective memoranda.

Suffice it to state that the CA already decided on respondent mining companies' petition, and rendered the assailed Decision and Resolution subject of the instant petitions before the Court. Indeed, to entertain the sought intervention at this late stage would only further delay the resolution of the cases. It bears underscoring, as well, that it is the State, or the Republic, through the MGB-DENR, that has the legal interest to represent the rights and interests of the Mankayan ICCs/IPs sought to be affected by the renewal of MPSA No. 001-90. This flows from the State's policy on the protection of the rights of indigenous cultural communities, as well as of ensuring their economic, social, and cultural well-being. [63]

G.R. No. 244216: The Arbitral award in favor of respondent mining companies must be vacated.

Arbitration is an alternative mode of dispute resolution outside of the regular court system governed by RA 876 [64] (Arbitration Law), RA 9285 [65] (2004 ADR Act) and the Special ADR Rules. It is a voluntary dispute resolution process in which one or more arbitrators—appointed in accordance with the agreement of the parties, or relevant ADR laws and rules—resolve a dispute of the parties by rendering an arbitral award. [66] Being essentially a contractual undertaking, resort to arbitration requires consent from both parties in the form of an arbitration clause that pre-exists the dispute. [67] The parties, by entering into an arbitration agreement, undertake to submit their dispute to a tribunal of arbitrators of their own choosing and to be bound by its resolution. [68]

In the case, respondents insist on the rule on autonomy of arbitral awards, while the Republic invokes the exceptions thereof, more particularly, violation of public policy, as will be thoroughly addressed in the following discussion.

The rule on autonomy of arbitral awards is not absolute.

Under the 2004 Arbitration Act, an arbitral award may be questioned before the regional trial court, which may confirm, vacate, set aside, modify, or correct the award. [69] The nature of this remedy against an arbitral award is embodied in the 2009 Special ADR Rules, viz:

Rule 19.7. No appeal or certiorari on the merits of an arbitral award. – An agreement to refer a dispute to arbitration shall mean that the arbitral award shall be final and binding. Consequently, a party to an arbitration is precluded from filing an appeal or a petition for certiorari questioning the merits of an arbitral award. (Italics supplied.)

In *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*, [70] the Court underscored on the contemplated lack of appeal or certiorari mechanism, as follows:

[A]n arbitral award is not appealable via Rule 43 because: (1) there is no statutory basis for an appeal from the final award of arbitrators; (2) arbitrators are not quasi-judicial bodies; and (3) the Special ADR Rules specifically prohibit the filing of an appeal to question the merits of an arbitral award. [71]

x x x x

A losing party is likewise precluded from resorting to certiorari under Rule 65 of the Rules of Court. Certiorari is a prerogative writ designed to correct errors of jurisdiction committed by a judicial or quasi-judicial body.

Because an arbitral tribunal is not a government organ exercising judicial or quasi-judicial powers, it is removed from the ambit of Rule 65.

Not even the Court's expanded certiorari jurisdiction under the Constitution can justify judicial intrusion into the merits of arbitral awards. While the Constitution expanded the scope of certiorari proceedings, this power remains limited to a review of the acts of "any branch or instrumentality of the Government." As a purely private creature of contract, an arbitral tribunal remains outside the scope of certiorari.[72] (*Italics supplied.*)

While the lack of an effective appeal mechanism reflects the arbitration policy of non-intervention on the substantive merits of arbitral awards,[73] this rule of autonomy of arbitral awards is not absolute.

Under Section 24 of the Arbitration Law, one seeking to vacate an arbitral award must prove affirmatively the following:

- (a) [The] award is procured by corruption, fraud, or other undue means; or
- (b) [That] there was evident partiality or corruption in the arbitrators or any of them; or
- (c) [That] the arbitrators were guilty of misconduct [that materially prejudiced the rights of any party]; or
- (d) [That] the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.[74] (*Italics supplied.*)

An arbitral award may also be vacated in cases where an arbitrator, otherwise disqualified to act, willfully refrained from disclosing his or her disqualification to the parties.[75]

The foregoing grounds contemplate integrity of the arbitral tribunal (i.e., award is procured through fraud, corruption, undue means, or evident partiality on the part of the arbitrators, among others),[76] and the irregularities in the arbitration proceedings, as grounds for vacating a domestic arbitral award.

Another exception to the autonomy of arbitral awards, a notable one, is based on public policy considerations in reference to Article 34 of the 1985 United Nations Commission on International Trade Law Model Law. This is reproduced in Chapter 4 of the Implementing Rules and Regulations (IRR) of the 2004 ADR Act which provides that an arbitral award may be vacated if it is in conflict with the public policy of the Philippines.[77] While this applies particularly to International Commercial Arbitration, the ground is made applicable to domestic arbitration by the Special ADR Rules.[78] Rule 19.10 thereof reads:

Rule 19.10. Rule on judicial review on arbitration in the Philippines. — As a general rule, the court can only vacate or set aside the decision of an arbitral tribunal upon a clear showing that the award suffers from any of the infirmities or grounds for vacating an arbitral award under Section 24 of Republic Act No. 876 or under Rule 34 of the Model Law in a domestic arbitration, or for setting aside an award in an international arbitration under Article 34 of the Model Law, or for such other grounds provided under these Special Rules.

If the Regional Trial Court is asked to set aside an arbitral award in a domestic or international arbitration on any ground other than those provided in the Special ADR Rules, the court shall entertain such ground for the setting aside or non-recognition of the arbitral award only if the same amounts to a violation of public policy.

The court shall not set aside or vacate the award of the arbitral tribunal merely on the ground that the arbitral tribunal committed errors of fact, or of law, or of fact and law, as the court cannot substitute its judgment for that of the arbitral tribunal.[79] (*Italics supplied.*)

The Republic maintains that the public policy underlying the enactment of the IPRA requiring the FPIC and NCIP as precondition to the renewal of MPSA No. 001-90 is the State's policy "to protect and promote the rights of the indigenous cultural communities to their ancestral lands to ensure their economic, social, cultural and well-being."

For the Republic, the Arbitral Award in favor of respondents sanctions violation of the law effectively disenfranchising the ICCs/IPs from enforcing the certifications mandated by the IPRA. The Republic argues that the CA erred in summarily dismissing this public policy consideration that impelled the RTC Branch 141 to vacate the questioned Arbitral Award.[80]

The Republic's invocation of violation of public policy as a ground for vacating an arbitral award raises a pure question of law taking into consideration the restrained attitude of court intervention in that even in the face of errors of law committed by an arbitral tribunal, the arbitral award would generally not be disturbed or vacated.

The pressing question, then, is whether the Arbitral Tribunal's determination that respondents may be exempted from complying with the FPIC and NCIP Certification Precondition required by the IPRA, as a precondition for the renewal of MPSA No. 001-90, constitutes a violation of public policy that would justify vacatur of the arbitral award, or a mere error in the interpretation or application of the said law, as maintained by respondents, in which case, the award would nevertheless be sustained.

The Republic's invocation of violation of public policy is impressed with merit.

Contrary to the proposition of respondents, the Arbitral Tribunal's determination—that respondents be excused from the IPRA requirement on the FPIC and NCIP Certification Precondition—does not relate to a mere interpretation of law, or its application to the established facts, within the context of arbitration. The non-application of the requirement contravenes a strong and compelling public policy on the protection of the rights of the Mankayan ICCs/IPs to their ancestral domains.

It bears underscoring that the protection of the "rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being," is a Constitutionally declared policy of the State.[81] This is also reflected as a State Policy under the Philippine Mining Act of 1995, safeguarding the environment and protecting the rights of affected communities, more particularly the ICCs/IPs to their ancestral domains.[82] In recognition of this policy, Section 16 of the Act mandates that "[n]o ancestral land shall be opened for mining-operations without prior consent of the indigenous cultural community concerned." [83] As aptly observed by Associate Justice Alfredo Benjamin S. Caguioa (Associate Justice Caguioa), this general requirement of consent on the part of the affected ICCs/IPs is now made more specific and concrete through the FPIC and Certification Precondition explicitly mandated in Section 59 of the IPRA, thus :

SECTION 59. Certification Precondition. — All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process. (*Italics supplied.*)

Rooted in no less than the Constitution, as well as being clearly, categorically and positively reflected in the IPRA, the existence and mandate of the invoked public policy ensuring the protection of the rights of the ICCs/IPs to their ancestral domains cannot be undermined, worse disregarded. As characterized by then Associate Justice Reynato S. Puno in his separate opinion in *Cruz v. Sec. of Environment & Natural Resources*, [84] the IPRA is a novel piece of legislation crafted "to address the centuries-old neglect of the Philippine indigenous peoples," thus:

The struggle of the Filipinos throughout colonial history had been plagued by ethnic and religious differences. These differences were carried over and magnified by the Philippine government through the imposition of a national legal order that is mostly foreign in origin or derivation. Largely unpopulist, the present legal system has resulted in the alienation of a large sector of society, specifically, the indigenous peoples. The histories and cultures of the indigenes are relevant to the evolution of Philippine culture and are vital to the understanding of contemporary problems. It is through the IPRA that an attempt was made by our legislators to understand Filipino society not in terms of myths and biases but through common experiences in the course of history. The Philippines became a democracy a centennial ago and the decolonization process still continues. If the evolution of the Filipino people into a democratic society is to truly proceed democratically, i.e., if the Filipinos as a whole are to participate fully in the task of continuing democratization, it is this Court's duty to acknowledge the presence of indigenous and customary laws in the country and affirm their co-existence with the land laws in our national legal system.[85]

As keenly noted by Associate Justice Amy C. Lazaro-Javier, the invoked public policy is clear, explicit, well-defined and dominant, i.e., "it is directly ascertainable by reference to a statute, implementing administrative rules and court decisions and not merely from ambiguous and murky general considerations of supposed public interests." Verily, in excusing respondents from the FPIC and Certification Precondition requirement, the Arbitral Tribunal cannot be said to have merely erred in the interpretation or application of the law. It manifestly disregarded the same, and the law's underlying public policy.

In *Asset Privatization Trust v. Court of Appeals*,[86] the Court vacated an arbitral award rendered in "manifest disregard of the law." The Court cited the United States case of *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Jaros*,[87] holding that there is manifest disregard of the law where: "(1) the applicable legal principle is clearly defined and not subject to reasonable debate; and (2) the arbitrators refused to heed that legal principle." [88] Guided by these parameters, the Court held in *Equitable PCI Banking Corp. v. RCBC Capital Corp.*[89] that "to justify the vacation of an arbitral award on account of 'manifest disregard of the law,' the arbiter's findings must clearly and unequivocally violate an established legal precedent." [90] Here, the two elements clearly attend. The Arbitral Tribunal refused to heed the strong and compelling public policy on the protection and promotion the rights of the Mankayan ICCs/IPs, more particularly to their ancestral lands.

Also, in so manifestly disregarding the FPIC and Certification Precondition requirement under the IPRA, the Arbitral Tribunal undoubtedly "exceeded [its] powers, [and] so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to [it] was not made." [91] This is another ground for vacatur of the award under Section 24[92] of the Arbitration Law. Here, the Arbitral Tribunal's determination on the non-application of the FPIC and Certification Precondition mandated by Section 59 of the IPRA cannot be said to affect exclusively the parties to the MPSA and the arbitration proceedings. It has far reaching effects to the Mankayan ICCs/IPs whose rights to their ancestral domains recognized by the State would be prejudiced. As the Mankayan ICCs/IPs cannot be deprived of their rights to their ancestral domains without their consent, the Arbitral Award cannot be said to be complete, final and definite, worse binding upon them.

Further, respondents do not have vested right for the renewal of MPSA 001-90 under the same terms and conditions thereof. It bears underscoring that the mining agreement partakes of a mere privilege, license or permit granted by the State to respondents for the conduct of mining operations on a vast tract of land in the Municipality of Mankayan. In *Southeast Mindanao Gold Mining Corp. v. Balite Portal Mining Coop.*,[93] the Court ruled on the nature of a "natural resource exploration permit" similar to respondent's Mineral Production Sharing Agreement; thus:

As correctly held by the Court of Appeals in its challenged decision, EP No. 133 merely evidences a privilege granted by the State, which may be amended, modified or rescinded when the national interest so requires.

This is necessarily so since the exploration, development and utilization of the country's natural mineral resources are matters impressed with great public interest. Like timber permits, mining exploration permits do not vest in the grantee any permanent or irrevocable right within the purview of the non-impairment of contract and due process clauses of the Constitution, since the State, under its all-encompassing police power, may alter, modify or amend the same, in accordance with the demands of the general welfare.[94] (*Italics and underscoring supplied.*)

The imposition of the FPIC and Certification Precondition does not deprive respondent mining companies of any right or obligation under the MPSA for the renewal thereof, as would legally support their argument on the non-impairment of the obligation of contracts under the Constitution. As underscored by Associate Justice Caguioa, contrary to respondents' proposition, the renewal of the MPSA is not guaranteed under the contract's renewal clause, as it clearly provides that renewal is subject to conditions "as may be provided by law." Necessarily, respondents' invocation of the non-impairment clause must "yield to the loftier purposes targeted by the government." [95] Notably, the Arbitral Award is in the nature of a contract, it having proceeded from an arbitration agreement. Thus, deemed written into this contract are the provisions of existing laws and a reservation of the State's exercise of police power, most especially so that the questioned Arbitral Award covers a subject impressed with public welfare and interest.[96]

The Arbitral Tribunal, in apparently seeking to strike a balance between the contending interests of respondent mining companies and that of the Mankayan ICCs/IPs, simply had no factual and legal bases to arbitrate favorably to the former dispensing with the FPIC requirement under the IPRA. As the Court emphasizes, the consent requirement proceeds from public policy and social justice finding support in no less than the Constitution. This requirement cannot be done away with arbitration, the basis of which is the mere contractual will of the mining companies and the State granting them mere mining privileges. The CA, therefore, gravely erred in affirming the subject Arbitral Award in favor of respondents, it being rendered in manifest disregard of the IPRA and in contravention with a strong and compelling public policy on the promotion and protection of the rights of ICCs/IPs.

The foregoing, notwithstanding, while the interests of respondent mining companies, indeed, cannot outweigh that of the ICCs/IPs, due process and fairness dictate that respondent mining companies be given the opportunity to fully comply with the consent requirement under the IPRA for the renewal of MPSA No. 001-90.

Admittedly, the FPIC and NCIP Certification Precondition was not contemplated by the parties under the original MPSA No. 001-90. As underscored by the Arbitral Tribunal, respondent mining companies heavily spent for and engaged in mining operations over the years with the renewal provision in mind. This reasonably flows from the huge and long-term nature of investment inherent in mining ventures. It further noted that the Republic failed to refute respondents' documents showing that respondents spent billions of pesos as exploration and other pre-development costs, which include, among others, the construction of the Tailings Dam.[97] Indeed, the sought renewal of MPSA 001-90 is burdened by the supervening IPRA, as well as the Philippine Mining Act, making it now dependent upon the consent of the Mankayan ICCs/IPs.

Suffice it to state that as early as May 22, 2014, or about 11 months prior to the expiration of the original term of MPSA No. 001-90 on March 18, 2015, respondent mining companies wrote MGB-CAR a letter expressing their intention to renew the agreement for a period of another 25 years under the same terms and conditions pursuant to Section 3.1 thereof. The MGB-CAR already found respondent mining companies to have substantially complied with the requirements for the renewal of the questioned MPSA save only as regards the FPIC and NCIP Certification Precondition.[98] This is bolstered by the fact that the MGB-CAR itself advised respondents that their joint application for the renewal of the MPSA would be endorsed to the NCIP for appropriate action on the

FPIC and NCIP Certification Precondition required by the IPRA.[99]

The NCIP Administrative Order No. 1-98,[100] which outlines the procedures and guidelines for the implementation of the IPRA, provides that existing contracts within the ancestral domains "shall not be renewed without the free and prior informed consent of the [concerned] IP community members and upon renegotiation of all terms and conditions thereof." [101] It further provides that the required consent shall be signed by at least a majority of the representatives of all households comprising the concerned ICCs/IPs.[102]

Thus, to underscore on the indispensability of the consent requirement under the IPRA, as well as to balance the contending interests of respondent mining companies and that of the Mankayan ICCs/IPs in this case, the vacatur of the Arbitral Award shall be without prejudice to respondent mining companies' full compliance with the requirement of the FPIC of the Mankayan ICCs/IPs as a condition for the renewal of MPSA No. 001-90.

