

Pakistan's Need for Amicable Resolutions Concerning Foreign Investment Disputes: The *Reko Diq* Case

Maulana Abdul Haque v Government of Balochistan
PLD 2013 SC 641

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Introduction

This case note explains that Pakistan should domestically resolve its foreign investment disputes through a multi-tier dispute resolution mechanism. Pakistan is an emerging market in terms of attracting foreign investment. In this regard, a robust dispute resolution mechanism concerning foreign investment disputes should be established and enforced. This will provide a solution to escalating international arbitrations which Pakistan confronts. In this case note, the judgment of the Supreme Court of Pakistan ('SC') in *Maulana Abdul Haque v Government of Balochistan*¹ is explained and critically analyzed.

In this case, the SC held that the 'Chagai Hills Exploration Joint Venture Agreement' ('CHEJVA') signed between the Balochistan Development Authority ('BDA') and Broken Hill Properties Minerals Intermediate Exploration Inc. ('BHP') in 1993 was void *ab initio*. The CHEJVA granted exploration and mining licenses to BHP in the *Reko Diq* area, which is located in the Chagai District of Balochistan. Public concern regarding CHEJVA increased in subsequent years as amendments were made to the agreement, leading to the involvement of the Balochistan High Court and the SC in the matter. The Balochistan High Court validated the agreement, but this ruling was reversed by the SC. Aggrieved by this decision, the foreign companies that were party to the litigation referred the dispute to the International Centre for Settlement of Investment Disputes ('ICSID') for arbitration. The ICSID gave its verdict on 21 March 2017, holding Pakistan liable for breaching a bilateral investment treaty.²

This case note explains the facts of the case, elaborates the parties' arguments, describes the ruling of the SC, and provides an analysis of the ruling. The analysis explains that recourse to international arbitration was avoidable had that the SC adequately deliberated on the differences between

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¹ PLD 2013 SC 641.

² *Tethyan Copper Company v Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1.

public and private international law. A deliberation of this nature would have given the SC an opportunity to consider an amicable settlement for safeguarding Pakistan's commercial and indigenous concerns. Although the *Reko Diq* area is valuable for its natural wealth, it is equally significant for the local indigenous population because of their cultural attachment to the land. The case note recommends other approaches for resolving foreign investment disputes which Pakistan can take into consideration.

Case Background & Facts

In 1993, BDA entered into a joint-venture agreement with BHP Minerals for the development of mining capabilities in Chagai Hills, located in the Tethyan Belt. The Tethyan belt stretches from Turkey and Iran into Pakistan and is considered to be amongst the world's top five goldmine reserves, in addition to bearing a vast amount of copper resources.³ Even though the area has an abundance of valuable natural resources, this supply has remained untapped due to Pakistan's lack of financial and technical expertise required to mine these areas. Consequently, contracts are signed with foreign mining companies, which in return claim a huge share of the benefits. In this case, BHP Minerals was entitled to a 75% interest, whereas BDA would have 25% interest.⁴ In the years subsequent to its signing, the CHEJVA was amended multiple times in favor of the mining companies.

The amendments to the CHEJVA concerned the substitution and addition of new parties and the relaxation of the Balochistan Mining Concession Rules 1970 ('BMCR') for ease of exploration in the area. The BMCR 1970 provided special facilitation for mining companies in exceptionally difficult cases. It was relaxed in 1994 as per BHP's request to the Government of Balochistan. However, on 4th March 2000, an addendum to the CHEJVA was executed which replaced the BDA with the Balochistan Government as the new contracting party and allowed the addition of new mining companies to the contract. Consequently, through an Option Agreement,⁵ BHP formed an exploration alliance and a new company called the Tethyan Copper Company ('TCC') was formed. In such circumstances, the creation of a new company is a means of allocating risk, as it has a separate legal personality, distinct from its parent company. The new company will bear any losses, whereas the parent company can still benefit from the profits. TCC then conducted further explorations and concluded

³ (n 1) [2].

⁴ Chagai Hills Exploration Joint Venture Agreement, art. 3.

