

Obtaining Permits for Ancestral Domain Areas

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ABBREVIATIONS

| | |
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| AD | Ancestral Domain |
| ADO | Ancestral Domains Office |
| ADSDPP | Ancestral Domain Sustainable Development Protection Plan |
| CADC | Certificates of Ancestral Domains Claims |
| CALC | Certificates of Ancestral Land Claims |
| CALT | Certificate of Ancestral Land Title |
| CNO | Certificate of Non-Overlap |
| CRDP | Community Royalty Development Plan |
| CSO | Civil Society Organization |
| DENR | Department of the Environment and Natural Resources |
| EIA | Environmental Impact Assessment |
| FBI | Field Based Investigation |
| FPIC | Free and Prior Informed Consent |
| ICC | Indigenous Cultural Communities |
| IP | Indigenous Peoples |
| IPO | Indigenous Peoples Organization |
| IPRA | Indigenous Peoples Rights Act |
| LAO | Legal Affairs Office |
| LGU | Local Government Unit |
| MOA | Memorandum of Agreement |
| NCIP | National Commission on Indigenous Peoples |
| NGA | National Government Agency |
| NGO | Non-Government Organization |
| PCB | Provincial Consultative Body |
| RA | Republic Act |
| RHO | Regional Hearing Office |
| RRT | Regional Review Team |
| TMSD | Technical Management and Services Division |
| WFP | Work and Financial Plan |

Procedures for obtaining Permits for Ancestral Domain Areas

a) The Legal and Regulatory Framework Governing Extractive Operations in Ancestral Domains

i. Recognition and protection of Indigenous Peoples' rights under the 1987 Philippine Constitution

The Philippines' 1987 Constitution recognizes the importance of Indigenous Peoples (IPs) and their rights over ancestral lands and domains. It is a policy of the state to recognize and promote the rights of indigenous cultural communities within the framework of national unity and development.¹

The IPs are empowered to participate in the law-making process by being one of the groups expressly mentioned to be represented by party-list representatives. Under Section 5(2), Article VI of the Constitution states: "The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector."

The rights of the IPs over their ancestral lands and ancestral domains are stipulated under the first paragraph of Section 5 of Article XII and Section 6 of Article XIII.

In line with National Economy and Patrimony, Section 5, Article XII of the Constitution states that: "The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

Section 6 of Article XIII states that: "The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands."

The second paragraph of Section 5 of Article XII also states that "The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain." The Constitution does not define customary laws, however, a definition is provided by the Indigenous Peoples Rights Act (IPRA), as will be discussed later.

The culture, tradition, and institutions of the IPs are respected and guaranteed protection and promotion. Section 17, Article XIV of the Constitution states that: "The State shall recognize, respect, and

protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.”

Section 12, Article XVI of the Constitution states that: “The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities.”

In contrast to the well-recognized rights of the IPs under the 1987 Constitution, the 1973 Constitution only provided a section recognizing indigenous peoples’ rights under Section 11, Article 15. (The state shall consider the customs, traditions, beliefs, and interests of national cultural communities in the formulation and implementation of the State policies.) Under the 1935 Constitution, no such right was recognized.

ii. Philippine Mining Act of 1995

The Philippine Mining Act or Republic Act 7942 recognizes the rights of the Indigenous Communities over their ancestral land. Section 16 of the law states the requirement of prior consent of the Indigenous Cultural Community (ICC) concerned before the area could be opened for extractive operations.

iii. Indigenous Peoples Rights Act of 1997

Since the provisions of the 1987 Constitution do not clarify the nature and extent of IP rights, the IPRA (RA 8371) was enacted in 1997. The law concretized the extent of IP rights in relation to the national legal system under Section 22 of Article II and Section 5 of Article XII of the 1987 Constitution, especially with regard to ancestral lands and domains.

Under the IPRA, property rights within the ancestral domains already existing and/or vested are recognized and respected.²

Ancestral lands and domains are actually not the same. They are defined under Sections 3(a) and (b) of the Act, respectively:

a) Ancestral Domains — Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but

from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

b) Ancestral Lands — Subject to Section 56 hereof, refers to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots.”

Looking at the definitions, the phrase ancestral domain is broader than ancestral land. While ancestral lands refer only to lands occupied, possessed and utilized by ICCs/IPs since time immemorial, ancestral domains include lands, inland waters, coastal areas, and natural resources held under a claim of ownership, occupied or possessed by the ICCs/IPs. Ancestral domains need not be utilized, unlike ancestral lands.