WHEREFORE, the petition in G.R. No. 244216 is GRANTED. The Decision dated April 30, 2018 and the Resolution dated January 14, 2019 of the Court of Appeals in CA-G.R. SP No. 146806 are REVERSED and SET ASIDE insofar as it sustained the Final Arbitral Award dated November 27, 2015 issued by the Arbitral Tribunal.

Accordingly, the Final Award dated November 27, 2015 issued by the Arbitral Tribunal in favor of respondents Lepanto Consolidated Mining Company and Far Southeast Gold Resources, Inc. is VACATED without prejudice to their full compliance with the requirement of the "Free and Prior Informed and Written Consent" of the Mankayan Indigenous Cultural Communities/Indigenous Peoples as a condition for the renewal of Mineral Production Sharing Agreement No. 001-90.

On the other hand, the petition in G.R. No. 244063 is DENIED.

SO ORDERED.

Gesmundo, C.J., Hernando, M. Lopez, Gaerlan, Rosario, J. Lopez, Marquez, Kho, Jr., and Singh, JJ., concur.

Leonen, S.A.J. and Caguioa, J., see concurring opinion.

Lazaro-Javier, J., please see concurrence.

Dimaampao, J., see separate concurring opinion.

Zalameda,[*] J., no part.

[*] No part.

[1] Filed under Rule 45 of the Rules of Court. Rollo (G.R. No. 244063), pp. 23-34; rollo, (G.R. No. 244216), pp. 15-62.

[2] Rollo (G.R. No. 244063), pp. 40-71; penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Jose C. Reyes, Jr. (now a retired Member of the Court) and Franchito N. Diamante.

[3] Id. at 73-77; penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Franchito N. Diamante and Rodil V. Zalameda (now a Member of the Court).

[4] Rollo (G.R. No. 244216), pp. 182-194; penned by Judge Maryann E. Corpus-Mañalac.

[5] Id. at 226-259; signed by Chairman Victor C. Fernandez, and Co-Arbitrators Roderick R.C. Salazar III and Jose Aguila Grapilon.

[6] Id. at 260-283.

[7] Id. at 18-19.

[8] Id. at 19.

[9] Id. at 266. Item 3.1 of the Production Sharing Agreement provides:

3.1. THE INITIAL TERM OF THIS AGREEMENT SHALL BE TWENTY-FIVE (25) CONTRACT YEARS FROM THE EFFECTIVE DATE, SUBJECT TO TERMINATION AS PROVIDED HEREIN, RENEWABLE FOR ANOTHER PERIOD OF TWENTY-FIVE (25) YEARS UPON SUCH TERMS AND CONDITIONS AS MAY BE MUTUALLY AGREED UPON BY THE PARTIES OR AS MAY BE PROVIDED BY LAW.

[10] Section 59 of Republic Act No. 8371 provides:

SECTION 59. Certification Precondition. — All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

[11] Entitled, "Rules and Regulations Implementing Republic Act No. 8371, otherwise known as the 'Indigenous Peoples' Rights Act of 1997,'" approved on June 9, 1998.

[12] Sections 6 and 9, Part II, Rule VIII, NCIP Administrative Order No. 1-98 provides:

Section 6. Existing Contracts, Licenses, Concessions, Leases, and Permits Within Ancestral Domains. — Existing contracts, licenses, concessions, leases and permits for the exploitation of natural resources within the ancestral domain may continue to be in force and effect until they expire. Thereafter, such contracts, licenses, concessions, leases and permits shall not be renewed without the free and prior informed consent of the IP community members and upon renegotiation of all terms and conditions thereof. All such existing contracts, licenses, concessions, leases and permits may be terminated for cause upon violation of the terms and conditions thereof. (*Italics in the original and supplied.*)

x x x x

Section 9. Certification Precondition Prior to Issuance of any Permits or Licenses. —

a) Need for Certification. No department of government or other agencies shall issue, renew or grant any concession, license, lease, permit or enter into any production sharing agreement without a prior certification from the NCIP that the area affected does not overlap any ancestral domain.

b) Procedure for Issuance of Certification by NCIP.

x x x x

(2)

The certification shall be issued only upon the free, prior, informed and written consent of the ICCs/IPs who will be affected by the operation of such concessions, licenses or leases or production-sharing agreements. A written consent for the issuance of such certification shall be signed by at least a majority of the representatives of the all households comprising the concerned ICCs/IPs. (*Italics in the original and supplied.*)

[13] Rollo (G.R. No. 244216), pp. 284-286.

[14] Id. at 290.

[15] Id. at 291-292.

[16] Id. at 72.

[17] Id. at 299-301.

[18] Id. at 278.

[19] Id. at 235-236.

[20] Id. at 343-344.

[21] Id. at 226-259.

[22] Id. at 258-159.

[23] Rule 2.2 of the Special Rules of Court on Alternative Dispute Resolution (Special ADR Rules) provides:

Rule 2.2. Policy on arbitration. — (A) Where the parties have agreed to submit their dispute to arbitration, courts shall refer the parties to arbitration pursuant to Republic Act No. 9285 bearing in mind that such arbitration agreement is the law between the parties and that they are expected to abide by it in good faith. Further, the courts shall not refuse to refer parties to arbitration for reasons including, but not limited to, the following:

a. The referral tends to oust a court of jurisdiction;

x x x x

f. One or more of the issues are legal and one or more of the arbitrators are not lawyers;

x x x x

(Italics supplied).

[24] Rollo (G.R. No. 244216), pp. 237-238.

[25] Id. at 246.

[26] Id. at 229-253.

[27] Id. at 257.

[28] Id. at 200-225.

[29] Id. at 187.

[30] Id.

[31] Id.

[32] Id.

[33] Id. at 182-194.

[34] Id. at 194.

[35] Rule 19.10 of the Special ADR Rules provides:

Rule 19.10. Rule on judicial review on arbitration in the Philippines. — x x x

If the Regional Trial Court is asked to set aside an arbitral award in a domestic or international arbitration on

any ground other than those provided in the Special ADR Rules, the court shall entertain such ground for the setting aside or non-recognition of the arbitral award only if the same amounts to a violation of public policy.

x x x x. (*Italics supplied.*)

[36] A.M. No. 07-11-08-SC, approved on September 1, 2009.

[37] Rollo (G.R. No. 244216), p. 190.

[38] *Id.* at 195-199.

[39] *Id.* at 119-179.

[40] Rollo (G.R. No. 244063), pp. 79-88.

[41] *Id.* at 40-71.

[42] *Id.* at 70.

[43] *Id.* at 52.

[44] *Id.* at 70.

[45] *Id.* at 53-55.

[46] *Id.* at 58-60.

[47] *Id.* at 67.

[48] *Id.* at 68-69.

[49] *Id.* at 73-77.

[50] In a Resolution dated February 18, 2019, the Court resolved to consolidated G.R. No. 244063 with G.R. No. 244216; *id.* at 9-10.

[51] *Id.* at 26.

[52] Rollo (G.R. No. 244216), pp. 38-39.

[53] *Id.* at 38-39.

[54] Rollo (G.R. No. 244063), pp. 26-27.

[55] See Section 2 of Republic Act No. 9285.

[56] See Rule 2.1 of the Special ADR Rules.

[57] See Rule 1.1 of the Special ADR Rules.

[58] *Department of Environment and Natural Resources v. United Coconut Planters Consultants, Inc.*, 754 Phil. 513, 531 (2015).

[59] See Rule 22.1 of the Special ADR Rules.

[60] See *Alonzo v. Intermediate Appellate Court*, 234 Phil. 267, 273 (1987).

[61] See Rule 2.1 of the Special ADR Rules.

[62] See Section 2, Rule 19 of the Rules of Court.

[63] Section 5, Article XII of the Constitution.

[64] Entitled, "An Act to Authorize the Making of Arbitration and Submission Agreements, to Provide for the Appointment of Arbitrators and the Procedure for Arbitration in Civil Controversies, and For Other Purposes," approved on June 19, 1953.

[65] Entitled, "An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes," approved on April 2, 2004.

[66] Section 3(d) of Republic Act No. 9285 provides:

SECTION 3. Definition of Terms. — For purposes of this Act, the term:

x x x x

(d) "Arbitration" means a voluntary dispute resolution process in which one or more arbitrators, appointed in accordance with the agreement of the parties, or rules promulgated pursuant to this Act, resolve a dispute by rendering an award;

x x x x

[67] *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*, 800 Phil. 721, 741 (2016).

[68] *Id.*

[69] Section 46 of Republic Act No. 9285 provides:

SECTION 46. Appeal from Court Decisions on Arbitral Awards. — A decision of the regional trial court confirming, vacating, setting aside, modifying or correcting an arbitral award may be appealed to the Court of Appeals in accordance with the rules of procedure to be promulgated by the Supreme Court.

x x x x

[70] 800 Phil. 721 (2016).

[71] *Id.* at 751.

[72] *Id.* at 754-756.

[73] Rule 2.1 of the Special ADR Rules provides:

Rule 2.1. General policies. — It is the policy of the State to actively promote the use of various modes of ADR and to respect party autonomy or the freedom of the parties to make their own arrangements in the resolution of disputes with the greatest cooperation of and the least intervention from the courts.

x x x x

[74] Section 24 of Republic Act No. 876, referred to under Rule 19.10 of the Special ADR Rules.

[75] See Rule 19.10 of the Special ADR Rules.

[76] See *Global Medical Center of Laguna, Inc. v. Ross Systems International, Inc.*, G.R. Nos. 230112 & 230119, May 11, 2021.

[77] Article 4.34 of the Implementing Rules and Regulations of Republic Act No. 9285:

Article 4.34. Application for Setting Aside an Exclusive Recourse against Arbitral Award.

(ii) The Court finds that:

(aa) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Philippines; or

(bb) the award is in conflict with the public policy of the Philippines. (*Italics supplied.*)

[78] *Fruehauf Electronics Philippines Corp. v. Technology Electronics Assembly and Management Pacific Corp.*, supra note 67 at 754, citing Rule 19.10, Special ADR Rules.

[79] Rule 19.10, Special ADR Rules.

[80] *Rollo* (G.R. No. 244316), p. 34.

[81] Section 5, Article XII of the Constitution.

[82] Sections 2 and 4 of Republic Act No. 7942 reads:

Section 2

Declaration of Policy

All mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protect the rights of affected communities.

x x x x

Section 4

Ownership of Mineral Resources

Mineral resources are owned by the State and the exploration, development, utilization, and processing thereof shall be under its full control and supervision. The State may directly undertake such activities or it may enter into mineral agreements with contractors.

The State shall recognize and protect the rights of the indigenous cultural communities to their ancestral lands as provided for by the Constitution.

[83] Section 16 of Republic Act No. 7942.

[84] 400 Phil. 904 (2000).

[85] *Id.* at 1015-1016. (*Citations omitted.*)

[86] 360 Phil. 768 (1998).

[87] 70 F.3d 418; cited in *Equitable PCI Banking Corp. v. RCBC Capital Corp.*, 595 Phil. 537 (2008).

[88] *Equitable PCI Banking Corp. v. RCBC Capital Corp.*, supra at 558-559. (*Underscoring supplied.*)

[89] 595 Phil. 537 (2008).

[90] *Id.* at 559.

[91] See Section 24 of Republic Act No. 876, referred to under Rule 19.10 or the Special ADR Rules.

[92] Id.

[93] 429 Phil. 668 (2002).

[94] Id. at 682.

[95] Philippine Association of Service Exporters, Inc. v. Drilon, 246 Phil. 393, 406 (1988).

[96] JMM Promotion and Management, Inc. v. Court of Appeals, 329 Phil. 87, 101 (1996).

[97] Rollo (G.R. No. 244216), p. 253.

[98] Id. at 290.

[99] Id.

[100] Entitled, "Rules and Regulations Implementing Republic Act No. 8371, otherwise known as 'The Indigenous Peoples Rights Act of 1997,'" approved on June 9, 1998.

[101] Section 6, Part II, Rule VIII, NCIP Administrative Order No. 1-98 provides:

Section 6. Existing Contracts, Licenses, Concessions, Leases, and Permits Within Ancestral Domains. — Existing contracts, licenses, concessions, leases and permits for the exploitation of natural resources within the ancestral domain may continue to be in force and effect until they expire. Thereafter, such contracts, licenses, concessions, leases and permits shall not be renewed without the free and prior informed of the IP community members and upon renegotiation of all terms and conditions thereof. All such existing contracts, licenses, concessions, leases and permits may be terminated for cause upon violation of the terms and conditions thereof.

[102] Section 9, Part II, Rule VIII, NCIP Administrative Order No. 1-98 provides:

Section 9. Certification Precondition Prior to Issuance of any Permits or Licenses.

xxxx

b) Procedure for Issuance of Certification by NCIP.

(2) The certification shall be issued only upon the free, prior, informed and written consent of the ICCs/IPs who will be affected by the operation of such concessions, licenses or leases or production-sharing agreements. A written consent for the issuance of such certification shall be signed by at least a majority of the representatives of the all households comprising the concerned ICCs/IPs.

CONCURRING AND DISSENTING OPINION

LEONEN, SAJ.:

Following the State policy of recognizing and promoting the rights of indigenous peoples,[1] the Indigenous Peoples' Rights Act introduced measures to guarantee that their rights over their ancestral lands, including the resources found in them, are protected. These protections include a certification precondition before any license, concession, lease, or production sharing agreement involving the exploitation of natural resources may be granted or renewed.

Furthermore, to ensure that the State policy is followed, such agreements must be construed with the utmost scrutiny, for they affect not only the nature of the property rights they vest, but also all other extractive natural resource rights that potentially negate the constitutionally protected rights of indigenous cultural communities.

The certification precondition, which includes obtaining free and prior informed and written consent (FPIC) from the affected indigenous peoples,[2] must be strictly complied with before such agreements may be renewed. Parties cannot just circumvent this requirement on the mistaken notion that they still have vested rights, even after the force of their agreement has ceased to exist.

I therefore concur with the ponencia insofar as it ordered the Final Award issued in favor of respondents Lepanto Consolidated Mining Company and Far Southeast Gold Resources, Inc. to be vacated for violating the State's declared policy. However, it should have granted the Motion for Leave to Intervene filed by the Lone Congressional District of Benguet Province (Congressional District of Benguet).

On March 3, 1990—before Republic Act No. 8371, or the Indigenous Peoples' Rights Act of 1997, took effect—the Republic of the Philippines (Republic), through the Department of Environment and Natural Resources, entered into Mineral Production Sharing Agreement No. 001-90 (MPSA No. 001-90 or the Agreement) with respondents. It allowed them to conduct mining operations on a tract of land in Mankayan, Benguet, which covered part of the Mankayan Indigenous Peoples' ancestral domain.[3]

On May 22, 2014, respondents wrote the Mines and Geosciences Bureau-Cordillera Administrative Region, expressing their intention to renew the Agreement. Respondents relied on Section 3.1 of MPSA No. 001-90, which states that the Agreement's term shall be for 25 years, "renewable for another period of 25 years upon such terms and conditions as may be mutually agreed upon by the parties or as may be provided by law[.]"[4]

The Bureau informed respondents that while the requirements for MPSA No. 001-90's renewal had been substantially complied with, the application shall be endorsed to the National Commission on Indigenous Peoples to examine if they have met the certification precondition under Section 59 of the Indigenous Peoples' Rights Act, which included the requirements of obtaining FPIC from the affected indigenous peoples.[5]

Respondents challenged the endorsement, contending that their vested right to renew the Agreement would be impaired should they be required to comply with these preconditions.[6] They served a Demand for Arbitration on the Republic, and the dispute was then referred to arbitration.[7]

The arbitral tribunal issued a Final Award holding, among others, that respondents need not comply with the certification precondition before MPSA No. 001-90 may be renewed.[8] It decreed that the requirements were unfavorable future legislation violating Section 14.2 of the Agreement and Section 56 of the Indigenous Peoples' Rights Act. It ruled that respondents had a vested right for the renewal of the Agreement under its original terms and conditions.[9]

The Republic filed a Petition, which the Regional Trial Court granted. It vacated the Final Award and decreed that noncompliance with the certification precondition infringed on the public policy that the Indigenous Peoples' Rights Act sought to promote.[10]

Respondents filed a Petition for Review before the Court of Appeals. As the case was pending, the Congressional District of Benguet filed a Motion for Leave to Intervene.[11] On appeal, however, the Court of Appeals set aside the trial court's ruling and affirmed that of the arbitral tribunal. It likewise denied the Motion for Leave to Intervene.[12]

Thus, two Petitions were filed before this Court.

