

## Philippines

***NCIP Administrative Order No. 03, Series of 2012, The Revised Guidelines on Free and Prior Informed Consent (FPIC) and Related Processes of 2012***

Machine translation

NCIP Administrative Order No. 3

Series of 2012

### **THE REVISED GUIDELINES ON FREE AND PRIOR INFORMED CONSENT (FPIC) AND RELATED PROCESSES OF 2012**

Pursuant to Sections 44 (m), 46(a), 57, 58, 59, and 7 of R.A. 8371, otherwise known as the Indigenous Peoples Rights Act of 1997, and other related provisions, the following guidelines are hereby promulgated in lieu of NCIP Administrative Order No. 01, Series of

2006, as follows:

#### **PART I PRELIMINARY PROVISIONS**

##### **Section 1. Title. This Guidelines shall be known as “The Revised Guidelines on**

the Exercise of Free and Prior Informed Consent (FPIC) and Related Processes”.

##### **Section 2. Objectives.**

- a. Ensure genuine exercise by Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) of their right to Free and Prior Informed Consent (FPIC), whenever applicable;
- b. Protect the rights of ICCs/IPs in the introduction and implementation of plans, programs, projects, activities and other undertakings that will affect them and their ancestral domains to ensure their economic, social and cultural well-being;
- c. Provide, and ensure compliance with the procedure and the standards in the conduct of Field-Based Investigation (FBI) and FPIC process, payment of fees, compensation for damages, execution of Memorandum of Agreements, observance of corporate social responsibility; and imposition of sanctions for the commission of prohibited acts and omissions as hereinafter provided;
- d. Ensure just and equitable partnership in environmental management, land use, development and resource use within ancestral domains as well as benefit sharing, between and among the concerned ICCs/IPs and the prospective investor, government agency, local government unit (LGU), non- government organization (NGO) and other entities desiring to engage or collaborate in such undertaking;
- e. Ensure that when priority right to development and utilization of natural resources is validly exercised by the ICCs/IPs, the same shall be validated in accordance with the spirit and principles of FPIC;
- f. Ensure that any benefit derived after the grant of FPIC or as an exercise of priority rights shall be managed and used properly by, for and with the concerned community not forgetting inter-generational obligations; and
- g. Guarantee protection of resettled/displaced ICCs/IPs.

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##### **Section 3. Declaration of Policy.**

- a) The FPIC actualizes and strengthens the exercise by ICCs/IPs of their rights to Ancestral Domains, Social Justice and Human Rights, Self- Governance and Empowerment, and Cultural Integrity;
- b) The right of ICCs/IPs to the management, development, use and utilization of their land and resources within their own ancestral domains shall be given utmost regard;
- c) No concession, license, permit or lease, production-sharing agreement, or other undertakings affecting ancestral domains shall be granted or renewed without going through the process laid down by law and this Guidelines.(a3)

## Section 4. Operating Principles. In the implementation of this Guidelines, the following operating principles shall be observed:

- a. **Empowerment.** The ICCs/IPs shall freely pursue their economic, social and cultural development through their participation in decision-making, determination of priorities, as well as the practice of their justice system and peace-building processes.
- b. **Consensus-Building and Decision-Making Process.** The ICC/IPs shall participate in the decision-making processes primarily through their indigenous socio-political structures. They shall likewise affirm the decisions of their duly authorized representatives.
- c. **Peace-Building.** The decision-making of the ICCs/IPs in the conduct of the FPIC is a measure to promote peace, harmony, understanding, unity and security.
- d. **Cultural Integrity.** In the implementation or operation of plans, programs, projects or activities in Ancestral Domains, due regard must be given not only to the physical environment but the total environment including the spiritual and cultural bonds to the areas.
- e. **Inter-generational Responsibility.** The indigenous concept of ownership sustains the view that ancestral domains are considered community property which belong to all generations and therefore cannot be sold, disposed or destroyed. The ICCs/IPs shall have priority rights to manage and pursue sustainable and responsible development plans, programs, projects or activities within their ancestral domain.
- f. **Primacy of Customary Law.** In the conduct of FBI, FPIC, and other processes provided under this Guidelines, including but not limited to dispute resolutions in relation thereto, the primacy of customary law and decision-making processes as determined by the ICCs/IPs shall be observed and adhered to.
- g. **Transparency and Clarity.** The processes under this Guidelines shall be transparent to all stakeholders. The applicant shall make a full and accurate disclosure of information concerning the proposed program, project or activity in a manner that is both accessible and understandable to the concerned community.
- h. **Existing Property Regimes.** Existing and/or vested rights shall continue to be recognized pursuant to Section 56 of R.A 8371 and its Implementing Rules and Regulations.

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- i. **Ancestral Domain as a Single Unit.** An Ancestral Domain shall be recognized and treated as one or undivided unit.

## Section 5. Definition of Terms. In addition to the terms defined under IPRA

and its IRR, the following are defined thus:

- a. **Ancestral Domain Sustainable Development & Protection Plan (ADSDPP).** Refers to the consolidation of the plans of ICCs/IPs within an ancestral domain for the sustainable management and development of their land and natural resources as well as the development of human and cultural resources based on their indigenous knowledge systems and practices.
- b. **Area Affected.** It refers to area/s in the ancestral domain which will be overlapped or affected by the proposed plan, program, project or activity, including areas that will sustain effects or impact to be determined by the FBI Team.
- c. **Bio-prospecting.** The research, collection, and utilization of biological and genetic resources and substances, with the view of applying the knowledge derived therefrom for medicinal, commercial and other purposes.
- d. **Certificate of Non-Overlap (CNO).** It refers to the Certificate issued by the NCIP attesting to the fact that the area where the particular plan, program, project or activity will be done does not overlap with, or affect, any ancestral domain.
- e. **Certification Precondition (CP).** It refers to the Certificate issued by the NCIP, signed by the Chairperson, attesting to the grant of FPIC by the concerned ICCs/IPs after appropriate compliance with the requirements provided for in this Guidelines.
- f. **Consensus-Building.** It refers to that part of the decision-making process undertaken by the ICCs/IPs through their indigenous socio-political structures and practices in arriving at a collective/communal decision.
- g. **Environment Impact Statement (EIS).** It is the document which aims to identify, predict interpret, and communicate information regarding changes in environmental quality associated with a proposed project and which examines the range of alternatives for the objectives of the proposal and their impact on the environment.
- h. **Extractive or Large Scale Activities.** These refer to the activities enumerated in Sec. 19 of this Guidelines.
- i. **Field-Based Investigation (FBI).** It refers to the ground investigation undertaken to determine whether or not the plan,

program, project or activity overlaps with, or affects, an ancestral domain, the extent of the affected area, and the ICCs/IPs whose FPIC is to be obtained.

j. **Indigenous elder/leader.** An indigenous elder/leader emerges from the dynamics of customary laws and practices; they evolve from a lifestyle of conscious assertion and practice of traditional values and beliefs. They are recognized as authority in conflict resolution and peace-building processes, on spiritual rites and ceremonies and in doing so, possess the attributes of wisdom and integrity. They lead and assist the community in decision-making processes towards the protection and promotion of their rights and the sustainable development of their ancestral domains.

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k. **Independent Expert.** Refers to a person specializing in related field whose education and/or experience can be a source of invaluable information pertaining to a particular issue and who is expected to give an objective information or opinion, that will help the ICCs/IPs to reach a sensible, intelligent and well-informed decision.

l. **Non-Extractive and/or Small Scale Activities.** These are the activities enumerated in Section 24 of this Guidelines.

m. **Resolution of Consent.** It refers to the written resolution adopted by the affected ICCs/IPs by themselves or through their duly authorized elders/leaders expressing their acceptance of the plan, program, project or activity.

n. **Resolution of Non-Consent.** It refers to the written resolution adopted by the affected ICCs/IPs by themselves or through their duly authorized elders/leaders expressing their non-acceptance of the plan, program, project or activity and the reasons therefor.

## **PART II PRELIMINARY ACTIVITIES**

**Section 6. Application for Issuance of Certification Precondition. The application for CP shall be endorsed by the appropriate regulatory agency or unit of government to the NCIP Regional Office that has jurisdiction over the area where the plan, project, program or activity is sought to be undertaken, provided however, that for plans, programs, projects or activities affecting ancestral domains that do not require a permit, license or agreement from any government agency/instrumentality, the application shall be filed directly with the same NCIP Regional Office having jurisdiction over the area.**

In case the project is within two (2) or more regions, the endorsement or application shall be transmitted to the Director of the Ancestral Domains Office (ADO) who shall decide which Regional Office shall take the lead in facilitating the appropriate and applicable process taking into consideration the extent of the effect and the size of the areas that will be affected. (a7) No two (2) or more applications of similar subject shall be simultaneously entertained at any given time covering the same area while an application is being processed therein, neither shall another be given due course while a previous application is being processed.