IPRA defines “Time Immemorial” as a period of time when as far back as memory can go, certain ICCs/IPs are known to have occupied, possessed in the concept of an owner, and utilized the territory devolved to them. Such devolution is by operation of their customary law or inherited from their ancestors in accordance with their customs and their traditions.³

Ancestral lands/domains shall include such concept of territories which cover not only the physical environment but the total environment including spiritual and cultural bonds to the areas which the ICCs/IPs possess, occupy and use and to which they have claims of ownership.⁴

The ICC/IPs have priority rights in the extraction or exploitation of any natural resources within the ancestral domains. Those who are not members of ICCs or are not IPs may be allowed to develop and utilize natural resources only if there is a formal and written agreement entered into with the ICCs/IPs concerned or if allowed by them pursuant to its own decision making processes.⁵

In line with this right to extract, the National Commission on Indigenous Peoples (NCIP) shall have visitorial powers and take appropriate action to safeguard the rights of the IPs. In no case shall a person or entity be allowed by the ICCs/IPs to develop or utilize their ancestral domains for a period longer than twenty-five (25) years), but this may be renewable for another 25 years.⁶

This is consistent with the Philippine Mining Act with respect to securing prior consent of the IPs before any extraction of natural resources can be undertaken in their ancestral domains.⁷

The indigenous concept of ownership is peculiar. The rights of the IPs over the ancestral domains and all resources found therein are private but at the same time community property. Under Section 5 of the IPRA, ancestral domains belong to all generations and are not allowed to be sold, disposed, or destroyed.

Included here are traditional resource rights. Section 3 (o) of the IPRA refer to rights of the ICCs/IPs to sustainably use, manage, protect and conserve a) land, air, water, and minerals; b) plants, animals and other organisms; c) collecting, fishing and hunting grounds; d) sacred sites; and e) other areas of economic, ceremonial and aesthetic value in accordance with their indigenous knowledge, beliefs, systems and practices.

The IPRA recognizes the different rights attaching to the rights of ownership and possession of the ICCs/IPs with respect to their ancestral domains.

The ICCs/IPs have the right to develop, control and use lands and territories traditionally occupied, owned, or used by them. Such right includes the right to manage and conserve natural resources within the territories and uphold the responsibilities for future generations. They are given the right to benefit from and share the profits from the allocation and utilization of resources found therein. In relation to such right, they are given the power to bargain for the terms and conditions for the exploration of the natural resources in their areas for the purpose of ensuring ecological, environmental protection and conservation measures, pursuant to national and customary laws. Since they are given the abovementioned rights, they must be informed and be given a chance for intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of such project. Their right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights should be upheld.⁸

They cannot be removed or relocated from their territories without free prior and informed consent (FPIC), nor through any means other than eminent domain.⁹ And in case they are displaced due to natural catastrophes, it is the responsibility of the State to resettle the displaced ICCs/IPs in suitable areas where they can have temporary life support systems. They shall always have the right to return to their abandoned lands whenever the normalcy and safety of such lands shall be determined. Until their ancestral domains are determined to be safe, they shall have the right of security of tenure over the lands where they have been resettled. Basic services and livelihood shall be provided to them to ensure their needs are adequately addressed.¹⁰

Aside from their priority rights to natural resources within their ancestral domains under Section 57, they also have the right to suspend or stop projects under Section 59 of the law should the ICCs/IPs find a requirement under the consultation process has been violated.

With respect to their ancestral lands, the law recognizes and protects their right of ownership and possession of the ICCs/IPs over them.¹¹ Such right of ownership and possession include the right to transfer such land or property among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned. They shall also have the right to redemption in case the land has been transferred by virtue of any agreement or devise to a non-member of the concerned ICCs/IPs that is tainted by the vitiated consent of such ICCs/IPs, or the transfer was for unconscionable consideration or

price. The transferor ICC/IP shall have the right to redeem the same within a period not exceeding 15 years from the date of the transfer.¹²

In recognizing the rights of the ICCs/IPs over their ancestral domains, they shall be issued a Native Title in the form of a Certificate of Ancestral Domain Title (CADT). The title shall cover the territories identified and delineated as their ancestral domains.¹³

The NCIP was established under the IPRA. It is the primary government agency responsible for the formulation and implementation of the policies, plans, and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as their rights thereto.¹⁴

After the ancestral domains have been officially delineated and determined by the NCIP, they shall be issued a CADT in the name of the community concerned, containing the list of all the IPs identified in the census.¹⁵ The NCIP shall register issued certificates of ancestral domain titles and certificates of ancestral land titles (CALT) before the Register of Deeds in the place where the property is situated.¹⁶

b) The Process of securing the IP's Free and Prior Informed Consent

The Philippine Mining Act, Section 16 states that in no case shall Mineral Agreements, Financial or Technical Assistance Agreements (FTAAs) or mining permits be granted in areas subject of Certificates of Ancestral Domains/Ancestral Land Claims (CADC/CALC) or in areas verified by the Department of Environment and Natural Resources (DENR) regional office and/or other office or agency of the Government authorized by law for such purpose as actually occupied by ICCs under a claim of time immemorial possession except with their prior consent.