Again, while I disagree with the ponencia in that petitioner Congressional District of Benguet should have been allowed to intervene, I ultimately agree that the Final Award should be vacated. The Petitions, therefore, should be granted.

I

Due to the exceptional characteristics of arbitration proceedings, the ponencia affirmed the Court of Appeals' denial of the Motion for Leave to Intervene. The ponencia holds that intervention is not permitted in an arbitration case, which is contractual and consensual nature.[13]

While I agree with the ponencia that the remedy of intervention does not apply to arbitration cases, the limitation does not extend to proceedings before the Court of Appeals.

In *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*,^[14] this Court said that since arbitral proceedings are contractual in nature, the parties may agree on the rules to be observed by the arbitrators:

Resort to arbitration is voluntary. It requires consent from both parties in the form of an arbitration clause that pre-existed the dispute or a subsequent submission agreement. This written arbitration agreement is an independent and legally enforceable contract that must be complied with in good faith. By entering into an arbitration agreement, the parties agree to submit their dispute to an arbitrator (or tribunal) of their own choosing and be bound by the latter's resolution.

However, this contractual and consensual character means that the parties cannot implead a third-party in the proceedings even if the latter's participation is necessary for a complete settlement of the dispute. The tribunal does not have the power to compel a person to participate in the arbitration proceedings without that person's consent. It also has no authority to decide on issues that the parties did not submit (or agree to submit) for its resolution.

. . . .

The contractual nature of arbitral proceedings affords the parties substantial autonomy over the proceedings. The parties are free to agree on the procedure to be observed during the proceedings. This lends considerable flexibility to arbitration proceedings as compared to court litigation governed by the Rules of Court.^[15] (Citation omitted)

Here, petitioner Congressional District of Benguet filed its Motion for Leave to Intervene while the main case was pending in the Court of Appeals, well after the arbitral tribunal had rendered its Final Award. The proceeding before the Court of Appeals is civil in nature, governed not by the parties' arbitral agreement, but by the Special Rules of Court on Alternative Dispute Resolution (Special ADR Rules)^[16] and the Rules of Court.

The ponencia suggests that the Special ADR Rules preclude the Rules of Court's application even in a suppletory manner.^[17] It cites Rule 22.1 of the Special ADR Rules, which states that the Rules of Court provisions "applicable to the proceedings enumerated in Rule 1.1 of [the] Special ADR Rules have either been included and incorporated in [the] Special ADR Rules or specifically referred to [therein]."^[18]

Yet, the proceedings enumerated in Rule 1.1 exclude proceedings before the Court of Appeals. It provides:

RULE 1.1. Subject matter and governing rules. — The Special Rules of Court on Alternative Dispute Resolution (the "Special ADR Rules) shall apply to and govern the following cases:

- a. Relief on the issue of Existence, Validity, or Enforceability of the Arbitration Agreement;
- b. Referral to Alternative Dispute Resolution ("ADR");
- c. Interim Measures of Protection;
- d. Appointment of Arbitrator;

- e. Challenge to Appointment of Arbitrator;
- f. Termination of Mandate of Arbitrator;
- g. Assistance in Taking Evidence;
- h. Confirmation, Correction or Vacation of Award in Domestic Arbitration;
- i. Recognition and Enforcement or Setting Aside of an Award in International Commercial Arbitration;
- j. Recognition and Enforcement of a Foreign Arbitral Award;
- k. Confidentiality/Protective Orders; and
- l. Deposit and Enforcement of Mediated Settlement Agreements.

The exclusion of Court of Appeals proceedings in the list means that the parties may resort to Rules of Court provisions, including the remedy of intervention.

The ponencia goes on to cite Rule 1.13 of the Special ADR Rules to say that "[i]n situations where no specific rule is provided under the Special ADR Rules, the court shall resolve such matter summarily and be guided by the spirit and intent of the Special ADR Rules and the ADR Laws."^[19]

It is true that Republic Act No. 9285, or the Alternative Dispute Resolution Act of 2004, encourages the use of alternative dispute resolution as a means to achieve speedy and impartial justice. But the law does not stop litigants from seeking redress from regular courts. This interpretation is reinforced by *Fruehauf*, where this Court held that since the arbitral tribunal is a contractual and consensual body, it lacks inherent powers over the parties and acquires jurisdiction over them only through stipulation. Save for certain exceptions, its powers and authority over the parties cease upon the rendition of a final award:

As a contractual and consensual body, the arbitral tribunal does not have any inherent powers over the parties. It has no power to issue coercive writs or compulsory processes. Thus, there is a need to resort to the regular courts for interim measures of protection and for the recognition or enforcement of the arbitral award.

The arbitral tribunal acquires jurisdiction over the parties and the subject matter through stipulation. Upon the rendition of the final award, the tribunal becomes *functus officio* and — save for a few exceptions — ceases to have any further jurisdiction over the dispute. The tribunal's powers (or in the case of *ad hoc* tribunals, their very existence) stem from the obligatory force of the arbitration agreement and its ancillary stipulations. Simply put, an arbitral tribunal is a creature of contract.^[20] (Citations omitted)

The Rules of Court, therefore, may suppletorily apply. On that score, petitioner Congressional District of Benguet may be allowed to intervene.

"Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose: to enable the third party to protect or preserve a right or interest that may be affected by those proceedings."^[21] Rule 19, Section 1 of the Rules of Court provides the requisites for one to successfully intervene:

SECTION 1. Who may intervene. — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

In *Executive Secretary v. Northeast Freight Forwarders, Inc.*,^[22] this Court discussed the conditions for intervention and clarified that the determination of whether a motion to intervene may be allowed is a matter addressed to the court's discretion:

Intervention is not a matter of absolute right but may be permitted by the court when the applicant shows facts which satisfy the requirements of the statute authorizing intervention. Under our Rules of Court, what qualifies a person to intervene is his possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both; or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof. As regards the legal interest as qualifying factor, this Court has ruled that such interest must be of a direct and immediate character so that the intervenor will either gain or lose by the direct legal operation of the judgment. The interest must be actual and material, a concern which is more than mere curiosity, or academic or sentimental desire; it must not be indirect and contingent indirect and remote conjectural, consequential or collateral. However, notwithstanding the presence of a legal interest, permission to intervene is subject to the sound discretion of the court, the exercise of which is limited by considering "whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding."

To allow intervention, (a) it must be shown that the movant has legal interest in the matter in litigation, or is otherwise qualified; and (b) consideration must be given as to whether the adjudication of the rights of the original parties may be delayed or prejudiced, or whether the intervenor's rights may be protected in a separate proceeding or not. Both requirements must concur, as the first is not more important than the second.

The allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court. The permissive term of the rules shows the intention to give to the court the full measure of discretion in permitting or disallowing intervention.^[23] (Citations omitted)

Applying this, petitioner's Motion for Leave to Intervene should have been granted.

One of the declared policies of the Indigenous Peoples' Rights Act is to ensure that the Indigenous Cultural Communities/Indigenous Peoples' (ICCs/IPs) rights to their ancestral domains are recognized, and that the State shall recognize the applicability of their customary laws to determine the extent of their ownership and ancestral domains.^[24] The Implementing Rules and Regulations of the law mandate that contracts to exploit natural resources within the ancestral domains shall not be renewed unless the "free and prior informed consent" of the affected indigenous community members is first obtained.^[25]

Ronald M. Cosalan (Cosalan), as an indigenous tribe member, and as representative of ICCs/IPs, has a clear legal interest to ensure that the State respects and protects the ICCs/IPs' rights over their ancestral domain.^[26] Therefore, petitioner Congressional District of Benguet, as represented by Cosalan, has the legal interest to guarantee that the ICCs/IPs within its territory benefit from the rights and opportunities under the law.

II

Nonetheless, I join the majority that the arbitral tribunal's Final Award should be vacated for violating the State's declared policy and being injurious to the interests of society.

"As a rule, the award of an arbitrator cannot be set aside for mere errors of judgment either as to the law or as to the facts. Courts are without power to amend or overrule merely because of disagreement with matters of law or facts determined by the arbitrators."^[27] This is based on "the State's policy of upholding the autonomy of arbitration proceedings and their corresponding arbitral awards."^[28]

The rule, however, is not absolute. Section 41 of the Alternative Dispute Resolution Act of 2004 states:

SECTION 41. Vacation Award. — A party to a domestic arbitration may question the arbitral award with the appropriate regional trial court in accordance with the rules of procedure to be promulgated by the Supreme Court only on those grounds enumerated in Section 25 of Republic Act No. 876. Any other ground raised against a domestic arbitral award shall be disregarded by the regional trial court.

In relation, Section 19.10 of the Special ADR Rules provides:

RULE 19.10. Rule on judicial review on arbitration in the Philippines. — As a general rule, the court can only vacate or set aside the decision of an arbitral tribunal upon a clear showing that the award suffers from any of the infirmities or grounds for vacating an arbitral award under Section 24 of Republic Act No. 876 or under Rule 34 of the Model Law in a domestic arbitration, or for setting aside an award in an international arbitration under Article 34 of the Model Law, or for such other grounds provided under these Special Rules.

If the Regional Trial Court is asked to set aside an arbitral award in a domestic or international arbitration on any ground other than those provided in the Special ADR Rules, the court shall entertain such ground for the setting aside or non-recognition of the arbitral award only if the same amounts to a violation of public policy.

The court shall not set aside or vacate the award of the arbitral tribunal merely on the ground that the arbitral tribunal committed errors of fact, or of law, or of fact and law, as the court cannot substitute its judgment for that of the arbitral tribunal. (Emphasis supplied)

Under the law and rules, a regional trial court may set aside an arbitral award if it is found to go against public policy. As pointed out by Chief Justice Alexander Gesmundo during our deliberations, an arbitral award is against public policy if "its enforcement would be (1) against our State's fundamental tenets of justice and morality or (2) blatantly be injurious to the public or the interests of the society[.]"[29]

In *Vda. de Ongsiako v. Gamboa*,[30] this Court elucidated on what it means for an agreement to be against public policy: "if it is injurious to the interests of the public, contravenes some established interest of society, . . . or, as it is sometimes put, if it is at war with the interests of society and is in conflict with the morals of the time."[31]

In my separate concurring opinion in *Sama v. People*,[32] I explained that there has been a shift of attitude toward ICCs/IPs from simply integration to recognition and protection:

Upon the ratification of the 1987 Constitution, the State's attitude towards indigenous people shifted from integration to maintaining and preserving the indigenous people's identity. "[I]t commits to not only recognize, but also promote, 'the rights of indigenous cultural communities.'" In addition, the 1987 Constitution affirms to "protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being."

Taking this shift into account, subsequent laws incorporated the concept of ancestral land and recognized the rights of indigenous peoples.[33] (Citations omitted)

Indeed, our present legal framework vows to recognize and promote the rights of ICCs/IPs, at the forefront of which is our very own Constitution. Article II, Section 22 states:

SECTION 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

Notably, Article XII, Section 2 of the Constitution provides for the State's ownership over minerals and natural resources:

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. 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. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State's ownership of these natural resources is, however, qualified by the ICCs/IPs' rights over their ancestral lands and domains. In *Sama*, I discussed the extent of the State's ownership and control over these natural resources in relation to the indigenous concept of ownership. Citing *Cariño v. Insular Government*[34] and *Reavis v. Fianza*,[35] I clarified that the constitutionally protected titles of ICCs/IPs cover not only their ancestral lands and domain, but also the natural resources found in them:

Cariño established the notion that Igorots and, by analogy, other groups with similar customs and long associations, have constitutionally protected native titles to their respective ancestral lands. It also emphasized that, based on native custom and long association, there exists a legal foundation that the ancestral lands of some native groups within the Philippine archipelago are owned pursuant to private, communal title.

The doctrine espoused in *Cariño* was further reinforced by the United States Supreme Court in *Reavis v. Fianza*.

Reavis involved two (2) gold mines situated in the province of Benguet. These mines were in a tract of land, the sole and exclusive possession of which belonged to an Igorot named *Toctoc*. The gold mines were developed by Igorot miners in accordance with their customs.

Toctoc neither had any paper title over the mines nor was he granted concession by the Spanish Government. This notwithstanding, *Toctoc's* "title and ownership thereto were generally known and recognized by the people of the community[,]" including the Spanish officials.

Upon *Toctoc's* death, the mines' possession and ownership passed on to his heirs, which included *Fianza*. *Toctoc's* heirs continued to live and work on the mines without interruption. However, in 1901, *Reavis* entered upon the subject mines and proceeded to stake his claims on them. *Reavis* was in the honest but mistaken belief that the mines were part of the abandoned and forfeited Spanish grant of a certain *Holman*. Insisting ownership over the mines, *Fianza* filed a formal protest against *Reavis*.

When the case reached the United States Supreme Court, it sustained *Fianza's* claim of ownership of the mines and decreed:

The appellees are Igorots [sic], and it is found that, for fifty years, and probably for many more, *Fianza* and his ancestors have held possession of these mines. He now claims title under the Philippine act of July 1, 1902, chap. 1369, 45, 32 Stat. at L. 691. This section reads as follows:

'That where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations of the Philippine Islands, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act, in the absence of any adverse claim; but nothing in this act shall be deemed to impair any lien which may have attached in any way whatever prior to the issuance of a patent.'

It is not disputed that this section applies to possession maintained for a sufficient time before and until the statute went into effect. . . . The period of prescription at that time was ten years. . . . Therefore, as the United States had not had the sovereignty of the Philippines for ten years, the section, notwithstanding its similarity to Rev. Stat.

2332, U.S. Comp. Stat. 1901, p. 1433, must be taken to refer to the conditions as they were before the United States had come into power. Especially must it be supposed to have had in view the natives of . . . the islands, and to have intended to do liberal justice to them. By 16, their occupancy of public lands is respected and made to confer rights. In dealing with an Igorrot [sic] of the province of Benguet, it would be absurd to expect technical niceties, and the courts below were quite justified in their liberal mode of dealing with the evidence of possession and the possibly rather gradual settling of the precise boundaries of the appellees' claim[.] . . . At all events, they found that the appellees and their ancestors had held the claim and worked it to the exclusion of all others down to the bringing of this suit, and that the boundaries were as shown in a plan that was filed and seems to have been put in evidence before the trial came to an end.

Reavis recognized the extent of the natives' rights over their ancestral territories. It acknowledged that their rights extend not only to the lands, but likewise include the natural resources found in them. Accordingly, the State's power over these resources extend only to its regulation. The State, as laid down under Section 57 of IPRA, can only provide for the guidelines and limitation on how these resources can be utilized[.][36] (Emphasis supplied, citations omitted)

In relation to this, among the laws that regulate the use of the natural resources in ancestral domains are Republic Act No. 7942, or the Philippine Mining Act of 1995, and the Indigenous Peoples' Rights Act.

Section 16 of the Philippine Mining Act requires the prior consent of the affected indigenous cultural community before ancestral lands may be opened for mining operations:

Section 16

Opening of Ancestral Lands for Mining Operations

No ancestral land shall be opened for mining-operations without prior consent of the indigenous cultural community concerned.