**Section 7. Documents Required to Accompany Application. The applicant shall submit a company and project profile which shall include: the nature and purpose of the project; location with an indicative map showing the names of sitios and/or barangays that will be affected; Abstract of proposed project describing the size, pace, reversibility and scope; duration; preliminary assessment of the likely economic, social, cultural and environmental effects, including potential risks and how these will be addressed; Indicative budget; Persons to be involved in implementation; Operational Plan and activities; and the Profile of the applicant.**

The ADO, in consultation with field offices, shall craft the standard and appropriate checklist for the above purpose. At any time, the FBI/FPIC Team may require additional but pertinent document/s from the applicant, e.g EIS from the DENR, if available.

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## **Section 8. Constitution and Composition of the FBI Team. The FBI Team shall be constituted, by the Regional Director, by way of Memorandum, within ten (10) days from approval of this Guidelines, to be composed of the following:**

- 1) The Community Development Officer (CDO), as Team Leader;
- 2) The FBI Provincial Focal Person;
- 3) One (1) from the Community Service Center (CSC); and
- 4) Two (2) IP elders/leaders identified by the CSC

The composition of the team may be revised or enhanced upon the agreement of the FBI team as the need arises in order to cope with existing work conditions or circumstances, with the approval of the Regional Director.

For CSCs in provinces without provincial offices, the Regional Director concerned shall designate the leader and members of the FBI Team which shall be headed by the CDO and other personnel from the CSC and may be augmented by personnel of the Regional Office and/or from the nearest Provincial Office.

## **Section 9. Duties and Functions of the FBI Team. The duties and functions of the FBI team are:**

1. Consult with the AD representatives if applicable;
2. Conduct the pre-FBI Conference and along with the proponent, prepare the WFP for the FBI;
3. Undertake the FBI to determine the particular area that will be affected, including the projection of the indorsed technical description/geographic coordinates in the AD, the probable effects of the plan, program, project or activity, and the number of ICCs/IPs that will be affected,
4. Identify the elders/leaders and determine presence of disputes/conflict with adjacent ancestral domain/s;
5. Prepare, under oath, and submit a report with recommendations to the Regional Director;
6. Liquidate all funds handled in accordance with standard accounting and auditing rules and regulations; and
7. Perform such other functions as may be directed by higher authorities.

In consultation with field offices, The ADO shall craft the appropriate form/s, for the guidance of the FBI Team in the performance of its functions.

## **Section 10. Pre-FBI Conference; Matters to be Taken. The following matters shall be discussed, taken up and/or acted upon during the Pre-FBI Conference:**

- a. Orientation on the requirements of the FBI process;
- b. The identity and other basic information about the applicant;
- c. Detailed project profile;
- d. Work and Financial Plan; and
- e. Other important matters that may be agreed upon.

**Section 11. Non-appearance at Pre-FBI/Pre-FPIC Conference and Non-payment of FBI/FPIC Fee. Should the applicant fail to appear in the Pre-FBI or Pre-FPIC conference, the Provincial Officer or the CSC Head, as the case may be, shall schedule another conference with notice to, and at the expense of, the applicant. If on the second schedule, the applicant still fails to appear, the Provincial Officer or the CSC Head shall immediately inform the Regional Director of such failure.**

Upon receipt of the information or report, the Regional Director shall order the suspension of the process with notice to the applicant. The order shall also direct the applicant to show cause, within a non-extendible period of ten (10) days from receipt, why the application should not be deemed abandoned for lack or loss of interest. If

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after the lapse of ten (10) days from receipt of the Order, as evidenced by a proof of receipt, and without justifiable reason formally communicated to the Regional Director, the latter shall declare the application cancelled and shall return the application to the endorsing regulatory agency or the applicant, as the case may be. Thereafter, other applications, if any, may be given due course.

Failure on the part of the applicant to pay the FBI/FPIC fee or comply with the requirements as agreed upon during the Pre-FBI/Pre-FPIC conference/s shall likewise result in suspension or cancellation as provided in the preceding paragraph.

**Section 12. Work and Financial Plan (WFP) for FBI/FPIC. The WFP shall be agreed upon by the applicant, the concerned ICCs/IP representatives, and NCIP during the Pre-FBI/Pre-FPIC Conference. It shall include, among others, the estimated cost of: (a) Food and snacks, lodging and transportation expenses of those who will be actually involved in the FBI process; (b) Documenting the FBI activities i.e. photo and/or video, cassette recording and development, reproduction of documents; and (c) Others as may be agreed by all the parties during the Pre-FBI/Pre-FPIC conference.**

The computation of expenses or costs must be based on rates applicable in the particular area where the FBI/FPIC is to be undertaken.

No subsequent cash advance by the person authorized to do so in behalf of the Team shall be allowed unless the previous one is fully liquidated

The FBI/FPIC Fee remitted or paid by the proponent or applicant shall be deposited in a Trust Account to be established for the purpose by the Regional Office. Cash advances and withdrawals therefrom, and the utilization and liquidation of such advances and withdrawals shall be in accordance with the appropriate memorandum circular to be issued by the Director of the Finance and Administration Office.

**Section 13. Commencement and Conduct of the FBI. The Team shall commence the FBI within ten (10) days from date of deposit/payment of the FBI fee and must be completed within ten (10) working days from actual commencement except when delayed by reason of fortuitous event or force majeure.**

The FBI Team shall submit its report in accordance with Section 9 of this Guidelines. Should it be apparent from the report that an AD shall be affected by the proposed project, the RD shall immediately mobilize the FPIC team, otherwise, a CNO shall be issued pursuant to Section 15 of this Guidelines.

**Section 14. Contents of the Field-Based Investigation Report.** The FBI report must contain a narrative of what

transpired during the ground or field investigation; findings and recommendations; and the pertinent attachments, in a standard *pro forma* form to be devised by ADO after consultation with field offices. The report shall be signed, under oath, by the team leader and members.

**Section 15. Certificate of Non-Overlap; When Issued. When the area is patently and publicly known to be outside any AD, or the activity is determined, after FBI, not to affect an AD, the Regional Director, with the concurrence of the concerned Commissioner, shall issue a CNO, provided however, that the applicant shall execute an undertaking for the conduct of FPIC should it be discovered later that there is, in fact, an overlap with an AD, provided further, that special attention shall be given to ICCs/IPs who are shifting cultivators or traditionally nomadic so as not to prejudice their rights as such.**

**Section 16. The FPIC Team. The FPIC Team in each province with provincial office, to be constituted by the Regional Director, shall be composed of the following:**

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- 1) The Provincial Officer, as Team Leader;
- 2) The Provincial Legal Officer;
- 3) One (1) Engineer from the Provincial or Regional Office,;
- 4) The head of the FBI Team; and
- 5) Two (2) IP elders/leaders selected by the community in the first assembly.

In provinces without provincial office, the Regional Director shall, constitute the FPIC Team to be led by the CSC Head and with members from the same service center to be augmented from personnel of the Regional Office and/or nearby Provincial Office, and two (2) community elders/leaders selected by the community.

Substitution, re-arrangement, augmentation of membership in/of the FPIC Team may be done for good and valid reasons, upon the recommendation of the Provincial Officer or CSC Head, as the case may be, with the approval of the Regional Director.

The Regional Director, Chief of the Technical Management and Services Division (TMSD) the Regional Attorney, and the Regional Hearing Officer, shall in no case be part of the Team.

**Section 17. *Duties and Functions of the FPIC Team.* The FPIC Team shall perform the following functions:**

- a. Convene, with prior notice, the First general assembly to validate the following: (1) FBI Report; (2) Identity of the IP Elders and Leaders; (3) Decision-Making Process; (4) Census of IPs/Migrant IPs; (5) Area affected; (6) Existence of boundary conflict with other ADs;
  - b. Document Conflict Resolution Mechanism and facilitate the conduct of the same by the chosen/selected Elders/Leaders, should there be any dispute/conflict to be resolved;
  - c. Facilitate and document the proceedings of the assembly and be responsible for the interpretation, translation, clarification, or elaboration of matters discussed or taken up;
  - d. Orient the participants on the pertinent provisions of IPRA at all stages and activities;
  - e. Present the agreed WFP during the assembly;
  - f. Invite the appropriate independent experts, if available, to give their opinions on any aspect of the project;
  - g. Should the ICC/IP agree to the activity, help draft the Resolution of Consent and the MOA, or Resolution of Non-Consent should the ICCs/IPs reject the proposal;
  - h. Make an accounting, in accordance with generally accepted accounting and auditing rules, of all monies and properties received in relation to the conduct of the FPIC; and
  - i. Prepare and submit FPIC report with recommendation/s, and an executive summary of the same, both duly signed under oath by all the team leader and members, to the Regional Director, copy furnished the concerned Commissioner.
- The ADO shall craft the appropriate *pro forma* form for FPIC Reports after consultation with field offices.