Under the Mining Act, "prior consent" refers to prior informed consent obtained, as far as practicable, in accordance with the customary laws of the concerned ICC. Prior informed consent should meet the minimum requirements of public notice through various media such as, but not limited to, newspaper, radio or television advertisements, fully disclosing the activity to be undertaken and/or sector consultation wherein the Contractor/Permit Holder/Permittee should arrange for a community assembly, notice of which should be announced or posted in a conspicuous place in the area for at least a month before such assembly, provided that the process of arriving at an informed consent should be free from fraud, external influence and manipulations.¹⁷

Under the IPRA Law, "Free Prior and Informed Consent" (FPIC) is defined as the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.¹⁸

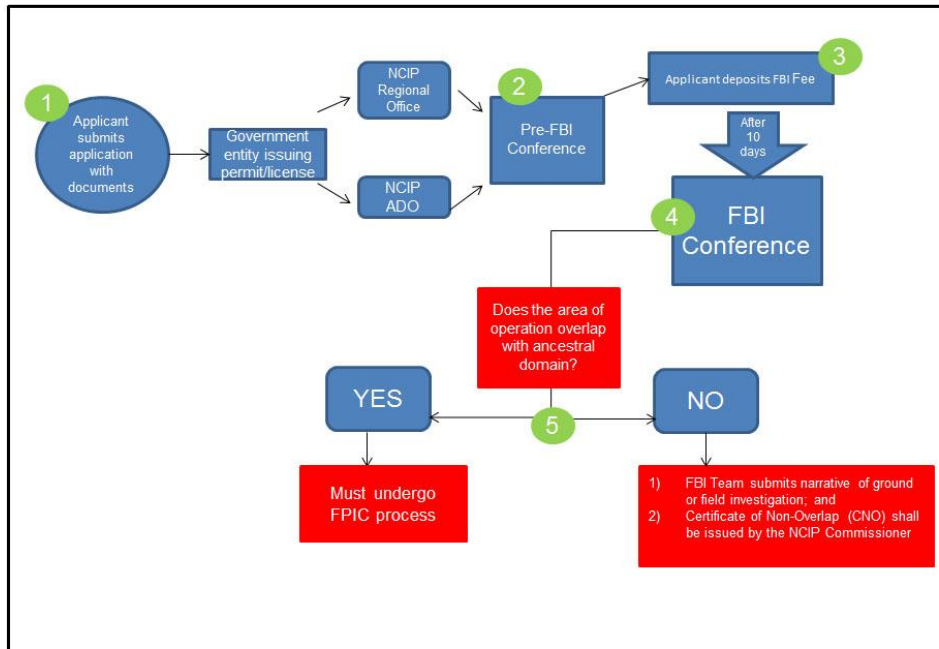
Congress, through the IPRA, implemented the provisions of the Constitution in allowing applicability of customary laws in determining ownership and extent of Ancestral Domains (ADs). Customary laws are referred to as a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by the respective ICCs/IPs.¹⁹

Under the IPRA, FPIC is needed in the following circumstances:

1. Section 7(c) – Whenever ICCs/IPs will be relocated from their territories as an exceptional measure.
2. Section 32 – Whenever community intellectual rights are taken from the ICCs/IPs.
3. Section 33 – When there is a need for the preservation, respect and protection of indigenous sacred places, including burial sites: it is unlawful to explore, excavate or make diggings on archeological sites of the ICCs/IPs for the purpose of obtaining materials of cultural values without FPIC of the ICC concerned. It is also unlawful to deface, remove or otherwise destroy artifacts which are of great importance to the ICCs/IPs for the preservation of their cultural heritage.
4. Section 35 – Whenever there is a need to access biological and genetic resources and to indigenous knowledge related to the conservation, utilization and enhancement of such resources within the ADs of the ICCs/IPs.
5. Section 58: Whenever there are environmental considerations – Should ICCs/IPs decide to transfer the responsibility of maintaining, managing and developing ADs or portions thereof which are found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestation as determined by appropriate agencies.
6. Section 59: In the issuance of a Certification Precondition (CP) – All departments and other governmental agencies shall be strictly enjoined from issuing, renewing or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any AD.

In order to implement the provisions under the IPRA law requiring FPIC, the NCIP formulated AO 3-2012, amending former regulations (DAO 96-40), detailing the process of securing FPIC.

