EN BANC

G.R. No. 244063 – LONE CONGRESSIONAL DISTRICT OF BENGUET PROVINCE, REPRESENTED BY HON. RONALD M. COSALAN, REPRESENTATIVE, *Petitioner*, **v. LEPANTO CONSOLIDATED MINING COMPANY AND FAR SOUTHEAST GOLD RESOURCES, INC.,** *Respondents*;

G.R. No. 244216 – REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE MINES AND GEOSCIENCES BUREAU OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (MBG-DENR), *Petitioner*, **v. LEPANTO CONSOLIDATED MINING COMPANY AND FAR SOUTHEAST GOLD RESOURCES, INC.,** *Respondents*.

Promulgated:
June 21, 2022

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CONCURRING AND DISSENTING OPINION

LEONEN, *J.*:

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.

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1 CONST., art. II, sec. 22.
2 Republic Act No. 8371 (1997), sec. 59.

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

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3 *Ponencia*, p. 3.
4 Id. at 5.
5 Id.
6 Id.
7 Id. at 6.
8 Id. at 7–8.

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

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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].

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

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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.

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.
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> 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

[19] Id.

> 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

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[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].

> "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."
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> 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.
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> 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

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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.

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.
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> 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.*
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> 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

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[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].

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."
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> 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:

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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].

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

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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).

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 Igorrots [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:
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> > '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 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.

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[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).

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

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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].

> 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

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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].

> 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.

MARVIC M.V.F LEONEN
Senior Associate Justice

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47 Id.

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