**Section 18. The Regional Review Team (RRT); Composition; Functions. There shall be a Regional Review Team (RRT) to be constituted by the Regional Director, composed of the TMSD Chief, Regional Attorney and the duly designated Regional FPIC Focal Person. The RRT leader may either be the TMSD or the Regional Attorney, at the option of the Regional Director.**

The RRT shall have the following duties and responsibilities:

1. Make a judicious and complete review of the FPIC report and the MOA;
2. Render a report, under oath, of their findings and recommendations to the Regional Director;
3. Summon any member of the FPIC Team, representative of the ICCs/IPs, or representative of the proponent to clarify matters contained in the report and the MOA;
4. Appear before the Commission when so required; and
5. Perform such other functions as may be directed by the Regional Director.

## **PART III**

### **ACTIVITIES, PLANS, PROGRAMS, PROJECTS COVERED AND MANDATORY ACTIVITIES**

**Section 19. Extractive/ Intrusive/ Large Scale. The following plans, projects, programs, and activities are considered large scale/extractive/intrusive:**

- a. Exploration, development, exploitation, utilization of land, energy, mineral, forest, water, marine, air, and other natural resources requiring permits, licenses, lease, contracts, concession, or agreements e.g production-sharing agreement, from the appropriate national or local government agencies, including feasibility studies related thereto;
- b. Those that may lead to the displacement and/or relocation of ICCs/IPs;
- c. Resettlement programs or projects by the government or any of its instrumentalities that may introduce migrants;
- d. Declaration and management of protected and environmentally critical areas, and other related undertakings;
- e. Bio-prospecting and related activities;
- f. Activities that would affect their spiritual and religious traditions, customs and ceremonies, including ceremonial objects, archeological exploration, diggings and excavations and access to religious and cultural sites;
- g. Industrial land use including the establishment of economic zones;
- h. Large scale agricultural and forestry management projects;
- i. Carbon trading and related activities;
- j. Large scale tourism projects;
- k. Establishment of temporary or permanent military facilities; conduct of military exercises, or organizing para-military forces;
- l. Issuance of land tenure instrument or resource use instrument by any government agency and related activities; and
- m. Others analogous to the foregoing, except small-scale quarrying.

The foregoing shall be governed by the FPIC process in Section 22 of this Guidelines.

**Section 20. Who Shall Exercise the Right to FPIC.** All ICCs/IPs who are owners of the ancestral domain have the right to exercise FPIC on/for any of the activities listed in the immediately preceding section; *Provided*, that in case the AD is owned by two (2) or more ICC/IP sub-groups, or under a unified claim, provisions of their duly executed and validly existing agreement shall be followed, if any, otherwise, all ICCs/IPs sub-

groups, tribes shall all participate in the decision-making in accordance with their applicable customary law/s; *Provided further*, that when there are two or more domains affected, the ICCs/IPs owning such domains shall exercise the right to FPIC separately; *Provided furthermore*, that affected migrant IPs inside the domain/s may participate in the exercise of the right to FPIC if expressly allowed by the domain owners.

Unless specifically stated in the MOA, separate exercise of the right to FPIC shall be for each major phase of the proposed activity such as Exploration; Operation or Development; Contracting of operator; and the like.

Nothing in this provision may be interpreted to prejudice the rights of persons under other existing laws.

**Section 21. Pre-FPIC Conference. The following shall be taken up, acted upon or accomplished during the Pre-FPIC Conference: a) The FBI Report; b) Finalization and approval of WFP; c) Deposit/Remittance of FPIC Fee; d) Setting of schedules and tasking; e) Preparation of Work Order; f) Orientation on the FPIC process, protocols, and prohibited acts; g) Arrangements for the payment of the bond; h) Submission by the applicant of an undertaking, written in a language spoken and understood by the community concerned, that it shall commit itself to full disclosure of records and information relevant to the plan, program, project or activity, that would allow the community full access to records, documents, material information and facilities pertinent to the same; i) Submission by the applicant of an Environmental and Socio-cultural Impact Statement, detailing all the possible impact of the plan, program, project or activity upon the ecological, economic, social and cultural aspect of the community as a whole. Such document shall clearly indicate how adverse effects may be avoided, mitigated and/or addressed; j) Opinions of invited experts, if any; and k) Others as may be required by the FPIC team or as may have been surfaced during the conduct of the FBI.**

**Section 22. Conduct of Community Assemblies and Other Activities.** Two (2) community assemblies, known as *First* and *Second* Community Assembly, respectively, shall be held.

The *First* Community Assembly shall be held as soon as the proponent remits or pays the FPIC Fee to the Regional Office and the corresponding amount is released to the concerned NCIP Provincial Office or Service Center for the purpose. It shall be held on a date and strategic place within the AD after the following are complied with by the FPIC team:

1. Formal notice to the Regional Director with his/her approval of the date and place secured;
2. Posting of written notices seven (7) days before the activity in conspicuous places in and around the concerned ICC/IP Community, i.e. the Community Tribal and/or Barangay Hall/s;
3. Personal service of formal notices to the AD representatives as appearing in the Certificate of Ancestral Domain Title (CADT) Recognition Book or ADSDPP Book, if available, seven (7) days before the activity;
4. Service of formal notice to the representative of the proponent/locator;
5. Service of formal notice to the concerned LGU/s Chief Executive/s, concerned NGOs and invited experts, if any; and
6. Service of notice to the Provincial Consultative Body (PCB), if existent.

During this assembly, the following matters shall be taken-up, discussed and/or acted upon: a) Orientation on IPRA and the FPIC process; b) Validation FBI report and the area/s affected; c) The Census of IPs/Migrant IPs/Non-IPs; d) Identification and validation of IP Elders and Leaders; e) Determination of the Decision-making or consensus-building process/es; f) Consensus on the involvement of NGOs/CSOs; g)

Validation of the members of the FPIC Team representing the community; h) Presentation of the agreed WFP; i) Option, selection and invitation of independent expert/s to conduct EIA or give their expert opinions; j) Arrangements for conflict/dispute resolution mechanisms by the chosen/elected IP Elders/Leaders; k) Date and place of Second community assembly; and l) Other matters that may be necessary and pertinent.

The **Second** Community Assembly shall be held on a date and place within the AD decided upon during the First community assembly. In this assembly, the following shall be taken up or undertaken:

1. Presentation by the applicant of the plan, program, project or activity that it seeks to undertake. The presentation shall include: a) The Operation Plan and the scope and extent of the proposal; b) The cost and benefits of the proposal to the ICC/IP and their ancestral domains; c) The perceived disadvantages or adverse effects to the community; and d) The measures adopted by the applicant to avoid or mitigate these;
2. Sharing by an expert/s, if engaged or invited, to include presentation of the result of the EIA if available, expert opinion/s on any aspect, recommendation/s, and identification of affected area/s;
3. Remarks or inputs of other stakeholders, e.g. concerned NGAs, LGUs, NGO, IPO;
4. Open forum to give the ICCs/IPs the chance to ask questions and to speak out their concerns relative to the presentations and the project; and
5. Other important matters that are agreed upon during the assembly.

If it becomes obvious or apparent that there are other ancestral domain/s that are affected, the FPIC process shall be undertaken in such area/s, either in one process or separately, depending on the obtaining facts and circumstances and the decision of the people of such affected area/s.

Towards the end of the **Second** community assembly, the ICCs/IPs shall be left alone to agree on their decision-making/consensus-building schedules and when to come out with their decision. This activity must not be undertaken less than ten (10) days from the date of the Second community assembly and must be completed within a reasonable time but not more than two (2) months thereafter.

Following the **Second** Community assembly shall be the consensus-building period. This is the period when the ICCs/ IPs shall proceed to consult among themselves, employing their own traditional consensus-building processes, to further understand and discern the merits/advantages and demerits/disadvantages of the proposal in order to intelligently arrive at a consensus. Except for NCIP representatives who shall document the proceedings, the applicant and non-members of the IP community are strictly enjoined from participating in the consensus-building activity or interfering in any manner in the decision making process. Non-IPs or migrant IPs who are residents of the AD may only participate if allowed by the AD owners in accordance with their customs and traditions, provided however, that the permission be made in writing and signed by the authorized elders/leaders.

When the ICCs/IPs are already ready with their decision or consensus, the duly authorized Community Elders/Leaders shall communicate to the FPIC Team such consensus. If it appears to be favorable, the FPIC Team shall immediately notify the proponent and the community representatives for the negotiation of the terms and conditions that shall be embodied in the MOA. Once the parties agree on the terms and conditions, the MOA is forthwith drafted in the vernacular and English or vice versa. Thereafter, a validation assembly shall be convened within the AD, at which

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time the MOA provisions shall be explained to the community by the FPIC Team in a language that they speak and understand. After having understood the contents and implications of the MOA, the community may confirm the same. After confirmation, the same shall be forthwith signed by the authorized signatories of both parties. The negotiation of the terms and conditions and the signing by the duly authorized representatives of the proponent and the ICCs/IPs must be done within the AD. Along with the finalization of the MOA, the Resolution of Consent of the community shall also be prepared, signed and released.

If the consensus is not favorable, the Resolution of Non-consent shall be prepared, signed and released.