Flow Chart 1: Pre-FPIC Process



NCIP AO 3-2012 (amending DAO 96-40) – Process of securing FPIC for extractive operations

Step 1:

The applicant must submit to the government entity issuing permits and licenses for extractive operations an application for Certificate of Precondition (CP) together with documents that specify the following:

- The nature and purpose of the project.
- Location, including 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 the implementation.
- Operation plan and activities.
- The profile of the applicant.²⁰

The government entity shall submit the application to the Regional Office of the NCIP of the province of the applicant’s intended operations. If the project covers two or more regions, the application or

endorsement shall be transmitted to the NCIP-Ancestral Domains Office (ADO) Director who shall decide which Regional Office shall facilitate the application. No two applications from different entities shall be entertained at the same time.²¹

Step 2:

The Field-Based Investigation (FBI) refers to a ground investigation undertaken by the FBI Team to determine if the plan, program, project or activity overlaps with, or affects, an ancestral domain.²²

The orientation on the requirements of the FBI process, the identity and other basic information about the applicant, detailed project profile, work and financial plan, and other important matters that may be agreed upon shall be taken up in the pre-FBI conferences.²³ During the pre-FBI conference, the work and financial plan (WFP) shall be agreed upon by the applicant, the ICCs/IP representatives, and the NCIP. The WFP shall include 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; and c) others as may be agreed upon by all the parties during the Pre-FBI Conference.²⁴

Step 3:

The applicant must pay the FBI fee.

Step 4:

The FBI Conference shall commence within 10 days from the date of such deposit or payment—and must be completed within 10 working days from actual commencement except when delayed due to fortuitous event or force majeure.

The FBI Team must submit a report of its field investigation, findings, and recommendations.²⁵

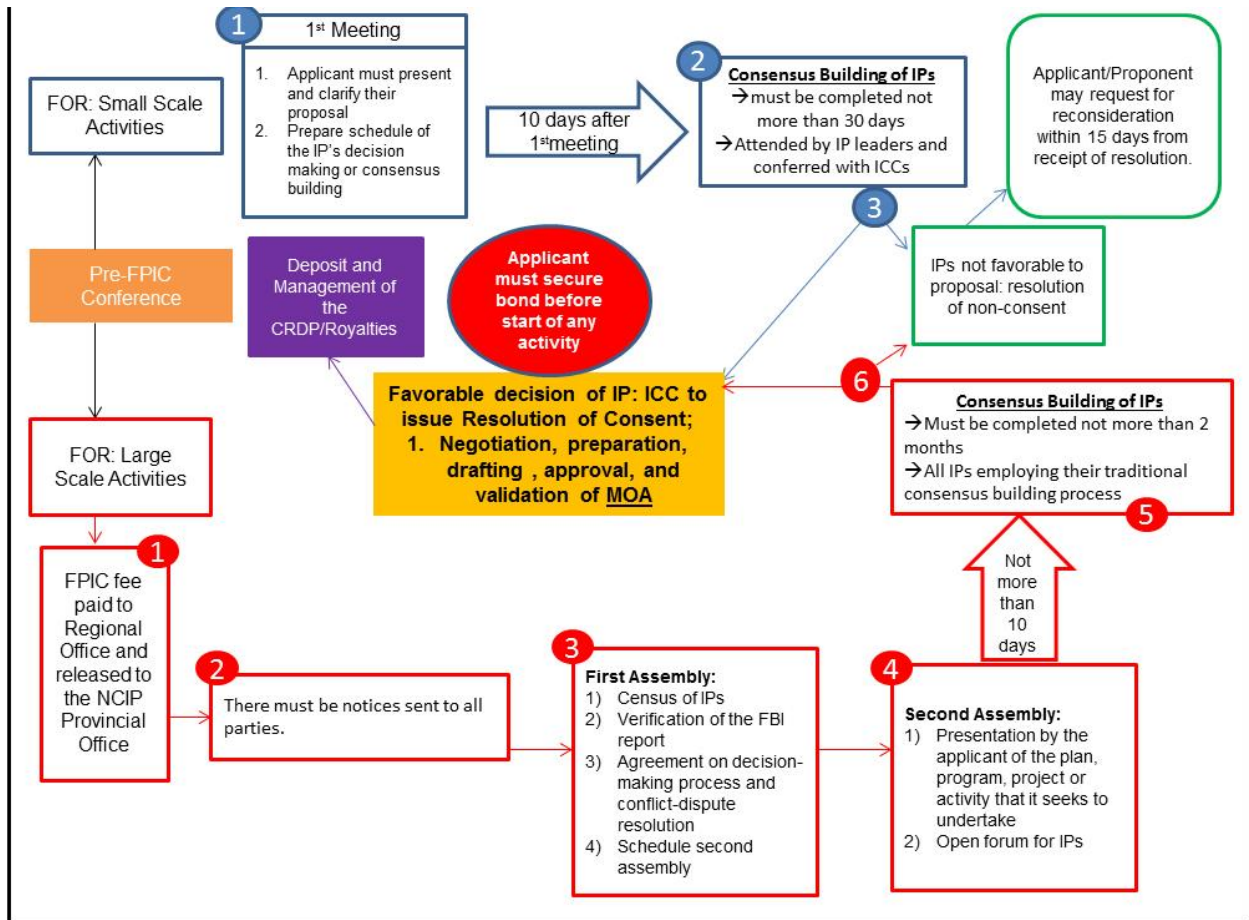
Step 5:

