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# **ONLINE CASE STUDIES**

## **Case Study IV Indigenous Peoples in the Philippines**

In 1997, the Philippines enacted the Indigenous Peoples' Rights Act of 1997 (IPRA), Section 80 of Republic Act No. 8371. There followed on June 9, 1998, Administrative Order No. 01-98, which set forth the rules and regulations to implement the act; many of the provisions are set forth below. How do they compare to the UN Declaration on the Rights of Indigenous Peoples? Is the law likely to protect either the environment or for indigenous peoples?

Assume you represent a company that would like to examine and potentially develop into new pharmaceuticals indigenous traditional medicines derived from local plants. Can this be done? What steps will it be necessary to take? Can only the knowledge be used or the plants as well? Can the plants or seeds be taken? If a medicine is patented, will royalties be owed the indigenous community? What if the regulations are not followed? On May 28, 2001, Administrative Order no. 11 created a team to undertake institutional and performance audit on the National Commission on Indigenous Peoples.

### **RULE I**

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**SECTION 3. Declaration of Policy.** — The State recognizes the inherent dignity and equal and inalienable rights of all members of Philippine society as the foundation of freedom, justice and peace. The rights of indigenous cultural communities/indigenous peoples are universal, indivisible, interdependent and interrelated. It is, therefore, the policy of the state to recognize and promote all individual and collective rights of ICCs/IPs within the framework of national unity and development in accordance with the Constitution and applicable norms and principles.

**SECTION 4. Operating Principles.** — In implementing the policies enumerated in these Rules, the following operating principles shall be adhered to:

- a. **Cultural Diversity.** As the beginning of unity is difference, the diversity of cultures, traditions, beliefs and aspirations of indigenous peoples shall be encouraged and fostered in openness, mutual respect for, and active defense of the equal and inalienable dignity and universal, indivisible, interdependent and interrelated rights of every human being, in the spirit of inter-people cooperation;
- b. **Consensus and Peace-Building.** In resolving conflicts or disputes affecting or pertaining to indigenous peoples, any determination or decision thereon shall be reached through dialogue and consensus as far as practicable;
- c. **Cultural Integrity.** Within ancestral domains/lands, the holistic and integrated adherence of indigenous peoples to their respective customs, beliefs, traditions, indigenous knowledge systems and practices, and the assertion of their character and identity as peoples shall remain inviolable;

- d. Human Dignity. The inherent and inalienable distinct character, sacred human dignity, and unique identity of indigenous peoples as peoples shall be respected;
- e. Subsidiarity, Solidarity and Total Human Development. In the pursuit of civil, political, economic, social and cultural development, the human person shall be the central subject thereof and its active participant and beneficiary. Everyone has duties to the community. In the exercise of rights and freedoms, everyone shall be subject only to such limitations as are determined by custom or law, solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society; and
- f. Transparency and Capacity Building. The Commission shall perform its tasks on the basis of transparency and active support and participation by the ICCs/IPs, and shall take a pro-active strategy in empowering ICCs/IPs and in the fulfillment of its mandate.

## **RULE II**

### **Definition of Terms**

SECTION 1. Definition of Terms. — For purposes of these Rules and Regulations the following terms shall mean:

- a. Ancestral Domains. Refers to all areas generally belonging to ICCs/IPs, subject to property rights within ancestral domains already existing and/or vested upon the effectivity of the Act, comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present, except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects or any voluntary dealings entered into by the government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise; hunting grounds: burial grounds; worship areas; bodies of water; mineral and other natural resources; and lands which may no longer be exclusively occupied by ICCs/IPs, but from which they traditionally had access to, for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators.
- b. Ancestral Lands. Refers to land, subject to property rights within the ancestral domains already existing and/or vested upon effectivity of the Act, occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots.
- . . .
- j. Community Intellectual Rights. Refer to the rights of ICCs/IPs to own, control, develop and protect: (a) the past, present and future manifestations of their cultures, such as but not limited to, archeological and historical sites, artifacts, designs, ceremonies, technologies, visual and performing arts and literature as well as religious and spiritual properties; (b) science and technology including, but not limited to, human and other genetic resources, seeds, medicine, health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, resource management systems, agricultural technologies, knowledge of the properties of fauna and flora, oral traditions, designs, scientific discoveries; and, (c) language, script, histories, oral traditions and teaching and learning systems.
- k. Free and Prior Informed Consent. As used in the Act, shall mean the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices,

free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of an activity, in a language and process understandable to the community.

