REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **October 12, 2022** *which reads as follows*:

"G.R. No. 229913 (GREEN ENERGY MANAGEMENT [GEM] and HOLDINGS, INC., *petitioner* v. NATIONAL COMMISSION ON INDIGENOUS PEOPLES–CORDILLERA ADMINISTRATIVE REGION AND REGIONAL OFFICE NO. 02, REGIONAL HEARING OFFICERS-FIRST CLUSTER, BUGKALOT/ILONGOT TRIBE, REGISTERED OWNER OF CADT NO. R02-NAG-0703-0012, REPRESENTED BY PROVINCIAL CHIEFTAIN OF AURORA PROVINCE, ROMEO D. CAWAD, PROVINCIAL CHIEFTAIN OF QUIRINO PROVINCE, YOMIE E. EBENGA, AND PROVINCIAL CHIEFTAIN OF NUEVA VIZCAYA, WATANG C. ALIWAK, JR., BUGKALOT CONFEDERATION OF NUEVA VIZCAYA, QUIRINO, AND AURORA, INC., REPRESENTED BY ITS OVERALL CHIEFTAIN ROSARIO K. CAMMA, DEPARTMENT OF ENERGY, *respondents*). — While this case has been rendered moot due to supervening events, we reiterate the rules laid down in *Lim v. Gamosa*[1] and *Unduran v. Aberasturi*[2] that the National Commission on Indigenous Peoples has jurisdiction over cases involving indigenous peoples belonging to the same indigenous cultural community. If the parties to the case belong to different indigenous cultural communities, or if only one party is a member of an indigenous cultural community, and the matter involved does not fall under any of the exceptions, it is proper for the National Commission on Indigenous Peoples to dismiss the complaint for lack of jurisdiction.

This Court resolves a Petition for Review on *Certiorari*[3] assailing the Decision[4] and Resolution[5] of the Court of Appeals, which, in turn, affirmed

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1 774 Phil. 31 (2015) [Per J. Perez, First Division].
2 808 Phil. 795 (2017) [Per J. Peralta, En Banc].
3 *Rollo*, pp.156–262.
4 Id. at 12–36. The September 19, 2016 Decision in CA-G.R. SP No. 138059 was penned by Associate Justice Jhosep Y. Lopez (now a member of this Court) and concurred in by Associate Justice Ramon R. Garcia and Associate Justice Leoncia R. Dimagiba of the Fifteenth Division of the Court of Appeals, Manila.
5 Id. at 38–40. The February 6, 2017 Resolution in CA-G.R. SP No. 138059 was penned by Associate Justice Jhosep Y. Lopez (now a member of this Court) and concurred in by Associate Justice Ramon R. Garcia and Associate Justice Leoncia R. Dimagiba of the Fifteenth Division of the Court of Appeals, Manila.

the Resolution[6] issued by the National Commission on Indigenous Peoples-Cordillera Administrative Region (National Commission on Indigenous Peoples) granting the Complaint for Injunction with Prayer for the issuance of a temporary restraining order and writ of preliminary injunction, enjoining the Department of Energy from further implementing, renewing, and/or extending the Hydropower Service Contract of Green Energy Management and Holdings, Inc. (Green Energy Holdings).

On October 14, 2011, Green Energy Holdings and the Republic of the Philippines, through the Department of Energy, entered into a Hydropower Service Contract[7] for the Diduyon Hydroelectric Power Project (the Diduyon project) with service contract HSC No. 2011-10-149 for the exploration, development, and utilization of the hydropower resources to certain areas located along the Diduyon River in Barangays Dioy and Dingasan, Cabarroguis and Nagtipunan, both in the province of Quirino.[8]

Green Energy Holdings had two years from the effectivity of the contract to carry out the pre-development stage of the Diduyon project, extendible for a year, provided: "it is not in default in its exploration, financial [,] and other work commitments and obligations, and has provided a Work Program for the extension period acceptable to the [Department of Energy]."[9]

In its January 26, 2012 letter, the Department of Energy endorsed the request of Green Energy Holdings for the issuance certification by the National Commission of Indigenous Peoples for the Diduyon project.[10]

On August 14, 2012, Green Energy Holdings, Green Energy and Alternative Technologies, Inc. (Alternative Technologies), and Columbus Capitana Corporation (Columbus Capitana) signed a Memorandum of Agreement, wherein a joint venture was formed to undertake the pre-development, implementation, and operation of the Diduyon project.[11]

Pursuant to the joint venture, Columbus Capitana would own 80% of the shareholdings of Green Energy Holdings, "which would serve as the vehicle for the Diduyon project."[12] On the same day, the shareholders of Green Energy Holdings and Columbus Capitana executed a Share Purchase Agreement in favor of Columbus Capitana.[13]

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6 Id. at 404–406. The September 29, 2014 Resolution in Case No. R02-020-14 was penned by Regional Hearing Officer Cynthia Marie R. Tablang of Regional Office No. 02 of the National Commission on Indigenous Peoples, Tuguegarao.

