

Republic of the Philippines
OFFICE OF THE PRESIDENT
NATIONAL COMMISSION ON INDIGENOUS PEOPLES
Quezon City

NCIP Administrative Order No. 01
Series of 2006

THE FREE AND PRIOR INFORMED CONSENT
(FPIC) GUIDELINES OF 2006

Pursuant to Section 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 lie of NCIP Administrative Order No. 03, Series of 2002, as follows

PART 1: PRELIMINARY PROVISIONS

Section 1. Title. This Guidelines shall be known as “The Free and Prior Informed Consent (FPIC) Guidelines of 2006.”

Section 2. Objectives.

- a. Ensure genuine participation Indigenous Cultural Communities/Indigenous People (ICCs/IPs) in decision-making through the exercise of their rights to Free and Prior informed Consent (FPIC), whenever applicable;
- b. Protect the rights of ICCs/IPs in the introduction and implementation of plan, programs, projects, activities and other undertakings that will impact upon their ancestral domains to ensure their economic, social and cultural well-being;
- c. Provide the procedure and the standards in cultural conduct of field based investigation (FBI) and FPIC process, charging of fees; and imposition of administrative sanctions for intentional commission of prohibited acts and omissions as hereinafter provided; and
- d. Ensure just and equitable partnership in environmental management, land use, development, utilization and exploitation of resources within ancestral domains as well as benefit sharing, between and among the concerned ICC/IP community and the prospective investor, government agency, local government unit (LGU), non-government organization (NGO) and other entities desiring to collaborate in such undertaking, when FPIC is given.

Section 3. Declaration of Policy. It is the policy of the Commission to:

- a. Uphold the intent and purpose of the law in requiring FPIC of the ICCs/IPs in connection with applications for lease, license, permit, agreement, and/or concession to implement and/or operate programs, projects, or activities affecting ancestral domains;
- b. Ensure that the process of securing the FPIC of ICCs/IPs and the corresponding issuance of Certificate Precondition (CP) shall be conducted with outmost regard for the right of ICCs/IPs to the management, development, use and utilization of their land and resources within their own ancestral domains and/or lands (Ads/ALs);
- c. Adopt and enforce mechanisms for the protection, promotion and realization of ICC/IP rights;
- d. Exercise its visitorial powers and to safeguard the rights of the ICCs/IPs with regard to resource utilization contracts or agreements;
- e. Guarantee that no concession, license, permit or lease, production sharing agreement, or other undertaking affecting ancestral domain/lands will be granted or renewed without going through the process laid down by law and this Guidelines.

Section 4. Operating Principles. In the implementation of this Guidelines, the following 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 ICCs/IPs shall participate in the decision making process primarily through their indigenous socio-political structures. They shall likewise affirm the decision of their duly authorized representatives.
- c. **Peace-Building.** The FPIC is a peace-building measure as it promotes genuine involvement, and exercise by, ICCs/IPs in decision-making. Adherence to the process guarantees harmony, understanding, unity and security.
- d. **Primacy of Cultural Integrity.** Within ancestral domain/lands, the holistic and integrated adherence of IPs to their respective customs, belief, traditions, indigenous knowledge system and practices (IKSP), and the assertion of their character and identity as people shall assume an important consideration in the decision-making processes required for the issuance of the Certification Precondition (CP) as a pre-requisite to the introduction, implementation or operation of plans, programs, projects or activities in AdS/ALs to ensure that the culture and traditions of the concerned ICCs/IPs are recognized and respected in the process and their general well-being promoted.
- e. **Right to Manage Own Land and other Resources within in the Domain.** This right of the ICCs/IPs to manage and develop their own land and other resources within their AdS/ALs shall be respected. It is the policy of the Commission to ensure the priority rights of ICCs/IPs to manage and pursue developments plans, programs, projects or activities in their respective ancestral domain and in the utilization, harvesting, development, extraction and/or exploitation of natural resources therein, and that any alienation or transfer of any of these rights to entities other than the owner of the ancestral domain shall require the conduct of the FPIC process.
- f. **Primacy of Customary Law.** The conduct of FBI and FPIC processes shall recognize the primacy of customs, traditions and practices of the ICCs/IPs concerned.
- g. **Sustainable Development and Protection.** The FPIC, whenever given, shall ensure the ICCs/IPs concept and requisites of sustainable and responsible development and protection of ancestral domains shall benefit the present and future generations.
- h. **Transparency and Clarity.** The process of conducting the FBI and the FPIC shall be characterized by transparency among stakeholders. All issuances, orders, decisions of the Commission relative thereto must be made known to all parties concerned. The applicants shall make a full and project or activity in a manner that is both accessible and understandable to the concerned community.
- i. **Inter-Agency, LGU and NGO/Peoples Organization (PO) Involvement and Community Support.** The collaboration of other government agencies, local government units, and the involvement of NGOs/Pos duly accredited by NCIP and authorized by the ICCs/IPs shall be encouraged in order that their rights shall be promoted and protected.
- j. **Recognition and Exercise of Ownership Rights over Titled Properties within Ancestral Domain Areas.** Titled property holders within ancestral domain areas can exercise all the rights of an owner accorded to them by law, but the exercise of such rights shall carry with it the responsibility of respecting the rights of the ICCs/IPs within the domain. If the exercise of such rights by the titled property owner is such that the rights of the ICCs/IPs can be adversely affected, consultations among the affected ICCs/IPs shall be undertaken through their elders/leaders but the subject of the consultation shall be limited only to the determination and proper compensation through agreement of the loss, damage or injury that may be suffered, and to the satisfaction of the ICCs/IPs that measures shall be undertaken to mitigate if not totally avoid such loss, damage or injury.

Section 5. Definition of Terms. The definition of terms found in R.A. 8371, and its implementing Rules and Regulations (IRR) are hereby adopted, including the terms defined herein below:

- a. **Free and Prior Informed Consent (FPIC).** This is the consensus of all members of the ICCs/IPs which is determined in accordance with their respective customary laws and practices that is free from any external manipulation, interference and coercion and obtained

after fully disclosing the intent and scope of the plan/program/project/activity, in a language and process understandable to the community. The FPIC is given by the concerned ICCs/IPs upon the signing of the Memorandum of Agreement (MOA) containing the conditions/requirements, benefits as well as penalties of agreeing parties as basis for the consent.

