EN BANC

G.R. No. 182734 – BAYAN MUNA PARTY-LIST REPRESENTATIVES SATUR C. OCAMPO and TEODORO A. CASIÑO, ANAKPAWIS REPRESENTATIVE CRISPIN B. BELTRAN, GABRIELA WOMEN'S PARTY REPRESENTATIVES LIZA L. MAZA and LUZVIMINDA C. ILAGAN, REPRESENTATIVE LORENZO R. TAÑADA III, and REPRESENTATIVE TEOFISTO L. GUINGONA III, Petitioners **v. PRESIDENT GLORIA MACAPAGAL-ARROYO, EXECUTIVE SECRETARY EDUARDO R. ERMITA, SECRETARY OF THE DEPARTMENT OF FOREIGN AFFAIRS, SECRETARY OF THE DEPARTMENT OF ENERGY, PHILIPPINE NATIONAL OIL COMPANY, and PHILIPPINE NATIONAL OIL COMPANY EXPLORATION CORPORATION,** Respondents.

Promulgated:

June 27, 2023

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CONCURRING OPINION

LEONEN, *J.*:

I concur in the denial of the Motion for Reconsideration and reiterate my Concurring Opinion in the initial Decision[1] on this case. The Joint Marine Seismic Undertaking (the Undertaking) was executed in grave violation of Article XII, Section 2 of the Constitution. The *ponencia* is correct in denying respondents' procedural challenges to reverse the Court's finding of unconstitutionality.[2] The limits of State prerogatives over the exploration of natural resources is a matter of transcendental importance which requires the Court to exercise its power of judicial review.

Contrary to respondents' claim,[3] the determination of the exact location of the agreement area of the Undertaking does not preclude the Court from exercising its discretion to take cognizance of the Petition. *Gios-Samar v. DOTC*[4] filters out cases involving questions of fact which are intertwined and "indispensable to the resolution of the legal issue."[5] As the *ponencia* pointed out, there is no question of fact that is relevant to the resolution of the case because respondents admitted that the agreement area falls within the Republic's territory.[6] Moreover, it is clear that the parties executed the

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1 *Ocampo v. Arroyo,* G.R. No. 182734, January 10, 2023 [Per J. Gaerlan, *En Banc*].
2 *Ponencia*, pp. 4–11.
3 Motion for Reconsideration, pp. 7–8.
4 G.R. No. 217158, March 12, 2019 [Per J. Jardaleza, *En Banc*].
5 *Id.*
6 *Ponencia*, pp. 5–6.

Undertaking with the understanding that activities will be conducted in areas where each government party has a claim. Lastly, the resolution of the *lis mota* of the case—whether the activities contemplated in the Undertaking constituted exploration within the scope of Article XII, Section 2 of the Constitution—is not hinged upon the determination of the metes and bounds of the agreement area. Thus, there is no basis to apply the filtering mechanism in *Gios-Samar*.

Respondents argue that the Court encroached upon presidential discretion on matters of foreign and economic policies reflected in the Undertaking.[7] They contend that in striking the Undertaking as unconstitutional, the Court "tie[d] the hands of the President with respect to foreign relations and economic policies."[8]

I agree with the *ponencia* that the Undertaking is not a foreign relations instrument. Respondents cannot be allowed to change their legal theory in their Motion for Reconsideration.[9] Respondents characterized the Undertaking as a purely corporate act in their pleadings filed before the Court.[10] I wish to clarify, however, that foreign relations instruments vary in form. The President need not personally enter into or sign international agreements because the authority to negotiate and sign for the Republic may be delegated.[11] Notwithstanding the wide discretion granted to the President as the "chief architect of foreign policy," its exercise should not go beyond the Constitution.[12]

While the United Nations Convention on the Law of the Sea (UNCLOS) defines the extent of the maritime zones of the Philippines and the sovereign rights and obligations within these zones, it is our Constitution that dictates how these rights are to be exercised. Relevant is Article XII, Section 2 of the Constitution which declares that "the State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens."