The FPIC Team shall facilitate the conduct of, and document all, proceedings/activities under this section and shall be responsible for the translation, interpretation, clarification, or elaboration of matters taken up, and the explanation of pertinent provisions of IPRA, to the best of their personal knowledge and ability. Views, pro and con, shall be summarized and documented as accurately as possible. The FPIC team may also direct any participant in the assembly to submit written comments or objections which must be received by the FPIC Team within a non- extendible period of three (3) working days, to form part of its final report.

**Section 23. Posting of Bond.** After the issuance of written resolution of consent and before the start of any activity enumerated under Section 19 of this Guidelines, the applicant shall secure a bond with a reputable bonding company with the consent of the NCIP, or deposit a cash bond with NCIP, to answer for damages, violation of terms and conditions which the ICCs/IPs may suffer and claim from on account of the said activity as may be agreed by the parties in the MOA and under other applicable laws. The kind, amount of bond to be secured or posted, and the terms and conditions thereof, shall be specified in the MOA.

**Section 24. Non-Extractive/Small Scale Activities..** The following plans, projects, programs, and activities are considered non-extractive/small scale.

1. Activities not covered in Section 19 hereof;
2. Feasibility studies not embraced in the preceding Sections;
3. Non-extractive exploitation and utilization of land, water and natural resources as defined under existing laws, rules and regulations of governing or regulating agencies, e.g. ISF, CBFM, IFMA etc.;
4. Programs/projects/activities not requiring permits from government agencies;
5. Other Small scale quarrying; and
6. Such other activities analogous to the foregoing.

Researches undertaken by government, private persons, or corporations or foreign entities for purposes intended directly or indirectly for any purpose shall be governed by the Guidelines on Research and Documentation of IKSPs and Customary Laws.

The FPIC process under this Section requires negotiation between the community, represented by its Council of Elders/Leaders, and the applicant, facilitated by the FPIC Team. There shall be two (2) separate meetings with the elders/leaders which are herein referred to as the **First** meeting and the **Decision** meeting. In the **First** meeting, the applicant will be given sufficient time to present and clarify its proposal. The presentation must include the operation plan, the scope and extent of the activity, the cost and benefits to the ICC/IP and their ancestral domains, perceived disadvantages or adverse effects to the community, and measures adopted by the applicant to avoid or mitigate these. In said meeting, the ICCs/IPs shall prepare a schedule for their decision-making/consensus-building which must start not less than ten (10) days from the first meeting and completed not more than Thirty (30)

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days thereafter. The **First** meeting shall be followed by the consensus-building period by and among the council of elders/leaders. They will also use this period to consult with their constituency in accordance with their customary mechanisms. After they are able to arrive at a consensus within the time frame they decided, they shall inform the FPIC Team of such consensus. If the decision/consensus is favorable, the Team shall forthwith convene the **Decision** meeting, with notice to the concerned parties. During this meeting, the council of elders/leaders will formally proclaim their decision and the parties shall proceed to negotiate and finalize the terms and conditions of the MOA and thereafter consummate the same.

If the consensus is against the project, the leaders/elders shall issue a resolution of non-consent, however, if it is favorable, the Regional Director shall within three (3) days, from receipt of the resolution, prepare and sign the CP and transmit the same, including the FPIC Report, to the concerned commissioner for concurrence, copy furnished ADO. Once concurred, the same shall be endorsed to the Chairperson for confirmation.

The process herein provided shall be considered as exception to the strict provisions of Part V of this Guidelines.

**Section 25. Excluded Areas.** The following areas are excluded from any activity except for the exclusive purposes for which they are identified:

- a. Sacred grounds and burial sites of indigenous communities;
- b. Identified international and local cultural and heritage sites;
- c. Critical areas identified or reserved by the ICCs/IPs for special purposes;
- and
- d. Other areas specifically identified by ICCs/IPs in their ADSDPP.

## PART IV

### POST FPIC ACTIVITIES

Section 26. Submission of Report. Where the ICCs/IPs gave their consent in accordance with the foregoing provisions, The FPIC Team shall submit a formal report with recommendation/s, systematically prepared with pertinent and legible annexes, signed by the team leader and members under oath to the Regional Director. An executive summary thereof shall also be prepared and copy furnished the concerned Commissioner/s.

In cases where EIA, EIS and/or ECC are required by the regulatory agency, and the same are not available at the time of the FPIC Process, the proponent/applicant shall execute an undertaking that should the same become available, the proponent/applicant shall furnish NCIP a copy of the same, and undergo the FPIC process in areas included in said EIA, EIS and/or ECC as affected areas which were not included in the previously determined affected area/s. In case of non-consent, the FPIC Team shall report the same to the Regional Director, and the latter shall forthwith inform the proponent, copy furnished the concerned Commissioner/s and the ADO.

**Section 27. Request for Reconsideration. The proponent/applicant may request for reconsideration of the resolution of non-consent within fifteen (15) days from receipt of the said resolution of non-consent. The request for reconsideration shall be addressed to the ICCs/IPs through the Regional Director. It must embody any new proposal to address the reason/s for the rejection. After receipt of the request for reconsideration, the Regional Director shall direct the leader of the FPIC Team to serve copies upon the authorized representatives of the ICCs/IPs. Upon service to the ICC/IP elders/leaders, the FPIC Team Leader shall advise them to consult with the**

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community. Should the leaders believe that there is need for a community assembly to discuss the merit of the request, they shall so inform the FPIC Team Leader with a proposal for the provision of funds for the holding of a community assembly. This shall then be communicated to the Regional Director who shall then inform the proponent/applicant. Should the Elders/Leaders, after consultation with the community on their own, believe that there is no chance for reconsideration, they shall formally inform the FPIC Team Leader, who shall then formally inform the Regional Director, copy furnished the proponent/applicant.

If the ICCs/IPs manifests their rejection of the plan, program, project or activity, in any written form signed by the members of the community and their elders/leaders before or during the FBI, the same shall be received by the FBI team and the Regional Director shall be notified of the same. Upon receipt of the notice, the Regional Director shall order the conduct of a validation assembly similar to a consensus- building activity as provided for in this rules to validate the rejection. However, if the rejection is received or made after the FBI, the matter shall be tackled in the mandatory activity on consensus-building. If the rejection is affirmed during the validation assembly, the appropriate resolution of non-consent shall be made, adopted, and signed, and thereafter transmitted to the Regional Director by the FPIC Team. The Director shall then return the application to the endorsing agency or the applicant, as the case may be, with a transmittal of the resolution of non-consent. As a consequence of the adoption of such resolution, all proceedings in the conduct of the FPIC shall ipso facto stop. No FPIC process for any similar proposal shall be undertaken within six (6) months from the issuance of non-consent.

**Section 28. RRT Review.** After receipt of the report, the Regional Director shall direct the RRT to review the same within five (5) days. Should the review report be favorable, and the Director finds nothing wrong with the same, he shall endorse the record of the FPIC Process undertaken, together with his recommendation/s to the ADO for appropriate action, otherwise he may direct appropriate action by the RRT or the FPIC Team before he makes his endorsement to the ADO.

**Section 29. Inaction.** The inaction of the applicant within six (6) months from the last FPIC activity, without justifiable reason, shall be a ground for a termination of the FPIC process to be declared by the Regional Director with notice to the applicant.

**Section 30. Dormant Certification Precondition.** If no activity is undertaken by the proponent within a year from the approval/issuance of permit, the CP is considered dormant and thus, upon the report of the Regional Director, the Chairperson shall issue a show cause order directing applicant/proponent why the CP should not be cancelled. Failure of applicant to comply within a non-extendible period of fifteen (15) working days from receipt of the order, or to show justifiable reason, the CP shall be cancelled by Resolution of the Commission, with notice to the concerned regulatory agency, proponent, and the ICCs/IPs.

## **PART V MEMORANDUM OF AGREEMENT**

**Section 31. *Preparation of the Memorandum of Agreement (MOA).*** When the consent of the concerned community is obtained, the terms and conditions agreed upon shall be embodied in a MOA to be executed between and among the ICC/IPs, the applicant/proponent, the NCIP, and any other party that may be necessarily involved.

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The MOA shall be prepared by the FPIC Team strictly in accordance with what has been agreed upon by the parties, written in the language or dialect of the ICCs/IPs concerned, and thereafter translated into English and/or Pilipino. The drafting shall be the primary obligation of the Legal Officer of the concerned provincial office. In his/her absence the Regional Director shall designate the Legal Officer from another province to assist the FPIC Team.