- b. **Certification Precondition (CP).** It refers to the Certification of Compliance issued by the Commission attesting that the applicant has complied with the requirements for securing the affected ICC/IP's FPIC in accordance with the provisions of this Guidelines. It also refers to the certificate issued by the Regional Director in cases specifically provided in this Guidelines.
- c. **Certificate of Non-Overlap (CNO).** It refers to the certification issued by the concerned Regional Director of NCIP attesting to the fact that the area affected by a particular plan, program, project or activity does not overlap with any ancestral domain.
- d. **Resolution of Non-Consent (RNC).** It refers to the resolution adopted by the affected ICC/IP through their elders/leaders expressing their non-acceptance of the plan, program, project or activity, and stating the reasons thereof.
- e. **Resolution on Consent (ROC).** It refers to the resolution adopted by the affected ICC/IP through their elders/leaders expressing their acceptance of the plan, program, project or activity.
- f. **Field-Based Investigation (FBI).** It refers to the ground investigation 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 ICCs/IPs whose FPIC is to be obtained.
- g. **Ancestral Domains Sustainable Development and Protection Plan (ADSDPP).** It refers to the plan formulated and adopted by a particular IP community that embodies the vision, framework, goals, objectives, and strategies of ICCs/IPs for sustainable management and development of their ancestral domain and all resources therein, including human and cultural resources. The ADSDPP may contain zoning and identification of plans, programs and projects.
- h. **Elders/Leaders.** These refer to individual IPs or member of ICCs who are regarded by ICCs/IPs with certain degree of wisdom, integrity esteem and dignity, and who are generally relied upon the community members as leaders in the pursuit of community concerns. For purposes of this Guidelines, identified elders and leaders gathered together can be referred to as the council of elders/leaders.
- i. **Consensus-Building.** It refers to that part of the decision-making process undertaken by the ICCs/IPs through their indigenous socio-political structures in arriving at a collective decision.
- j. **Area Affected.** It refers to the area/s which will most likely be affected by the postponed plan, program, project or activity as determined by FBI Team. It consists of the impact area as defined by the concerned regulating agency or the impact area applied to plans, programs, projects or activities that require Environmental Impact Assessment (EIA); Provided, That in both cases it shall take into account the opinions/views of elders/leaders in deference to ICCs/IPs customs, traditions and practices.
- k. **Bioprospecting.** The research, collection and utilization of biological and genetic resources for purposes of applying the knowledge derived there from intended, or later used, for commercial purposes.

PART II: PLANS, PROGRAMS, PROJECTS OR ACTIVITIES COVERED

Section 6. Coverage. The FPIC process to be followed will depend on the nature and extent of the proposed plan, projects, programs or activities sought to be introduced into any ancestral domain area, as follows:

- A. The following plans, projects, programs or activities shall undergo the FPIC process prescribed in Section 26 of this Guidelines:
 - 1. Large-Scale development, exploitation and utilization of land, water, air, and other natural resources within ancestral domains/lands;

2. Exploration of minerals and energy sources within ancestral domains.
3. Program, projects and activities that may led to the displacement and/or relocation of indigenous peoples;
4. Resettlement programs or projects by the government or any of its instrumentalities that may introduce migrants into ancestral domains whether permanent or temporary.
5. Management of protected and environmentally critical areas, and other related joint undertakings within ancestral domains
6. Bioprospecting activities.
7. Industrial land use including the establishment of economic zones;
8. Large scale tourism projects;
9. Large scale agricultural and forestry management projects; and
10. Other activities similar or analogous to the foregoing.

B. Except those covered in the immediately preceding, paragraph the following shall governed by the FPIC process prescribed in the Section 27 of this Guidelines:

1. Small-scale exploitation and utilization of land, water and natural resources within ancestral domains/lands as defined under existing laws, rules and regulations of governing or regulating agencies.
2. Commercial research undertaken by government, private person, or corporations or foreign entities for the purpose intended directly or indirectly for commercial use, such as: publication, documentation, paid lectures, among others.
3. Unsolicited government projects for the delivery of socio-economic services and development including projects of charitable institutions, and civic or non-government organizations, the direct and the primary beneficiary of which are ICCs/IPs who own the ancestral domain, except when the same are formally coordinated with NCIP or as co-implementor in connection with the latter's program, projects or activities in which case, no FBI/FPIC is necessary: *Provided*, That the said program or projects are validated by the NCIP to be acceptable to the intended ICC/IP beneficiaries, either because the same conform with the community's ADSDPP or shall become part thereof in the future. If the owner-ICCs/IPs are not the primary beneficiaries of the aforementioned programs or projects, compliance with the FBI/FPIC process shall be required;
4. Activities that would affect their spiritual and religious traditions, customs and ceremonies, including ceremonial objects or access to religious and cultural sites, archeological explorations, digging ,and excavations unless the council of elders/leaders require the conduct of the FPIC process prescribed under Section 26;
5. Programs /projects/activities not requiring permits from government agencies;
6. Feasibility studies for any program, project, activity or undertaking relative to any of those enumerated in Section 6(A);
7. Occupation of military or organizing para military forces, establishment of temporary or permanent military facilities, or military exercises within the domains, except when requested by concerned elders/leaders in writing. 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, shall not require FPIC. The cessation of hostilities and the presence or absence of clear and imminent danger shall be determined by the elders/leaders who may notify in writing the occupying military/armed force to vacate the ancestral domain; and
8. Such other activities analogous to the foregoing nature.

Section 7. Application for Issuance of Certification Precondition. The application for lease, license, permit, agreement and or concession to implement, operate or undertake plan, programs, projects, or activities in ancestral domains shall be files by the applicant directly with the concerned or appropriate government regulatory agency or instrumentality which shall then endorse it to the appropriate NCIP Regional Office for the compliance with the applicable process provided in this Guidelines. In case the application/project covers two or more regions, the concerned government agency shall endorse the same 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. For plans, programs, projects or activities affecting the ancestral domain that do not require a permit, license or agreement from any government agency/ instrumentality, the application shall be filed directly with the NCIP Regional Office having jurisdiction over the area where the project shall be implemented.

Section 8. Documents Required to Process the Application. The endorsement from the concerned or appropriate regulatory agency or instrumentality shall include the following:

- a. Projects profile which shall include, among others: the name and principal business address of the applicant, the contact person, nature and purpose of project, location/indicative map indicating the name of sitios and/or barangays covered by the project, its impact area and duration of the project.
- b. Operational Plan and projects activities as required by the endorsing agency.
- c. Other relevant data/documents.

For applications for the conduct of activities affecting the ancestral domain that do not require a permit, license or agreement from any government agency/instrumentality, the following documents shall be attached to the application:

- a. Abstract of the project which, among others, enumerates socio-cultural and economic advantage/disadvantage to the ICCs/IPs.
- b. Location/Indicative map of the affected area; and
- c. Other relevant documents

In both cases, the FBI team may require additional documents from the applicant. For juridical entities, proof of their juridical personality is required.