Meanwhile, the Indigenous Peoples' Rights Act is considered as 'the principal piece of legislation that would govern with respect to most of the demands of indigenous peoples through their various organizations.'"[37] The law not only recognizes the "general concept of indigenous property right and granting title thereto[.]" but likewise identifies "the civil and political rights of all members of indigenous cultural communities or indigenous peoples, regardless of their relation to ancestral lands or domains[.]"[38]

Section 59 of Indigenous Peoples' Rights Act requires compliance with the certification precondition before any license or production sharing agreement may be issued or renewed:

SECTION 59. Certification Precondition. — All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government--owned or -controlled corporation may issue new concession license lease or production sharing agreement while there is a pending application for CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

This certification precondition is one of the means by which the State "protect[s] the rights of ICCs/IPs to their ancestral domains[.]"[39]

Here, the Final Award considered respondents free from having to comply with the certification precondition under the Indigenous Peoples' Rights Act before MPSA No. 001-90 may be renewed, as this would violate the Agreement and respondents' vested rights.

This is blatantly contrary to public policy. Respondents should comply with the certification precondition before MPSA No. 001-90 may be renewed. Otherwise, the protection that the Constitution and the Indigenous Peoples' Rights Act seek to afford ICCs/IPs would be pointless should the Final Award be enforced.

III

Finally, I wish to emphasize that respondents have no vested rights for the renewal of MPSA No. 001-90.

Notwithstanding the recognition of the ICCs/IPs' rights, these rights are subject to Section 56 of the Indigenous Peoples' Rights Act:

SECTION 56. Existing Property Rights Regimes. — Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.

The property rights contemplated in Section 56 "include those whose ownership [is] evidenced by a Certificate of Title under the Property Registration Decree, those whose rights have vested but [who] have not yet acquired a title[,] and arguably even those who do not possess title but who have been granted rights to use, exploit[,] and develop resources." [40]

Retired Justice Santiago M. Kapunan, in his separate opinion in the landmark case of *Cruz v. Secretary of Environment and Natural Resources*, [41] characterized the property rights under Section 56 as follows:

The "property rights" referred to in Section 56 belong to those acquired by individuals, whether indigenous or non-indigenous peoples. Said provision makes no distinction as to the ethnic origins of the ownership of these "property rights." The IPRA thus recognizes and respects "vested rights" regardless of whether they pertain to indigenous or non-indigenous peoples. Where the law does not distinguish, the courts should not distinguish. What IPRA only requires is that these "property rights" already exist and/or vested upon its effectivity. [42] (Citation omitted)

Accordingly, despite the Indigenous Peoples' Rights Act's enactment, respondents' property rights acquired through MPSA No. 001-90 would have been recognized and respected.

However, respondents' property rights existed only during the term of the Agreement. These rights ceased to exist when the Agreement expired. This is consistent with the nature of a mining production sharing agreement, "where the [g]overnment grants to the contractor the exclusive right to conduct mining operations within a contract area and shares in the gross output." [43]

To some extent, mining production sharing agreements are like timber licenses in that they "are the principal instruments by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted." [44] They "evidence a privilege granted by the State to qualified entities, and do not vest in the latter a permanent or irrevocable right to the particular concession area and the forest products therein." [45]

Further, *Benguet Consolidated Mining Company v. Pineda* [46] defines a vested right as follows:

"Vested right is 'some right or interest in the property which has become fixed and established, and is no longer open to doubt or controversy,'"

"A 'vested' right is defined to be an immediate fixed right of present or future enjoyment, and rights are 'vested' in contradistinction to being expectant or contingent".

In Corpus Juris Secundum we find:

"Rights are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. The right must be absolute, complete, and unconditional, independent of a contingency, and a mere expectancy of future benefit, or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested right. So, inchoate rights which have not been acted on are not vested." [47] (Citations omitted)

The Indigenous Peoples' Rights Act requires that concessions, licenses, leases, or production sharing agreements shall not be renewed without prior compliance with the certification precondition under Section 59 of the law. This requirement applies to contracts or agreements existing at the time of the law's enactment, including MPSA No. 001-90.[48]

ACCORDINGLY, I vote to GRANT the Petitions.

[1] CONST., art. II, sec. 22.

[2] Republic Act No. 8371 (1997), sec. 59.

[3] Ponencia, p. 3.

[4] Id. at 5.

[5] Id.

[6] Id.

[7] Id. at 6.

[8] Id. at 7-8.

[9] Id. at 8-9.

[10] Id. at 10-11.

[11] Id. at 11.

[12] Id. at 11-12.

[13] Id. at 15-17.

[14] 800 Phil. 721 (2016) [Per J. Brion, Second Division].

[15] Id. at 741-742.

[16] SPECIAL ADR RULES or A.M. No. 07-11-08-SC (2009).

[17] Ponencia, p. 16.

[18] Id. citing SPECIAL ADR RULES, Rule 22.1.

[19] Id.

[20] *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*, 800 Phil. 721, 743-744 (2016) [Per J. Brion, Second Division].

[21] *Denila v. Republic*, G.R. No. 206077, July 15, 2020,

<<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66407>> [Per J. Gesmundo, Third Division].

[22] 600 Phil. 789 (2009) [Per J. Chico-Nazario, Third Division].

[23] Id. at 799-800.

[24] Republic Act No. 8371 (1997), sec. 2 states:

Section 2. Declaration of State Policies. — The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:

a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;

b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well[-]being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain[.]

[25] NCIP Administrative Order No. 01-98 (1998), Rule VIII, Part II, sec. 6 states:

Section 6. Existing Contracts, Licenses, Concessions, Leases, and Permits Within Ancestral Domains. — Existing contracts, licenses, concessions, leases and permits for the exploitation of natural resources within the ancestral domain may continue to be in force and effect until they expire. Thereafter, such contracts, licenses, concessions, leases and permits shall not be renewed without the free and prior informed consent of the IP community members and upon renegotiation of all terms and conditions thereof. All such existing contracts, licenses, concessions, leases and permits may be terminated for cause upon violation of the terms and conditions thereof.

[26] Petition (G.R. No. 244063), p. 5.

[27] Asset Privatization Trust v. Court of Appeals, 360 Phil. 768, 792 (1998) [Per J. Kapunan, Third Division].

[28] Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation, 800 Phil. 721, 750 (2016) [Per J. Brion, Second Division].

[29] Mabuhay Holdings Corporation v. Sembcorp Logistics Limited, G.R. No. 212734, December 5, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64839>> [Per J. Tijam, First Division].

[30] 86 Phil. 50 (1950) [Per J. Torres, First Division].

[31] Id. at 56.

[32] G.R. No. 224469, January 5, 2021, <<https://sc.judiciary.gov.ph/19238/>> [Per J. Lazaro-Javier, En Banc].

[33] J. Leonen, Separate Concurring Opinion in Sama v. People, G.R. No. 224469, January 5, 2021, <<https://sc.judiciary.gov.ph/19238/>>, 6 [Per J. Lazaro-Javier, En Banc].

[34] 212 U.S. 449 (1909).

[35] 215 U.S. 16 (1909). See also Dominique Gallego, Indigenous Peoples: Their Right to Compensation Sui Generis for Ancestral Territories Taken, 43 ATENEO L. J. 43, 55 (1998).

[36] J. Leonen, Separate Concurring Opinion in Sama v. People, G.R. No. 224469, January 5, 2021, <<https://sc.judiciary.gov.ph/19238/>>, 28-30 [Per J. Lazaro-Javier, En Banc].

[37] Id. at 31.

[38] Id. citing Marvic M.V.F. Leonen, Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy, 1998 PHIL. PEACE & HUM. RTS. REV. 159, 160 (1998).

[39] Republic Act No. 8371 (1997), sec. 2.

[40] See Marvic M.V.F. Leonen, Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy, 1998 PHIL. PEACE & HUM. RTS. REV. 159, 180 (1998).

[41] 400 Phil. 904 (2000) [Per Curiam, En Banc].

[42] J. Kapunan, Separate Opinion in Cruz v. Secretary of Environment and Natural Resources, 400 Phil. 904, 1080 (2000) [Per Curiam, En Banc].

[43] Republic Act No. 7942 (1995), sec. 26 states in part:

Section 26

Modes of Mineral Agreement

For purposes of mining operations, a mineral agreement may take the following forms as herein defined:

a. Mineral production sharing agreement is an agreement where the Government grants to the contractor the exclusive right to conduct mining operations within a contract area and shares in the gross output. The contractor shall provide the financing, technology, management and personnel necessary for the implementation of this agreement.

[44] Ysmael, Jr. & Company, Inc. v. Deputy Executive Secretary, 268 Phil. 739, 750 (1990) [Per J. Cortes, Third Division].

[45] Id.

[46] 98 Phil. 711 (1956) [Per J. J. B. L. Reyes, Second Division].

[47] Id.

[48] NCIP Administrative Order No. 01-98 (1998), Rule VIII, Part II, sec. 6.

CONCURRING OPINION

CAGUIOA, J.:

The instant consolidated petitions ask this paramount question: What are the effects of the requirements of Free and Prior Informed Consent (FPIC) and Certification of the National Commission on Indigenous Peoples (NCIP Certification) previewed by Republic Act No. (RA) 7942 or the Philippine Mining Act of 1995 (Philippine Mining Act) and embodied in RA 8321 or the Indigenous People's Rights Act of 1997 (IPRA) on a bid for the renewal of a Mineral Production Sharing Agreement (MPSA) first executed prior to the effectivity of said laws. Necessarily, the query here for the Court's determination is whether or not an MPSA may be renewed on its original terms without regard to or compliance with the additional policy-imbued conditions that have been straightforwardly required by laws that were legislated during the MPSA's original term.

I concur with the ponencia's granting of the petitions on the basis of the following findings: (i) the arbitral award in favor of respondents must be vacated; (ii) the rule on arbitral autonomy is not absolute as one notable exception to this is when it is against public policy; (iii) the arbitral award here was a clear violation of public policy of protecting the rights of the indigenous peoples; and that (iv) respondents have no vested right in the MPSA

renewal since a mining agreement is a mere privilege.

In order to sufficiently elucidate the premises of the instant concurrence, a brief recollection of the factual history of the dispute is in order.

This controversy involves the 25-year term MPSA No. 001-90 (MPSA No. 001-90) dated March 3, 1990 wherein the Department of Environment and Natural Resources (DENR) authorized respondents Lepanto Consolidated Mining Company and Far Southeast Gold Resources, Inc. (collectively, respondents) to undertake mining operations on a tract of land in Mankayan, Benguet, which the ponencia itself acknowledges as one that covers part of the ancestral domains of the Mankayan Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs).[1]

The only determinative issue here pertains to the sought renewal of the MPSA, in light of new laws enacted after it was executed, particularly, the Philippine Mining Act which was enacted in 1995, and the IPRA, which was enacted in 1997. The Philippine Mining Act regulates the exploration, development and utilization of mineral resources, while the IPRA, for its part: (i) enjoins all departments and government agencies from granting, issuing, renewing concessions, licenses, leases or product-sharing agreements without prior NCIP Certification that the area subject of the same does not overlap with any ancestral domain, and (ii) requires the FPIC of the affected ICCs/IPs as a condition for the issuance of the NCIP Certification, among others.

The above dispute came to a head when, approaching the expiration of MPSA No. 001-90, respondents wrote the Mines and Geosciences Bureau-Cordillera Administrative Region (MGB-CAR) and expressed their intention to renew the same for another 25 years, pursuant to the renewal clause therein which provides that the same shall be renewable for another period of 25 years upon such terms and conditions as may be mutually agreed upon by the parties or as may be provided by law.[2]

The MGB-CAR replied that respondents' application for renewal would be endorsed to the NCIP for appropriate action, with particular attention to the requirements of FPIC and NCIP Certification. Respondents questioned the endorsement to the NCIP, argued that MPSA No. 001-90 was exempted from the FPIC and NCIP Certification requirements, and alleged that said conditions were an impairment of their vested rights. Respondents wrote to the DENR and later served it with a Demand for Arbitration. They also obtained a Writ of Preliminary Injunction from Branch 149, Regional Trial Court of Makati City (RTC) which enjoined the DENR, MGB and NCIP from disturbing their mining operations in the area pending resolution of the dispute.

When the dispute was brought before the Arbitral Tribunal pursuant to the arbitration clause in MPSA No. 001-90, the Arbitral Tribunal found that the issues brought to it were arbitrable and thereafter held that: (i) the FPIC and the NCIP Certification were "unfavorable future legislation requirement[s]"[3] and were prejudicial to respondents; (ii) the renewability of the MPSA was a vested right of respondents, and that the imposition of the FPIC and the NCIP Certification which were not contained in MPSA No. 001-90, was an outright confiscation of respondents' investments; and that (iii) MPSA No. 001-90 was deemed renewed since the correspondence between parties showed that respondents already complied with all the requirements, except for the FPIC and the NCIP Certification.

When petitioners filed a petition to vacate the Arbitral Award before the RTC, the latter ordered the vacation of the same for the following reasons: (i) the Arbitral Tribunal exceeded its authority since the resolution of the controversy was not confined to the terms of the contract but involved the application of the IPRA and the Philippine Mining Act; (ii) the IPRA was an exercise of the State's police power in protecting IP rights, which is superior to respondents' principle of non-impairment of contracts; and (iii) the parties cannot dispense with the requirement without contravening the underlying public policy embodied in the IPRA on the promotion and

protection of the rights of the ICCs/IPs.

On appeal before the Court of Appeals (CA), the CA set aside the RTC Resolution and reinstated the Arbitral Award, and ruled that: (i) the RTC committed grave abuse of discretion when it vacated the Arbitral Award and held that the dispute relates to the correct interpretation and enforceability of the MPSA's renewal provision; hence, it is a proper subject of arbitration; (ii) the Arbitral Tribunal has authority and jurisdiction to interpret and apply relevant laws in resolving the disputes presented before it; and (iii) the grounds for vacating an arbitral award are not concerned with the correctness of the award, but only with the validity of the arbitration agreement or the regularity of the arbitration proceedings.[4]

Ruling now on the consolidated petitions which challenge the CA's Decision, the ponencia grants them, reverses the CA, finds that the Arbitral Award in favor of respondents must be vacated[5] and finds that: (i) the RTC can review the substantive merits of an arbitral award based on what it perceives as errors of law or fact committed by the arbitral tribunal; and (ii) the Arbitral Tribunal exceeded its authority when it determined that the FPIC and the NCIP Certification were violative of the principle of non-impairment of contracts.

The ponencia finds merit in petitioners' invocation of the Arbitral Award's violation of public policy, and rules that the Arbitral Tribunal's determination and exemption of respondents from the IPRA requirement of the FPIC and the NCIP Certification Precondition did not relate to a mere interpretation of law, but instead contravenes compelling public policy on the protection of the rights of the ICCs/IPs to their ancestral domains.[6]

In view of the above context, I join the ponencia, with the groundwork for the same outlined in the following discussions.

Preliminarily, it is perhaps worth articulating as a matter of framework that the instant controversy is not one which may be justly and sufficiently resolved by simply referring to the four corners of the MPSA in question.

At once, the Court must recognize, as it does, that the legal issue here presented reaches beyond the limited confines of contractual matters between parties and the oft-referred to principle of non-impairment of contracts, and more importantly rises to the level of constitutional proportions set in a complex balancing act and cross-section between and among the following: (i) a private contractor's interest in recovering investments; (ii) the Government's role as the grantor of permits for mining explorations and operations as well as the regulator thereof; and finally (iii) the State's duty to protect and preserve the rights of the ICCs/IPs who are evidently not party to the agreement between the private contractor and the Government, but whose self-determination and sense of integrity are irreversibly intertwined with the land that is subject of the same.

It is my considered view that given the above interaction of varying interests and duties, the Legislature, in its wisdom, stepped in when it enacted two pivotal and far-reaching laws in 1995 and 1997, i.e., the Philippine Mining Act and the IPRA, respectively, and categorically imposed by law what may have been impossible to achieve if left to the aspirations of voluntary altruism and self-denial. With two legislations, the law expressly provided for a mechanism to ensure the protection of the ICCs/IPs who previously and far too often had no say in matters of great import to the resilience of their culture of way of life.