If the FBI team finds that there are no ancestral domains (ADs) which will be affected by the proposed project, then the Commissioner of the NCIP will issue a Certificate of Non-Overlap (CNO).²⁶ The CNO shall issue if:

- 1) The area is patently and publicly known to be outside any ancestral domain; or
- 2) The activity will not affect an AD.²⁷

If the proposed project affects an ancestral domain, then the NCIP Regional Director shall constitute a Free Prior and Informed Consent (FPIC) team in the province of the affected AD. The FPIC team shall validate the FBI reports, identify the IP representative leaders, make a census of IPs/Migrant IPs, verify affected ADs, and check the existence of any boundary conflict with other ancestral domains. The FPIC Team must document conflict resolution mechanisms and facilitate the conduct of the same by the chosen/selected Elders/Leaders, should there be any dispute/conflict to be resolved.²⁸

Flowchart 2: FPIC Process proper



i. FPIC process for large scale operations

There must be two (2) community assemblies in order to inform the ICCs/IPs affected by the undertaking of the applicant and ultimately, to obtain their consent.²⁹

Step 1:

The proponent must pay the FPIC fee to the Regional Office and the amount must be remitted to the NCIP Provincial Office or Service Center for the FPIC process.³⁰

Step 2:

The following notifications must be made:

- 1) A formal notice to the Regional Director of the time and place of the First Assembly for his approval.
- 2) Written notices in conspicuous place around the community seven (7) days prior to the First Assembly.

- 3) Personal Notice to the AD representatives (by personal service) seven (7) days before the first assembly.
- 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.
- 6) Service of notice to the Provincial Consultative Body (PBC), if existent.³¹

Step 3:

The First Community assembly is held as soon as the FBI Fee is remitted to the NCIP Provincial Office or Service Center to take up the following matters:

- 1) Orientation on the IPRA and the FPIC Process.
- 2) Validation of the FBI report and verification of the area/s affected.
- 3) A census of the IPs, migrant IPs, and non-IPs shall be taken. IP elders and leaders who will be involved in the activity shall be identified.
- 4) Agreement on the decision-making and consensus-building processes.
- 5) Agreement on conflict and dispute resolution mechanisms with the elected or chosen IP elders or leaders.
- 6) Agreement on the WFP presented.
- 7) Consideration of opinions of experts.
- 8) Other matters deemed necessary and important.³²
- 9) Agree on the date and place within the AD of the Second Community Assembly.³³

Step 4:

The Second Community Assembly shall take up the following:

1. Presentation by the applicant of the plan, program, project or activity that it seeks to undertake. The presentation shall include the following:
 - a. The Operation Plan and the scope and extent of the proposal.
 - b. The Operation Plan and the scope and extent of the proposal.
 - c. The perceived disadvantages or adverse effect to the ICCs/IPs and the AD.
 - d. The measures adopted by the applicant to avoid or mitigate these.
2. Sharing by an expert, if engaged or invited, to include presentation of the result of the Environmental Impact Assessment (EIA) if available, expert opinion or recommendation on any aspect, and identification of affected area or areas.
3. Remarks or inputs of other stakeholders such as LGUs, NGOs, NGAs, or IPO.
4. Open Forum to give the ICCs/IPs the chance to ask questions and express their concerns regarding the project.
5. Other important matters agreed upon during the assembly.³⁴

Towards the end of the Second Community Assembly, the ICCs/IPs shall be left alone to agree on their decision-making/consensus-building schedules.³⁵

Step 5:

The Consensus Building of the IPs must commence less than ten (10) days from the date of the Second Community Assembly and must be completed not be more than two (2) months thereafter.³⁶

The ICCs/IPs shall employ their own traditional consensus-building processes to further discern the merits and demerits of the proposal and arrive at a consensus. Only IP members of the ICCs are allowed to participate in this process. Select NCIP representatives shall document the proceedings.³⁷

Step 6:

The duly authorized Community Elders or Leaders shall inform the FPIC Team of the consensus of the ICCs/IPs after they reach a decision.³⁸

If IPs favor the proposal, then the FPIC Team shall notify the proponent and the community representatives for the negotiation of the terms and conditions in the MOA. Once the parties agree on the terms and conditions, the MOA is drafted in both the vernacular and English.³⁹

