



THE REVISED FPIC GUIDELINES & OTHER RELATED PROCESSES OF 2012

**(NCIP ADMINISTRATIVE ORDER NO. 3,
SERIES OF 2012)**



Presentation Outline (FPIC Guidelines of 2012)

I. Legal Bases

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I. Community Solicited/Initiated Process

II. Local or foreign funded projects in cooperation with NCIP

III. Traditional Use Rights

IV. EPR Process

IV. Salient FPIC Provisions

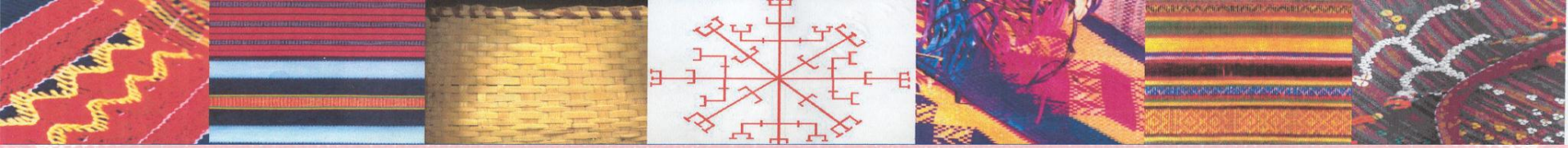
V. Prohibited Acts

I. LEGAL BASES [IPRA]

Sec. 2. Declaration of State Policies: Xxxxx:

b] The State shall protect the rights of the ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

Sec. 7 refers to the rights to ancestral domain including the right to develop, control and use the same and to benefit and share the profits from allocation and utilization of the natural resources found therein with the right to negotiate the terms and conditions for the exploration of natural resources in the area.



Section 59, among other provisions, provides that in areas where there are ancestral domains [AD], all departments and other government agencies shall be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement until and unless an FPIC is obtained. In areas outside AD, projects and plans can only proceed upon certification that indeed the land is outside AD. The certification to be issued is called the Certificate of Non-Overlap [CNO]

II. OVERVIEW OF THE FPIC PROCESS

COVERAGE

**A. EXTRACTIVE, INTRUSIVE, LARGE-SCALE
ACTIVITIES**

**B. NON-EXTRACTIVE / SMALL-SCALE
ACTIVITIES**

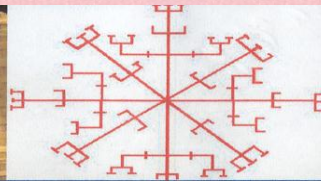


A] Extractive, Intrusive, Large Scale Activities

- Exploration, development, exploitation, utilization of lands, energy, mineral, forest, water, marine air, and other natural resources, including feasibility studies
- Programs leading to displacement and resettlement
- Declaration & management of protected and environmentally critical areas
- Bioprospecting and related activities
- Programs or activities affecting the IPs' spiritual and religious tradition, customs, and ceremonies
- Industrial or large-scale tourism/agricultural/forestry land uses or management projects
- Carbon Trading activities
- Establishment of military facilities, conduct of military activities, organizing para-military forces
- Similar/analogous activities

B] Non-Extractive/Small-Scale Activities

- Non-extractive exploitation and utilization of natural resources
- Programs, plans, activities not covered under in the enumeration above
- Activities not requiring government permits
- Feasibility studies on subject not covered under the not covered by the enumeration above
- Other Small Scale Quarrying
- Similar/analogous activities