Given that two important and unrepealed laws expressly impose a requirement pursuant to the protection of indigenous rights, I submit that it is therefore only incumbent upon the Court to remind that arbitral awards, however respected in their autonomy, do not enjoy unqualified deference when exercised imperfectly or in excess, or when otherwise are clearly violative of expressed public policy. In the same vein, the Court here must also caution, lest a belief to the contrary pervades, that there can be no inalienable or vested right on matters that are purely conditioned privileges granted by the government, especially when measured against overarching

constitutional matters that are imbued with public interest.

The rationale for the above position is two-tiered, and will be discussed in seriatim.

In addition to the grounds under RA 876, the Special ADR Rules also govern the instant case, which adds another exceptional ground for vacatur of an arbitral award: clear affront to public policy

In addition to the grounds provided for under Section 24 of RA 876 or The Arbitration Law, also applicable to the instant controversy is A.M. No. 07-11-08-SC or the Special Rules of Court on Alternative Dispute Resolution (Special ADR Rules). Made effective on October 30, 2009 pursuant to the country's policy to move towards a more arbitration friendly regime, Rule 1.1 of the Special ADR Rules enumerates the cases which the Special ADR Rules cover, which includes the vacation of domestic arbitration awards, to wit:

RULE 1: GENERAL PROVISIONS

Rule 1.1. Subject matter and governing rules. — The Special Rules of Court on Alternative Dispute Resolution (the "Special ADR Rules") shall apply to and govern the following cases:

- Relief on the issue of Existence, Validity, or Enforceability of the Arbitration Agreement;
- Referral to Alternative Dispute Resolution ("ADR");
- Interim Measures of Protection;
- Appointment of Arbitrator;
- Challenge to Appointment of Arbitrator;
- Termination of Mandate of Arbitrator;
- Assistance in Taking Evidence;
- Confirmation, Correction or Vacation of Award in Domestic Arbitration;
- Recognition and Enforcement or Setting Aside of an Award in International Commercial Arbitration;
- Recognition and Enforcement of a Foreign Arbitral Award;
- Confidentiality/Protective Orders; and
- Deposit and Enforcement of Mediated Settlement Agreements. (Emphasis supplied)

As mentioned in the ponencia, the Special ADR Rules bring to the table another exception to the general rule and policy of judicial restraint with respect to intervening or reviewing an arbitral award: violation of the State's public policy.

First articulated in Article 34 of the 1985 UNCITRAL Model Law,[7] this exceptional ground for vacation or setting aside an award on account of conflict with the country's public policy was first carried over into the municipal context in Article 4.34, Rule 5, Chapter 4[8] of the Implementing Rules and Regulations (IRR) of the ADR Act of 2004, in relation to international commercial arbitration, and Rule 19.10 of the Special ADR Rules which applies also to domestic arbitration.

For the more specific interest of the instant case, Rule 19.10 of the Special ADR Rules provides:

Rule 19.10. Rule on judicial review on arbitration in the Philippines. — As a general rule, the court can only vacate or set aside the decision of an arbitral tribunal upon a clear showing that the award suffers from any of

the infirmities or grounds for vacating an arbitral award under Section 24 of Republic Act No. 876 or under Rule 34 of the Model Law in a domestic arbitration, or for setting aside an award in an international arbitration under Article 34 of the Model Law, or for such other grounds provided under these Special Rules.

If the Regional Trial Court is asked to set aside an arbitral award in a domestic or international arbitration on any ground other than those provided in the Special ADR Rules, the court shall entertain such ground for the setting aside or non-recognition of the arbitral award only if the same amounts to a violation of public policy.

The court shall not set aside or vacate the award of the arbitral tribunal merely on the ground that the arbitral tribunal committed errors of fact, or of law, or of fact and law, as the court cannot substitute its judgment for that of the arbitral tribunal. (Emphasis supplied)

Even in the en banc case of *Global Medical Center of Laguna, Inc. v. Ross Systems International, Inc.*,^[9] where the Court reaffirmed the policy of judicial non-interference in construction arbitral awards of the Construction Industry Arbitration Commission (CIAC), the Court there nevertheless clearly laid down that the preferred arbitral autonomy is circumscribed either by challenges to the very integrity of the arbitral tribunal or allegations that the arbitral award violates the Constitution or the law, in which cases the Court may revisit the entire arbitral award, viz.:

Far from being absolute, however, the general rule proscribing against judicial review of factual matters admits of exceptions, with the standing litmus test that which pertain to either a challenge on the integrity of the arbitral tribunal, or otherwise an allegation of a violation of the Constitution or positive law.

x x x x

In other words, the scenarios that will trigger a factual review of the CIAC's arbitral award must fall within either of the following sets of grounds:

(1)

Challenge on the integrity of the arbitral tribunal (i.e., (i) the award was procured by corruption, fraud or other undue means; (ii) there was evident partiality or corruption of the arbitrators or of any of them; (iii) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (iv) one or more of the arbitrators were disqualified to act as such under Section 9 of R.A. 876 or "The Arbitration Law", and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (v) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made) and;

(2)

Allegation of the arbitral tribunal's violation of the Constitution or positive law.

In addition to the prototypical examples that exceptionally trigger a factual review of the CIAC's arbitral awards, the Court here discerns the merit in adding the otherwise forgotten presumption that factual findings of the CIAC arbitral tribunal may also be revisited by the Court upon an allegation that the arbitral tribunal committed an act that is violative of the Constitution or other positive laws. To abate fears, the delimitation discerned in the Court's power to review factual findings of the CIAC shall in no way plausibly allow for a situation wherein the Court's hand is stayed from correcting a blatant Constitutional or legal violation because the autonomy of the arbitral process is paramount. Contrarily, the Court underscores that the contracted or very limited grounds for alleging grave abuse of discretion on the part of the CIAC arbitral tribunal, however narrow, are still principally tethered to the courts' primary duty of upholding the Constitution and positive laws. The addition of the second ground makes plain that no amount of contracting or expanding grounds for grave abuse will ever be permitted to lay

waste to the original purpose of the courts and their mandate to uphold the rule of law.[10] (Emphasis and underscoring supplied)

To my mind, therefore, the litmus test that is primarily called for in assessing whether the RTC had the authority to review and vacate the Arbitral Award in question was whether, as submitted by petitioners, the said Award violates public policy under Rule 19.10 of the Special ADR Rules.

The facts and the law of case show that the only defensible conclusion of the Court must be in the affirmative.

The Arbitral Award in question, in its blanket exception of the MPSA from the coverage of IPRA, is a clear violation of public policy which allows for its review and vacatur

The factual milieu of this case, with particular focus on how the Arbitral Award found that MPSA No. 001-90 should be renewed without need to comply with the FPIC and NCIP Certification as required by the IPRA, qualifies as a notable exception, i.e., violation of public policy under Rule 19.10 of the Special ADR Rules — which therefore places the Arbitral Award within the scope of judicial review.

Once more, it bears repeating that the overarching exceptional ground under Article 34 of the 1985 UNCITRAL Model Law, as reproduced in Chapter 4 of the IRR of ADR Act of 2004 and Rule 19.10 of the Special ADR Rules, as quoted above, qualifies that no degree of arbitral autonomy can force the Court to give an imprimatur to an award that is demonstrably contrary not only to law but to public policy.

When the Arbitral Award in question made the legal conclusion that the expiring MPSA No. 001-90 may be renewed without giving any regard to legal requirements that have already been in place as early as five years into said MPSA's 25-year term, said Arbitral Award evidently fell within the sphere of those awards that may be argued as contrary to law, since it finds that the respondents here may completely carve themselves out of the application of existing legal requirements under the IPRA. On this point, alone, I am hard-pressed to find the RTC in error for holding that the Arbitral Tribunal's award may be vacated under Rule 19.10 of the Special ADR Rules for being contrary to law and the public policies that imbued these laws.

Specifically, the Arbitral Award created an exception from the Philippine Mining Act and the IPRA, where no such exceptions were provided for by these laws. In fact, and starkly to the contrary, these laws positively require mineral agreements and mining activities to be informed and undertaken with due regard to the very rights that respondents here pray they may be freed from having to reckon with. This, the Court cannot countenance either in sound law or good conscience, without tearing through the very fabric of the constitutional policy, as reflected in positive legislation and landmark jurisprudential rulings, of upholding the rights of the ICCs/IPs.

For one, the Philippine Mining Act enjoins that mineral resource exploration must be undertaken in a manner that ensures the protection of communities that may be affected by such activities. This much is unmistakable in the black letter of the law. For one, its policy declared under Section 2 thereof categorically situates the Philippine Mining Act within the aim of promoting rational exploration of the country's mineral resources in a manner that effectively protects the rights of the collocated[11] affected communities, to wit:

SECTION 2. Declaration of Policy. — All mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protect the rights of affected communities. (Emphasis supplied)

More particularly, Section 4 thereof positively vests the State with the duty to uphold the constitutionally

safeguarded protection of ICCs/IPs in the process of mineral resource utilization, thus:

CHAPTER II

GOVERNMENT MANAGEMENT

SECTION 4. Ownership of Mineral Resources. — Mineral resources are owned by the State and the exploration, development, utilization, and processing thereof shall be under its full control and supervision. The State may directly undertake such activities or it may enter into mineral agreements with contractors.

The State shall recognize and protect the rights of the indigenous cultural communities to their ancestral lands as provided for by the Constitution. (Emphasis supplied)

Still more, even prior to the effectivity of the IPRA, the notion of requiring consent of the ICCs/IPs was already provided for in Section 16, in relation to Section 17, of the Philippine Mining Act, viz.:

SECTION 16. Opening Ancestral Lands for Mining Operations. — No ancestral land shall be opened for mining-operations without prior consent of the indigenous cultural community concerned.

SECTION 17. Royalty Payments for Indigenous Cultural Communities. — In the event of an agreement with an indigenous cultural community pursuant to the preceding section, the royalty payment, upon utilization of the minerals shall be agreed upon by the parties. The said royalty shall form part of a trust fund for the socioeconomic well-being of the indigenous cultural community. (Emphasis supplied)

Two years after the Philippine Mining Act took effect, the general requirement of consent on the part of ICCs/IPs whose communities may be affected by mining operations took on a more specific and concrete version, through the FPIC requirement.

Finding its roots mainly in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which the Philippines adopted in September 13, 2007, the FPIC is required in all decision-making processes that affect the ICCs/IPs or their territories, such as those that may involve relocation (Articles 10),^[12] the practice of their cultures and traditions (Article 11),^[13] and the implementation of legislative or administrative measures (Article 19).^[14]

More specifically, Articles 28, 29 and 32 require the governments to obtain the FPIC of the ICCs/IPs on matters that affect the utilization and preservation of their territories, as well as empowers the latter to seek redress in case of non-compliance of the FPIC condition, thus:

Article 28

1.

Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2.

Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1.

Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2.

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3.

States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

x x x x

Article 32

1.

Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2.

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3.

States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact. (Emphasis and underscoring supplied)

Furthermore, the above UNDRIP pronouncements took on a more concrete and municipal version when the IPRA was passed into law on October 29, 1997, within the larger and constitutional policy structure of recognizing and promoting all the rights of the ICCs/IPs, as broadly provided for under Section 2 thereof, viz.:

SECTION 2. Declaration of State Policies. — The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:

a)

The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and

development;

b)

The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural [well-being] and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;

c)

The State shall recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies;

d)

The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinction or discrimination;

e)

The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; and

f)

The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.

Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, interests and institutions, and to adopt and implement measures to protect their rights to their ancestral domains. (Emphasis supplied)

Expressly, Section 3(g) of the IPRA adopted the UNDRIP definition of FPIC and defined it thus:

SECTION 3. Definition of Terms. — x x x

g)

Free and Prior Informed Consent — as used in this Act shall mean the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community;

Still more pertinently in the evaluation of the renewability of MPSA No. 001-90, Section 59 in relation to Section

57 of the IPRA enjoins all concerned government agencies and instrumentalities from granting or entering into product-sharing agreements, among others, without the compliance with the FPIC requirement, to wit:

SECTION 57. Natural Resources within Ancestral Domains. — The ICCs/IPs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: Provided, That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally, That the NCIP may exercise visitorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract.

x x x x

SECTION 59. Certification Precondition. — All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process. (Emphasis and underscoring supplied)

As demonstrated in the phraseology of Section 59 of the IPRA as quoted above, the imposition of the FPIC as a requirement for product-sharing agreements includes the prayer for renewal of existing ones that are approaching the end of their terms. Therefore, respondents' submission that MPSA No. 001-90 may be automatically renewed without due regard for any new requirements under the law that did not exist when the MPSA was first granted suffers from much hubris and little support. Contradistinctively, upon the expiration of MPSA No. 001-90 in 2015, the requirements of the FPIC and the NCIP certification for all mineral agreements are already in place, to which the renewability of the expired MPSA must henceforth be subjected.

In addition, it is similarly precariously sweeping for respondents to operate under the presumption that the FPIC is but a singular technical requirement that they can opt out of in the name of non-impairment of contracts. As the Food and Agriculture Organization (FAO) of the United Nations succinctly puts it:

FPIC has emerged as an international human rights standard that derives from the collective rights or indigenous peoples to self-determination and to their lands, territories and other properties. For the purposes of this guide it should be considered as a collective right of indigenous peoples to make decisions through their own freely chosen representatives and customary or other institutions and to give or withhold their consent prior to the approval by government, industry or other outside party of any project that may affect the lands, territories and resources that they customarily own, occupy or otherwise use.

It is thus not a stand-alone right but an expression of a wider set of human rights protections that secure indigenous peoples' rights to control their lives, livelihoods, lands and other rights and freedoms. FPIC has been described as a standard that supplements and is a means of effectuating these substantive rights. It thus needs to be respected alongside other rights, including rights relating to self-governance, participation, representation, culture, identity, property and, crucially, lands and territories. Not only should FPIC be respected, but in addition, no measure should undermine indigenous peoples' enjoyment of human rights, even in instances where their FPIC has been obtained.[15] (Emphasis supplied)

Even jurisprudentially, the FPIC has also long been held as an integral aspect of the precondition for lawful exploration and mining activities in a land that forms part of an ancestral domain. In the landmark case of *Cruz v. Secretary of Environment and Natural Resources*,^[16] then Associate Justice Reynato S. Puno elucidated on the weight of Section 59 of the IPRA, viz.:

Concessions, licenses, lease or production-sharing agreements for the exploitation of natural resources shall not be issued, renewed or granted by all departments and government agencies without prior certification from the NCIP that the area subject of the agreement does not overlap with any ancestral domain. The NCIP certification shall be issued only after a field-based investigation shall have been conducted and the free and prior informed written consent of the ICCs/IPs obtained. Non-compliance with the consultation requirement gives the ICCs/IPs the right to stop or suspend any project granted by any department or government agency.^[17]

More recently, in the 2019 case of *Maddela v. Oxiana Philippines, Inc.*,^[18] which similarly involved a mining exploration in a tract of land that is within an ancestral domain, the Court explained the import of an FPIC, thus:

Under AO No. 3, FPIC refers to the consensus of all members of the ICCs/IPs, determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the program/project/activity, in a language and process understandable to the community. The FPIC is given by the concerned ICCs/IPs upon the signing of the Memorandum of Agreement containing the conditions/requirements, benefits, as well as penalties of agreeing parties as basis for the consent.

Under the same rules, a Certification Precondition refers to the certification issued by the NCIP that the site covered and affected by any application for concession, license or lease, or production-sharing agreement does not overlap with any ancestral domain area of any indigenous cultural community or indigenous peoples or, if the site is found to be within an ancestral domain area, that the required FPIC was properly obtained from the ICC/IP community concerned in accordance with the provisions of these guidelines. Section 59 of the IPRA mandates that all departments and other government agencies are strictly enjoined from issuing, renewing, or granting the application without the certification precondition, which is issued only after a field-based investigation is conducted by the Ancestral Domains office of the affected area.