Validation of MOA

An assembly shall be convened within the AD wherein the MOA provisions shall be explained to the community by the FPIC Team. The community may confirm the same and then signed by the authorized signatories of both parties. The Resolution of Consent of the community, along with the finalization of the MOA, shall also be prepared, signed, and released.⁴⁰

Securing a bond

The applicant shall secure a bond with a reputable bonding company with the consent of the NCIP, or deposit a cash bond with the NCIP. The bond shall answer for damages resulting from any violations of terms and conditions of the MOA which the ICCs/IPs may suffer and claim from on account of any activity undertaken as may be agreed by the parties in the MOA and 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.⁴¹

If the consensus is not favorable, the Resolution of Non-Consent shall be prepared, signed, and released.⁴² It expresses their non-acceptance of the plan, program, project or activity and the reasons therefor.⁴³

Pre-FPIC Conference

During the conference, the FBI report, the finalization and approval of the WFP and the deposit and remittance of the FPIC fee shall be taken up. The conference must also set up schedules, preparations of work orders, and discuss the process, protocols and prohibited acts in the ancestral domains. There shall also be arrangements for the payment of a bond and submission by the applicant of an undertaking, written in the language spoken and understood by the community concerned which states that they shall commit to full disclosure of records and information relevant to the plan, program, project or activity, and facilities pertinent to their undertaking. The applicant must submit an Environmental and Socio-cultural

Impact State, which details all the adversity of the possible impact of their undertaking upon the ecological, economic, social and cultural-life of the community and how such could be avoided, mitigated, or addressed.⁴⁴

ii. FPIC process for non-extractive/small scale activities

Step 1:

After the Pre-FPIC Conference, a First meeting shall take place to allow the applicant to present its proposal.⁴⁵

The presentation must include the place of operation, 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.⁴⁶

Step 2:

Ten days from the first meeting, the consensus-building stage shall take place and must be completed not more than 30 days thereafter.⁴⁷ It shall be attended by the council of elders or leaders. After they arrive at a consensus they shall inform the FPIC Team.⁴⁸

Step 3:

If the decision or consensus is favorable, the FPIC Team shall convene the Decision meeting. During the Decision meeting, the council of elders or leaders will formally proclaim their decision and the parties shall proceed to negotiate and finalize the terms and conditions of the MOA.⁴⁹

The Regional Director shall, within three (3) days from receipt of the resolution of consensus, prepare and sign the CP and transmit it, including the FPIC Report, to the concerned Commissioner for concurrence, copy furnished the ADO. Once concurred, it shall be endorsed to the Chairperson for confirmation.⁵⁰

If the consensus is against the project, the leaders or elders shall issue a resolution of non-consent.⁵¹ The FPIC Team shall report the resolution of non-consent to the Regional Director, and the latter shall inform the proponent, copy furnished the concerned Commissioner/s and the ADO.⁵²

Requesting for reconsideration in case of non-consent

The proponent/applicant may request for reconsideration within fifteen (15) days from receipt of the resolution of non-consent. The request must embody any new proposal to address the reason/s for rejection.⁵³

If consultations with the community indicate there is no chance for reconsideration, the leaders/elders shall formally inform the FPIC Team Leader, who shall then inform the Regional Director, copy furnished the proponent/applicant.⁵⁴

If the ICCs/IPs manifests their rejection of the plan, program, project or activity in any written form before or during the FBI, it shall be received by the FBI Team and the Regional Director shall be notified.⁵⁵ The Regional Director shall order the conduct of an assembly to validate the rejection. If the rejection is received or made after the FBI, the matter shall be tackled in the mandatory activity on consensus-building.⁵⁶

If the rejection is affirmed during the validation assembly, the appropriate resolution of non-consent shall be made, adopted, and signed, and all proceedings in the conduct of the FPIC shall stop. No FPIC process for any similar proposal shall be undertaken within six (6) months from the issuance of the resolution of non-consent.⁵⁷

c) Memorandum of Agreement

i. Parties

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.⁵⁸

ii. Preparation and drafting

The FPIC Team shall prepare the MOA strictly in accordance with what has been agreed upon by the parties, written in the language of the ICCs/IPs, and translated into English and/or Pilipino. The MOA shall be drafted by the Legal Officer of the concerned provincial office, or one from another province so designated by the Regional Director.⁵⁹

iii. Signing

The MOA shall be signed within the affected AD by those duly authorized, during a general assembly where its contents are fully read aloud and explained by the FPIC Team, and understood and affirmed by the community. The FPIC team shall make the appropriate revision or amendment needed to the satisfaction of the community assembly.⁶⁰

The following are the signatories of the MOA: 1) the elders or leaders or their alternates who have been identified during the validation and authorized by the community to sign; 2) for corporations, partnerships or single proprietorship entities, the authorized officers, representatives, or partners per Board Resolution; and 3) the Chairperson in behalf of the NCIP as Third Party. For projects where the Regional Director is authorized to issue the corresponding CP, the MOA shall be signed by the Regional Director in behalf of the NCIP as Third Party.⁶¹

iv. Terms and conditions

The MOA shall include, but shall not be limited to, the following:

- 1) Detailed benefit-sharing provisions in accordance with rules and regulations (i.e. not less than 1% royalty under mining act).
- 2) Development projects based on the development priorities of the community.