Section 9. Immediate Actions to CP Applications. Immediately upon receipt of the project documents either endorsed to NCIP or directly applied for, the Regional Director shall immediately cause the Provincial Officer concerned to hold a Pre-FBI Conference and consequently, the FBI to determine whether the project affects a known ancestral domain area. If not AD is affected, the procedure provided from Section 21 shall be followed, otherwise, the Provincial Officer aforementioned shall immediately inform the Regional Director in writing and the procedure provided for in Section 14 shall be followed.

In the event that the Commission officially approves a Master List of Ancestral Domain Areas, the immediate action to be taken is for the officer duly designated at the regional office to immediately determine whether the project site falls within, or overlaps with, a known ancestral domain area as appearing in the Master List of Ancestral Domains. If there is no overlap, the procedure provided for in Section 21 hereof shall be followed, otherwise, the officer aforementioned shall immediately inform the Regional Director in writing and the procedure provided for in Section 14 hereof shall be followed.

The Regional director shall forthwith notify: a) the applicant that the Pre-FBI Conference will be conducted at the Provincial Office at a specified date; and b) the Provincial Officer concerned that the Pre-FBI Conference will be conducted at the Provincial Office at a specified date. For Service Centers in Provinces without Provincial Offices, the Pre-FBI conference shall be held at the Service Center concerned. The Pre-FBI Conference shall be held within a period of ten (10) days from receipt of the application or the endorsement.

Part III: PROCEDURE TO SECURE THE FPIC REQUIREMENT

Section 10. Who Shall Give the Free and Prior Informed Consent. The ICCs/IPs whose FPIC is required to be secured shall depend upon the area affected as determined in accordance with the immediately preceding Section. The following shall likewise to be considered in determining who shall give the approval/ disapproval:

- a. When the area affected covers the entire ancestral domain, the consent of the concerned ICCs/IPs within the ancestral domain shall be secured;

- b. When the area affected covers only a portion of the ancestral domain, only the ICCs/IPs in such portion shall be involved in the FPIC process, or in special cases, whose consent shall be validated;
- c. When the area affected covers two or more ancestral domains, the ICCs/IPs in each domain shall be separately involved in the FPIC process;
- d. When the area affected covers an ancestral domain and an adjacent ancestral land, the latter shall be separately involved in the FPIC process;
- e. When the area affected covers ancestral domain situated in two or more regions, the affected ICCs/IPs shall be involved in the FPIC process. In case of consent, a MOA shall be executed for each ancestral domain affected unless the ICCs/IPs agree to a joint MOA; and
- f. When the area affected covers an ancestral domain situated in two or more barangays, the assemblies required in Section 26 and 27 of this Guidelines may be conducted jointly or separately for each barangay. The FBI team, in consultation with elders/leaders, shall recommend to the FPIC Team whether to conduct separate or joint assemblies.

Nothing in this provision shall prejudice the rights of persons mentioned in Section 37 and 38 of this Guidelines.

Section 11. *Determination of Area Affected.* The FBI Team shall determine the area affected taking into consideration the following criteria:

- a. The impact area as defined by the concerned regulating agency or the impact area applied to plans, programs, projects or activities that require Environmental Impact Assessment(EIA) on the basis of the project documents and the indicative map submitted by the applicant to find out the extent of coverage of both the area affected and the members of the community whose consent is to be obtained, the FBI team must seek the opinion/views of elders/leaders as initially identified by the ancestral domain area representatives as referred to in Section 13 (d.2) on whether or not the impact area as determined is acceptable to the community taking into account their customs, traditions and practices.
- b. In case there is no impact area defined by any regulating agency, FBI Team shall consider the operation plan, indicative map and other project documents submitted by the applicant. The Team shall likewise consult the ancestral domain representatives as referred to In Section 13 (d.2).

PART IV: FIELD BASED INVESTIGATION

Section 12. *Constitution and Composition of the FBI Team.* Within ten (10) days from the approval of this Guidelines, each Provincial Officer shall forthwith constitute the FBI Team for each province consisting of at least three (3) members. Two (2) of whom shall come from the Provincial Office and one (1) from the Community Service Center (Service Center) concerned or vice versa, without prejudice to the formation of additional teams and/or substitution of member/s should need arise. For Service Centers in provinces without provincial offices, the Regional Director concerned shall cause/order the constitution of the FBI Team/s from employees of the Service Center concerned.

These constituted teams can be grouped or regrouped by the Provincial Officer at any given time in order to cope with existing work condition or circumstance. The constituted FBI teams shall be at the disposal of the Provincial Officer or the Service Center Head, as the case may be, to be assigned by him upon every written notice of the Regional Directory.

The Administrative Officer shall act as a disbursing officer and an alternate shall be designated by the Provincial Officer for all applications. The disbursing officer and the alternate so designated shall be properly bonded. For this purpose, the amount needed for the payments of the bond premium shall be charged against MOOE of the provincial office.

Section 13. *Duties and Functions of the FBI Team.* The FBI Team shall:

- a. Attend scheduled Pre-FBI conference to be presided by the Provincial Office but prior to the scheduled conference, the FBI Team assigned shall have gathered already available data and information needed for the pre-FBI conference as provided in Section 14 of this Guidelines.

- b. During the Pre-FBI conference, generate the expected output as provided for in Section 14 of this Guidelines;
- c. Conduct Field Investigation after notifying the ancestral domain area representatives of the schedule of the conduct of FBI and requesting for their attendance. The said notice shall contain the date, venue and time of the meeting and the information that food and transportation of the attendees will be provided;
- d. In the actual conduct of the FBI, confer with the ancestral domain area representatives for the purpose of:
 - d.1. Determining the nature and extent of the plan, program, project or activity, the area affected and the number of ICCs/IPs affected in compliance with Section 11, paragraph (a);
 - d.2. Listing of elders/leaders with ancestral domain area representatives as informants. For this purpose the ancestral domain area representatives shall be as follows: the Consultative Body representatives for the ancestral domain area as constituted by the NCIP through *NCIP Administrative Order 01, Series of 2003*; one (1) IPO representative in the ancestral domain area, if there is any; and one (1) representative of tribal council of elders/leaders, if there is any; and
 - d.3. On-site preparation of the Work and Financial Plan (WFP) needed for the conduct of FPIC to be co-signed by ancestral domain area representative sin attendance during the conduct of FBI. This WFP shall be reviewed and finalized during the Pre-FPIC Conference.
- e. Formally notify in writing the concerned LGU/s and Provincial Consultative Body (PCB) of the conduct of FBI;
- f. Prepare and submit FBI report to the Regional Director duly noted by the concerned Provincial Officer, copy furnished the Ancestral Domains Office, the concerned Ethnographic Commissioner, and the concerned applicant in accordance with Section 19 of this Guidelines; and
- g. Observe established and applicable accounting and auditing rules and regulations.