- l. Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs). Refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, become historically differentiated from the majority of Filipinos. ICCs/IPs shall, likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization or at the time of inroads of non-indigenous religions and cultures or the establishment of present state boundaries who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains.  
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- n. Indigenous Political Structures. Refer to organizational and cultural leadership systems, institutions, relationships, patterns and processes for decision making and participation identified by ICCs/IPs such as, but not limited to, Council of Elders, Council of Timuay, Bodong Holders, or any other tribunal or body of similar nature.
- o. Individual Claims. Refer to claims on land and rights thereon which have been devolved to individuals, families and clans including, but not limited to, residential lots, rice terraces or paddies and tree lots.
- p. Indigenous Knowledge Systems and Practices. Refer to systems, institutions, mechanisms, and technologies comprising a unique body of knowledge evolved through time that embody patterns of relationships between and among peoples and between peoples, their lands and resource environment, including such spheres of relationships which may include social, political, cultural, economic, religious spheres, and which are the direct outcome of the indigenous peoples, responses to certain needs consisting of adaptive mechanisms which have allowed indigenous peoples to survive and thrive within their given sociocultural and biophysical conditions.  
...
- s. Native Title. Refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest.
- t. Natural Resources. Refer to life support systems such as, but not limited to, the sea, coral reefs, soil, lakes, rivers, streams and forests as well as useful products found therein such as minerals, wildlife, trees and other plants, including the aesthetic attributes of scenic sites that are not manmade.  
...
- w. Self Governance. Refers to the right of ICCs/IPs to pursue their economic, social, and cultural development; promote and protect the integrity of their values, practices and institutions; determine, use and control their own organizational and community leadership systems, institutions, relationships, patterns and processes for decision making and participation, such as, but not limited to, Council of Elders, Bodong Holders, Dap-ay, Ator, Council of Mangkatadong, or any other body of similar nature.
- x. Sustainable Traditional Resource Rights. Refer to the rights of ICCs/IPs to sustainably use, manage, protect and conserve: a) land, air, water, and minerals; b) plants, animals and other organisms; c) collecting, fishing and hunting grounds; d) sacred sites; and e) other areas of economic, ceremonial and aesthetic value in accordance with their indigenous knowledge, belief systems, and practices.
- y. Time Immemorial. Refers to a period of time when as far back as memory can go, certain ICCs/IPs are known to have occupied, possessed and utilized a defined territory devolved to

them, by operation of custom law or inherited from their ancestors, in accordance with their customs and traditions.

- z. Unlawful or Unauthorized Intrusion. Refers to the occupation of lands and utilization of resources within the ancestral domain without the consent of the IP concerned or through invasion, violation, wrongful entry or entry by stealth or force or uninvited entrance upon the territorial domain of another.

### **RULE III**

#### **Rights to Ancestral Domains/Lands**

#### **PART I POLICIES AND CONCEPTS**

**SECTION 1. Constitutional and Legal Framework.** — The State shall protect the rights of 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 domains.

**SECTION 2. Composition of Ancestral Domains / Lands.** — Ancestral Domains/Lands are all areas generally belonging to the ICCs/IPs, owned, occupied or possessed by themselves or through their ancestors, communally or individually since time immemorial.

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

Ancestral domain consists of lands, inland waters, coastal areas, minerals and other natural resources.

Lands within ancestral domains shall include, but not limited to, ancestral lands, forests, pasturelands, residential lands, agricultural lands, hunting grounds, burial grounds, worship areas, land no longer occupied by the ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators, and other lands individually owned whether alienable and disposable or otherwise. Ancestral land shall consist of, but not be limited to, residential lots, rice terraces or paddies, private forests, swidden farms, and tree lots. Provided that property rights within the ancestral domains already existing and/or vested upon effectivity of the Act, within ancestral domains/lands, shall be respected and recognized.

Inland waters and coastal areas include fishing grounds, collecting grounds, and bodies of water.