The foregoing requirements tell us that a properly conducted FPIC is an indispensable and integral part of the certification precondition. Indeed, AO No. 3 delineates the mandatory activities in the conduct of the FPIC process. We note the CA's finding that "[we] carefully perused the Record of the present case and discovered that, indeed, [Oxiana] had complied with the foregoing procedure before the FPIC was granted by the Bugkalots in its favor."^[19] (Emphasis supplied)

I must also humbly take exception to the averment of the respondents that the renewability of MPSA No. 001-90 is a vested right, and that the additional requirements under the law may not be considered with respect to its renewal without confiscating their investments. For purposes of freeing this submission from dangerous inaccuracy, it must be recalled that an MPSA is defined under Section 26 of the Philippine Mining Act thus:

SECTION 26. Modes of Mineral Agreement. — For purposes of mining operations, a mineral agreement may take the following forms as herein defined:

(a.)

Mineral production sharing agreement is an agreement where the Government grants to the contractor the exclusive right to conduct mining operations within a contract area and shares in the gross output. The contractor shall provide the financing, technology, management and personnel necessary for the implementation of this agreement. (Emphasis supplied)

The phraseology of the definition of an MPSA clearly provides that it is not a vested right but a mere grant extended by the Government, that is limited in term and the conditions for the renewal of which, as MPSA No. 001-90 itself recognizes, are subject to mutual agreement or provisions of law. The nature of the MPSA as argued by the respondents to be "vested" is therefore belied by the fact that (i) the MPSA is a mere grant of a privilege which is term-bound; and (ii) the very MPSA in question itself admits that its renewal is not privileged but subject to mutual agreement or provisions of law. Respondents, under MPSA No. 001-90, therefore merely enjoy a privilege granted to it by the Government, and awarded in accordance with legal requirements and public policies. The unambiguous pronouncement of the need to review existing grants relating to mining rights wholly negates respondents' submission that the renewal of MPSA No. 001-90 has vested in their favor.

In addition, while it is true that Section 32 of the Philippine Mining Act provides that an MPSA may be renewable for another term not exceeding 25 years under the same terms and conditions thereof, without prejudice to changes mutually agreed upon by the parties, the same provision is deemed modified by the IPRA's later addition of conditions that must be complied with before a mineral agreement may be renewed.

Still more, neither does respondents' citation of Section 56 of the IPRA support their averment of an effective blanket guarantee of renewal of MPSA No. 001-90. Section 56 of the IPRA assures that upon IPRA's effectivity, existing property rights within the ancestral domains are to be recognized and respected, viz.:

SECTION 56. Existing Property Rights Regimes. — Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.

Section 56, however, only guarantees that existing property rights are to be recognized and respected. Section 56 does not, however, extend so far as to guarantee the renewal of property rights that have ceased to exist upon the expiration of a contract that grants the same. Section 56 of the IPRA, on respecting existing property rights on the ancestral domains, is not irreconcilable with the requirement of FPIC and NCIP Certification insofar as the property interests of respondents are concerned. Quite the contrary, Section 56 only provides that the enactment of the IPRA does not amount to an effective ground for displacement or abortion of existing property rights (e.g., MPSA rights) on the ancestral domains, but does not extend to any assurance that existing MPSAs, upon their expiration, may be renewed and carved out of the categorical requirements introduced by the new laws.

In other words, Section 56 of the IPRA, as applied to MPSA No. 001-90, only guarantees that throughout the duration of its original 25-year term, or from 1990-2015, respondents may not be denied the enjoyment of their property rights as granted by the same. This, as far as the records show, appears to be the case since despite the passing of the Philippine Mining Act and the IPRA in 1995 and 1997, respectively, the MPSA of the respondents continued to be respected on the subject property until its expiration in March 2015. So that when respondents sought the renewal of their MPSA in 2015, the Philippine Mining Act and the IPRA have already been in place for over 20 years and 18 years respectively, throughout said period respondents' MPSA was recognized and respected.

However, when MPSA No. 001-90 expired in March 2015, the renewal of the same is an entirely different consideration that has taken it outside of the contemplation of Section 56. Upon the expiration of the term of effectivity of MPSA No. 001-90, there was effectively no longer any existing property right to be respected within the provision of Section 56. Until and unless it is renewed in compliance of all the pertinent conditions that must bear upon its renewal pursuant to law and public policy. Stated differently, a question of a renewal of the same MPSA with the same terms for another 25 years can no longer be had with a complete disregard of new laws and concomitant new requirements and conditions that are clearly already in place.

This is clearly what is not only recognized but unequivocally provided for in the very renewal clause of MPSA

No. 001-90 itself, under Section 3.1 thereof, which is cited by the ponencia, to wit:

- 1) Section 3.1 of the MPSA 001-90 stating that the term of twenty-five (25) years is "renewable for another period of 25 years upon such terms and conditions as may be mutually agreed upon by the parties or as may be provided by law[.]"[20] (Emphasis and underscoring supplied)

Necessarily, contrary to respondents' submission, and as clearly provided in the text of the renewal clause of MPSA No. 001-90, the renewability of the said MPSA for another 25 years is not exempt from legal conditions that may be further provided by law, but instead shall be subject thereto.

Within the much larger context of the interplay between financial interests of investors in mineral agreements vis-à-vis the rights of the ICC/IPs in their ancestral domains, the "conditions x x x as may be provided by law" that the renewal clause of MPSA No. 001-90 speaks of undoubtedly includes the FPIC and the NCIP Certification, since they are the pertinent new requirements that have been added by legislation with respect to the grant and renewal of mineral agreements.

Consequently, as correctly held by the RTC, the question of whether the terms of the MPSA may be wholesale renewed without having to comply with the FPIC and the NCIP Certification is not only one which can be resolved with reference to the four corners of MPSA No. 001-90, but instead clearly goes into a legal issue on the reach of subsequently introduced laws that are imbued with public policy. Given this, the RTC did not overstep the bounds of its authority when it went into ruling on this legal question of the effects of the Philippine Mining Act and the IPRA on the plausibility of renewal of MPSA No. 001-90 for respondents, since such a pivotal question is within the competence of the courts.

More crucially, the RTC not only acted within its jurisdiction when it ordered that the Arbitral Award in question be vacated, but that it similarly acted well in accord with prevailing laws and jurisprudence when it did so. Certainly, the courts cannot be forced to affirm an arbitral award that is neither consistent with laws and public policy nor absolute and unqualified in its autonomy.

As the Court held in the case of Mabuhay Holdings Corporation v. Sembcorp Logistics Limited,[21] public policy is the "safety valve" to be resorted to when a arbitral award may not be respected without abandoning fundamental precepts of the legal system, viz.:

Most arbitral jurisdictions adopt a narrow and restrictive approach in defining public policy pursuant to the pro-enforcement policy of the New York Convention. The public policy exception, thus, is "a safety valve to be used in those exceptional circumstances when it would be impossible for a legal system to recognize an award and enforce it without abandoning the very fundamentals on which it is based." An example of a narrow approach adopted by several jurisdictions is that the public policy defense may only be invoked "where enforcement [of the award] would violate the forum state's most basic notions of morality and justice." Thus, in Hong Kong, an award obtained by fraud was denied enforcement by the court on the ground that fraud is contrary to Hong Kong's "fundamental notions of morality and justice." In Singapore, also a Model Law country, the public policy ground is entertained by courts only in instances where upholding the award is "clearly injurious to the public good or x x x wholly offensive to the ordinary reasonable and fully informed member of the public." [22]

It is also important to add that while the notion of "public policy" may not have been spelled out in concrete certainties, the guiding definitions of this Court in the earlier cases of Ferrazzini v. Gsell[23] (Gsell) and Gabriel v. Monte De Piedad[24] (Monte De Piedad) are apropos if not controlling.

In the 1916 case of Gsell, the Court ruled that the gravity of the public policy nature of the matter is determined by its source, which includes the Constitution, thus:

By "public policy," as defined by the courts in the United States and England, is intended that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good, which may be termed the "policy of the law," or "public policy in relation to the administration of the law." (Words & Phrases Judicially Defined vol. 6, p. 5813, and cases cited.) Public policy is the principle under which freedom of contract or private dealing is restricted by law for the good of the public. (Id., Id.) In determining whether a contract is contrary to public policy the nature of the subject matter determines the source from which such question is to be solved. (Hartford Fire Ins. Co. vs. Chicago, M. & St. P. Ry. Co., 62 Fed. 904, 906.)

The foregoing is sufficient to show that there is no difference in principle between the public policy (orden publico) in the two jurisdictions (the United States and the Philippine Islands) as determined by the Constitution, laws, and judicial decisions.[25] (Emphasis supplied)

Still, in the 1941 case of *Monte De Piedad*, the Court held that although there was yet no clear-cut definition of public policy, a contract that is prohibited by express legislation, among others, may be considered contrary thereto, to wit:

The term "public policy" is vague and uncertain in meaning, floating and changeable in connotation. It may be said, however, that, in general, a contract which is neither prohibited by law nor condemned by judicial decision, nor contrary to public morals, contravenes no public policy. In the absence of express legislation or constitutional prohibition, a court, in order to declare a contract void as against public policy, must find that the contract as to the consideration or thing to be done, has a tendency to injure the public, is against the public good, or contravenes some established interests of society, or is inconsistent with sound policy and good morals, or tends clearly to undermine the security of individual rights, whether of personal liability or of private property. Examining the contract at bar, we are of the opinion that it does not in any way militate against the public good. Neither does it contravene the policy of the law nor the established interests of society.[26] (Emphasis supplied)

The foregoing early definitions of what public policy entails clearly paint the picture of a policy that finds its roots in the Constitution, as well as its affirmation or support in subsequent express legislations.

To my mind, there are perhaps few national policies that can readily fit this operative profile than that of the rights of the ICCs/IPs over their ancestral domains, as recognized in black letter under Section 22, Article II,[27] Section 5, Article XII,[28] and Section 6, Article XIII[29] of the 1987 Constitution, as well as affirmed by the Philippine Mining Act and the IPRA.

Finally, and if I may caution to add, it is perhaps not entirely labored to assume that the requirement of an FPIC on the part of the ICCs/IPs was generally introduced in the Philippine Mining Act, and thereafter pointedly required in the IPRA precisely because without such an expression of the same as a legal obligation, private contractors and other mining companies may not be reasonably expected to willingly act against their financial interests in order to ensure that their mining activities do not impair, neglect or defeat acknowledged indigenous rights.

Seeing, as the ponencia itself acknowledges[30] the financial toll the FPIC will entail as far as the business interests of the respondents is concerned, I proffer that that is conceivably why the coercive weight of an expressed legal imperative was called for, lest compliance with unpopular laws and financially costly public policies are easily done away with in the name of preserving optimum business opportunities. I am, therefore, unable to imagine any alternative but for the Court here to make the difficult but inevitable ruling that is underpinned by definite law and overriding public policy.

For indeed the interlace of interests involving the mining industry is as complex as it is fragile, and while the

Court must acknowledge the value of a more liberalized approach to the exploration of mineral resources in the country, the Court must also notice that said optimization is not an unalloyed benefit. And while the Court understands the financial reversals that respondents fear, the contours of which we can only dimly speculate on, what remains certain and clear as day is the Court's foremost duty to reject unconstitutional mechanisms and escape clauses that facilitate development aggressions on the indigenous communities which the Constitution itself as well as unaltered legislations are already positively guarding against.

Bearing the above in mind, I CONCUR with the ponencia and vote to GRANT the instant petitions.

[1] Ponencia, p. 3.

[2] Id. at 5.

[3] Id. at 8.

[4] Decision in CA-G.R. SP No. 146806 dated April 30, 2018, penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Jose C. Reyes, Jr. (now a retired Member of the Court) and Franchito N. Diamante concurring. The CA Resolution dated January 14, 2019, which denied petitioners' Motion for Reconsideration, was penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Franchito N. Diamante and Rodil V. Zalameda (now a Member of the Court) concurring.

[5] Ponencia, pp. 17-18.

[6] Id. at 22.

[7] Article 34. Application for setting aside as exclusive recourse against arbitral award

1.

Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

2.

An arbitral award may be set aside by the court specified in article 6 only if:

(a)

the party making the application furnishes proof that:

(i)

a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

(ii)

the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii)

the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if

the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv)

the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b)

the court finds that:

(i)

the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii)

the award is in conflict with the public policy of this State. (Emphasis supplied)

[8] Article 4.34. Application for Setting Aside an Exclusive Recourse against Arbitral Award.

(a)

Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with second and third paragraphs of this Article.

(b)

An arbitral award may be set aside by the Regional Trial Court only if:

(i)

the party making the application furnishes proof that:

(aa)

a party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the Philippines; or

(bb)

the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(cc)

the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(dd)

the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of ADR Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with ADR Act; or

(ii)

the Court finds that:

(aa)

the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Philippines; or

(bb)

the award is in conflict with the public policy of the Philippines. (Emphasis supplied)

[9] G.R. No. 230112, May 11, 2021, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67423>>.

[10] Id.

[11] Herein refers to the communities that are located either within or around the mineral sites in a manner by which any mining activity will inevitably affect them.

[12] Article 10.

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

[13] Article 11.

- Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

- States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

[14] Article 19.

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

[15] Food and Agriculture Organization, United Nation, Respecting free, prior and informed consent: Practical guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition, Rome, 2014, pp. 4-5, accessed at <<https://www.fao.org/3/i3496e/i3496e.pdf>>.

[16] 400 Phil. 904 (2000).

[17] Id. at 1012.

[18] G.R. No. 198243, February 27, 2019. (Unsigned Resolution)

[19] Id.

[20] Ponencia, p. 5.

[21] 844 Phil. 813 (2018).

[22] Id. at 843-844.

[23] 34 Phil. 697 (1916).

[24] 71 Phil. 497 (1941).

[25] Supra note 23, at 711-712.

[26] Supra note 24, at 500-501.

[27] CONSTITUTION, Art. II, Sec. 22: The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

[28] CONSTITUTION, Art. XII, Sec. 5: The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

[29] CONSTITUTION, Art. XIII, Sec. 6: The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.

The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

[30] Supra note 1, at 26-27.

CONCURRENCE

LAZARO-JAVIER, J.:

The issue arose when respondents sought to renew their Mineral Production Sharing Agreement (MPSA) No. 001-90 dated March 3, 1990 with petitioners Republic et al., for another 25 years. After receiving their renewal application, petitioners referred this matter to the National Commission on Indigenous Peoples (NCIP) for the requisite consultation, consent, and certification processes pursuant to Section 59 of the Republic Act (RA) No. 8371, Indigenous Peoples Rights Act (IPRA).[1] Respondents refused to submit themselves to these processes arguing that the requisites for the renewal did not include the processes under Section 59 and for petitioners to insist on these processes would result in the impairment of their contractual and other vested rights under the MPSA. The Arbitral Tribunal also opined that the consent process could lead to the Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) non-consent and therefore, result in the non-renewal of the MPSA and the wastage of all the investments that were poured in with a view to renewals of the MPSAs ad infinitum on the basis of the old and the then applicable regulatory regimes. Respondents immediately submitted their objection to arbitration. The Arbitral Tribunal rendered an award which exempted respondents and the renewal of their MPSA from Section 59.

Petitioners petitioned the Regional Trial Court (RTC) for Makati City to vacate the arbitral award on the ground that it violated public policy as established in Section 59. They argued that the MPSA, even as a contract can be impaired by the exercise of the State's police power, which here is evidenced by the IPRA and its Section 59.

The RTC agreed with petitioners and vacated the arbitral award. The RTC saw Section 59 as a clear expression of the State's public policy and the renewal of the MPSA must abide by this provision. This is especially so since it is not disputed that the MPSA covered parts of the ancestral domains of the Mankayan Indigenous Cultural Communities/Indigenous Peoples (Mankayan ICCs/IPs).

The Court of Appeals though reversed. It agreed with the Arbitral Tribunal that respondents acquired a vested right to renew the MPSA with the government after they have complied with all the requirements independent of the consent requirement under Section 59. Petitioners cannot demand compliance with Section 59 as this would be contrary to respondents' contractual rights under the MPSA, and could lead to the wastage of respondents' investments should the ICCs/IPs withhold consent.