Section 14. *Pre-FBI Conference; Matters to be Taken.* The following matters are to be taken up in the Pre-FBI Conference.

- a. Introduction and orientation on the requirements of FBI process;
- b. Introduction of the applicant, proof of legal capacity and the proposed project;
- c. Production of additional project documents when necessary;
- d. Initial determination and approximation of the area affected;
- e. Agreement on the cost of the FBI computed by the Head of the FBI Team based on the following:
 - e.1. Food, lodging and transportation expenses of the FBI Team members in attending the Pre-FBI conference;
 - e.2. Food, lodging and transportation expenses of the FBI Team for the duration of the actual conduct of FBI;
 - e.3. Documenting the FBI activity(photo and/or video, cassette recording and development, reproduction of documents);
 - e.4. Food and transportation of ancestral domain area representatives attending the meeting called for by the FBI Tea. Cost of traveling expenses of the Provincial FBI Team to attend the one (1) day Pre-FPIC Conference at the Regional Office;
- f. Commencement and termination of the FBI process in accordance with Section 18 of this Guidelines; and
- g. Additional matters agreed upon at the start of the Pre-FBI Conference.

Section 15. *FBI Fee.* The FBI Fee to be paid by the applicant shall be assessed in accordance with the following rules:

- i. If no overlap is noted based on the duly approved Master list of Ancestral Domain Areas, the applicant shall only pay a Certification Fee of Five Hundred Pesos (Php 500.00), but if an FBI is necessary in order to determine whether the plan, program, project or activity affects an ancestral domain, the applicant shall shoulder the agreed cost of the FBI, the amount of which shall be determined during the Pre-FBI Conference.
- ii. If no overlap is noted based on the approved Master list of Ancestral Domain Areas, and the proposed plan, program, project or activity falls within the classification requiring the conduct of FPIC process prescribed under Section and Section 27, the applicant shall pay the agreed cost of conducting the FBI based on the WFP to be agreed upon during the Pre-FBI Conference.
- iii. If no overlap is noted on a known AD/AL already issued with a CADT/CALT, FBI is still required for purposes of determining the area affected and the ICCs/IPs whose consent is to be obtained in accordance with Section 9 of this Guidelines necessary in determining the cost of conducting the FPIC process. However, in these areas where the plan, program, project or activity patently affects the entire ancestral domain and the cost can be determined as well as the requirements of Section 9 of this Guidelines, the conduct of FBI can be dispensed with and proceed to hold the Pre-FPIC Conference. The requirements under Section 13. (d.3) hereof requiring the on-site preparation of WFP bearing the conformity shall likewise be dispensed with.
- iv. Except for situations and circumstances as provided in Section 8 6.B (3), 31, and 35 of this Guideline, a government agency, institution or instrumentality, is required to pay FBI fee in an amount to be determined during the Pre- FBI Conference.

Section 16. *Establishment of Trust Account.* Each Provincial Office and Service Center with no provincial office, shall establish a trust account in an authorized government depository bank where all FBI and FPIC Fee payments shall be deposited as Trust Funds.

Upon deposit of the amount determined for FBI or FPIC, as the case maybe, the disbursing officer shall forthwith prepare the necessary disbursement vouchers to ensure that the amount is made available with 5 days thereafter.

Section 17. *Failure to Appear at Pre-FPIC Conference and Failure to pay FBI.FPIC Fee; Effect.* Should the applicant fail to appear in either the Pre-FBI or Pre-FPIC Conference, the Provincial Officer or the Service Center Head shall immediately inform the Regional Director of such fact. The processing of the application and the period provided thereof, shall be suspended by the Regional Director and duly recorded, with notice to the applicant, sent through facsimile, registered mail or messengerial services with proof of receipt or return card . The notice shall also contain the information that inaction by the applicant with ten (10) days from the receipt thereof will be deemed as lack of interest on their part and the Regional Director concerned can already issue the suspension order, without prejudice the re-opening of the same.

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

After the lapse of ten (10) days from the receipt of the Order of Suspension, sent through facsimile, registered mail or messengerial services with proof of receipt or return card, the Regional Director shall return the application to the applicant or to the endorsing regulatory agency, as the case maybe, and a copy of the application folder archived.

Thereafter, other application, if any, may be given due course. The suspended application maybe re-opened if no other application is already undergoing the FPIC process, otherwise, the suspended application will have to await outcome of the on-going FPIC processing.

Section 18. Commencement and Conduct of the Filed-Based Investigation(FBI), The Team shall commence the FBI after (5)days from payment of the FBI fee. The Provincial Officer or Service Center Head shall immediately notify the Regional Director that the FBI fee has already been paid. Correspondingly, the Provincial Officer or the Service Center Head, as the case may be, shall immediately notify the ancestral domain representatives of the commencement of the FBI. Except when otherwise agreed upon, the FBI period is ten (10) days. The 10th day is the pre-designated date to hold the Pre-FPIC Conference should there be need to conduct the FPIC process. It is thereafter understood that the FBI Team shall have submitted its report to the concerned Provincial Officer or Service Center Head, who shall then immediately constitute the FPIC Team in accordance with Section 22 hereof should there be a need to conduct the FPIC process.

Section 19. Contents of the Field-Based Investigation Report. The FBI report shall contain the following:

- a) Narrative of the FBI signed by all members of the Team containing:
 - a.1. Inclusive dates when the FBI was conducted;
 - a.2. Names and designation of members of the FBI Team;
 - a.3. Specific names of a places actually visited;
 - a.4. Names of persons interviewed, indicating their positions in the community;
 - a.5. Latest official barangay or municipal census record, or in their absence, other available listings;
 - a.6. Views and opinions of elders/leaders on what should cover the area affected following Section 11 (1), their approximation of number of IP household heads within the area affected;
 - a.7. Initial documentation of concerned ICCs/IPs decision – making process for purposes of Section 25 of this Guidelines; and
 - a.8. Recommendations needed for the proper conduct of the FPIC proceedings.
- b) List of elders/leaders of the affected community;
- c) Copy of the latest official barangay or municipal census record indicating the IP population in the affected area, and/or other available listings;
- d) Indicative map showing the extent of overlap and the names of Sitios and Barangay affected;
- e) Highlights of discussions and attendance sheet duly signed/thumb- marked by the IP elders/leaders; and
- f) Computation of cost required for the conduct of FPIC proceedings.