**SECTION 3. Indigenous Concept of Ownership.** — Ancestral domains/lands and all resources found therein form the material bases of the ICCs/IPs' cultural integrity. The indigenous concept of ownership therefor, generally holds that ancestral domains are the ICCs'/IPs' private but communal property which belongs to all generations and shall not be sold, disposed nor destroyed. The present generation who are today's occupants have the intergenerational responsibility of conserving the land and natural resources for future generations of ICCs/IPs to enjoy.

**SECTION 4. Recognition of Ancestral Domain and Land Rights.** — The rights of the ICCs/IPs to their ancestral domains and lands by virtue of native title shall be recognized and respected. Native title to ancestral domains and lands may be formally recognized or established through the issuance of corresponding Certificate of Ancestral Domain Title (CADT) or Certificate of Ancestral Land Title (CALT) as provided in the Act.

All areas within ancestral domains, whether delineated or not, are presumed to be communally owned and, pursuant to the indigenous concept of ownership, could not be sold, disposed nor destroyed.

Areas and resources in the domains are deemed destroyed if on account of the activity conducted or applied:

- a) The area or resource could no longer serve its normal or natural functions; or
- b) That the area or resource is used in a manner not consistent with customary laws or agreements of the indigenous peoples concerned; or
- c) That the area or resource is used or gathered in a wasteful or excessive manner resulting to irreversible loss or irreparable damage.

## **PART II RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES / INDIGENOUS PEOPLES TO ANCESTRAL DOMAINS**

**SECTION 1. Rights of Ownership.** — ICCs/IPs have rights of ownership over lands, waters, and natural resources and all improvements made by them at any time within the ancestral domains/lands. These rights shall include, but not limited to, the right over the fruits, the right to possess, the right to use, right to consume, right to exclude and right to recover ownership, and the rights or interests over land and natural resources. The right to recover shall be particularly applied to lands lost through fraud or any form of vitiated consent or transferred for an unconscionable price.

**SECTION 2. Right to Develop Lands and Natural Resources.** — Subject to property rights within the ancestral domains already existing and/or vested upon effectivity of the Act, ICCs/IPs have the right to control, manage, develop, protect, conserve, and sustainably use: a) land, air, water and minerals; b) plants, animals and other organisms; c) collecting, fishing and hunting grounds; d) sacred sites; and, e) other areas of economic, ceremonial and aesthetic value in accordance with their indigenous knowledge systems and practices (IKSPs) and customary laws and traditions, and duly adopted Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) where ADSDPPs have been adopted; and to equitably benefit from the fruits thereof. In all instances, ICCs/IPs shall have priority in the development, extraction, utilization and exploitation of natural resources.

- a. **Rights to Benefits.** The ICCs/IPs have the right to benefit from the utilization, extraction, use and development of lands and natural resources within their ancestral lands/domains and to be compensated for any social and/or environmental costs of such activities.

Accordingly, the concerned ICC/IP community shall be extended all the benefits already provided under existing laws, administrative orders, rules and regulations covering particular resource utilization, extraction or development projects/activities, without prejudice to additional benefits as may be negotiated between the parties. The NCIP, as third party, shall, among others, assist the ICCs/IPs in the negotiation process to safeguard and guarantee that the terms and conditions of the agreement negotiated are not inimical to the rights of the ICCs/IPs.

The NCIP shall ensure that at least 30% of all funds received from such activities will be allocated to the ICC/IP community for development projects or provision of social services or infrastructure in accordance with their duly adopted Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) whenever. In the absence of such ADSDPP, the NCIP shall assist the ICCs/IPs in the development of a program or project to utilize such funds.

In consultation with ICCs/IPs, the NCIP shall set guidelines for the utilization of funds accruing to ICCs/IPs.