⁵ An 'Option Agreement' entitles one of the parties' to purchase, sell or benefit from an asset at a specific price in the future.

that the area had substantial amounts of copper and gold resources. For ease of further explorations, the Balochistan Minerals Rules 2002 ('BMR') were promulgated in light of BMCR 1970's relaxation in 1994. After the promulgation of BMR, TCC applied for new exploration licenses as the new rules granted TCC complete control over the prospection and exploration of the area. In 2006, through the signing of a Novation Agreement,⁶ TCC was officially granted 75% interest in the project. Although the adjustments made to the CHEJVA intended to accommodate the substitution and addition of contracting parties and the relaxation of BMCR 1970, the constitutionality of such changes was called into question.

In 2006, petitions were filed before the Balochistan High Court challenging the validity of the CHEJVA and ensuing agreements. The Balochistan High Court held the CHEJVA to be valid, and considered the relaxation of the BMCR 1970, the enactment of BMR and other acts of the respondents to be legal. Constitutional petitions were then filed before the SC challenging the Balochistan High Court decision. The petitions questioned the validity of the licenses granted to the mining companies, on the basis of being non-transparent and unfair since national laws protecting vital interests of the people of Balochistan and Pakistan had allegedly been violated.

Parties' Arguments

The petitioners contended that the agreements were illegal, as the process of granting the mineral rights was marred by corruption. As the mining companies' were not eligible for the grant of licenses under the BMCR 1970, therefore, they lobbied for relaxing the rules in 1994. According to rule 98 of the BMCR 1970, the requirement for the grant of relaxations is that *individual hardship*⁷ needs to be proven. In the present case, no details of any hardship were submitted by the mining companies and the relaxations were granted arbitrarily as per the requests of BHP. Moreover, relaxations can only be granted to those companies which are incorporated or registered in Pakistan; however, BHP was neither incorporated nor registered in Pakistan. The effect of the relaxations was that the mining companies were granted a larger area and additional time to prospect, contrary to what was allowed under the BMCR 1970. Additionally, the petitioners asserted that the Balochistan Government's actions were *ultra vires*, as only the Federal

⁶ A 'Novation Agreement' can replace an original party to a contract with a new party.

⁷ The term 'hardship' includes any concern of appreciable detriment, whether financial, personal or otherwise. John S. James, *Stroud's Judicial Dictionary* (4th edn, Sweet & Maxwell 1994) 1210.

Government had the authority to exempt and relax the rules. After the relaxations, the new rules promulgated under the BMR 2002 were heavily influenced by the respondent companies' lobbying. The authority which the respondent companies exerted through lobbying was undemocratic and an act of corruption. Furthermore, the grant of complete exploration rights to TCC as per the Novation Agreement was illegal since there was no public advertisement for call of tenders. Therefore, it was argued that the CHEJVA and all the ensuing agreements were void *ab initio*.

The respondents, on the other hand, argued that the CHEJVA was the creature of a democratic process, as it resulted from negotiations involving the Government, Chief Minister of Balochistan, the departments of Law, Planning & Development and Finance, and had been executed by the Governor of Balochistan. The relaxations were also granted after thorough deliberation by the Balochistan Government through an inter-ministerial committee. They were needed in order to facilitate the mining operations for the benefit of Pakistan. Moreover, the foreign mining companies operating in Pakistan were not mandated to be registered or incorporated in Pakistan for carrying out mining operations and the BMCR 1970 allowed the Balochistan Government executive authority to relax any rules.⁸ TCC argued that the allegations in the present case had to be construed as being against BHP since TCC had not been formed when the relaxations took place in 1994. The Novation Agreement which led to the formation of TCC was a separate agreement and not subject to the CHEJVA. Therefore, even if CHEJVA was void *ab initio*, that did not result in the Novation Agreement being the same. There was also no need for public bidding for grant of licenses as the Novation Agreement was not a transfer of rights. Therefore, all the relaxations which took place - the succeeding agreements, the formation of TCC and other actions of the parties - were lawful.

Judgment

The Honorable judges comprising the bench in this case were Chief Justice Iftikhar Muhammad Chaudhry, Justice Gulzar Ahmed and Justice Sheikh Azmat Saeed. The SC examined the records relating to the various clauses of the CHEJVA and the relaxation of rules. It held that the relaxations were unlawfully granted and consequently the contract was void *ab initio* since the mining companies were not registered in Pakistan.