Section. Pre-FPIC Conference. During the Pre-FPIC conference, the following shall be accomplished:

1. Briefing on the project and the result of the FBI;
2. Presentation of the WFP for the conduct of the FPIC process;
3. Briefing on the FPIC process, protocols, and prohibited acts;
4. Setting of schedules, tasking, and payments of FPIC cost;
5. Preparation of Work Order;
6. The cost for the payment of the bond premium of accountable officers which shall be included in the WFP to be paid by the applicant.
7. Subsequent 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.
8. Subsequent 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 documents shall clearly indicate how adverse effects maybe avoided, mitigated and/or addressed; and

9. Other related matters.

Section 21. *Certificate of Non-Overlap; When Issued.* Based on the report on the concerned Provincial Officer, Service Center Head or duly designated officer at the Regional Office, as the case may be, certifying to the fact that the area affected by the proposed plan, program, project or activity does not affect/overlap with an ancestral domain, the Regional Director shall, within a period of three (3) days, issue to the applicant a **Certificate of Non-Overlap (CNO)** coupled with a signed undertaking that the applicant agrees to the conduct of FBI/FPIC requirement should it be found later that there is, in fact, an overlap in whole or in part of any ancestral domain/land, a copy of which shall be furnished to ADO and the concerned Provincial Officer or Service Center Head, as the case may be.

PART V: CONDUCT OF FREE AND PRIOR INFORMED CONSENT

Section 22. *Constitution and Composition of FPIC Team.* The FPIC Team shall be a composed of not more than six (6) members designated by the Regional Director from the Provincial and/or Service Center personnel which must include, whenever feasible, the Provincial Legal Officer, one (1) Engineer from the provincial or regional office, and the least one (1) member of the FBI Team. The Regional Director and the Chief of Technical Management and Service Division shall in no case be part of the Team.

Section 23. *Period of FPIC Mandatory Activities; Commencement.* The period for the conduct of the FPIC mandatory activities under Section 25 hereof shall not exceed fifty-five (55) days. The period for the conduct of the FPIC mandatory activities under Section 27 hereof shall not exceed thirty-five (35) days. Both periods shall commence on the date that the FPIC fee is paid in cash or deposited by the applicant in the NCIP Provincial Trust Account (PTA) and is made available to the Team. The Team leader shall request release of the funds in accordance with the WFP for the conduct of FPIC immediately upon the availability of the trust fund. The periods may be extended upon request of the community or applicant on meritorious grounds as may be determined by the parties or on account of fortuitous events or *force majeure*, in which case, the proceedings shall continue as soon as the reason thereof ceases to exist as determined by the FPIC Team.

Section 24. *Validation of the List of Elders/Leaders; When and How.* Except in ancestral domain areas where the elders/leaders are already identified and recognized by the NCIP as a result of delineation and titling or ADSDPP formulation activities of the NCIP, the initial identification of elders/leaders by the FBI Team in accordance with Section 13 (d.2) shall be validated as follows:

- a. For plans, programs, projects, and activities enumerated under Section 6(A), validation of elders/leaders shall be held during the Consultative Community Assembly as provided in Section 26 (b).

NCIP shall facilitate the convening of the elder/leaders coming from the affected area to validate the authenticity and legitimacy of the elders/leaders as appearing in the list. In that assembly, the participants will be asked to validate the recognized leaders of the community. The purpose is to secure genuine representation for the community in the negotiations.

- b. For the plan, program, projects, and activities enumerated under Section 6 (B), validation of elders/leaders shall be held during the conduct of the First Meeting as provided in Section 27.

The elders/leaders as listed by the FBI Team shall be confirmed through peer validation. The elders/leaders present in this meeting may, by unanimous agreement, include or exclude other elders/leaders to complete the list of the FBI Team.

Section 25. *Determination and Manifestation of Customary Decision-Making Process.* The customary decision-making process of the concerned ICCs/IPs shall be adhered to in securing their FPIC, i.e. whether the community decision is to be given by the elders/leaders, or by the community members involved through household representation or otherwise. The validated and recognized elders/leaders shall present their decision-making process during the Community Assembly for project provided under Section 6.A or during the First Meeting, for projects provided under Section 6.B. Members of the community present during the Community Assembly or the First Meeting, as the case may be, shall affirm the process presented by their recognized elders/leaders. Whatever the customary decision-making process may be, the requirement of consensus-building shall at all times be observed.

Section 26. *Conduct of Mandatory Activities for Plans, Programs, Projects or Activities covered under Section 5 (A) of this Guidelines.* The FPIC Team shall ensure the conduct of the following mandatory activities/processes:

- a. ***Posting of Notices and Serving of Invitations.*** The FPIC Team shall cause the posting of notices in conspicuous places in and around the concerned ICCs/IPs community including the service of personal to the IP elders/leaders for a Consultative Community Assembly (CCA), specifying the date, time, venue, and agenda of the meeting. In cases of FPIC process prescribed under Section 27, the notice shall call for a First Meeting between the IP elders/leaders and the applicant.
- b. ***Consultative Community Assembly.*** The participants to the CCA are the elders or leaders, the representatives of IP households/families within the area affected, the representatives from the applicant, the FPIC Team, the representatives from development NGOs duly accredited by the NCIP and authorized by the Community present within the ancestral domain area, if there are any. After the validation of the list of elders/leaders as prescribed under Section 24 of this Guidelines, the applicant will be given in the said assembly. The Operation Plan and the scope and extent of the proposal shall then presented to the elders/leaders by the applicant for understanding, and shall given them the needed information supporting their proposal, including but not limited to: the cost and benefits of the proposal to the ICC/IP and their ancestral domains, presentation of perceived disadvantage or adverse effects to the community and the measures adopted by the applicant to mitigate these.

In the discussions to follow, the other representatives will be given their turn in presenting their views to the proposal for the appreciation of the council of elders/leaders. The council of elders/leaders shall decide whether another meeting is necessary to complete the process.

For purpose of paragraph (d) of this section, the elder/leaders, in the present of the participating household representatives affected by the project, shall make known to the applicant and to all concerned the decision-making process adhered to or practiced by the community.