**Section 32. Contents of MOA.** The MOA shall include, but shall not be limited to, the following:

- a. Detailed benefit-sharing provisions in accordance with rules and regulations [i.e. not less than 1% royalty under mining act];
- b. Development projects based on the development priorities of the community;
- c. Monitoring of the implementation MOA to be implemented by NCIP in partnership with LGUs and CSOs. This undertaking shall be paid for by the company;
- d. Mitigation and resettlement plans for potential risks ;
- e. Redress mechanisms;
- f. Clause on the non-transferability of the MOA;
- g. Clause for renegotiation of the economic provisions;
- h. Whether the concerned ICCs/IPs shall require another FPIC to be conducted in case of merger, reorganization, transfer of rights, acquisition by another entity, or joint venture;
- i. List of responsibilities of the company and the affected community j. Inclusive dates/duration of agreement;
- k. Other than what has already been granted by law, the benefits to be derived by the host ICC/IPs indicating the type of benefits, specific target beneficiaries as to sector and number, the period covered, and other pertinent information;
- l. Detailed use of all funds to be received by the host ICC/IP communities, ensuring that a portion of such funds shall be allocated for development projects, social services and/or infrastructures in

accordance with their development framework and the Guidelines on the Management of Royalty Share and Other Benefits promulgated by the Commission En Banc;

- m. Transparency mechanism on transfer and disbursement of funds;
- n. Detailed measures to protect IP rights and value systems;
- o. Detailed measures to conserve/protect any affected portion of the ancestral domain critical for watersheds, mangroves, wildlife sanctuaries, forest cover, and the like;
- p. Responsibilities of the applicant as well as the host IP community;
- q. The monitoring and evaluation system of the MOA, to include submission of reports and creation of monitoring teams;
- r. Remedies and/or penalties for non-compliance or violation of the terms and conditions which includes applicability of customary laws and imposition of sanction/s;
- s. Deposit of cash or surety bond mentioned pursuant to Section 23 hereof;
- t. Provision to render assistance in the event of calamities/disasters in the community;
- u. Provision to undertake a new FPIC Process in case of mining activities, after the exploration stage;
- v. Provision on the effects of dormant Certification Precondition;
- w. Membership of proponent in organizations requiring ethical standards in a particular line of activity; and
- x. Other requirements provided in this Guidelines.

Corporate Social Responsibility (CSR) or Social Development and Management Projects (SDMP) required under existing laws shall not be considered as part of benefits enumerated above.

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### **Section 33. Signatories to the MOA. The signatories of the MOA shall be:**

- a. Elders/leaders or their alternates who have been identified during the validation and authorized by the community to sign;
- b. For corporations, partnerships or single proprietorship entities, the authorized officers, representatives, or partners per Board Resolution; and
- c. The Chairperson shall sign the MOA in behalf of the NCIP as Third Party. For projects where the Regional Director is authorized by this Guidelines to issue the corresponding certification precondition, the MOA shall be signed by him/her in behalf of the NCIP as Third Party.

### **Section 34. MOA Signing. The signing of the MOA shall be done within the affected ancestral domain by those duly authorized, during a general assembly called for the purpose, after its contents is fully read aloud and explained by the FPIC Team, and understood and affirmed by the community. Should there be need for any change/s, the FPIC team shall make the appropriate revision or amendment to the satisfaction of the community assembly.**

Signing by those duly authorized may be done through actual writing/signing or the affixing of thumb marks, provided however, that in case of the latter, a member of the community who is able to read and write shall sign as an instrumental witness. Those authorized to sign in behalf of the community, including instrumental witnesses, shall thereafter present themselves before a notary for the appropriate notarial acknowledgment.

### **Section 35. Final Review of the MOA by the Legal Affairs Office. The MOA shall be reviewed by the Legal Affairs Office (LAO) prior to the endorsement of the FPIC report by ADO to the Commission. The legal advisory of the LAO shall form part of the FPIC Report of ADO.**

In cases where the Regional Director is authorized to issue the CP, the MOA shall be reviewed by the Regional Legal Officer or any Legal Officer who has not participated in any stage of the FPIC Process.

**Section 36. Non-transferability of Free and Prior Informed Consent.** The consent of the ICCs/IPs for a particular proposal shall not be transferable except in cases of merger, reorganization, transfer of rights, acquisition by another entity, or joint venture, to any other party, and the same is provided in the MOA: Provided, however, That the transferee shall assume the obligations of the transferor, otherwise another FPIC will be required. The transferee may improve the terms and conditions of the MOA affording or providing greater benefits for the ICCs/IPs other than those stated in the MOA, or may propose other terms and conditions that would uphold the interest and welfare of the concerned IP community. Such change/improvement in the MOA shall bear the approval of the Commission pursuant to this Rule.

In the circumstances mentioned in the immediately preceding paragraph, the transferee is required to execute a formal undertaking, with notice to the representatives of the ICCs/IPs concerned, that upon the effectivity of the new set-up or relation brought about by the foregoing circumstances, the transferee shall faithfully comply with the terms and conditions of the MOA and that they shall observe and assume all the obligations stipulated in the said MOA. In this connection, it shall be the responsibility of the transferor to inform transferee of the existence of MOA before the perfection of the new set-up or relation. Likewise it shall be the duty of the transferee to inform, in writing, the ICCs/IPs concerned and NCIP of the impending merger, reorganization, transfer, acquisition, or joint venture and shall be required to submit the necessary documents required under Section 7 of this Guidelines to ADO and to the representative of the ICCs/IPs concerned.

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The preceding paragraphs shall not apply when it is expressly provided in the MOA that a new FPIC is required in the event of merger, reorganization, transfer of rights, acquisition by another entity, or joint venture.

**Section 37. Complaints Related to the Memorandum of Agreement.** Any complaint involving the interpretation and implementation of the MOA shall be resolved first in the community using their traditional conflict resolution process. If the complaint is not resolved using the customary system, the complaint shall be filed with the appropriate NCIP Regional Hearing Office (RHO) for disposition. The decision of the RHO may be appealed in accordance with the provisions of Administrative Circular No. 1, Series of 2003.

**Section 38. Applicability of Customary Laws and Imposition of Sanctions for Violation of the Terms of the MOA.** Any person/party who willfully violates or fails to comply with his duty or obligation under the provisions of the MOA may be held liable in accordance with the customary laws and practices of the host or concerned ICC/IPs and sanctions may be imposed in accordance therewith: *Provided*, That the sanctions are not excessive, cruel and degrading, and without prejudice to the exhaustion of conciliation and mediation efforts by the NCIP, and the exercise of the latter's visitatorial and injunctive powers. This is without prejudice to any action that any person or the community may take before the proper courts for the enforcement of civil, criminal or administrative liability.(48)

## **PART VI OTHER PROCESSES**

**Section 39. Community-Solicited or Initiated Activities.** Programs, projects and activities solicited or initiated by the concerned ICCs/IPs themselves where the activity is strictly for the delivery of basic services to be undertaken within or affecting the ancestral domain, do not require compliance with the FBI/FPIC requirement as provided in this Guidelines, however, they shall be subjected to a validation process where the following shall be determined:

- a. The ICC, in fact, voluntarily solicited or initiated the plan, program, project or activity to be undertaken;
- b. The plan, program, project or activity conforms with the community's ADSDPP or in the absence of the ADSDPP, the concerned community considers the same to form part already of the ADSDPP that they will formulate in the future;
- c. The ICC knows the extent of the plan, program, project or activity and its socio-cultural/ environmental impact to the community;
- d. The parties acknowledge their obligations; or
- e. The plan, program, project or activity is for the delivery of basic services or livelihood projects involving community.

**Section 40. Projects, programs and activities undertaken by NCIP by itself or in cooperation with other government agencies and LGU Projects.** Projects, programs and activities undertaken by NCIP itself or in cooperation with other government agencies and LGU projects shall also be validated to determine if they coincide or complement with the development priorities of the community and will not in any way adversely affect their well-being.(n)

**Section 41. Foreign Funded Project Undertaken in Cooperation with the NCIP.** NCIP may enter into cooperation with foreign funding agencies for projects involving delivery of basic services or for the promotion of economic and sustainable

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development, in which case, the requirements of FPIC may be dispensed with and that only validation under the preceding sections of this Guidelines may suffice. Projects undertaken by international funding agencies or institutions by themselves or in cooperation with non-government organizations or institutions shall, however, be subject to the appropriate FPIC process as provided in the applicable provisions of this Guidelines or other pertinent NCIP Guidelines.

**Section 42. Exercise of Traditional Resource-Use Rights.** Gathering, hunting and such other traditional use by members of the ICC/IP of natural resources found within their ancestral domain including gathering of rattan and other forest products for family/personal consumption, subsistence and livelihood, do not require the conduct of the FPIC Process as provided in this Guidelines, provided, that the use shall be limited for the ICC/IPs' traditional use. To avoid circumvention or abuse of this provision, the NCIP shall validate such utilization upon the complaint of any member of the council of elders/leaders.

**Section 43. Objects and Process of Validation. Where validation is required in the sections 39, 40, 41, and 42 to determine the consent of the Community, the process shall be as follows:**

- (1) The Regional Director, *motu proprio* or upon receipt of the written request for validation, shall constitute a team composed of not more than three (3) from the provincial office or CSC, as the case may be, to conduct a field validation;
- (2) The team shall immediately conduct the validation and thereafter submit the appropriate report, prepared under oath, to the Regional Director within ten (10) days from commencement thereof;
- (3) The process of validation shall be done through interviews of elders/leaders and other community members; and
- (4) If the validation yielded positive report, the Regional Director shall within three (3) days, from receipt, prepare the CP and validation documents to be transmitted to the concerned commissioner for concurrence, copy furnished ADO. Once concurred, the same shall be endorsed to the Chairperson for confirmation. Otherwise, the Regional Director shall return the documents to the applicant/petitioner.