⁸ Balochistan Mining Concession Rules 1970, rule 3 and 98.

The SC stated in its judgment that in accordance with rule 98 of the BMCR 1970, relaxations had to be granted on an *individual hardship* basis.⁹ As per this basis, parties have to show what difficulty has arisen that allows for grant of relaxations.¹⁰ The SC noted that the standard of hardship is an exceptional one, where the parties' need to prove that extreme suffering had compelled them to request for relaxation of rules as their last possible option. A mere request without any justification of hardship by BHP Minerals did not meet the standard for hardship. All relaxations granted were, thus, *ultra vires* and beyond the scope of the provisions of the law.

The mining companies benefited from the relaxation of rules since they were granted prospecting licenses which covered a larger area and longer time duration than was allowed according to rule 42 of the BMCR 1970.¹¹ The licenses could only be renewed for a period of three years; however, in this case, they were renewed for five years as per the companies' requests. When the BMR 2002 came into force, the prospecting licenses had lapsed by then and the Balochistan Government became obligated to call for competitive bids in a transparent manner. However, there were no bids for tender through public advertisement and exploration licenses were arbitrarily granted to TCC. The licenses were granted for further nine years which the SC noted as an extraordinary and undue favour.¹²

The SC held that the licenses were unlawfully granted since the companies were not registered in Pakistan. Despite the fact that they were repeatedly ordered to produce their certificates of registration, the companies failed to do so. The SC noted that since the mining companies could not prove that they were registered in Pakistan, they were not competent to be granted mineral licenses to explore and mine. In case of non-registration, the transfer of interest which led to the creation of TCC was also void. Similarly, the CHEJVA was also not registered as per section 17(1)(b) of the Registration Act 1908. The CHEJVA was the base on which the superstructure of the ensuing agreements was grounded on; therefore, the Addendum No.1, Option Agreement, the Mincor Option, the Alliance Agreement, the Novation Agreement, and the subsequent share-purchase agreements were also considered unregistered and void *ab initio*. The SC further noted that the BDA arbitrarily formed the agreement without the Balochistan Government's authorization and therefore, all actions carried out

⁹ (n 1) [34].

¹⁰ *Ashok Kumar Uppal v State of J&K* (1998) 4 SCC 179.

¹¹ As per the rule, lease shall not be granted for more than 5 sq. miles area, but in the instant case, it was granted up to 1000 sq. km.

¹² (n 1) [17].

by the BDA had no legal value. Finally, the SC reasoned that although foreign investment is vital for Pakistan's growing economic interests, foreign investment agreements cannot be entered in disloyalty to the state and in breach of the law as provided in Article 5¹³ of the Constitution of Pakistan 1973. As a result, the CHEJVA and the ensuing agreements were declared void *ab initio*, since they were entered into in violation of the ordinary and constitutional laws of Pakistan. During the course of the SC proceedings, arbitration before the International Chamber of Commerce ('ICC'), and the ICSID were initiated by the respondent companies as per the dispute resolution clause of the CHEJVA.¹⁴

The ICSID Award

A bilateral investment treaty claim against the Pakistan Government was instituted before the ICSID and a contract based claim before the ICC against the Balochistan Government. TCC claimed that it was wrongfully denied a mining license after its submission of a feasibility report in 2011, which was made after years of intensive research and investment. It sought provisional measures against the Government of Pakistan. The Government of Pakistan sent requests to the ICC and ICSID that the matter was already being adjudicated in the SC therefore arbitration proceedings should be stopped. The arbitral tribunals accepted Pakistan's request and dismissed TCC's request for provisional measures. However, the tribunals did not deny their jurisdiction on merits and ordered the parties to provide regular reports concerning their activities.

The ICSID proceedings resumed after the SC verdict. Pakistan argued that the CHEJVA was made unlawfully and therefore, any plea for damages by TCC had no legal effect. However, the ICSID ruled in favor of TCC by deciding the case on its own merits, notwithstanding the SC verdict. The ICSID held that Pakistan was liable for the breach of a bilateral agreement which resulted in damages to the respondent companies.

Analysis

¹³ The Constitution of Islamic Republic of Pakistan 1973, art 5:

‘(1) Loyalty to the State is the basic duty of every citizen.