The Court has resolved to vacate the Final Award dated November 27, 2015, issued by the Arbitral Tribunal in favor of respondents Lepanto Consolidated Mining Company and Far Southeast Gold Resources, Inc. without prejudice to their full compliance with the requirement of Free and Prior Informed and Written Consent (FPIC) of the Mankayan ICCs/IPs as a condition for the renewal of the MPSA.

I concur.

First. The MPSA has been adjudged to be a contract "whereby the State, through the Department of Environment and National Resources, grants to a private party the exclusive right to conduct mining operations within a specified area, in exchange for a share in the proceeds of the operations." [2] But this characterization does not immunize the MPSA from modification as a consequence of the State's exercise of police power over contracts imbued with public interest and/or public welfare.

As held in *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*: [3]

There is an impairment when, either by statute or any administrative rule issued in the exercise of the agency's quasi-legislative power, the terms of the contracts are changed either in the time or mode of the performance of the obligation. There is likewise impairment when new conditions are imposed or existing conditions are dispensed with.

Not all contracts, however, are protected under the non-impairment clause. Contracts whose subject matters are so related to the public welfare are subject to the police power of the State and, therefore, some of its terms may be changed or the whole contract even set aside without offending the Constitution; otherwise, "important and valuable reforms may be precluded by the simple device of entering into contracts for the purpose of doing that which otherwise may be prohibited."

x x x x

Similar to the right to due process, the right to non-impairment yields to the police power of the State.

In *Anucension v. National Labor Union, Hacienda Luisita* and the exclusive bargaining agent of its agricultural workers, National Labor Union, entered into a collective bargaining agreement. The agreement had a union security clause that required membership in the union as a condition for employment. Republic Act No. 3350 was then subsequently enacted in 1961, exempting workers who were members of religious sects which prohibit affiliation of their members with any labor organization from the operation of union security clauses.

On the claim that Republic Act No. 3350 violated the obligation of contract, specifically, of the union security clause found in the collective bargaining agreement, this Court conceded that "there was indeed an impairment of [the] union security clause." Nevertheless, this Court noted that the "prohibition to impair the obligation of contracts is not absolute and unqualified" and that "the policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worthwhile — a

government which retains adequate authority to secure the peace and good order of society." A statute passed to protect labor is a "legitimate exercise of police power, although it incidentally destroys existing contract rights." "[C]ontracts regulating relations between capital and labor x x x are not merely contractual, and said labor contracts x x x [are] impressed with public interest, [and] must yield to the common good."

This Court found the purpose behind Republic Act No. 3350 legitimate. Republic Act No. 3350 protected labor by "preventing discrimination against those members of religious sects which prohibit their members from joining labor unions, confirming thereby their natural statutory[,] and constitutional right to work, the fruits of which work are usually the only means whereby they can maintain their own life and the life of their dependents." This Court, therefore, upheld the constitutionality of Republic Act No. 3350.

Laws regulating public utilities are likewise police power legislations. In *Pangasinan Transportation Co., Inc. v. The Public Service Commission*, *Pangasinan Transportation Co., Inc. (Pangasinan Transportation)* filed an application with the Public Service Commission to operate 10 additional buses for transporting passengers in Pangasinan and Tarlac. The Public Service Commission granted the application on the condition that the authority shall only be for 25 years.

When the Public Service Commission denied Pangasinan Transportation's motion for reconsideration with respect to the imposition of the 25-year validity period, the bus company filed a petition for certiorari before this Court. It claimed that it acquired its certificates of public convenience to operate public utility buses when the Public Service Act did not provide for a definite period of validity of a certificate of public convenience. Thus, Pangasinan Transportation claimed that it "must be deemed to have the right [to hold its certificates of public convenience] in perpetuity."

Rejecting Pangasinan Transportation's argument, this Court declared that certificates of public convenience are granted subject to amendment, alteration, or repeal by Congress. Statutes enacted for the regulation of public utilities, such as the Public Service Act, are police power legislations "applicable not only to those public utilities coming into existence after [their] passage, but likewise to those already established and in operation." [4] (Emphases supplied)

Mining corporations and mining activities are imbued with public interests. Necessarily, mining contracts must also be imbued with public interests. The Court has said –

It cannot be overemphasized that the exploration, development[,] and utilization of the country's natural resources are matters vital to the public interest and the general welfare; hence, their regulation must be of utmost concern to the government, since these natural resources are not only critical to the nation's security, but they also ensure the country's survival as a viable and sovereign republic.[5]

Given the police power of the State over mining activities and appurtenant mining contracts, the Court cannot set aside Section 59 of the IPRA as an unimportant side note in the renewal of MPSAs including respondents' own. Section 59 is deemed written into respondents' MPSA and similar contracts. This is especially so since Section 59 expressly covers the renewal of concessions and production sharing agreements. It is an expression of public interest that the State as legal owner of the mineral sources has required of mining companies like respondents to comply with in recognition of, and respect for, the collective ownership rights of ICCs/IPs over their ancestral domains.

Second. The arbitral award is not immune from the vacatur remedy before the RTC. This remedy is expressly recognized in Section 41 of RA 9285, Alternative Dispute Resolution Act of 2004,[6] and Rule 19.1 of the Special Rules of Court on Alternative Dispute Resolution.[7] Among the grounds for this remedy is "violation of public policy."

This ground for vacating an arbitral award has been explained thus:

Alagasco seeks vacatur of the Arbitration Award on the grounds that Moseley's reinstatement violates public policy. Courts play a very limited role in reviewing arbitral awards, due to the congressionally- mandated preference for private settlement of grievances under the Labor Management Relations Act. *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509, 121 S. Ct. 1724, 149 L. Ed. 2d 740 (2001); *United Paperworkers Int'l Union v. Misco*, 484 U.S. 29, 36-37, 108 S. Ct. 364, 98 L. Ed. 2d 286 (1987). Although courts generally cannot consider arbitration awards on their merits or otherwise second guess the arbitrator, the question whether an arbitrator's interpretation of a collective bargaining agreement is contrary to public policy is one for the courts to decide. *Misco*, 484 U.S. at 36-40, 43; *W.R. Grace & Co. v. Local Union 759, Int'l Union of United Rubber Workers*, 461 U.S. 757, 766, 103 S. Ct. 2177, 76 L. Ed. 2d 298 (1983). However, such authority is not "a broad judicial power to set aside arbitration awards as against public policy." *Misco*, 484 U.S. at 43. To prevail on the claim of vacatur on public policy grounds, Alagasco has the burden to prove three general elements. First, the arbitrator's interpretation of the collective bargaining agreement (i.e., Moseley's reinstatement) violates "some explicit public policy that is well defined and dominant." *Misco*, 484 U.S. at 43 (quotation marks omitted). Second, that policy is ascertainable "by reference to the laws and legal precedents and not from general considerations of supposed public interests." *Id.* at 43 (quotation marks omitted). Third, the violation of the public policy must be "clearly shown" and not be based on "speculation or assumption." *Id.* at 44.[8] (Emphases supplied)

In rejecting Section 59, the arbitral award here violated public policy. This is because –

One, the Arbitral Tribunal's interpretation of the MPSA as not being subject to Section 59 of the IPRA violates a clear and explicit public policy that is well-defined and dominant.

Two, this policy is clear, explicit, well-defined, and dominant since it is directly ascertainable by reference to a statute, implementing administrative rules and court decisions, and not merely from ambiguous and murky general considerations of supposed public interests.

Three, by exempting the renewal of MPSAs, especially respondents' MPSA, public policy has been shown to have been clearly violated since as a consequence, Section 59 need no longer be complied with. Such violation is not just based on speculation or assumption.

The RTC was therefore correct in setting aside and vacating the arbitral award and substituting its own by requiring respondents to comply with Section 59.

Third. Respondents' impairment argument has no leg to stand on. At this point, it is speculative. The mere requirement to undergo the processes under Section 59 of the IPRA does not automatically mean – whether ipso facto or ipso jure – that respondents' MPSA will actually be rejected. The fact that the contract areas lie within the Mankayans' ancestral domains only means that the Mankayans have to be consulted and their consent to the MPSA's renewal ought to be obtained.

What is respondents so afraid of? If they have done the best for the interests of the Mankayans, they would be the first to consent, on consultation, to the renewal. If they have been short-changed, as the ICCs/IPs historically have been, for which reason the IPRA was enacted, then humanity, and not only profits, demands that they consent. To put a crass analogy, officers of respondent-corporations would at least require to be consulted and to consent when their respective abodes are desecrated and ransacked by others for their own benefits. So with the Mankayan ICCs/IPs. If anyone destroys their properties, the least thing this Court can do is to require the interlopers to consult them and obtain their free and prior informed and written consent.

At this stage of the renewal process, the Court cannot place the cart before the horse or the horse ahead of the rider. We have yet to hear from the Mankayan ICCs/IPs. We cannot say, without evidence, that they will reject the renewal of respondents' MPSA, and for this lack of evidence, our remedy is to do away with Section 59 for all

MPSAs entered into and coming into effect after November 22, 1997 when the IPRA went into force. Respondents have no cause of action to claim non-impairment of contracts. We do not even know that the consultation and consent process would entail any further expense or unconscionable number of days. Clearly, we cannot react reflexively simply on respondents' say-so.

[1] SECTION 59. Certification Precondition. — All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process. (REPUBLIC ACT No. 8371, AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES, CREATING A NATIONAL COMMISSION ON INDIGENOUS PEOPLES, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES, Approved on October 29, 1997).

[2] *Diamond Drilling Corporation of the Philippines v. Crescent Mining and Development Corporation*, G.R. No. 201785, April 10, 2019.

[3] 816 Phil. 205-280 (2018).

[4] *Id.* at 272-275.

[5] *Apex Mining Co., Inc. v. Southeast Mindanao Gold Mining Corporation*, G.R. Nos. 152613 & 152628, November 20, 2009.

[6] SEC. 41. Vacation Award. - A party to a domestic arbitration may question the arbitral award with the appropriate regional trial court in accordance with the rules of procedure to be promulgated by the Supreme Court only on those grounds enumerated in Section 25 of Republic Act No. 876. Any other ground raised against a domestic arbitral award shall be disregarded by the regional trial court. (REPUBLIC ACT No. 9285, AN ACT TO INSTITUTIONALIZE THE USE OF AN ALTERNATIVE DISPUTE RESOLUTION SYSTEM IN THE PHILIPPINES AND TO ESTABLISH THE OFFICE FOR ALTERNATIVE DISPUTE RESOLUTION, AND FOR OTHER PURPOSES, Approved on April 2, 2004).

[7] A.M. No. 07-11-08-SC, SPECIAL RULES OF COURT ON ALTERNATIVE DISPUTE RESOLUTION September 1, 2009.

[8] *Ala. Gas Corp. v. Gas Fitters Local Union No. 548 of the United Ass'n*, 2014 U.S. Dist. LEXIS 99765, *7-14, 2014 WL 3655713 (M.D. Ala. July 23, 2014).

SEPARATE CONCURRING OPINION

DIMAAMPAO, J.:

I respectfully concur with the ponencia insofar as it denies the Petition of the Lone Congressional District of Benguet Province in G.R. No. 244063 and vacates the Final Arbitral Award in G.R. No. 244216.

All the same, keeping in mind that these Petitions involve a domestic^[1] arbitral award, it is judicious to clarify that "manifest disregard of the law" as a ground for vacatur is a concept separate and distinct from the public policy exception under Article 34 of the Model Law,^[2] in relation to Rule 19.10 of the Special ADR Rules.^[3] At this juncture, I adopt the highly instructive observations of retired Senior Associate Justice Estela M. Perlas-Bernabe (SAJ Perlas-Bernabe) regarding the dissimilarities between the two.

In truth, "manifest disregard of the law" cannot be found in both the Model Law and the New York Convention. Such ground finds its roots in United States case law involving the application of the Federal Arbitration Act (FAA). In *Peebles v. Merrill Lynch, et al.*,^[4] the Eleventh Circuit of the United States Court of Appeals recognized three different non-statutory bases for vacatur of an arbitration award, namely: (a) if the award is arbitrary and capricious; (b) if its enforcement is contrary to public policy; and (c) if it evinces a manifest disregard of the law.

As opined by retired SAJ Perlas-Bernabe,^[5] based on the pronouncements of the Court in *Asset Privatization Trust v. Court of Appeals*^[6] and *Equitable PCI Banking Corp. v. RCBC Capital Corp.*,^[7] it is readily apparent that the ground of "manifest disregard of the law" in this jurisdiction is actually intertwined with – as it is demonstrative of – the integrity of the arbitral tribunal or the regularity of the proceedings proper. For indeed, if an award was made in manifest disregard of the law, then the integrity of the arbitral tribunal or the regularity of the proceedings are squarely put into question. In both cases, however, the Court did not expressly conflate manifest disregard of the law with the public policy exception. Concomitantly, in *Duferco International Steel Trading v. T. Klaveness Shipping A/S*,^[8] the United States Court of Appeals laid down the requisites that must concur for the invocation of manifest disregard of the law to proper, which did not include violation of public policy.

The public policy exception under Rule 19.10 of the Special ADR Rules could be found in Article 34 of the Model Law, which is closely modelled after Article V of the 1985 New York Convention.^[9] The recently retired magistrate keenly discerned that the phrase "contrary to the public policy" in the New York Convention has no further exposition within the treaty itself. Still, commentators elucidate that "[a]lthough different jurisdictions define public policy differently, case law tends to refer to a public policy basis for refusing recognition and enforcement of an award under article V(2)(b) of the New York Convention when the core values of a legal system have been deviated from. Invoking the public policy exception is a safety valve to be used to those exceptional circumstances when it would be impossible for a legal system to recognize an award and enforce it without abandoning the very fundamentals on which it is based."^[10]

To date, the phrase "public policy" still eludes a more precise and universal meaning. Nonetheless, the Court has adopted the narrow definition found in the oft-cited case of *Parsons & Whittemore Overseas v. Societe Generate de L'Industrie du Papier (RAKTA)*,^[11] i.e., "where enforcement would violate the forum state's most basic notions of morality and justice."^[12] Tellingly, according to a recent report by the International Bar Association,^[13] it remains difficult to draw up a catalog of violations of substantive public policy, save for "awards giving effect to illegal activities"^[14] or "universally condemned activities such as terrorism, drug trafficking, prostitution, pedophilia, corruption or fraud in international commerce."^[15]

As touched upon by retired SAJ Perlas-Bernabe,[16] the Court in *Maynilad Water Services, Inc. v. Center for Popular Movement*[17] refused to recognize an arbitral award as being contrary to public policy because it would adversely affect the public at large and lead to an unequal treatment of water consumers in different locales. Furthermore, the Court held that the confirmation of the award would be illegal as it was violative of Republic Act (R.A.) No. 6234, viz.:

Indeed, recognizing and enforcing the arbitral award in *Mabuhay Holdings* will have no injurious effect to the public, unlike confirming the arbitral award in this case. The arbitral award in *Mabuhay Holdings* adversely affected a private entity. On the other hand, the arbitral award which allowed Maynilad to include its corporate income taxes in the computation of water rates will adversely affect the public at large, specifically, the water consumers in Service Area West served by Maynilad.

Not only will confirming the arbitral award in favor of Maynilad be injurious to the public; it will result in unequal protection of water consumers Service Area East under Manila Water and those in Service Area West under Maynilad.

In the arbitration commenced by Manila Water against the Republic, the arbitral tribunal therein held that Manila Water cannot include its corporate income taxes in the computation of rates chargeable to water consumers in Service Area East. If the arbitral award in favor of Maynilad is confirmed, this will result in a disproportionate price difference between the water rates in Service Area West and Service Area East. Note that there is no substantial distinction between the water consumers in the respective service areas. This is contrary to the equal protection clause guaranteed by the Constitution.

Even confirming the arbitral award in favor of Maynilad will be illegal. Under Sections 3(h) and 3(m) of Republic Act No. 6234, the MWSS is mandated to fix "just and equitable rates."