7 Id. at 15.

8 Id. at 429–430.

9 Id. at 15 and 432.

10 Id. at 15 and 433.

11 Id. at 432.

12 Id. at 433.

13 Id. at 15 and 433.

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Based on the Agreements, Columbus Capitana may assign its rights to a related party. Columbus Capitana later transferred its rights to Northeast Hydro Development Corporation (Northeast Hydro). Thus, the obligations of Columbus Capitana under the Agreements became the obligations of Northeast Hydro. [14]

Green Energy Holdings alleged that in a Joint Pre-Field Based Investigation Conference, the National Commission on Indigenous Peoples Nueva Vizcaya Provincial Officer Gregorio G. Singangan (Provincial Officer Singangan) stressed the need for a field-based investigation to determine the parameters of the Diduyon project.[15]

In a January 13, 2013 Certification, the officers of Barangay Bugkalot Association certified that the Tubo River upstream and the Diduyon River downstream of the proposed hydroelectric power source "is within Certificate of Ancestral Domain Title No. 12 in the Municipality of Kasibu, Nueva Vizcaya."[16]

From January 10 to 16, 2013, the Field-Based Investigation of the National Commission on Indigenous Peoples Regional Office No. 02 conducted an investigation on the hydroelectric power application of Green Energy Holdings.[17]

In its February 21, 2013 Memorandum, the National Commission on Indigenous Peoples recommended the urgent conduct of the free and prior informed consent process for the application of the Green Energy Holdings. It also directed Provincial Officer Singangan and the rest of the Field-Based Investigation team to assess secondary data and the conduct of the free and prior informed consent process in a Work Order dated March 14, 2013.[18]

On October 31, 2013, the National Commission on Indigenous Peoples issued another work order reiterating the conduct of an assessment of secondary data and the conduct of the free and prior informed consent process.[19]

In a May 30, 2014 letter, Provincial Officer Singangan reported to Ethnographic Commissioner Atty. Percy A. Brawner the conduct of the January 2013 field-based investigation where "certain IP migrants are continuously submitting their opposition to the proposed project" despite the

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14 Id. at 433–434.
15 Id.
16 Id. at 875.
17 Id. at 878–879.
18 Id. at 16.
19 Id.

unanimous approval of the Diduyon project by the Bugkalot community.[20]

On June 6, 2014, Melody Ngo (Ngo), a former stockholder of Green Energy Holdings, filed a Complaint with Urgent Prayer for Issuance of a 72-Hour and 20-Day Restraining Order and/or Writ of Preliminary Injunction, seeking to enjoin the conduct of the annual stockholders' meeting and election of the board of directors on the grounds that she, as an incumbent Corporate Secretary, did not issue a notice of meeting rendering its conduct to be voids and that the venue for the meeting was not sanctioned by the bylaws and the Corporation Code.[21]

On June 9, 2014, Green Energy Holdings extrajudicially rescinded the Memorandum of Agreement and the Share Purchase Agreement it entered with Columbus Capitana due to Northeast Hydro's nonperformance of its obligations. Green Energy Holdings and its stockholders then filed a Complaint for Declaration of Validity of Extrajudicial Rescission or Judicial Rescission with Damages against Columbus Capitana and Northeast Hydro, docketed as Civil Case No. 14-647.[22]

On July 11, 2014, Ngo filed a Motion to Withdraw the Complaint stating that the extrajudicial rescission of the Agreements superseded her complaint. The trial court granted this motion.[23]

On September 24, 2014, the Bugkalot/Ilongot tribe and the Bugkalot Confederation, represented by their chieftains, filed a Complaint for Injunction with Prayer for Temporary Restraining Order and Preliminary Injunction before the Commission's Regional Office No. 02, praying that the Department of Energy, Green Energy Holdings, Columbus Capitana, and Northeast Hydro be enjoined from renewing or extending the Diduyon Project and from undertaking any pre-development activity in the Bugkalot/Ilongot tribe's ancestral domain.[24]

The Bugkalot/Ilongot tribe and the Bugkalot Confederation also filed an Extremely Urgent and Ex Parte Verified Motion for Inhibition.[25]

In its September 29, 2014 Resolution, the National Commission on Indigenous Peoples, through Regional Officer Cynthia Marie Tablang, granted the Motion for Inhibition.[26] The dispositive portion of the Resolution reads:

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20 Id.
21 Id.
22 Id. at 17.
23 Id.
24 Id.
25 Id. at 17.
26 Id. at 13.