Even if an activity is covered under Sections 39, 40, 41, and 42, the NCIP may exercise its injunctive powers upon a written complaint of any member of the affected community to enjoin the conduct or continued implementation of the program, project, plan or activity in order to safeguard the rights and interests of the community. (34a)

**Section 44. Emergency Cases. Where the conduct of plans, projects or activities of the government or any civic, religious, or similar organizations within ancestral domains is in response to emergency situations involving public order, health, security or safety including military operations within ancestral domain areas when made in connection with hot pursuit operations, securing vital government installations, programs and projects against clear and imminent danger FPIC shall not be required.**

**Section 45. Regulation of Entry of Migrants and Other Entities. All migrants and other entities must first secure the express permission of the community's Council of Elders/Leaders who shall, in accordance with their consensus building process, community practices, customs and traditions and upon the free and informed prior consent of the community members agree to accept such migrant or entity within the domains, subject to the following conditions:**

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- a. Said persons and entities can be allowed to perform activities as are expressly authorized and which are not inimical to the development of the ancestral domains and cultural integrity of the ICCs/IPs, and
- b. The ICCs/IPs shall maintain the right to impose penalties for violations of the conditions in accordance with their customary laws.

**Section 46. FPIC of Resettled/Relocated or Displaced ICCs/IPs Within Public Domains.** A group or a community of ICCs/IPs occupying a portion of public domain, whether as a result of a resettlement or relocation project of the government or as a result of displacement, has the right under Section 7, paragraphs (c) and (d) of the IPRA to be provided with lands of quality and legal status at least equal to that of the land previously occupied by them suitable to provide for their present needs and future development; hence, the said ICCs/IPs shall not be treated as migrants and can likewise exercise their right to FPIC.

**Section 47. FPIC Rights of Resettled, Displaced and Relocated IPs as well as Migrant IPs Living in Co-existence with the Original IPs within the Domain.** In a particular ICC/IP community where there exists resettled, displaced and relocated IPs or migrant IPs mingled or in co-existence with the owners of the AD, the right to FPIC of the resettled, displaced and relocated or migrant IPs will depend on the custom, practice or tradition of the owners of the AD allowing or disallowing the exercise thereof. Whether allowed or not allowed by the owners of the AD to participate in the FPIC proceedings, they shall likewise be entitled to the benefits by virtue of the MOA and to compensation for damages, loss or injury to them or their properties. The obligation to compensate the resettled, displaced and relocated IPs or migrant IPs of what is rightfully due them shall be recognized by the applicant in writing either in the MOA or in a separate undertaking made as an integral part of the MOA. (38)

**Section 48. Small Scale Quarry Approved by the Local Government Unit (LGU).** The CP for small-scale quarries, whose permits are issued by Local Government Units (LGUs) shall be issued by the concerned Regional Director with the concurrence of the concerned Regional Ethnographic Commissioner and affirmation by the NCIP Chairman. A copy of the CP shall be furnished to ADO, the concerned Provincial Officer or CSC Head, as the case may be.

**Section 49. Community-Initiated or Solicited Research.** Research activities solicited, commissioned or conducted by the concerned ICC/IP themselves to be undertaken within or affecting the ancestral domain, shall be governed by the Guidelines on IKSP/Customary Law research and documentation.

## PART VII

# EXERCISE OF PRIORITY RIGHTS

## Section 50. Steps in the Declaration of EPR by the ICCs/IPs. In the

declaration of the EPR by a particular ICC/IP community, the following must be observed:

1. **Community Assembly.** A community assembly of all members of the concerned ICC/IP community shall be held, at the community's own initiative and expense, with notice to NCIP.

For purposes of this Guidelines, the community assembly of all members shall be deemed sufficient and shall proceed after complying with the following rules:

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(a) Every household is entitled to one representative and, at least, majority of them must be physically present during the community assembly;

(b) Majority of the representatives of the community identified as responsible to make decisions for the community are also present;

(c) If it involves a CADT area, the representative/s identified in the claimbook or majority of them must also be present;

(d) Public officials, officers or employees who are members of the community may be allowed to participate in the community assembly but as ordinary members, elders/leaders or community representatives, as the case may be.

The community assembly shall take up the following, among others:

a. Review of the population of the concerned ICC/IP community. Reference may be made to the CADT application, the ADSDPP formulated, and/or any other credible source of data/information;

b. Information, Education, Consultation (IEC) on IPRA and pertinent provisions of its IRR and current NCIP guidelines;

c. Identification of, and discussion on, the particular natural resource over which the community desires to exercise priority right, including its specific location; and

d. Customary processes of arriving at a community consensus.

2. **Community Resolution.** Should the community decide to exercise their priority right, after complying with the foregoing, a community resolution shall be drafted, discussed, finalized and approved by a majority of all the members of the concerned ICC/IP community during the same assembly or in another assembly, as the case may be. The resolution shall, among others:

a. Identify the specific natural resource;

b. Delineate in detail the specific location and area where the subject natural resource is or may be found;

c. Describe the capability and/or capacity of the community to undertake the activity they seek to engage in as consequence of the EPR; and

d. List the names of community elders/leaders who are authorized to make the declaration of EPR.

The approval of the community resolution by all members of the concerned ICC/IP community shall be deemed sufficient and approved if signed or thumb- marked by a majority of all the members and representatives physically present during the community assembly as mentioned in Article III, Section (1).

3. **Declaration of EPR and EPR Plan.** The elders/leaders named and authorized in the community resolution to make the declaration shall make the declaration of EPR. The declaration shall include an EPR Plan which shall contain, among others, the following:

a. General information about the Ancestral Domain and the ICCs/IPs of the area, including indigenous land use plan, if existing and available;

b. Purpose of the declaration;

c. Natural resource for development, harvesting, extraction or exploitation;

d. Specific Location and area of the proposed site/s accompanied by maps, 3D

maps, sketches and/or other material reference monuments as annexes;

e. Projects, programs, activities or undertakings to be pursued to realize the purpose of the EPR;

f. Scope and duration of operational plan/s for every activity;

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- g. Capability of the community to undertake the same or to engage a qualified partner;
- h. Conformity with the existing ADSDPP and/or the Environmental Conservation and Protection Program of the concerned ICCs/IPs as provided for under the IRR of IPRA;
- i. Existence of a duly organized IPO registered and recognized by NCIP;
- j. Recognition and Observance of IP Governance/Decision-making processes;
- k. Existence and feasibility of EPR Plan & ECPP;
- l. In the absence of a provision in an existing ADSDPP, or non-existence of an ADSDPP, a statement that it shall be so included in the existing ADSDPP or in the one that shall be subsequently formulated.
- m. How income and/or benefits will be managed, shared, used and accounted for; and
- n. Name and personal circumstances of the authorized elders/leaders who made the declaration and their signatures or thumb-marks.

The community may request the assistance of NCIP in the preparation of their EPR Plan, or an NGO duly accredited by NCIP.

4. Where to File. The declaration of EPR, along with its annexes, including the community resolution, shall be filed, in five(5) legible copies, with the NCIP Regional Office that has administrative jurisdiction over the area declared for EPR. If the same is filed with any other office of the NCIP, it shall be received and immediately transmitted or endorsed to the concerned regional office.

Section 51. Validation of the EPR Declaration and Validating Team. The validation of the declaration of EPR shall be done by a Validating Team to be constituted by the Regional Director from among personnel of the appropriate Community Service Center, Provincial Office and/or Regional Office, which must not be more than five (5) persons. The Validating Team shall use as its reference and/or do the following, among others:

- a. CADT Claimbook and/or ADSDPP record, if existing. In the absence thereof, the barangay census or IP census conducted by the NCIP, and other official documents produced in the performance of NCIP's mandate;
- b. AD Profile, if existing, otherwise the team shall assist community in making one;
- c. Verify and validate the community resolution, the declaration, and other pertinent data/information;
- d. Get a copy and validate the Community EPR plan.
- e. Verify and validate the capability of the community to undertake the activity which is the object of their EPR or their capacity to engage a qualified partner.