- c. ***Consensus-Building and Freedom Period.*** After the termination of the CCA, the community, led by their elders/leaders, shall proceed to consult among themselves, employing their own traditional consensus-building processes in order to further discern the merits and demerits of the proposal in the CCA and to arrive at a consensus. Except for NCIP representatives who shall document the proceedings, non-members of the IP community are strictly enjoined from interfering with the consensus-building processes of the community.
- d. ***Decision Meeting.*** At the designate date, time, place, a meeting of the applicant and the elder/leaders facilitated by the FPIC Team, the elders/leaders will formally convey to the applicant the decision on the community members affected by the project as a result of the consensus-building process. If the consensus is favorable, the parties shall proceed to finalize the terms and conditions of the MOA. If the consensus is against the project, the leaders or elders will be required to submit their written decision in the form of a Resolution. Further, the applicant may ask the elders/leaders to explain the decision. If

the reason for the denial of the consent is something the applicant can readily address or a counter-proposal or a new proposal is made by the applicant, the elders/leaders may require another period, if they desire so, to reconsider their decision: *Provided, however,* That any such extension of the period as consequence of proposal or counter-proposal shall no exceed fifteen (15) days beyond the 55-day period.

In case the decision-making process is one that requires the participation of the majority members of the community involved, the decision to accept or reject a particular plan, program, project or activity shall be determined by raising of hands of community members in attendance and qualified to vote pursuant to their custom, tradition or practice. If the decision-making process following custom and tradition is such that the decision is to be left to the sound judgment or discretion of elders/leaders, the decision to accept or reject the plan, program, project or activity by the council of elders/leaders will be respected, and the vote of the community members is no longer required. In both situations, the requirement of consensus-building is necessary as provided in the immediately succeeding paragraph.

In this meeting, it is required from the council of elders/leaders to already designate in writing, duly signed, who among the members of the council are authorized to sign/thumb mark the MOA in behalf of the community in case the plan, program, project or activity is accepted.

The NCIP representatives shall set the mechanisms of the CCA after due consultation with all parties concerned.

The NCIP shall facilitate the conduct of, and document, the proceedings as well as translate, interpret, clarify or elaborate matters discussed and provide the participants information on the pertinent provisions of IPRA. This shall likewise apply to the succeeding section.

Section 27. Conduct of Mandatory Activities for Plans, Programs, Projects or Activities covered under Section 6 (B) of this Guidelines.

- a. **First Meeting.** The FPIC Process requires a negotiation to take place between the council of elders/leaders and the applicant facilitated by the FPIC Team. There shall be two (2) separate meeting which are herein referred to as the First Meeting and the Decision Meeting. Both these meeting must be undertaken and terminated within a period of twenty (20) days. In the First Meeting, the applicant will be given sufficient time in the presentation and clarification of their project proposal. The Operation Plan and the scope and extent of the proposal shall then be presented to the elders/leaders by the applicant for understanding, and shall give them the needed information supporting their proposal, including but not limited to: the cost and benefits of the proposal to the ICC/IP and their ancestral domains,; presentation of perceived disadvantages or adverse effects to the community and the measures adopted by the applicant to mitigate these.
- b. **Consensus-Building.** The period between the First and Decision meeting shall serve as the period for consensus-building among the members of the council of elders/leaders.
- c. **Decision Meeting.** On or before the 20th day from the date of the First Meeting; the council of elders/leaders will hold the Decision Meeting with the applicant at the designated time and place. The council of elders/leaders will formally convey their decision to the applicant as a result of their consensus-building process. If the consensus is favorable, the parties shall proceed to finalize the terms and the conditions of the MOA. If the consensus is against the project, the leaders or elders will be required to submit their written decision in form of a Resolution. Further, the applicant may task the council of elders/leaders to explain the decision. If the reason for the denial of the consent is something that the applicant can readily address or a counterproposal or a new proposal is made by the applicant, the council of elders/leaders may require another period, if they so desire, to re-consider their decision but in no case shall it exceed ten (10) days from the time of the first decision sought to be reconsidered.

In this meeting, it is required from the elders/leaders already designate in writing, duly signed/thumb-marked, who among the members of the council are authorized to sign the MOA in behalf of the community in case the project is accepted.

Section 28. *Resolution of Consent/Non-Consent for Section 26 and 27 FPIC process.* In the event that the ICC/IP community or IP leaders/elders decide to give their consent to the project, a Resolution of Consent shall be issued by the IP/ICC community through their duly authorized representatives/leaders/elders or the IP elders/leaders shall adopt and issue a Resolution of Non-Consent containing the reason for such denial.

Section 29. *Submission of Report.* A report of the FPIC process, either as prescribed under Section 26 or Section 27, shall be prepared and submitted by the FPIC Team to the Regional Director duly noted by the concerned Provincial Officer/s or Service Center Head/s. as the case may be. Within two (2) days from receipt, the Regional Director shall direct the Regional Review Team (RRT), composed of the TSMD chief, Regional Attorney, and another member, designated by him/her, to evaluate the same within five (5) days after which, he/she shall notify the applicant in writing of the result, attaching the Resolution of Non-Consent issued by the community in case of denial or rejection, and copy furnished ADO, or in case of consent, endorse all documents relative to the FPIC Process undertaken to the ADO for evaluation and endorsement to the commission.

Section 30. *Non-transferability of Free and Prior Informed Consent.* The consent of the ICCs/IPs for particular proposal shall not be transferable except on 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 document required under Section 8 of this Guidelines to ADO and the representative of the ICCs/IPs concerned.

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, and acquisition by another entity, or joint venture.

PART VI: IP SOLICITED/INITIATED PROJECTS, BASIC SOCIO- ECONOMIC SERVICE ACTIVITIES AND OTHER CASES

Section 31. *Community-Solicited or Initiated Activities.* Subject to NCIP validation, programs, projects and activities solicited or initiated by the concerned ICC/IP themselves where the activity is for the delivery of basic services or for the establishment of social enterprise to be undertaken within or affecting the ancestral domain, do not require compliance with FBI/FPIC requirement as provided in this Guidelines. The NCIP shall validate whether or not:

- 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 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 the basic services or for the establishment of socio enterprise or enterprise development involving community interest affecting land and resource use that would provide employment or generate income to improve the living condition and economic development of the concerned ICC/IP.

The Rules and Process of Validation as described hereafter shall be observed in the conduct of the field based validation.

Section 32. Community-Exercise of Priority Rights to Natural Resources. The intention of the ICCs/IPs to make use of or exercise their priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domain shall be formally declared, in writing, by the elders/leaders duly supported by a petition signed by the majority members of the community. Such declaration should be for specific purpose/s and shall describe with particularity the area to be covered by the declaration. It shall be made known to the NCIP through any of its offices and needs a formal acknowledgement from the Commission after the same is validated by the ADDO.

The Commission in acknowledging the declaration of ICCs/IPs to exercise their priority right pursuant to Section 57 of the IPRA is duty bounded to formally notify the concerned agency of such declaration through a Resolution and shall ensure the said agency likewise acknowledges and respects the same. Such notice shall effectively prevent the concerned agency from entertaining any other application that would frustrate the object and purpose of the declaration. Within a period of six (6) months from such notice, the ICC declarant shall submit its project application to the concerned regulating agency and comply with the minimum requirements for such application; otherwise, the priority right declaration shall be of no effect. The NCIP Provincial Officer or Service Center shall assist the concerned ICC in filling the necessary application as well as in the preparation of the documents required by the regulating agency.