> WHEREFORE, premises considered, the extremely urgent and *ex parte* verified motion for inhibition of the undersigned hearing officer in further hearing the above-entitled case is GRANTED.
>
> Further, the records of the above-entitled case is hereby forwarded to the Regional Hearing Officer (RHO) Cluster I, with official address at:
>
> NATIONAL COMMISSION ON INDIGENOUS PEOPLES
> Cordillera Administrative Region
> REGIONAL HEARING OFFICE – FIRST CLUSTER
> 2/f Lyman Ogilby Centrum (Annex)
> Episcopal Diocese of the North Central Philippines (EDNCP) Compound
> 358 Magsaysay Avenue, Baguio City[.]
>
> So Ordered.[27]

Thereafter, the records were forwarded to the National Commission on Indigenous Peoples Cordillera Administrative Regional Office.[28]

In its October 21, 2014 Resolution, the Regional Hearing Officer Cluster 1 of the National Commission on Indigenous Peoples[29] issued a temporary restraining order for 20 days, directing the Department of Energy not to renew the Diduyon project. The dispositive portion of the Resolution reads:

> WHEREFORE, upon the posting of a bond in the amount of TWO HUNDRED THOUSAND PESOS (P200,000.00), let a Writ of Preliminary Injunction pursuant to Section 69 (d) of [Republic Act No.] 8371 in relation to Section 82 and 83 of [National Commission on Indigenous Peoples] Administrative Circular No. 1 series of 2003, be issued against the DEPARTMENT OF ENERGY enjoining it from further implementing, renewing, and/or extending the service contract that it entered with GREEN ENERGY MANAGEMENT HOLDINGS, INC., enjoining the GREEN ENERGY MANAGEMENT HOLDINGS, INC., COLUMBUS CAPITANA CORPORATION and NORTHEAST [HYDRO DEVELOPMENT] CORPORATION and all persons under their instructions and acting for and in the behalves, and enjoining private defendants from entering the ancestral domain of the plaintiffs to undertake any pre-development activities, which domain is covered by Certificate of Ancestral Domain Title (CADT) No. RO2-NAG-0703-0012.
>
> Let a Writ of Preliminary injunction be served to defendants.
>
> Likewise, let a copy of the Writ of Preliminary Injunction be furnished the Commission through the Office of the Clerk of the Commission for its information and guidance.

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27 Id. at 13.
28 Id. at 17.
29 Id. at 14.

So Ordered.[30]

Thereafter, in its October 22, 2014 Resolution, the Regional Hearing Officer Cluster 1 issued a Writ of Preliminary Injunction[31] the dispositive portion of which reads:

> WHEREFORE, a Writ of Preliminary Injunction is hereby issued against the public defendant Department of Energy (DOE) enjoining it from further implementing, renewing, and/or extending the Hydropower Service Contract that it entered with private defendants[,] namely: GREEN ENERGY MANAGEMENT HOLDINGS, INC., COLUMBUS CAPITANA CORPORATION, and NORTHEAST HYDRO DEVELOPMENT CORPORATION, and all persons under their instructions and acting for and in their behalf. Private defendants are likewise ordered not to enter the ancestral domain of the plaintiffs to undertake any pre-development activities, which domain is covered by Certificate of Ancestral Domain Title (CADT) No. RO2-NAG-0703-0012.
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> So Ordered.[32]

Aggrieved, Green Energy Holdings filed a Petition for Certiorari before the Court of Appeals[33] seeking to annul the proceedings and set aside the Resolutions issued by the National Commission on Indigenous Peoples.[34] Green Energy Holdings claimed it was not afforded due process because it received a copy of the Summons, Complaint, and other records of Case No. RO2-020-14 only on October 15, 2014.[35]

In its September 19, 2016 Decision,[36] the Court of Appeals dismissed the petition and found no grave abuse of discretion when the National Commission on Indigenous Peoples took cognizance of the Complaint filed before it.[37]