(2) Obedience to the Constitution and law is the inviolable obligation of every citizen wherever he may be and of every other person for the time being within Pakistan.’

¹⁴ (n 4) art. 15.

A thorough understanding of international law was crucial for settling the matter domestically, rather than providing an opportunity for the respondent companies to proceed with international arbitration. The SC in its judgment, however, overlooked the primary difference between the two branches of international law, which are public and private. Public international law concerns only the conduct of states as individual actors, whereas private international law regulates private relationships such as those of individuals and multi-national corporations (MNCs) across borders.¹⁵ Since public international law does not consider private parties' as subjects, therefore they cannot institute cases in forums like the International Court of Justice (ICJ), nor can a case be brought against them. In this regard Article 34(1) of the ICJ Statute provides, 'Only states may be parties in cases before the Court'.¹⁶ However, MNCs can institute cases against contracting states in forums like the ICSID.¹⁷ The differences between forums like the ICJ and ICSID are manifold. Firstly, ICJ considers that the sovereignty of states concerning their jurisdiction over disputes is vital, as cases are generally brought to the ICJ after exhaustion of domestic remedies. On the other hand, international arbitral tribunals do not consider exhaustion of domestic remedies as an essential requirement. Since the arbitration clause is a separate agreement,¹⁸ therefore, arbitral tribunals can be directly approached regardless of exhaustion of domestic remedies. Secondly, whereas the proceedings in the ICJ are held in the open, international arbitral proceedings are not open, and the standards applicable to many matters concerning evidence and witnesses are different from those employed in domestic courts. Since Pakistan was involved in a private international dispute, recourse to the ICSID was going to be invoked even without exhaustion of domestic remedies. Therefore, the SC should have considered that the respondents would invoke the arbitration clause for their foreign investment claims.

As foreign investment increases, especially in developing economies, arbitration clauses are an increasingly prominent and major part of any

¹⁵ 'International Law Defined' in Diane Marie Amann (ed) *Benchbook on International Law* § I.A (American Society of International Law 2014) <www.asil.org/benchbook/definition.pdf> accessed 4 January 2018.

¹⁶ Statute of the ICJ, Chapter II - Competence of the Court, art. 34.

¹⁷ ICSID Convention, Regulations and Rules, art. 1(2):

The purpose of the Centre shall be to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States in accordance with the provisions of this Convention.

¹⁸ This is as per the *separability* clause. This means that, even if a contract is considered void, the arbitration clause is still treated as a separate agreement and is not considered void, since it provides for dispute resolution.

bilateral investment treaty. This has exponentially increased the number of cases being referred to the ICSID. For instance, the average number of cases being registered before the ICSID every year from 1972 to 1996 was 1.5. From 1997 to 2012 the average significantly increased to 23.8.¹⁹ Developing economies, like Pakistan, must endeavor to resolve foreign investment disputes domestically in order to avoid liability imposed by international arbitral tribunals. Furthermore, the separability clause is generally unenforceable if the contract is considered void *ab initio*. This is, however, more applicable in a domestic context. The ICSID can still be referred to for arbitration since it is an independent international forum as per Article 41 of the ICSID Convention, which provides that it is a judge of its own competence. For instance, in *AMCO v Indonesia*, the Tribunal stated that the verdicts of the domestic courts are not binding on ICSID since it is a separate and an impartial forum for dispute resolution.²⁰ These are important distinctions between private and public international law, which the SC in the *Reko Diq* case did not take into serious consideration. It wrongly believed that exhaustion of domestic remedies is important for international arbitral tribunals to have jurisdiction. Moreover, since there are different standards for evidence in international arbitrations, the evidence concerning the corruption of TCC was deemed insufficient. ICSID did not consider itself bound or influenced in any manner by the SC verdict, as it considers itself an independent and impartial tribunal. However, this assertion that international arbitral tribunals are impartial is a contentious one.