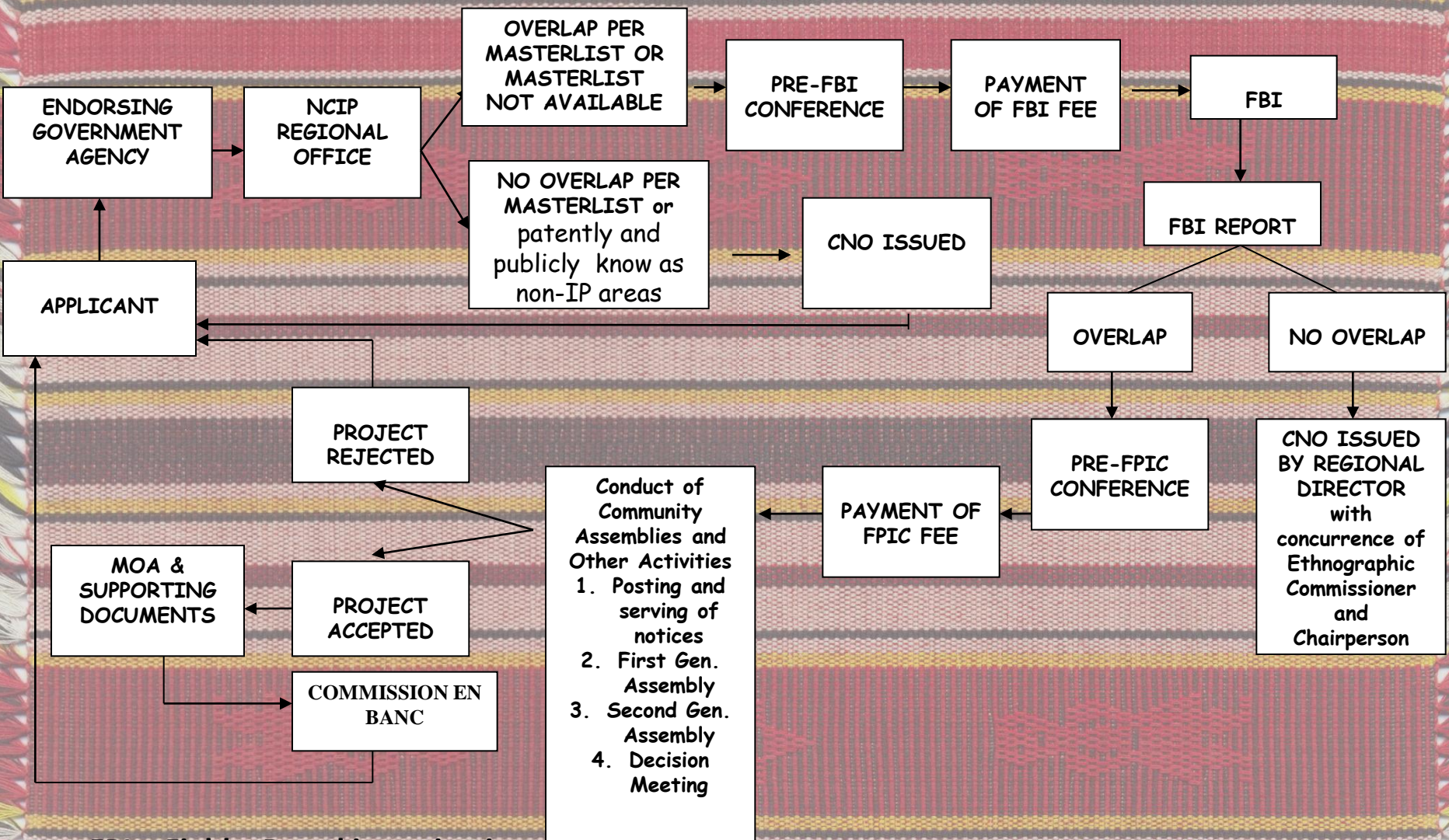
WHO SHALL GIVE OR EXERCISE THE FPIC

The ICCs/IPs owners of the ancestral domain or those adjacent areas affected by the plan, project or activity. For those affecting two [2] or more areas, the process may be held separately but only one certificate will be issued. Migrant IPs will be participate if allowed by the IPs/ICCs.

CERTIFICATE OF NON-OVERLAP [CNO]

Issued by NCIP attesting that the area to be affected by the activity does not overlap or is outside the domain. This is usually issued after a Field Based Investigation [FBI]. For precautionary measure, the Proponent shall execute an undertaking for the conduct of FPIC process should it be found later that there is in fact an overlap.