**Section 52. *Engaging a partner.* Should the community, during the process of validation, inform the Validating Team that it does not have the financial or technical capability or capacity to undertake the activity relative to which they declared EPR and desires to engage a specific kind of partner, the Validating Team shall advise and assist the community make a declaration to that effect, through the elders duly authorized in the community resolution and who filed the previous declaration. After such declaration is made, following the principles of FPIC, a community assembly must be held, at no expense to NCIP except for personnel services, at which time the following matters shall be taken up and acted upon:**

1. Personality of the proposed partner who shall be a non-member of the community or a juridical person whose incorporators are non-members or a mixture of members and non-members, validly organized and existing under Philippine laws;

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2. Financial and technical capability, as well as track record of the proposed partner;
3. Proposed terms and conditions of the proposed partnership which must include, among others: (a) the duties and obligations of the parties; (b) the determination, sharing, and release of benefits; the period of partnership; prohibited acts; and Conflict/Dispute resolution;
4. Sharing of expert opinions by persons invited by the community;
5. Open Forum;
6. Consensus-building period which must include a reasonable time frame of activities for such, the manner by which it will be done, and the date when the decision of the community will be made known to the Validating Team, by the authorized elders; and
7. Other matters that the community may deem necessary.

The community may decide to accept or reject the proposed partner. If rejected, other persons may be considered, if any. If accepted, the appropriate MOA shall be drafted.

Section 53. Memorandum of Agreement (MOA) on Partnership. The MOA between the community and the chosen partner shall be drafted and validated with the community in a validation assembly facilitated by the Validating Team, at the expense of the proposed partner, to determine compliance with this Guidelines and other pertinent laws, rules and regulations, and the terms and conditions agreed upon during the community assembly.

**Section 54. *Report of the Validating Team.* The report of the Validation Team, which shall be under oath, must include an executive summary with recommendations. It shall then be submitted to the Regional Director within fifteen (15) days from the termination of the validation period, who shall immediately refer the same to the RRT for review within three (3) working days. After receipt of the RRT review report, the Regional Director shall take such appropriate action he deems necessary, otherwise, he shall forthwith make a transmittal of the entire record, with his/her own recommendations, to the ADO Director who, after receipt, shall immediately request the LAO to issue legal opinion and furnish the concerned Commissioner a copy of the executive summary. After receiving the legal opinion, the ADO Director shall request for inclusion of the same in the agenda of the CEB for its next en banc session, through the Executive Director.**

**Section 55. *Action by the CEB.*** After appropriate deliberation, the CEB may decide to issue the formal acknowledgment of EPR and/or direct otherwise, as it deems fit. Should it decide to grant the formal acknowledgment, the same shall be embodied in an En Banc Resolution and the corresponding Certification Precondition shall be issued accordingly. Should the CEB decide not to confirm the EPR declaration, its denial and the grounds thereof shall be embodied in an En Banc Resolution. All such actions shall be transmitted by ADO to other appropriate government agencies, the community, the partner if applicable, and the field office/s.

Section 56. Limitation on Formal Acknowledgment of EPR. In no case shall the formal acknowledgment of a declaration of EPR by the CEB be presumed or considered as a grant of CADT to the community over their ancestral domain nor shall it exempt an AD claim from the process required under the law and the Rules on delineation and titling. It shall not also exempt the community from complying with the requirements imposed by concerned regulating agencies, nor the ripening into a MOA without undergoing the process provided above.

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**Section 57. *Applicability.*** The foregoing provisions on EPR shall be observed in the processing of all EPR declarations, including those pending before Regional, Provincial and Service Centers. All EPR declarations officially endorsed/transmitted to the Ancestral Domains Office before or on the day of effectivity of this Guidelines shall continue to be processed in accordance with Administrative Order 01, series of 2006 until approved or denied by the Commission.

## **PART VIII**

### **MANAGEMENT OF ROYALTIES & SIMILAR BENEFITS.**

**Section 58. *Nature of Royalties.*** Royalties shall not only be treated as economic benefits due ICCs/IPs but social justice measure, and in the management of the same, the inter-generational rights of ICCs/IPs must be recognized, promoted and protected. These are entitlements of ICCs/IPs as part of their guaranteed rights under domestic laws and international agreements, conventions or declarations.

**Section 59. *Person Authorized to Manage.*** Only the duly organized, NCIP registered, IPO of the concerned ICCs/IPs shall be authorized to receive and manage the royalties. Protection of the royalties that are received by it shall be provided in its by-laws and manual of operation, provided that, the same shall be compliant, and not be contrary, to provisions of this Guidelines.

**Section 60. Release of Royalty Fees.** The royalties may be released : a) directly to the account of the IPO of the ICCs/IPs duly established for the purpose, or b) to a Trustee Bank agreed upon which shall, in turn, be responsible for releases to the IPO account. In both cases, no release shall be made by the company to the IPO, or the trustee bank to the IPO, without the concurrence of the Commissioner from the Region and the Chairperson of NCIP duly secured by the IPO. The concurrence is intended to be a check on the use of the funds based on the CRDP.

**Section 61. Community Royalty Development Plan (CRDP).** The ICC/IP receiving royalties and similar fees must formulate a development plan for the management and use of the same to be known as the CRDP. In the formulation of the said plan, the ADSDPP must be considered, and the ICCs/IPs can engage the services of a reputable public or private agency to provide consultancy and/or technical services. The CRDP shall be subject to confirmation by the Commission En Banc after verification and validation by the concerned field office.

**Section 62. Use of Royalty.** The royalties must be used for programs and projects that will redound to the well-being and benefit of the ICCs/IPs entitled to it. It should have allocations for: Emergency concerns; Investments which may be short, medium or long term; Livelihood and social development projects which must be allocated not less than 30% of each and every release; Education and training of members, basic or professional; Capitalization for cooperative development; Credit facility; Salaries or wages of persons engaged to perform professional services; Mutual assistance, and the like. It must never be used as payment for damages caused by the proponent/company's activities to the person and properties of an individual member, as this is a distinct obligation of the company and not part of royalties

**Section 63. Transparency Mechanism.** The IPO shall prepare periodic financial reports, and annual financial statements duly audited, and furnish copies of the same to the NCIP. The same must also be reported to the general membership during the annual assembly that must be convened to tackle financial and other community or IPO concerns.

**Section 64. Monitoring and Visitorial Powers.** In the exercise of its mandate to protect the well-being and promote the rights of ICCs/IPs, the NCIP may direct financial and management audits of IPOs managing royalties and other benefits or exercise its visitorial powers as provided for by law.

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## **PART IX**

### **PROHIBITED ACTS AND REMEDIES**

**Section 65. *Prohibited Acts.*** After the filing of the application and during the period that the application is pending, any of the following acts or omissions are hereby declared either as acts prejudicial to the interest of the IP community in the attainment of their consent or acts in circumvention of the intent of the law in requiring the free, prior and informed consent of ICC/IP community and are therefore prohibited:

**a. *By the applicant:***

- 1) Employment or use of force, threat, coercion, intimidation, at any degree or in any manner, including those done by individuals or group of persons acting for the applicant;
- 2) Bringing of firearm/s in the community during visits by the applicant or group of persons acting for the applicant. When needed, armed security shall be obtained from local police authorities or the AFP as requested by NCIP;
- 3) Bribery or promise of money, privilege, benefit or reward other than what is presented by the applicant during the consultative community assembly/first meeting [Sec. 22 and 24] with the elders/leaders;
- 4) Clandestine or surreptitious negotiations with IP individuals, some members of the community concerned or leaders done, without the knowledge of the council of elders, leaders or majority of members of the community;
- 5) Donations to the community or to any of its members for the purpose of influencing the decision of the ICCs/IPs.
- 6) Holding of unauthorized meetings such as but not limited to wining and/or dining sessions, and the like or such other activities with the NCIP Official and personnel and/or members of the affected community, with the intention of unduly influencing the result of the FPIC process.
- 7) Deliberately delaying the progress of the FPIC process which cause division among the concerned ICCs/IPs.

**b. *By the NCIP Officer or Employee:***

1. Acceptance or receipt of money, gifts or other valuable thing from the applicant intended to unduly influence the outcome of the FPIC process;
2. Consorting with the applicant or with any person connected to or mediating for the latter intended to unduly influence the outcome of the FPIC process;
3. Deliberate failure to act appropriately on complaints coming from the community concerning prohibited acts committed by the applicant or the latter's representatives;
4. Gross negligence or deliberate omission to perform his duty required of him by this Guidelines;
5. Acting on or performing his duty in consideration of any offer, promise of future reward, privilege or benefit from the applicant;
6. Undue interference in the work of the FBIT/ FPICT/ RRT or doing the latter's work without being a member thereof;
7. Use of falsified narration of facts in reports, attachments or any supporting documents in the reports submitted with respect to FBI, and all other necessary documents covered by the FPIC;
8. Holding of unauthorized meetings such as but not limited to wining and dining drinking sessions, and the like or such other activities with the applicant and/or members of the affected community, with the intention of unduly influencing the result of the FPIC process in favor of the applicant; and

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9. Demanding or receiving from the applicant, IP community, or support institutions like NGOs, government agencies and institutions money, or any gift, donation or other valuable thing outside the approved work and financial and/or supplemental plan for the conduct of FBI and FPIC processes.