A critical inquiry from an ‘indigenous peoples’ perspective indicates that the ICSID is not inclined towards indigenous concerns. It looks at the dispute as a mere contractual one between the parties; rather than impartially inquiring into the impact on the local population.²¹ In this way, human rights discourse concerning indigenous peoples can potentially be overlooked in international arbitrations. The UN defines indigenous peoples as those who consider themselves culturally distinct from other groups of people living in the same territories and who have a vital cultural interest to protect their

¹⁹ International Centre for Settlement of Investment Disputes (ICSID), ‘The ICSID Caseload-Statistics (2017-2)’ <[https://icsid.worldbank.org/en/Documents/resources/ICSID%20Web%20Stats%202017-2%20\(English\)%20Final.pdf](https://icsid.worldbank.org/en/Documents/resources/ICSID%20Web%20Stats%202017-2%20(English)%20Final.pdf)> accessed 4 January 2018.

²⁰ ICSID Case No. ARB/81/1, [63].

²¹ ‘International Investment and the Rights of Indigenous Peoples’ (Columbia Center on Sustainable Investment 2016) <<http://ccsi.columbia.edu/files/2016/11/Workshop-on-International-Investment-and-the-Rights-of-Indigenous-Peoples-Outcome-Documents-November-2016.pdf>> accessed 4 January 2018.

identity for transmission to future generations.²² The 'UN Declaration on the Rights of Indigenous Peoples' ('Declaration') is a seminal document in this sense, as it incorporates customary international law regarding indigenous people. Article 18 of the Declaration provides that the indigenous people have an inherent right to the use of their lands and in the decision-making process affecting their territories.²³ The state has to provide protective mechanisms to ensure that the local population's right over the natural resources is not exploited. As per the Constitution of the Islamic Republic of Pakistan every Pakistani citizen is equal, but the state has to ensure that the cultural values of each group of people are also safeguarded. This is according to a holistic reading of Article 25 of the Constitution, which provides for equality of citizens, and Article 28 of the Constitution, which provides for the right to culture. It is important to see the Baloch people as an indigenous population. The Baloch people comprise an association of various tribes and clans, and even though those tribes have their own cultural differences, they see each other as part of one unique Baloch identity, sharing common culture, land, ancestors, traditions, and language.²⁴ Therefore, it is an international and constitutional obligation of the State of Pakistan to consider indigenous peoples' claim over their land in Pakistan. It is these important practical aspects concerning jurisdiction and impact on indigenous people which the SC should have been cognizant of in order to consider an amicable resolution.

The main focus of the SC should have been to settle the dispute amicably within Pakistan in order to protect indigenous and national concerns. It is important to consider what steps the SC could have taken into account before declaring the CHEJVA and all the subsequent agreements as void *ab initio*. Had the SC considered that the ICSID is a private international law forum which is not bound by its decision, a different approach to resolving the dispute could have been adopted. It could have foreseen that the respondent companies had invested around half a million US dollars into the project and the denial of the mining license would put them at a huge loss. Specific directions to a commission for further inquiry

²² United Nations Department of Economic And Social Affairs, Workshop On Data Collection And Disaggregation For Indigenous Peoples (New York, 19-21 January 2004).

²³ The Article reads: 'Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision making institutions'.

²⁴ Dr. Rehana Saeed Hashmi, Baloch Ethnicity: An Analysis of the Issue and Conflict with State (2015) 52 *JRSP* 57 <http://pu.edu.pk/images/journal/history/PDF-FILES/4-%20PC%20Dr.%20Rehana%20Saeed%20Hashmi_52-1-15.pdf> accessed 4 January 2018.

or investigation were needed so as to specify the source of the dispute and take corrective measures rather than terminating the contract. The SC mentioned that foreign investment is needed for the growing economy of Pakistan, but it cannot be at the cost of the state's sovereignty. Chief Justice Iftikhar Chaudhary stated, '... Only State power can authoritatively influence and, when necessary, exercise coercion on all aspects of life in human society. State power is in effect universal and sovereign in nature'.²⁵ On the other hand, this sovereignty is not an arbitrary one.