There is no prohibition in the Constitution for foreign corporations to participate in the exploration of our natural resources. The State is allowed to directly contract with them as contractual agents under its full control and supervision.[13] More importantly, agreements with foreign corporation are necessarily restricted in scope based on the limitation set under the

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7 Motion for Reconsideration, pp. 25–28.

8 *Id.* at 14.

9 *Spouses Mendiola v. Court of Appeals*, 691 Phil. 245, 258–259 (2012) [Per J. Bersamin, First Division].

10 *Ponencia*, pp. 9–11.

11 *Pimentel v. Romulo*, 501 Phil. 303, 315 (2005) [Per J. Puno, *En Banc*].

12 J. Leonen, Dissenting Opinion in *Saguisag v. Ochoa*, 777 Phil. 280, 635–636 (2016) [Per J. Sereno, *En Banc*].

13 J. Carpio, Dissenting Opinion in *La Bugal-B'laan Tribal Association, Inc.* v. *Ramos*, 486 Phil. 754, 961 (2004) [Per J. Panganiban, *En Banc*].

Constitution. These agreements should be in the nature of "technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils."[14] This provision in Article XII, Section 2 of the Constitution should be given a restrictive interpretation, recognizing that the "over-arching letter and intent of the Constitution is to reserve the exploration, development and utilization of natural resources to Filipinos."[15]

Any agreement, even those entered under the guise of foreign relations, must conform with the requirements prescribed in Article XII, Section 2 as to the authority, scope, terms and conditions, source, effect, and notice requirements. These are not mere formalities but are essential conditions for the contract's validity.[16] In choosing to directly undertake activities pertaining to the country's natural resources, the State should always be guided by these limits, and must always keep in mind the Filipino citizens who are the ultimate beneficiaries of the nation's patrimony.[17] Thus, when a foreign contract for the exploration of the country's natural resources exceed or fail to comply with the requirements of the Constitution, it is an illegal surrender of sovereign prerogatives and a violation of the trust reposed to the State.

I maintain my position that the exploration of marine wealth within our exclusive economic zone and continental shelf is solely reserved for Filipinos.[18] Any "pre-exploratory activities" which aim to discover the existence of natural resources in a particular area fall within the meaning of exploration activities and must be within the State's exclusive control and supervision. This covers not only the actual resource itself, but also any information generated from exploration activities conducted within the State's territory. Information on the existence of natural resources in an area is as valuable as the actual natural resource itself. Thus, data collected from exploration activities within our territory cannot be jointly owned with foreign countries.

Here, the Undertaking grossly failed to comply with the requirements of Article XII, Section 2 of the Constitution. The Philippine National Oil Company illegally agreed to a joint ownership of the information gathered from the exploratory activities within the exclusive economic zone of the Philippines in the West Philippine Sea. In doing so, it violated the express directive in the Constitution that the nation's marine wealth within its territory is reserved for the exclusive use and enjoyment of the Filipino people.

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14 CONST., art. XII, sec. 2, par. 4.

15 J. Carpio-Morales, Dissenting Opinion in *La Bugal-B'laan Tribal Association, Inc.* v. *Ramos*, 486 Phil. 754, 1073 (2004) [Per J. Panganiban, *En Banc*].

16 *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes*, 758 Phil. 724, 761–762 (2015) [Per J. Leonardo-De Castro, *En Banc*].

17 J. Leonen, Concurring Opinion in *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources*, G.R. Nos. 202897 et al., August 6, 2019 [Per J. Hernando, *En Banc*].

18 CONST., art. XII, sec. 2, par. 2.

ACCORDINGLY, I vote to **DENY** the Motion for Reconsideration **WITH FINALITY** for lack of merit and with basic issues already passed upon in the January 10, 2023 Decision.

MARVIC M.V.F. LEONEN
Senior Associate Justice