The Court of Appeals found that there were just reasons for Regional Hearing Officer Cynthia Marie Tablang to inhibit from the case and forward the records to the National Commission on Indigenous Peoples.[38] The Indigenous Peoples' Rights Act does not treat the National Commission on Indigenous Peoples' regional offices as separate and distinct from the National Commission on Indigenous Peoples but as its alter egos.[39]

The Court of Appeals also found that Green Energy Holdings was

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30 Id. at 14 and 408–413.
31 Id. at 17.
32 Id. at 14-15.
33 Id. at 17.
34 Id. at 13.
35 Id. at 328.
36 Id. at 12–36.
37 Id. at 34.
38 Id. at 21.
39 Id. at 22.

personally served its copy of the 20-day temporary restraining order on October 3, 2014.[40] Thus, the National Commission on Indigenous Peoples could not entertain the belated filing on November 1, 2014 of a Motion for Extension to File a Position Paper.[41]

Further, the Court of Appeals held that the parties cannot be faulted for relying on the existing law and prevailing jurisprudence when they filed the complaint before the Commission.[42] It cited *City Government of Baguio City v. Masweng*,[43] where this Court recognized the National Commission on Indigenous Peoples' power to issue injunctive reliefs against non-indigenous people to preserve the indigenous peoples' rights.[44] This is consistent with *Co v. Court of Appeals*.[45]

The dispositive portion of the Court of Appeals Decision reads:

> WHEREFORE, premises considered, the instant petition is DENIED. The Writ of Preliminary Injunction issued by NCIP and the Resolutions that led to its issuance are AFFIRMED. The NCIP is hereby directed to resolve with dispatch the merits of the complaint filed by herein private respondents.
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> SO ORDERED.[46]

Green Energy Holdings sought reconsideration. While the Motion for Reconsideration was pending, Green Energy Holdings filed a Manifestation before the Court of Appeals, stating that the National Commission on Indigenous Peoples had issued a Resolution, dismissing the Petition for lack of jurisdiction.[47]

The November 7, 2016 Resolution of the National Commission on Indigenous Peoples states:

> For Resolution is defendants' [Green Energy Management Holdings] motion to dismiss reiterating the earlier prayer for the dismissal of this case for lack of jurisdiction citing the cases of Unduran versus Aberasturi, G.R. No. 181284, Lim versus Gamosa, G.R. No. 193964, and Begnaen versus Caligtan, G.R. No. 189852. In all cases, the Supreme Court ruled that the NCIP has no jurisdiction over cases where one of the parties in a case is not a member of the Indigenous cultural community. The Supreme Court further stressed that the NCIP has no authority to adjudicate the rights and interest of persons who are not members of

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40 Id. at 23.
41 Id. at 24.
42 Id. at 31.
43 597 Phil. 668 (2009) [Per J. Tinga, Second Division].
44 *Rollo*, p. 31.
45 298 Phil. 221 (1993) [Per CJ Narvasa, Second Division].
46 *Rollo*, p. 35.
47 Id. at 1020–1024.

> indigenous people group. Jurisdiction is, therefore lodged with the regular courts.
>
> While the Unduran case is still pending with the Supreme Court in view of the Motion for reconsideration still to be resolved, the case of Lim versus Gamosa has become final, the Supreme Court having denied the motion for reconsideration filed by NCIP in a resolution dated July 13, 2016. The prevailing doctrine now is the ruling in Lim versus Gamosa.
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> In a case between the parties, CA G.R. SP No. 138059, the Court of [A]ppeals ruled that the doctrine in *Unduran* and *Gamosa* cannot be applied retroactively inasmuch as the TRO and writ of preliminary injunction issued by NCIP against defendant were made prior to the decision of the Supreme Court in Unduran and Gamosa. The Court of Appeals however, ruled that the NCIP should decide the pending case with dispatch.
>
> With the doctrine laid down by the Supreme Court in *Lim versus Gamosa* and the implication of the decision of the Court of Appeals to resolve this case with dispatch, dismissal of this case is therefore in order.
>
> WHEREFORE, premises considered, this case is hereby dismissed for lack of jurisdiction, defendant being an artificial person and its officers being not members of an indigenous people group. Defendant Green Energy Management Holdings, Inc. is however advised to go through the process of a full-blown FPIC.
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> So Ordered.[48]

In its February 6, 2017 Resolution, the Court of Appeals denied Green Energy Holdings' motion for reconsideration.[49]

Hence, Green Energy Holdings filed the present Petition.[50]

Petitioner argues that "the principle of prospectivity is not applicable where the Court's ruling is based on lack of jurisdiction."[51] In *Co v. Court of Appeals*,[52] which the Court of Appeals invoked in its assailed ruling, this Court allegedly ruled that "the rationale behind the principle of prospectivity – both in the application of law and judicial decisions enunciating new doctrines – is the protection of rights that have already vested and the obligation of contracts."[53] It does not apply to laws remedial in nature,[54] as in this case.