Any other acts or omission by NCIP officer or employee punishable or prohibited under any existing laws, rules and regulations governing public officers/employees.

c. By the IP Community or Member and/or Elders/Leaders

1) Solicitation and acceptance or receipt of gifts, money or other valuable things from the applicant intended to unduly influence the outcome of the FPIC process in favor of the applicant;

2) Consorting with the applicant or with any person connected to or mediating for the latter intended to unduly influence the outcome of the FPIC process in favor of the applicant;

3) Negotiating or mediating or transacting business with the applicant without proper authority from the affected ICC/IP; and

4) Giving or promising to give his consent in consideration of any offer, promise, future reward, privilege or benefit from the applicant other than what has been provided for or explained by the applicant to the Council of Elders or Leaders and community members during the consultation meetings.

## **d. Other Prohibited Acts by NGOs/CSOs/GAs/LGUs & Other Groups**

Undue influence or interference with the FPIC process or to the community, either to the members, elders/leaders or their representatives, exerted by representatives of NGOs or CSOs or GAs or local government instrumentalities, including barangay officials and their functionaries, and those made by other entities or groups with religious affiliations.

## **Section 66. Sanctions. Sanctions shall be imposed only after due notice and after the parties are given the opportunity to be heard, as follows:**

a) **Grave Violations.** Commission of any of the prohibited acts by the applicant/s considered grave violations shall constitute a ground for the non-issuance of the certificate applied for.

The violation is considered grave when the commission of the prohibited act is intentional and has resulted to loss of life or serious damage to property of an IP member of the community, committed by means of, but not limited to, employment or use of force, threat, coercion, intimidation, violence, including those done by individuals or group of persons acting for the applicant, including repeated commission of prohibited acts considered not grave.

Grave violations shall be a ground for disqualification on future applications for certificate precondition within ancestral domain areas, without prejudice to filing of appropriate criminal action against the offender under IPRA or the Revised Penal Code and other special laws. The imposition of disqualification can be lifted only upon petition by the individual or entity upon whom the disqualification was imposed, stating the grounds why the disqualification should be lifted. No such petition shall be entertained by the Commission without the favorable recommendation of the IP community concerned whose rights were seriously violated.

b) **Less Grave Violations.** Commission of any of the prohibited acts by or attributable to the applicant, may constitute grounds for the suspension of the FPIC process by the Regional Director until such time that the violation is sufficiently

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addressed as certified to by the concerned elders/leaders, in which event, the Regional Director shall order the continuation of the FPIC process.

Less grave violations refer to the commission of prohibited acts intentionally committed, but which do not result to loss of life or serious damage to property of an IP member of the community.

For deliberate delay in the conduct of the FPIC process, attributable to the applicant, the application shall, upon order of the Regional Director, be returned to the endorsing agency.

If the extent of the commission of the prohibited act would adversely affect the outcome of the community consent proceedings, the said proceedings shall, upon written request, be suspended by the Regional Director until it is shown that the prohibited act done has already been addressed.

c) Commission of any of the prohibited acts by or attributable to NCIP officers or employees will be proceeded against, and proper sanction shall be imposed, in accordance with existing laws, rules and regulations. In addition, he shall be, upon finding of *prima facie* evidence, immediately divested of his authority to be part of the proceedings upon order of the Regional Director and the former will be proceeded against criminally and/or administratively in accordance with the Civil Service Rules and Regulations on discipline.

Commission of any of the prohibited acts by or attributable to the NCIP Regional Director or the ADO Director shall, upon

finding of *prima facie* evidence, after hearing, immediately divest him/her of his/her authority to be part of the proceedings upon order of the Commission. In addition, the Commission shall file the necessary Criminal and Administrative Charges against the erring officer.

d) Prohibited acts committed by any officer or employee of any Government Agencies (GAs) /Local Government Units (LGUs) will be proceeded against, and proper sanction shall be imposed, in accordance with existing laws, rules and regulations.

e) Prohibited acts committed by any member of NGOs and other groups or individuals shall be a ground for a warning, contempt or exclusion from the FPIC proceedings applying the Commission's subpoena and contempt powers.

f) Commission of any of the prohibited acts by or attributable to the IPs/ICCs/Elders/Leaders shall be first subjected to customary laws of the affected community. When there is no relief, a complaint may be filed by the aggrieved party with the RHO for the enforcement of the decision made under customary laws or for the award of damages. In no case shall the RHO issue an order or judgment for the suspension of the FPIC proceedings or for the non-issuance of the certificate applied for, or if already issued, an order or judgment for its revocation.

## **Section 67. *Jurisdiction of Regional Hearing Officer on FPIC Controversies.* Violations of the requirement of FPIC under this Administrative Order shall be dealt with accordingly. For this purpose, cases involving violations of the requirement of FPIC which are within the original and exclusive jurisdiction of the Regional Hearing Officer as provided under Administrative Circular No.1, Series of**

2003 shall refer only to cases where the plan, program, project or activity was implemented without the required FPIC.

## **Section 68. *Hearing of Complaints before Application is Endorsed to ADO.* Prior to the endorsement of the FPIC application to the ADO, or issuance by the Regional Director of the CNO, all complaints involving irregularities in the implementation of this Guidelines, including commission of any of the prohibited acts shall be filed with the concerned Regional Director, copy furnished the FBI/FPIC Team**

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leader. Within ten (10) days from receipt of the complaint, the FBI/FPIC Team shall submit its answer thereto. The complaint shall be resolved by the Regional Director within ten (10) days from receipt of the answer or expiration of the period for filing thereof. The resolution shall address the irregularity or in case of commission of prohibited acts, recommend to the Commission to impose appropriate sanctions.

No motion for reconsideration shall be allowed. The remedy of the aggrieved party is to file a petition pursuant to Section 71 hereof within ten (10) days from receipt of the decision of the Regional Director. The aggrieved party must be furnished by the Regional Director a copy of the decision on the very date that the decision is rendered.

The filing of the administrative complaint shall not, as far as practicable, stop the FPIC process or of the processing of the application unless the sanction calls for it.

## **Section 69. *Hearing of Complaints after Application is Endorsed to ADO***

/Certification Issued. After the FPIC application is endorsed to the ADO, or after the concerned Regional Director issues the CNO, all petitions involving irregularities in the implementation of this Guidelines or those involving the commission of prohibited acts shall be filed with the Commission through the Clerk of the Commission, in nine (9) copies, with the original copy indicated as such, copy furnished the concerned Regional Director. The petition must be verified and accompanied by sworn affidavits of witnesses, other evidence and a certification of non-forum shopping executed in accordance with the requirements of the Rules of Court.

**Section 70. *Transmittal of Records and Comment.*** Upon the filing of the petition, the Clerk of the Commission shall, within three (3) days, direct the ADO to forward the records of the FPIC application to the Office of the Clerk of the Commission or the Regional Director to forward the CNO together with all accompanying documents within ten (10) days from receipt of the directive. Within ten (10) days from receipt of a copy of the petition, the concerned Regional Director may file a comment to the petition, attaching therewith such evidence other than those included in the records of the FPIC application indorsed to the Commission.

**Section 71. *Summary Proceedings to Resolve Petition.*** In the course of its proceedings, the Commission may require the submission of additional evidence or the conduct of clarificatory hearings, after which, the Commission shall resolve the petition within thirty (30) days from the Order submitting the case for resolution. Only one motion for reconsideration shall be allowed which must be filed within ten (10) calendar days from receipt of the decision, resolution or order, with proof of service that a copy of the motion was furnished the other parties to the petition.

## **PART X**

### **FINAL PROVISIONS**

**Section 72. *Applicability to Pending Applications.*** This Guidelines shall apply to all applications for issuance of Certification Precondition and Issuance of Certificate of Free and Prior Informed Consent by the IP/ICC received after the effectivity of this Guidelines; *Provided, however,* That in cases where the application was already received but no FBI was commenced due to failure of applicant to pay the required fee, such application shall still be covered by this Guidelines.

**Section 73. *Separability Clause.*** In case any clause, section, sentence, or provision of this Administrative Order or any portion hereof is held or declared unconstitutional or invalid by a competent Court, the other sections or portions hereof which are not affected thereby shall continue to be in full force and effect.

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**Section 74. *Repealing Clause.*** This Administrative Order repeals NCIP AO-

01, Series of 2006. The provisions of other Circulars, Memoranda, and Administrative Orders, issued by this Commission, inconsistent herewith or contrary to the provisions hereof are hereby repealed or modified accordingly.

**Section 75. *Effectivity.*** This Administrative Order shall take effect fifteen (15) days after its last publication in a newspaper of general circulation and registration in the Office of the National Administration Register, U.P. Law Center, Diliman, Quezon City, Philippines.

Approved this 13th day of April 2012, at Quezon City, Philippines.

**ATTY. PERCY A. BRAWNER CONCHITA C. CALZADO**

Commissioner Commissioner

**DIONESIA O. BANUA COSME M. LAMBAYON**

Commissioner Commissioner

**SANTOS M. UNSAD ATTY. ROQUE N. AGTON, JR.**

Commissioner Commissioner

**ZENAIDA BRIGIDA H. PAWID**

Chairperson

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