Certainly, allowing Maynilad to include its corporate income taxes in the rates chargeable to water consumers – taxes which, to repeat, do not inure to the benefit of water consumers – will result not only in unjust but also inequitable rates. A large segment of the water consuming public will be made to pay for something that has no direct benefit to them, while some will enjoy water services without the shouldering the same burden. This cannot be allowed.

All told, confirming the Final Award in *Maynilad Water Services, Inc. v. Metropolitan Waterworks and Sewerage System and Regulatory Office*, which allows Maynilad to include its corporate income tax in the subsequent charging years, will injure the public. The award, therefore, cannot be recognized for being contrary to public policy.

Given the foregoing discourse, it is respectfully recommended that the extensive discussion of the subtle yet material distinctions between manifest disregard of the law and the public policy exception as grounds for vacatur of an arbitral award, as submitted by retired SAJ Perlas-Bernabe during our deliberations, be included in the ponencia for the guidance of both the Bench and the Bar, as follows –

On the one hand, manifest disregard of law pertains to – as it demonstrates – the grounds to vacate relative to the integrity of the arbitral tribunal, as well as the regularity of the proceedings proper. This ground hearkens to the well-settled rule that a mere error in the interpretation of the applicable law by the Arbitral Tribunal would not be sufficient ground to vacate the award. "[B]ecause arbitrators do not necessarily have a background in law, they cannot be expected to have the legal mastery of a magistrate. There is a greater risk that an arbitrator might misapply the law or misappreciate the facts en route to an erroneous decision." In effect, the parties agree to shoulder the risk of a misapplication of law when they agree to submit their dispute to arbitration.

On the other hand, the public policy exception is a broader concept that goes beyond an arbitral tribunal's manifest disregard of law. In the words of the New York Convention Guide, it is a safety valve to be used in those exceptional circumstances when it would be impossible for a legal system to recognize an award and

enforce it without abandoning the very fundamentals on which it is based. When the Judiciary is called upon to either confirm, modify, or vacate an award, it becomes its duty to ensure that no illegality or impropriety is proliferated by the stamp of imprimatur placed on the arbitral award. While courts may not set aside an arbitral award on errors of law or fact, their solemn duty to uphold the Constitution behooves them to nonetheless ensure that the interests of the State and the public at large are not undermined by upholding the agreement of private parties. At the end of the day, the freedom to contract is not absolute; hence, when private actions result in an injustice or are prejudicial to the interests of the public, the courts have the authority to intervene for the sake of the public good.[18]

In this case, the Final Arbitral Award allowed respondent mining companies to freely circumvent the obligatory requirement expressed in Section 59 of the Indigenous Peoples Rights Act (IPRA) of 1997[19] that the Free and Prior Informed Consent (FPIC) of the Indigenous Cultural Communities or Indigenous Peoples (ICCs/IPs) concerned must first be secured before the National Commission on Indigenous Peoples (NCIP) can issue the necessary certification for the issuance, renewal, or grant of any concession, license, lease, or production-sharing agreement. Upon this point, the FPIC of the ICCs/IPs is a safeguard to ensure their genuine participation in decision-making and to protect their rights in plans, programs, projects, activities, and other undertakings that will impact upon their ancestral domains – consistent with their inherent right to self-governance and self-determination and their free pursuit of economic social and cultural development. As part of this self-governance, they have the right to participate in decision-making on matters that affect them, and the right to determine their priorities for development.[20]

Not only did the Final Arbitral Award in this case contravene the FPIC requirement under Section 59 of the IPRA, but it also went against the spirit of Section 56[21] of the same law. On this score, I echo the argument of retired SAJ Perlas-Bernabe that the proponents of House Bill (H.B.) No. 9125 and Senate Bill (S.B.) No. 1728 – the precursors of the IPRA – "clarified on multiple occasions that the protection of existing property regimes pertained to non-IPs' landownership rights, whether of an imperfect or perfect title, within ancestral domains; otherwise, this would defeat the purpose of the IPRA. It was further accentuated that Ancestral Domain Rights are themselves vested rights which deserve protection[,] "[22] to wit:

Interpellations of Representative Lagman for House Bill No. 9125[23]

MR. LAGMAN. Let me go to another subject and this is on vested rights. Section 3(a) and 56 of [the] Senate Bill No. 1728 subject ancestral domain's recognition to "vested rights." Both references to prior vested rights should be deleted. Subjected Senate Bill No. 1728 to vested rights misses a crucial point in the struggle for the recognition of ancestral domain rights. Ancestral Domain Rights are themselves vested rights. They are prior vested rights in point of time. Time immemorial possession in the concept of owner excludes property from the public domain. This has been the rule in this jurisdiction since 1909 in the case of *Cariño v. Insular Government*. These lands cannot be taken from their owners outright without offending the Bill of Rights. In the disguise of protecting vested rights, the Senate has opted to protect rights crafted out of contracts and concessions and not time immemorial possession and use. This defeats the purpose of IPRA.

May we know whether there is a similar provision in the House version?

MR. ANDOLANA. In this House version, Mr. Speaker, Your Honor, we have Section 61 which states, and I quote: "Existing Property Rights Regimes. – Property rights within the ancestral domains already existing upon effectivity of this Act, shall be recognized and respected."

This presupposes, Mr. Speaker, Your Honor, a situation where, in accordance with the existing law like under our [T]orrens system where titles have been issued to private individuals and where there is an existing claim and/or continuous, peaceful, open possession of this land by members of the indigenous cultural communities, then these property rights within this ancestral domain may be respected and recognized.

It presupposes, Mr. Speaker, Your Honor, that these lands are already privately owned and duly titled in accordance with Commonwealth Act No. 141 and other related laws.

MR. LAGMAN. So, in other words, Section 61 is of the same import as the cited provisions in the Senate bill, Your Honor.

MR. ANDOLANA. Yes, it is the position of your committee to limit these property rights as defined under the law. And these are, as I earlier said, private titled properties where titles are issued under Commonwealth Act No. 141 or other related laws or the Homestead Law, Free Patent Law, although it may be situated within the ancestral domain.

However, if these property rights are owned by indigenous people, then it is within what we call ancestral domain and forms part of the property of the cultural communities.

Interpellations of Senator Osmeña for Senate Bill No. 1728[24]

Senator Osmeña. Mr. President, what happens if some or most of these lands have already been titled in the names of those who are not members of the indigenous cultural communities? What will happen to their ownership thereof?

Senator Flavier. That is an excellent question, Mr. President, because that is the main concern of many people, particularly those in Baguio with whom I had a dialogue because they are already on site. That is the reason Section 61 was provided for in the bill which states that property rights within the ancestral domains already existing upon the effectivity of this Act shall be recognized and respected.

Interpellations of Senator Gonzales for Senate Bill No. 1728[25]

Senator Gonzales. So that would be the same answer if I ask the gentleman the question: How many of these ancestral lands are already in the possession of third parties who are nonmembers with respect to agricultural lands which they, or by their predecessors-in-interest, have been in open, public, peaceful, and adverse possession over a period of 30 years and to which they have now an imperfect title, and, therefore, entitled to judicial confirmation under existing laws?

Senator Flavier. I agree, Mr. President. They would be entitled. In fact, we were rather careful in making sure, through Section 61, that these property rights are respected.

XXX

Senator Gonzales. Yes, Mr. President. As it reads, it actually runs counter to the Torrens system, the purpose of which is to quiet title. It is an action in rem which vests in the registered owner ownership that is indefeasible and imprescriptible.

In the language of the Supreme Court, a registered owner need not wait at the portals of the court and sit de mirador tu casa for fear of losing his property.

Senator Flavier. I will be happy to have that clarified, Mr. President. If it is necessary to remove that phrase to remove all doubts, I will be happy because within the bill we were very careful in making sure that existing property rights are respected.

If the gentleman's point is whether the Torrens Title system is reserved, my answer is yes. To the extent that it contravenes this particular line, I will be happy to have it clarified.

Bicameral Conference Committee Discussions for H.B. No. 9125 and S.B. No. 1728[26]

HON. DRILON. Mr. Chairman, I must articulate what was brought up to me by some sectors downstairs and this is the phrase in our bill, in our version which says, "subject to vested rights..." They brought to my

attention and asked me what exactly do we mean "subject to vested rights." And they said, this is my amendment. I do not recall if this is my amendment, but I do recall that I did raise the question on the...in instances where the land is already covered by Transfer Certificate of Title or other form of title. What will happen and that is why that was in the interpellation [sic]. Now, yung "subject to vested rights," this is a...this was brought up to me as a little broad. I do not know if this is a matter that we should redefine more precisely in a more precise term.

CHAIRMAN FLAVIER. Yes, I'm open. I also recall that apart from Senator Frank Drilon, Senator Enrile also raised the same issue and I took the position then when I was being interpellated [sic] na yung mga hawak na ng lupa, huwag na nating guluhin. That is why we put that "subject to vested rights," but if there is a suggestion for more precise language to define "vested," I will be open, Mr. Senator.

HON. DOMINGUEZ. I believe, Mr. Chairman, that this was also interpreted in two sentences, when we covered the concerns of the City of Baguio. That we recognized existing rights over the land in the City of Baguio.

CHAIRMAN FLAVIER. There is one possibility and that is, we delete the words "subject to vested rights" and transfer that to the title properties provision on Section 56. Yes. The title of 56 is "Existing Property Rights Regimes". Property Rights within the ancestral domain already existing upon the effectivity of this Act shall be recognized and respected." Or is it already adequately covered, Mr. Senator?

HON. DRILON. Well, 56 is a clear declaration of respect for titles already issued, Section 56.

Strikingly, anent the renewal of mining permits or licenses, it was edifyingly explicated by retired SAJ Bernabe[27] that during the deliberations of S.B. No. 1728,[28]"it was clearly discussed that the 'particular permit or license will be allowed to remain in force and will be recognized and respected until it expires.' However, 'upon expiration, they can no longer be renewed without the written consent of the indigenous peoples and without prejudice to cancellation due to violations of terms and conditions of the permit' furthermore, it was even remarked that 'permits will be issued in the future not only with the written consent but also with the informed consent of the indigenous peoples[.]'"

In epitome, it is ineludible that the Regional Trial Court (RTC) did not err in vacating the Final Arbitral Award in the first instance because it ran counter to the unequivocal public policy enunciated in the IPRA[29] and the 1987 Constitution[30] itself of recognizing and promoting the rights of ICCs/IPs, such as their right to self-governance and self-determination,[31] as well as their right to their ancestral domains, among others.

A final cadence. In view of the vacatur of the Final Arbitral Award in this case under the public policy exception, it is humbly submitted that the intent of the parties to arbitrate the dispute must be honored in fealty to the policy on arbitration under Rule 2.2 of the Special ADR Rules, which states that "[w]here the parties have agreed to submit their dispute to arbitration, courts shall refer the parties to arbitration pursuant to the [Alternative Dispute Resolution (ADR) Act of 2004[32] bearing in mind that such arbitration agreement is the law between the parties and that they are expected to abide by it in good faith."

Accordingly, in the case at bench, the RTC must be directed to refer the matter of compliance with the FPIC requirement by respondent mining companies to the same arbitral tribunal or to a new one pursuant to Rule 11.9 of the Special ADR Rules in relation to Section 24 of the Arbitration Law,[33] which provide:

Rule 11.9. Court action. – xxx

In referring the case back to the arbitral tribunal or to a new arbitral tribunal pursuant to [Section] 24 of Republic Act No. 876, the court may not direct it to revise its award in a particular way, or to revise its findings of fact or conclusions of law or otherwise encroach upon the independence of an arbitral tribunal in

the making of a final award.

x x x

x x x

Section 24. Grounds for vacating award. – xxx

Where an award is vacated, the court, in its discretion, may direct a new hearing either before the same arbitrators or before a new arbitrator or arbitrators to be chosen in the manner provided in the submission or contract for the selection of the original arbitrator or arbitrators, and any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order. xxx[34]

To be sure, the mandate of the arbitral tribunal in domestic arbitration ends with the termination of the arbitration proceedings.[35] Elsewise stated, upon rendition of the final award, the tribunal becomes *functus officio* and – save for a few exceptions – ceases to have any further jurisdiction over the dispute.[36] One such exception is an application for setting aside an exclusive recourse against arbitral award under Article 5.34 of the Implementing Rules and Regulations (IRR) of the ADR Act of 2004.

[1] Section 32 of the ADR Act of 2004 characterizes "domestic arbitration as an arbitration that is not international as defined in Article 3 of the Model Law.

[2] UNCITRAL Model Law on International Commercial Arbitration.

[3] A.M. No. 07-11-08-SC dated 1 September 2009.

[4] 431 F.3d 1320 (11th Cir. 2005).

[5] Reflections of retired Senior Associate Justice Estela M. Perlas-Bernabe, p. 8.

[6] 360 Phil. 768 (1998).

[7] 595 Phil. 537 (2008).

[8] 333 F.3d 383, 389 (2[nd] Cir., 2003).

[9] See Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration: report of the Secretary-General, 25 March 1985, A/CN.9/264, p. 72 Available at: <<https://undocs.org/en/A/CN.9/264>>

[10] Reflections of retired Senior Associate Justice Estela M. Perlas-Bernabe, p. 5; citing New York Convention Guide, Article V(2)(b). Available at: <https://newyorkconvention1958.org/index.php?lvl=cmspage&pageid=10&menu=626&opac_view=-1>.

[11] 508 F.2d 969 (2d Cir. 1974).

[12] See *Mabuhay Holdings Corporation v. Sembcorp Logistics Limited*, 844 Phil. 813 (2018).

[13] See Report on the Public Policy Exception in the New York Convention – A Report by the IBA Subcommittee on Recognition and Enforcement of Foreign Arbitral Awards dated October 2015, p. 16. Available at:

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[14] Id.; emphasis and underscoring supplied.

[15] Id.; citing Maxi Scherer, England, p. 14; Charles Nairac, France, par. 21; Dominique Brown-Berset, Switzerland, p. 5; and Bennar Balkaya, Turkey, p. 6. Emphasis and underscoring supplied.

[16] Reflections of retired Senior Associate Justice Estela M. Perlas-Bernabe, pp. 6-7.

[17] G.R. Nos. 181764, 187380, 207444, 208207, 210147, 213227, 219362, and 239938, 7 December 2021; emphases and underscoring supplied, original citation omitted.

[18] Reflections of retired Senior Associate Justice Estela M. Perlas-Bernabe, p. 9; original citations omitted.

[19] R.A. No. 8371, approved on 29 October 1997.

[20] See *Kilusang Magbubukid ng Pilipinas v. Aurora Pacific Economic Zone and Freeport Authority*, G.R. No. 198688, 24 November 2020; citing Sections 13, 16, and 17 of the IPRA.

[21] "Existing Property Rights Regimes. – Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected."

[22] Reflections of retired Senior Associate Justice Estela M. Perlas-Bernabe, p. 11.

[23] Id. at 11-12; citing House of Representatives Records, 26 August 1997, pp. 528-530.

[24] Id. at 12; citing Senate Records, 20 November 1996, pp. 631 and 634.

[25] Id. at 12-13; citing Senate Records, 4 December 1996, pp. 861-863 and 866.

[26] Id. at 13; citing Record of the Bicameral Conference Committee, 9 October 1997, pp. 623-626.

[27] Reflections of retired Senior Associate Justice Estela M. Perlas-Bernabe, p. 14.

[28] Id. at 14-15; citing Senate Records, 20 November 1996, pp. 636-637.

[29] See Section 2 of the IPRA.

[30] See Article II, Section 22, Article XII, Section 5, and Article XIV, Section 17 of the 1987 Constitution.

[31] See *Kilusang Magbubukid ng Pilipinas v. Aurora Pacific Economic Zone and Freeport Authority*, supra note 20.

[32] R.A. No. 9285, approved on 2 April 2004.

[33] R.A. No. 876 approved on 19 June 1953.

[34] Emphasis supplied.

[35] See Article 5.32, paragraph (c) of the IRR of the ADR Act of 2004.

[36] See *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*, 800 Phil. 721, 744 (2016); original citations omitted.

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