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48 Id. at 1017–1018. The November 7, 2016 Resolution in Case No. RO2-020-14 was penned by Regional Hearing Officer Brain S. Masweng of the National Commission on Indigenous Peoples-Cordillera Administrative Region, Regional Hearing Office.

49 Id. at 38–40.

50 Id. at. 156–262.

51 Id. at 181.

52 298 Phil. 221 (1993) [Per CJ Narvasa, Second Division].

53 *Rollo*, p. 183.

54 Id. at 189.

Petitioner also argues that the Court of Appeals should have confirmed the dismissal of the assailed proceedings by the National Commission on Indigenous Peoples[55] under the ruling in *Unduran*, later reiterated in *Lim* and *Begnaen v. Caligtan.*[56] In *Unduran,* this Court held that "the [National Commission on Indigenous Peoples] has jurisdiction over claims and disputes involving rights of [indigenous cultural communities/indigenous peoples] only when they arise between or among [parties] belonging to the same [indigenous cultural communities/indigenous peoples]."[57] In this case, the petitioner is neither a member of an indigenous community nor does it belong to the Bugkalot/Ilongot tribe.[58]

Petitioner further contends that the writ of preliminary injunction was void *ab initio* or became *functus officio* upon the dismissal of the assailed proceedings.[59]

Moreover, petitioner claims that assuming that the National Commission on Indigenous Peoples had jurisdiction over the assailed proceedings, the Court of Appeals ruled on the case not in accord with the law.[60] The Court of Appeals erred in holding that "it is only upon the issuance of the free and prior informed consent process that the concerned government agency, in the instant case, public respondent Department of Energy, may issue the license or concession to a redeveloper."[61] It also erred in ruling that the National Commission on Indigenous Peoples correctly issued the temporary restraining order and subsequent writ of preliminary injunction. That petitioner was not deprived of due process.[62]

Petitioner alleged that public respondent Department of Energy's Guidelines prescribe that the free and prior informed consent process may be obtained after the service contract is awarded[63] or during the pre-development stage of a contract, which mainly consists of non-intrusive acts.[64] Petitioner attached public respondent Department of Energy's Answer before the National Commission on Indigenous Peoples, confirming this claim.

According to petitioner, there was no legal ground for the issuance of the Temporary Restraining Order and/or Writ of Preliminary Injunction, as the proper remedy of the members of indigenous cultural communities/indigenous peoples who claim to be affected by the Diduyon project is to participate in the Field-Based Investigation process, thus

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55 Id. at 183.
56 793 Phil. 289 (2016) Per C.J. Sereno, First Division].
57 *Rollo*, p. 183.
58 Id. at 186.
59 Id. at 181.
60 Id. at 181.
61 Id. at 182.
62 Id.
63 Id. at 202.
64 Id. at 205.

exhausting their administrative remedies before going to the courts.[65] Furthermore, the legal standing of respondents was not established.[66]

Finally, petitioner disputes the finding of the Court of Appeals on its receipt of a copy of the Temporary Restraining Order[67] and claims that there was a clear violation of due process in this case.[68]

In its December 3, 2018 Resolution,[69] this Court required respondents to comment on the Petition.

Respondents Bugkalot/Ilongot Tribe, through counsel, and the Bugkalot Confederation allege that during the pendency of the Petition for *Certiorari* before the Court of Appeals and while the Writ of Preliminary Injunction was in effect, public respondent Department of Energy, through former Secretary Carlos Jericho L. Petilla, granted an additional 180-day extension period to petitioner "to accomplish its remaining committed activities in the approved Work Program in relation to the expired [Diduyon project]."[70]

Private respondents later learned that Green Energy Holdings was granted an additional extension from two to five years, again in violation of the existing Writ of Preliminary Injunction.[71]

On January 17, 2017, after the Court of Appeals promulgated its Decision, the National Commission on Indigenous Peoples' Regional Director Ruben S. Bastero (Bastero)[72] wrote a letter to its Chairperson, Atty. Leonor T. Oralde-Quintayo, "of the termination of the Free Prior and Informed Consent in connection with [petitioner] 320 MW Diduyon Hydroelectric Power Project with [the Diduyon project]."[73]

A similar letter, dated January 23, 2017, was sent by the Bastero to Director Mario C. Marasigan of the Renewable Energy and Management Bureau.[74]

Respondent also argue that petitioner did not file an appeal, rendering, the free and prior informed consent process is now final and unappealable. Petitioner failed to secure the free and prior informed consent process from

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65 Id. at 219.
66 Id. at 229.
67 Id.
68 Id. at 238.
69 Id. at 1150–1151.
70 Id. at 1156.
71 Id. at 1157.
72 Id. at 1158.
73 Id.
74 Id. at 1159.