- 3) Monitoring of the implementation MOA to be implemented by NCIP in partnership with LGUs and Civil Society Organization (CSOs). This undertaking shall be paid for by the company.
- 4) Mitigation and resettlement plans for potential risks.
- 5) Redress mechanisms.
- 6) Clause on the non-transferability of the MOA.
- 7) Clause for renegotiation of the economic provisions.
- 8) 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.
- 9) List of responsibilities of the company and the affected community.
- 10) Inclusive dates/duration of agreement.
- 11) 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.
- 12) 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.
- 13) Transparency mechanism on transfer and disbursement of funds.
- 14) Detailed measures to protect IP rights and value systems.
- 15) Detailed measures to conserve/protect any affected portion of the ancestral domain critical for watersheds, mangroves, wildlife sanctuaries, forest cover, and the like.
- 16) Responsibilities of the applicant as well as the host IP community.
- 17) The monitoring and evaluation system of the MOA, to include submission of reports and creation of monitoring teams.
- 18) 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.
- 19) Deposit of cash or surety bond mentioned.
- 20) Provision to render assistance in the event of calamities/disasters in the community.
- 21) Provision to undertake a new FPIC Process in case of mining activities, after the exploration stage.
- 22) Provision on the effects of dormant Certification Precondition.
- 23) Membership of proponent in organizations requiring ethical standards in a particular line of activity.
- 24) Other requirements provided in these Guidelines.⁶²

Also to be included in the MOA is a provision requiring that the consent of the ICCs/IPs shall not be transferable by the applicant to any other party except in cases of merger, reorganization, transfer of rights, acquisition by another entity or joint venture. It is the transferee's responsibility to inform in writing to the ICCs/IPs concerned the impending merger, reorganization, transfer, acquisition, or joint venture.⁶³

The obligations and responsibilities of the transferor and transferee shall not apply when it is expressly provided in the original MOA that a new FPIC is required in the event of a merger, reorganization, transfer of rights, acquisition by another entity, or joint venture.⁶⁴

v. Reviewing the MOA

A Regional Review Team (RRT) is constituted to review the FPIC report and the MOA. It shall also render a report, under oath, of its findings and recommendations to the Regional Director. The RRT has the power to 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. The RRT shall be composed of the TMSD Chief, Regional Attorney and duly designated Regional FPIC Focal Person.⁶⁵

After the receiving the report, the Regional Director shall direct the RRT to review the same within five (5) days. Should the review be favorable, and the Director finds nothing wrong with it, the Regional Director endorses the record of the FPIC Process undertaken, together with his recommendation/s to the ADO for appropriate action.⁶⁶

The Legal Affairs Office (LAO) shall review the MOA prior to the endorsement of the FPIC report by the ADO to the Commission. The MOA shall be reviewed by the Regional Legal Office or any Legal officer who has not participated in the FPIC process.⁶⁷

If no activity is undertaken by the proponent within a year from the approval or 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 the applicant or proponent to reply in 15 days why the CP should not be cancelled.⁶⁸

vi. Violations of the MOA

Complaints involving the interpretation and implementation of the MOA shall first be resolved in the community using traditional conflict resolution processes.⁶⁹

Any person or party who willfully violates or fails to comply with 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 without prejudice to the exhaustion of conciliation and mediation efforts by the NCIP, and the exercise of the latter's visitorial and injunctive powers. Any person or the community may still take action before the proper courts to enforce civil, criminal, or administrative sanctions.⁷⁰

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 2003.⁷¹ Under Sections 47 and 48 of the Administrative Circular, RHO decisions, awards, or final orders may be appealed to the NCIP.

d) Deposit of Royalties

In 1995 when the Philippine Mining Act took effect, the royalty payment for the concerned ICCs was pegged at 1% of the gross output of the extractive operations. Expenses for community development may be credited to or charged against said royalty. Representatives from the Bureau/s, Regional Office/s, Department/s, LGU/s, relevant NGOs/POs and the Office of the Northern/Southern Cultural Communities may be requested to act as mediators in the negotiation between the parties for the royalty payment.⁷² The royalty, to be managed and utilized by the concerned ICCs, shall form part of a Trust Fund for the socioeconomic well-being of the ICCs in accordance with the management plan formulated for the ancestral land or domain area.⁷³