To be considered as authentic, the declaration must be made by the elders/leaders of the concerned ICCs/IPs duly supported by signed petition of majority of the community members of the ancestral domain. In acknowledging such declaration, the Commission shall require ADO to cause the conduct of a Field Based Validation to confirm the following:

- a. Authenticity of the declaration;
- b. The existence of the plan or projects; and
- c. The capacity of the ICCs/IPs to undertake the plan, program, project or activity.

If a non-member of the ICCs/IPs concerned is allowed by the ICC to take part in the development and utilization of the land or natural resources, whether such participation is a result of a community solicitation or in connection with the ICC declaration to exercise priority right, such participation of the non-member shall be limited to a period not exceeding twenty-five (25) renewable for not more than twenty-five years: *Provided*, That a formal and written agreement is entered into which the ICCs/IPs concerned and the community, pursuant to its own decision-making process, has agreed to allow such operation. In the absence of the ADSDPP, the concerned community shall be required to execute an undertaking that the project or activity shall form part of ADSDPP to be formulated: *Provided, further*, that the NCIP shall validate whether the said activity is in accordance with the community's ADSDPP. The Process of Validation described hereafter shall be observed in the conduct of the field based validation and that, the NCIP may exercise visitatorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract.

Section 33. *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 and subsistence 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/IP's traditional use. To avoid circumvention or abuse of this provision, the NCIP shall validate such utilization upon complaint of any member of the council of elders/leaders.

Section 34. *Object and Process of Validation.* Validation is intended to determine the consent of the community relative to programs and projects mentioned in Section 31, 32, 33, 40, and 41. The process of validation shall be as follows:

- (1) The NCIP *motu proprio*, or upon receipt of the written request for validation, the Regional Director shall constitute a team from the provincial office or service center, as the case may be, to conduct a filed validation;
- (2) The team shall immediately conduct the validation thereafter submit the appropriate report to the Regional Director within (10) days from commencement of the field validation;
- (3) Depending on the result of the validation, the Regional Director shall within three (3) days, from receipt of the report, issue the Certificate Precondition and/or take such appropriate measure for plans, programs, projects, or activity referred to I Section 33 hereof. For those covered under Section 31 and 32, the Regional Director shall endorse the validation documents to the Commission through ADO for the issuance of a Certificate Precondition and/or for appropriate action; and
- (4) The process of validation shall be done through interviews of elders/leaders and other community members;

Even if any an activity is covered under Section 31, 32, 33, 40 and 41, the NCIP may exercise its injunctive powers upon written complaint of any member of the affected community to enjoin the conduct or continued implementation of the program, project, plan or activity on order to safeguard the rights and interests of the community.

Section 35. *Emergency Cases.* Where the conduct of plans, projects or activities of the government or any civic, religious, or similar organizations within ancestral domain is in response to emergency situations involving public order, health, security or safety, FPIC shall not be required.

Section 36. *Regulating of Entry of Migrants and Other Entities.* Entry of migrants and other entities for purposes of establishing a resettlement , or for any of the activities falling under paragraphs (1)to(11) of Section 6 (A) require the conduct of the FPIC process as provided in this guidelines. Entry of migrants and other entities for purpose of conducting activities not falling under the said paragraphs of Section 6 shall be approved or rejected by the community in accordance with their customs, traditions and practices.

Section 37. *FPIC of Resettled/Relocated of Displaced ICCs/IPs Within Public Domains.* A group or a community of 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 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 rights to FPIC.

Section 38. *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 particular ICC/IP community where there exists resettled, displaced and reallocated IPs or migrant IPs mingled or 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.

Section 39. *Small-Scale Quarrying approved by Local Government Units(LGUs).* The certification precondition for small-scale quarries, whose permits are issued by LGUs, shall be issued by the concerned Regional Director with the concurrence of the concerned Ethnographic Commissioner.

PART VII: RESEARCH ACTIVITIES

Section 40. *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 Section 34 of this Guidelines.

Section 41. *Academic Research and Research in Aid of Policy.* The conduct of researches herein below enumerated within the ancestral domain may be allowed or disallowed by the concerned community elders/leaders in accordance with their customary ways and practices: *Provided*, That the research applicant shall notify in writing the concerned Provincial Office prior to the concerned ICCs/IPs, the research applicant shall obtain a CP from the concerned Regional Director. The CP shall contain such terms and conditions provided by concerned ICCs/IPs and/or Regional Director. The CP bearing the conformity of the ICCs/IPs through their authorized elders/leaders and the applicant shall constitute the contract between them.

- a. Academic Researches – those conducted pursuant to a scholastic program and/or researches required to earn a particular academic accreditations or degree.
- b. Researches conducted in Aid of Policy – all researches conducted for the purpose of developing policies or programs intended for the benefit of indigenous peoples.
- c. Researches necessary to implement the mandates of the NCIP –all types of researches needed to enforce the mandate of the NCIP including, but not limited to, those involving delineation of ancestral domains, preparation of ASDSPP, documentation of customary law.
- d. Social Research and Researches on the IP’s Culture and Arts – all researches conducted for the purpose of understanding the history, social relations and dynamics of IP communities as well as those involving the IPs, Culture and Arts.

Except for purely news coverage, all video publications of researches under Section 41 (a) and (d), the applicant must secure the consent of the concerned elders/leaders as certified by the concerned NCIP Regional Director. The video to be presented for public view must bear the information that the contents to be viewed bear the consent of the concerned elders/leaders of the community being the subject of the video documentation.

Section 42. *Bioprospecting.* Bioprospecting activities within ancestral domains shall comply with the FPIC process as provided in this Guidelines. For those ancestral domain areas covered by the Joint DENR-DA-PCSD-NCIP Administrative Order No.1, Series 2005, the FPIC process to be observed shall be in accordance with Chapter V thereof, unless the same is modified, revoked or repealed jointly by parties.