"[respondent] as the registered owner of the ancestral domain where the Service Contract Area of the Diduyon Hydroelectric Power Project covered by [the Diduyon project] is located."[75]

Further, respondent claims that petitioner was unable "to secure the issuance of the Certification Precondition by the National Commission on Indigenous Peoples Chairperson."[76]

Respondents state that as of January 28, 2017, the pre-development stage of the Diduyon project "already ended, expired and terminated by its own term,"[77] as evidenced by an "undated letter of former [Department of Energy] Secretary Zenaida Y. Monsada" to the Chair and President of petitioner.[78]

A portion of the undated letter states:

> After thorough evaluation of your request and the surrounding circumstances of the Project, the DOE hereby grants the amendment of the term of the Pre-development Stage of HSC from two (2) years to five (5) years pursuant to D.O. 2014-06-0010.
>
> In this regard, the Pre-Development of the HSC shall end on 28 January 2017 subject to your submission of an updated Work Program and actual expenditures.[79]

Respondents argue that petitioner has no standing to file this Petition because of the expiration of the Diduyon project and also because petitioner failed to comply with the free and prior informed consent process and obtain the Certification Precondition.[80]

In addition, respondents claim that petitioner received a copy of the Temporary Restraining Order issued by the National Commission on Indigenous Peoples on October 3, 2014 and not October 15, 2014.[81]

Respondents further argue that the Court of Appeals correctly ruled that private respondents have a legal right to be a community of indigenous peoples.[82]

On the issue of jurisdiction, respondents agree with the Court of

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75 Id.
76 Id. at 1159.
77 Id. at 1159–1160.
78 Id. at 1160.
79 Id. at 1185.
80 Id. at 1160–1164.
81 Id. at 1169–1170.
82 Id. at 1171–1174.

Appeals in prospectively applying the ruling in *Unduran* and *Lim.*

Public respondent Department of Energy, represented by the Office of the Solicitor General, filed a Manifestation (in Lieu of Comment)[83] stating that the Petition is moot because the Diduyon project was terminated in 2017.[84]

Attached to the Manifestation is a copy of a letter dated May 22, 2017, addressed to petitioner. A portion of the letter states:

> While you have submitted the Declaration of Commerciality (DOC), you failed to accomplish and complete all pre-development activities on or before the end of the contract term. Thus, the HSC shall expire automatically as it cannot be converted to Development Stage without the necessary permits.[85]

Petitioner filed a Counter-Manifestation,[86] stating that it moved for reconsideration of the termination of its service contract. Thus, it should not yet be deemed terminated.[87]

Subsequently, petitioner filed a Motion for Leave to File and Admit Attached Reply[88] and a Reply[89] in response to private respondents Bugkalot/Ilongot Tribe and the Bugkalot Confederation's Comment.

Petitioner argues that the principle of prospectivity applies when vested rights will be affected or when contractual obligations will be impaired.[90] Prospectivity does not apply to procedural rules or when a tribunal is divested of jurisdiction.[91]

Petitioner also argues that the National Commission on Indigenous Peoples has no jurisdiction in view of *Lim.* Similar to this Petition, the National Commission on Indigenous Peoples originally had jurisdiction over the petition in *Lim* until this Court promulgated its Decision, ruling that the "[National Commission on Indigenous Peoples] lacked jurisdiction over [the said case] and that the same was properly cognizable by the regular courts."[92]

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83 Id. at 1197–1205.
84 Id. at 1198.
85 Id. at 1204.
86 Id. at 1206–1218.
87 Id.
88 Id. at 1252–1257.
89 Id. at 1258–1324.
90 Id. at 1268–1269.
91 Id.
92 Id. at 1269.