Royalties are a social justice measure and are entitlements of the ICCs/IPs as part of their guaranteed rights under domestic laws and international agreements, conventions or declarations.⁷⁴

i. Management of royalties

Only the duly organized, NCIP-registered Indigenous People's Organization (IPO) of the concerned ICCs/IPs shall be authorized to receive and manage the royalties.⁷⁵

Step 1: Creation of the CRDP

The ICC/IP must formulate a Community Royalty Development Plan (CRDP) for the management and use of royalties and similar fees. In the formulation of such 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.⁷⁶

Step 2: Release of royalties

The release of the royalty fees shall not be allowed without the concurrence of the Commissioner from the Region and the Chairperson of the NCIP duly secured by such IPO. The concurrence is intended to be a check on the use of the funds based on the CRDP. The royalties may be released only: 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.⁷⁷

The royalties may be used for programs and projects that will redound to the well-being and benefit of the ICCs/IPs entitled to it.⁷⁸

Royalties must never be used as payment for damages caused by the proponent or company's activities to the person and properties of an individual member, as this is a distinct obligation of the company.⁷⁹

ii. Checks on the use and management of the royalties

The IPO shall prepare duly audited periodic financial reports and annual financial statements to the NCIP and the general membership during the annual assembly convened to tackle financial and other community or IPO concerns.⁸⁰ The NCIP may direct financial and management audits of the IPOs managing royalties and other benefits.⁸¹

1 1987 Philippine Constitution § 22, Article II

2 Indigenous Peoples Rights Act § 56.

3 *Id.* at § 3(p).

4 *Id.* at § 4.

5 *Id.* at § 57.

6 *Ibid.*

7 Philippine Mining Act § 16.

8 Indigenous Peoples Rights Act § 7 (b).

9 *Id.* at § 7 (c).

10 *Id.* at § 7 (d).

11 *Id.* at § 8.

12 *Id.* at § 8 (b).

13 *Id.* at § 11.

14 *Id.* at § 38.

15 *Id.* at § 52 (j).

16 *Id.* at § 52 (k).

17 Philippine Mining Act § 16.

18 Indigenous Peoples Rights Act § 3 (g).

19 *Id.* at § 3 (f).

20 NCIP Department Administrative Ordinance 3-2013 § 7.

21 *Ibid.*

22 *Id.* at § 5 (i).

23 *Id.* at § 10.

24 *Id.* at § 12.

25 *Id.* at §§ 13, 14.

26 *Id.* at §§ 13, 14.

27 *Id.* at § 15.

28 *Id.* at § 17.

29 *Id.* at § 22.

30 *Ibid.*

31 *Ibid.*

32 *Ibid.*

33 *Ibid.*

34 *Ibid.*

35 *Ibid.*

36 *Ibid.*

37 *Ibid.*

38 *Ibid.*

39 *Ibid.*

40 *Ibid.*

41 *Id.* at § 23.

42 *Id.* at § 22.

43 *Id.* at § 5 (n).

44 *Id.* at § 21.

45 *Id.* at § 24.

46 *Ibid.*

47 *Ibid.*

48 *Ibid.*

49 *Ibid.*

50 *Ibid.*

51 *Id.* at § 24.

52 *Id.* at § 27.

53 *Id.* at § 26.

54 *Id.* at § 27.

55 *Id.* at § 26.

56 *Id.* at § 27.

57 *Ibid.*

58 *Id.* at § 31.

59 *Ibid.*

60 *Id.* at § 34.

61 *Id.* at § 33.

62 *Id.* at § 32.

63 *Id.* at § 36.

64 *Ibid.*

65 *Id.* at § 18.

66 *Id.* at § 28.

67 *Id.* at § 35.

68 *Id.* at § 30.

69 *Id.* at §§ 37, 38.

70 *Ibid.*

71 *Id.* at § 37.

72 Philippine Mining Act § 16.

73 *Ibid.*

74 NCIP Administrative Order 3-2012 § 58.

75 *Id.* at § 59.

76 NCIP Administrative Order 3-2012 § 61.

77 *Id.* at § 60.

78 *Id.* at § 62; It should have allocations for the following, but are not limited to:

1. Emergency concerns.
2. Investments which may be short, medium or long term.
3. Livelihood and social development projects, which must be allocated not less than 30% of each and every release.
4. Education and training of members, basic or professional.
5. Capitalization for cooperative development.
6. Credit facility.
7. Salaries and wages of persons engaged to perform professional service
8. Mutual assistance.

79 *Ibid.*

80 *Id.* at § 63.

81 *Id.* at § 64.