The sovereignty of any country is not absolute and is subject to its international obligations. In this regard, Pakistan has ratified the United Nations Convention on the Recognition and Enforcement of Arbitral Awards 1958 ('New York Convention') and the ICSID Convention, 1966 in 2011 by enacting the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act 2011 and the Arbitration (International Investment Disputes) Act 2011. Article III of the New York Convention provides, 'Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles.' Article 54(1) of the ICSID Convention also provides, 'Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State.' Therefore, since Pakistan is a party to the Conventions it is legally obligated to follow their rules and procedures concerning the enforcement of foreign and international arbitral awards. The SC, on the other hand, stated that in case of an adverse award by the ICSID the award shall not be enforced in Pakistan on the grounds of public policy.²⁶ This pre-determined approach by the SC is significantly detrimental to Pakistan's economic concerns. It sets a bad precedent for foreign investors who will hesitate to invest millions of US dollars in a country which is unable to resolve matters domestically and demonstrates a reluctance to follow its international obligations. Hence, the SC should have taken into account the aforementioned factors concerning the differences between private and public international law, the impact on the local indigenous population, and Pakistan's commitment to its international obligations. By being cognizant of these circumstances, the SC should have pursued a domestic settlement rather than providing an opportunity for international arbitration.

²⁵ (n 1) [132].

²⁶ (n 1) [58].

For future instances, policy-makers and the courts can learn a lot from the *Reko Diq* fiasco. Dispute resolution mechanisms, other than arbitration, can be envisaged for settling foreign investment disputes. Mediation is an effective means of alternative dispute resolution between the parties. It is primarily a voluntary mechanism in which the parties settle their disputes through the help of a mediator. Mediation as a dispute resolution methodology is a more favorable approach for indigenous groups, like the Baloch, who resolve their disputes through mediatory processes.²⁷ The role of an arbitrator is to render an award to one party after the oral proceedings have been conducted, whereas the mediator aims to achieve a viable solution and settlement through negotiations. Most bilateral investment treaties do include such preliminary measures, as did the CHEJVA,²⁸ however as noted by the United Nations Conference on Trade and Development ('UNCTAD'), the time frame for such negotiations ranges from three to six months which has proven to be inadequate.²⁹ In order for such preliminary measures to be effective there is a need for the relevant government authorities to monitor the implementation of the agreement, conduct fact-finding missions and exchange information so that the escalating conflicts between the investors and the state may be prevented. The state should endeavor to establish an effective multi-tier dispute resolution mechanism.

Furthermore, sustainable development needs to be undertaken, keeping in view the interests of the indigenous people of Pakistan. The United Nations General Assembly has adopted the 2030 Agenda for Sustainable Development titled 'Transforming Our World: the 2030 Agenda for Sustainable Development'.³⁰ The Agenda addresses that sustainable development must ensure eradicating poverty, protecting planet and ensuring prosperity for all. States are also encouraged to include contributions of indigenous people in national policy-making.³¹ Keeping sustainable development in view, Pakistan should consider the participation of indigenous peoples in international investment agreements. In this way, the concerned parties will be provided more opportunities to engage with each other in an amicable manner concerning foreign investment disputes.

²⁷ Harry Croft, 'The Use of Alternative Dispute Resolution Methods within Aboriginal and Torres Strait Islander Communities' (2015) Access to Justice Paper No. 36/2015 <<http://www.civiljustice.info/cgi/viewcontent.cgi?article=1036&context=access>> accessed 4 January 2018.

²⁸ (n 4) art. 15.1.

²⁹ United Nations Conference on Trade and Development (UNCTAD), 'Investor-State Disputes: Prevention and Alternatives to Arbitration' (*United Nations* 2010) <http://unctad.org/en/docs/diaeia200911_en.pdf> accessed 4 January 2018.

³⁰ Resolution adopted by the General Assembly on 25 September 2015, A/RES/70/1.

³¹ *Ibid*, 79.

Conclusion

In the coming years as foreign investment increases, Pakistan can, and should, take valuable lessons from the *Maulana Abdul Haque v Government of Balochistan*, famously known as the *Reko Diq* case. This case note has explained the judgment of the SC, keeping in view the ruling of the ICSID in 2017. State institutions need to take note of the increasing reference to international arbitral tribunals. Holding contracts which involve huge sums of investments to be void *ab initio* is not the right move for future instances; since arbitral tribunals can still be approached regardless of the court decisions. In this regard, a multi-tier dispute resolution mechanism will allow the concerned parties to mutually engage and resolve their disputes, rather than exacerbate them. Such a mechanism can be inspired by indigenous people's methods of dispute resolution and involve them as equal stakeholders. Since Pakistan is an emerging economy, policy-makers need to consider the various possibilities on how to domestically resolve foreign investment disputes in an effective and transparent manner.