Petitioner reiterates that it has the standing to file the present Petition because the alleged termination of its service contract is still being reviewed.[93] In any case, it says that since respondents failed to refute petitioner's arguments in the Petition. Hence there is an implied admission on the correctness of the arguments.[94]

Petitioner subsequently filed a Manifestation informing this Court that in a separate case involving the same parties docketed as Case No. CAR-06-16,[95] the National Commission on Indigenous Peoples dismissed respondents' "Verified Petition to Cite for Indirect Contempt Respondents Lucio K. Tan, Jr., Chairman & President of Green Energy Management Holdings, Inc., Hon. Secretary Zenaida Y. Monsada, and Mario C. Marasigan III, Director IV, Renewable Energy Management Bureau, Department of Energy," for lack of jurisdiction.[96] The National Commission on Indigenous Peoples cited *Lim* and *Unduran.* Thus, petitioner says, the Commission itself recognizes that the decisions of this Court in the two cases apply retroactively.[97]

Respondents filed a Counter-Manifestation[98] reiterating that the Petition for Review is moot[99] because the free and prior informed consent process has been terminated,[100] and the Diduyon project has expired.[101]

The sole issue for this Court's resolution is whether the Petition has already been rendered moot due to the dismissal of the case for lack of jurisdiction by the National Commission on Indigenous Peoples, and the expiration of the Diduyon Project.

We deny the Petition.

Based on the records of this case, both parties raised the mootness of the Petition. For petitioners, the Petition was rendered moot by the dismissal of the case pending before the National Commission on Indigenous Peoples. For both public and private respondents, the Petition has been mooted by the expiration of the Diduyon project, which was the subject of the complaint filed before the National Commission on Indigenous Peoples.

To recall, the Court of Appeals promulgated its September 19, 2016 Decision, ordering the National Commission on Indigenous Peoples "to

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93 Id. at 1271–1281.
94 Id. at 1281–1282.
95 Id. at 1431–1434.
96 Id. at 1425–1434.
97 Id. at 1427.
98 Id. at 1436–1456.
99 Id. at 1441.
100 Id. at 1437–1438.
101 Id. at 1439–1441.

resolve [the case] with dispatch."[102] The National Commission on Indigenous Peoples then promulgated the November 7, 2016 Resolution, dismissing the case for lack of jurisdiction. On December 6, 2016, while the Motion for Reconsideration was pending, petitioner informed the Court of Appeals regarding the Resolution issued by the National Commission on Indigenous Peoples.[103]

The Court of Appeals promulgated its February 6, 2017 Resolution, denying the Motion for Reconsideration. It noted the Manifestation filed by petitioner, disposing of it in the following manner:

> While we Note petitioner's Manifestation dated December 6 2016, as well as private respondents' Counter Manifestation dated December 19 2016, informing Us that the NCIP CAR has already issued a Resolution dismissing the complaint filed by the private respondents, the same does not vest upon the Court the jurisdiction to rule on the soundness of such Resolution. The instant Motion for Reconsideration is not the proper remedy to seek a reversal of any resolution the NCIP may have already rendered.[104]

When respondents were ordered to file its Comment, public respondent Department of Energy informed this Court that the Diduyon project, which allegedly encroached upon respondents' ancestral domain, no longer exists. We note petitioner's Manifestation that it moved for reconsideration of the expiration of its service contract, and thus, it should not yet be deemed as expired. However, there is nothing on record to show that its motion for reconsideration was granted.

In any case, the Court of Appeals erred in applying the rule on prospectivity.

Co v. Court of Appeals,[105] cited by the Court of Appeals, is not applicable for it involved a criminal complaint for estafa. The accused, Co, issued a check in favor of a salvaging firm "in connection with an agreement to salvage and refloat a sunken vessel."[106] The bank dishonored the check for the reason "closed account."[107] At the time of the issuance of the bouncing check, the prevailing rule was "the delivery of a 'rubber' or 'bouncing' check as a guarantee for an obligation was not considered a punishable offense."[108] Such a rule was pronounced by the then Ministry of Justice in a December 15, 1981 circular.[109] In 1984, or a year after Co had issued the dishonored check, the Ministry of Justice reversed its earlier

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102 Id. at 35.
103 Id. at 1020–1024.
104 Id. at 39.
105 298 Phil. 221 (1993) [Per C.J. Narvasa, Second Division].
106 Id. at 223.
107 Id. at 224
108 Id.
109 Id. at 225.

pronouncement.[110] The trial court convicted Co, and the Court of Appeals affirmed Co's conviction. This Court reversed the decisions of the trial court and the Court of Appeals, explaining thus:

> This is after all a criminal action all doubts in which, pursuant to familiar, fundamental doctrine, must be resolved in favor of the accused. Everything considered, the Court sees no compelling reason why the doctrine of *mala prohibita* should override the principle of prospectivity, and its clear implications as hereinabove set out and discussed, negativing criminal liability.[111]

Tan, Jr. v. CA[112] is the more appropriate case for it discussed that rules of procedure can apply retroactively. The exception would be when the rule itself states that it should apply prospectively, when vested rights will be impaired, or when applying the new rules would deprive a party of due process.[113]

None of the exceptions discussed in *Tan, Jr.* are present in this case. No vested rights would be impaired, and due process would still be afforded to the parties.