PART VIII: MEMORANDUM OF AGREEMENT

Section 43. *Preparation of the Memorandum of Agreement.* When the consent of the concerned community is obtained, the terms and conditions thereof shall be embodied in a Memorandum of Agreement (MOA) to be executed between among and among the ICC/IP’s, the applicant and the NCIP and any other party that may be necessarily involved. The MOA shall be prepared by the FPIC team strictly in accordance with what has been agreed upon by the parties. The drafting shall be the primary obligation of the Legal Officer of the province or in his/her absence the Regional Legal Officer, and the FPIC Team members. The first draft shall immediately be translated into the language or dialect understood by the ICCs/IPs concerned. The Provincial

Officer or Service Center Head shall inform the Regional Director and request the presence of RRT members. The review authority of the RRT is to be performed in this meeting. The translated version along with the English or Filipino version shall be presented and explained to the council of elders/leaders. If the contents of the MOA is affirmed, those previously authorized to sign in behalf of the community shall affix their signature/thumb-mark and present themselves before a notary public to acknowledge the document they have executed. If there are necessary corrections to be made to reflect the terms and conditions originally agreed upon, the applicant shall be given the opportunity to examine the corrections. Thereafter, the parties may proceed to execute the MOA as provided herein.

Should the duly authorized elders/leaders sign the MOA by affixing their thumb-marks, a member of the community who knows how to read and write shall participate as an instrumental witness.

Section 44. *Final Review of Memorandum of Agreement 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.

Section 45. *Contents of the Memorandum of Agreement.* The MOA shall stipulate among others, the following:

- a) The detailed premises of the agreement;
- b) All parties involved ;
- c) Inclusive dates/ duration of agreement;
- d) 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 sector and number, the period covered, and other pertinent information that could guide the future monitoring and evaluation of the MOA;
- e) 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.
- f) Detailed measures to protect IP rights and value systems;
- g) Detailed measures to conserve/protect affected portion of the ancestral domain critical for watersheds, mangroves, wildlife, sanctuaries, forest cover, and the like;
- h) Responsibilities of the applicant s well as the host IP community;
- i) The monitoring and evaluation system of the MOA, to include the submission of reports and creation of monitoring teams;
- j) 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;
- k) 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;
- l) Undertaking in writing to answer for damages which the ICCs/IPs may suffer on account of the plan, program, project or activity. If in addition to the undertaking, the community requires the applicant to deposit a cash bond or post a surety bond to answer for such damages, the amount of the bond shall be equivalent to at least one percent (1%) of the cost investment subject to progressive increase, depending upon the effect of the project. The MOA shall be accompanied by proof of the deposit of a cash bond or surety bond with the NCIP. The surety bond must be secured from a reputable bonding company duly accredited by the Supreme Court and accompanied with an indemnity agreement and acceptable collateral other than a check. The applicant shall certify that the bond shall be in effect until expiration of the plan, project or undertaking.
- m) Other requirements provided in this Guidelines.

Section 46. *Signatories to the Memorandum of Agreement.* The signatories of the MOA shall be:

- a. Elders/leaders 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 as per Board resolution; and
- c. The Chairperson, by the authority of the Commission, shall sign the MOA in behalf of the NCIP as the Third Party; in case where the Regional Director is authorized by this Guidelines to issue the corresponding certification precondition, the Regional Director concerned is likewise authorized by the Commission to sign.

Section 47. *Complaint related to the Memorandum of Agreement.* Any complaint involving the interpretation and implementation of the MOA 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 48. *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 proceeded 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 prejudices to the exhaustion of the latter's visitorial and injunctive powers.

PART IX: PROHIBITED ACTS AND REMEDIES

Section 49. *Prohibited Acts.* After the filing of the application and during the period that the application is pending, any of the following acts or omissions is 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, treat, 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 the local police authorities or the AFO as requested by the 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. 26(b) and 27 (a)] 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 member for the purpose of influencing the decision of the ICCs/IPs.
- 6) Holding of unauthorized meeting 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.

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
9. Demanding or receiving from the applicant, IP community, or support institutions like NGO's, government agencies and institutions money, or any gift, donation or other valuable thing outside the approved work and financial and/or supplement 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/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 Gas or local government instrumentalities, including barangay officials and their functionaries, and those made by other entities or groups with religious affiliations.

Section 50. Sanctions. Sanctions shall be imposed only after due notice and after the parties are given the opportunity to be heard, as follows:

- a) **Grave Violation.** 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 acts 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 the individuals or group of persons acting for the applicant, including repeated commission of prohibited acts considered not grave.

Grave violation shall be a ground for disqualification on the 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 prohibited acts by or attribute 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 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 the prohibited acts intentionally committed, but which do not results 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 Civic Service Rules and Regulations on discipline.

Commission of any of the prohibited acts by or attributable to the NCIP Regional Director of 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, the 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 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 51. Jurisdiction of Regional Hearing Officer on FPIC Controversies. Violations of the requirement of the 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 be refer only to cases where the plan, program, project or activity was implemented without the required FPIC.

Section 52. *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 Leader. Within ten (10) days from the 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 the receipt of the answer or expiration of the period for filing thereof. The resolution shall address the irregularities 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 55 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 53. *Hearing of Complaint 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 the 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 54. *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 applications 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 the 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 endorsed to the Commission.

Section 55. *Summary Proceedings to Resolve Petition.* In the course of its proceedings, the Commission may require the submission of additional evidence or the conduct of certificatory 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 the 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 56. *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 57. *Separability Clause.* In cases any clause, section, sentence, or provision of this Administrative Order or any portion hereof is held or declared unconstitutional or invalid by a

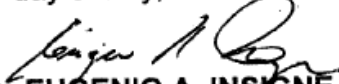
competent Court, the other sections or portions hereof which are not affected thereby shall continue to be in full force and effect.

Section 58. Repealing Clause. This Administrative Order repeals NCIP AO-03, Series of 2002. 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.

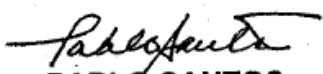
Section 59. Effectivity. This Administrative Order shall take effect fifteen (15) days after its last publication in a newspaper of general circulation and registration in the Office of the National Administration Register, U.P. Law Center, Diliman, Quezon City, Philippines.

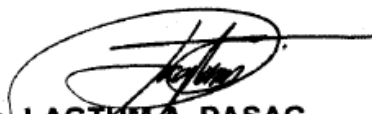
APPROVED:


This 28th day of July, in the Year of our Lord, 2006

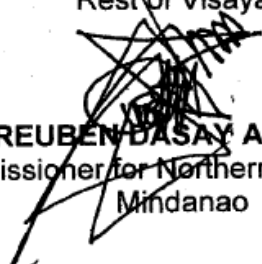

Hon. EUGENIO A. INSIGNE
Commissioner, CAR & Region 1


Hon. CORAZON M. ESPINO
Commissioner, Region II


Hon. PABLO SANTOS
Commissioner, Region III and
Rest of Luzon


Hon. LAGTUM A. PASAG
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Hon. ELECTO I. MASAGNAY
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Hon. JANNETTE CANSING SERRANO
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