FPIC PROCESS FLOWCHART FOR E I L S A



FBI - Field – Based investigation
CNO – Certificate of Non-Overlap Issued by Regional Director
MOA – Memorandum of Agreement
ELSA – Extractive, Large Scale Activities



III. OTHER PROCESSES

A. Community Solicited/Initiated Project

Programs, projects and activities solicited or initiated by the concerned ICCs/IPs themselves where the activity is strictly for the delivery of basic services to be undertaken within or affecting the ancestral domain, do not require compliance with the FBI/FPIC requirement, however, they shall be subjected to a validation process

B. Local or Foreign Funded Projects in cooperation or coordination with NCIP

NCIP may enter into cooperation with other government agencies and foreign funding agencies for projects involving delivery of basic services or for the promotion of economic and sustainable development, in which case, the strict requirements of FPIC may be dispensed with and that only community validation may suffice.

C. Exercise of Traditional Use Right

Gathering, hunting and such other traditional use by members of the ICC/IP of natural resources found within their ancestral domain like gathering or cutting of forest products for family/personal consumption, subsistence and livelihood, do not require the conduct of the FPIC Process, provided, it was done purposely for such intention.

D. Exercise of Priority Rights [EPR]

Should the community decide to exercise their priority right in the harvesting, extraction, development, or exploitation of any natural resource within their AD, they shall declare through a community resolution to be concerned ICC/IP community during a community assembly called for the purpose.

Should the community later on manifest that it does not have the financial or technical capability or capacity to undertake the activity, they may engage a partner but the same shall be subjected to FPIC.



IV. SALIENT PROVISIONS

A] Excluded Areas from any Activity except for the exclusive purpose for which they are identified

1. Sacred grounds burial sites of indigenous communities
2. Identified international and local cultural heritage site
3. Critical areas identified or reserved by the ICCs/IPs for special purposes
4. Other areas specifically identified by the IPs in their masterplan.

B] Memorandum of Agreement [MOA]

This document shall embody the provisions agreed upon in the negotiations including the payment of royalties to the IPs/ICCs. A community master plan on the use of royalties and other benefits must be incorporated or accompany the MOA. It shall exclude Corporate Social Responsibilities as part of the negotiations since these are provided by law.

C] Simultaneous application

No two (2) or more applications of similar subject shall be simultaneously entertained at any given time covering the same area while an application is being processed therein, neither shall another be given due course while a previous application is being processed.

D] Applicability of Customary Laws

Customary laws and practices shall be primary consideration in all issues surrounding the including sanctions may be imposed in accordance therein.

E] Use of Royalty and Other Benefits

The utilization of the financial benefits received shall be embodied in a document prepared by the IPs/ICCs. It shall be used for programs and projects that will redound to the well-being and benefit of the ICCs/IPs. Part of it may be used for the delineation and titling of their ancestral domain or a formulation of their community master plan, if there is still none. It should have allocations for: Livelihood and social development projects; Education and training of members; Capitalization for cooperative development; Credit facility; Salaries or wages of persons engaged to perform professional services; Mutual assistance, and the like.

F] Decision Making is Not Time Bound

In the decision making stage, the IPs/ICCs are not compelled to issue a decision within a specified time but in accordance with their customary law or practice.

V. PROHIBITED ACTS

1. *The applicant*

Among others: Employment of threat, coercion, or intimidation; Bribery.

2. *NCIP Officer or employee*

Acceptance or receipt of money, gifts, or any valuable things from the applicant; Use of falsified narration of facts.

3. *IP community or member and/or Elder/leader*

Solicitation and acceptance or receipt of gifts, money or other valuable things from the applicant; consorting or mediating with the applicant to unduly influence the result of the FPIC Process.

4. *NGOs/ CSO/,GAs/LGUs/Other Groups*

Undue influence or interference with the FPIC process or to the community.



Thank you

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