Thus, the Court of Appeals should have applied the ruling in *Lim*. While it may be true that when this case was initially filed before the National Commission on Indigenous Peoples, the parties had relied on the old interpretation of Section 66 of Republic Act No. 8371 or the Indigenous Peoples' Rights Act of 1997, the ruling in *Lim,* which clarified Section 66, applies.[114]

First, the parties in *Lim* were similarly situated in that they also relied upon the old rule, specifically, that all cases involving indigenous cultural communities/indigenous peoples are under the jurisdiction of the National Commission on Indigenous Peoples. In finally resolving the issue of jurisdiction, this Court declared.[115]

> All told, we rule that Section 66 of the IPRA, even as it grants jurisdiction to the NCIP over all claims and disputes involving rights of ICCs/IPs, requires that the opposing parties are both ICCs/IPs who have exhausted all their remedies under their customs and customary law before bringing their claim and dispute to the NCIP. The validity of respondents' claim is another matter and a question that we need not answer for the moment. Too, we do not resolve herein the other issues raised by petitioners given that we already declared that the NCIP does not have

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110 Id.
111 Id. at 235.
112 424 Phil. 556 (2002) [Per J. Puno, First Division].
113 Id. at 570.
114 *Lim v. Gamosa,* 774 Phil. 31 (2015) [Per J. Perez, First Division].
115 Id. at 61.

jurisdiction over the case of respondents against petitioners.[116]

In the dispositive portion of *Lim*, this Court clearly applied its ruling retroactively by dismissing the case pending before the National Commission on Indigenous Peoples due to lack of jurisdiction. This Court also mentioned that "respondents may refile their complaint against petitioners in a court of general jurisdiction."[117] Had the rule been applied prospectively, this Court would have allowed the case to continue before the National Commission on Indigenous Peoples.[118]

Second, *Unduran* enumerates the minimal instances when the National Commission on Indigenous Peoples has jurisdiction, even if the parties do not belong to the same indigenous cultural communities/indigenous people's groups. This Court made it very clear that:

> On a final note, the Court restates that under Section 66 of the IPRA, the NCIP shall have limited jurisdiction over claims and disputes involving rights of IPs/ICCs only when they arise between or among parties belonging to the same ICC/IP group; but if such claims and disputes arise between or among parties who do not belong to the same ICC/IP group, the proper regular courts shall have jurisdiction. However, under Sections 52 (h) and 53, in relation to Section 62 of the IPRA, as well as Section 54, the NCIP shall have primary jurisdiction over adverse claims and border dispute arising from the delineation of ancestral domains/lands, and cancellation of fraudulently-issued CADTs, regardless of whether the parties are non-ICCs/IPs, or members of different ICCs/IPs groups, as well as violations of ICCs/IPs rights under Section 72 of the IPRA where both parties belong to the same ICC/IP group.[119]

In this case, the controversy arose because private respondents objected to the Diduyon Project, which would include a portion of the Certificate of Ancestral Domain Title No. 12 in the Municipality of Kasibu, Nueva Vizcaya.[120] There is no adverse claim or border dispute involved. Certificate of Ancestral Domain Title No. 12 is not being canceled.

With the decisions in *Lim* and *Unduran* as the prevailing rules, the National Commission on Indigenous Peoples properly dismissed Case No. RO2-020-14.[121] The National Commission on Indigenous Peoples' dismissal of the case had the effect of rendering this Petition moot.

FOR THESE REASONS, the Petition for Review is **DENIED** for being moot.

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116 Id. at 78–79.
117 Id. at 79
118 Id.
119 *Unduran v. Aberasturi*, 808 Phil. 795, 831 (2017) [Per J. Peralta, En Banc].
120 *Rollo*, p. 16.
121 Id. at. 1017–1018.

SO ORDERED." **(Hernando, *J.*,** *vice Lopez, J.Y., J., per Raffle dated October 10, 2022*)

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
19 MAY 2023

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