- b. **Other Related Rights.** The rights of ICCs/IPs to develop their territories including all the natural resources therein shall further include, but not limited to, the following:
  - (1) The right to source out, control, manage, disburse or use any funds or appropriations from any legal entity, for the development of the territories, provided that the community concerned shall have adequate systems to ensure individual and collective accountability and responsibility for such funds;
  - (2) The right of ICCs/IPs through their Council of Elders/Leaders, subject to the principle of Free and Prior Informed Consent provided in these Rules and Regulations, to enter into agreement

with any legal entity, for the utilization, extraction or development of natural resources, subject to a limited term of 25 years, renewable at the option of the ICCs/IPs for another 25 years, and to visitorial and monitoring powers of the ICCs/IPs and the NCIP for purposes of ensuring that the ICCs/IPs' rights and interests are adequately safeguarded and protected;

- (3) The right of ICCs/IPs to protect, conserve and manage portions of the ancestral domains/lands which they find necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover or reforestation, with the full and effective technical and financial support of concerned government agencies or other legal entities; and
- (4) Subject to the customary laws, and Free and Prior Informed Consent of ICCs/IPs concerned, the right to temporarily allow or permit appropriate government agencies to manage the areas enumerated in the preceding paragraph, under a written agreement that shall ensure that:
  - a) a program of technology transfer shall be pursued to enable the concerned ICCs/IPs to ultimately manage the area themselves; and
  - b) that no displacement or dislocation of ICCs/IPs shall occur as a result of the implementation of the project/activity.

**SECTION 4. Right to Stay in Territories and Not to be Displaced Therefrom.** — The right of ICCs/IPs to stay in their territories shall remain inviolate. No ICCs/IPs shall be relocated without their free and prior informed consent nor through any means other than eminent domain. Relocation or displacement as an exceptional measure or as a result of calamity or catastrophe shall only be temporary. ICCs/IPs shall have the right to return to their ancestral domain as soon as the grounds for such relocation cease to exist, and shall have the right to be compensated for damages sustained as a consequence of the relocation.

- a. **Temporary Relocation as an Exceptional Measure.** Temporary relocation is an exceptional measure if, after exhausting all legal remedies, it stands as the only option to avoid loss of lives, and to safeguard the health and safety of the populations affected. Temporary relocation shall generally occur as a result of force majeure, natural calamities or catastrophes.

Where temporary relocation is determined by the ICC/IP concerned, in consultation with the NCIP and other appropriate government agencies as an exceptional measure, the concerned government agencies shall provide the affected ICCs/IPs with habitable relocation sites and adequate shelter, food, and other basic services, as well as livelihood opportunities to ensure that their needs are effectively addressed.

- b. **Right to Return to Ancestral Domain.** When the reason for the relocation ceases to exist as determined by the ICCs/IPs, in consultation with appropriate government agencies, the ICCs/IPs shall have the right to return to their ancestral domains. *cdasia*
- c. **Rights in Case of Permanent Relocation/Displacement.** Should the conditions for their return pose grave and long-term risks for the displaced ICCs/IPs, and normalcy and safety of the previous settlements are irreversibly lost, the displaced ICCs/IPs shall, upon their Free and Prior Informed Consent, be accorded the following:
  - (1) Relocation to a site, which shall, in all possible cases, be of equal quality and legal status as that previously occupied, and which shall be suitable to provide for their present needs and future development;
  - (2) Security of tenure over lands to which they will be resettled or relocated; and
  - (3) Compensation for loss, injury or damage as a consequence of such relocation or displacement.

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**SECTION 5. Right to Regulate Entry of Migrants and Other Entities.** — The collective right to use everything within the domain/land is limited only to the recognized members of the ICCs/IP community. Accordingly, the ICCs/IPs shall have the right to regulate the entry of migrants, including

organizations who intend to do business, engage in development or other forms of activities, in their ancestral domains/lands. For this purpose, the following shall be applicable:

- . . .
- c. Procedure for Regulating Entry of Migrants and Other Entities. All migrants and other entities must first secure the express permission of the community's council of elders/leaders who shall, in accordance with their consensus building process, community practices, customs and traditions and upon a Free, Prior and Informed Consent of the community members agree to accept such migrant or entity within the domains, subject to the following:
- (1) Said persons and entities can be allowed to perform activities as are expressly authorized and which are not inimical to the development of the ancestral domains and cultural integrity of the ICCs/IPs, and
  - (2) The ICCs/IPs shall maintain the right to impose penalties for violation of the conditions in accordance with their customary laws, the Act or its rules and regulations.

The ICCs/IPs' Council of Leaders/Elders, with the assistance of NCIP shall take appropriate action to ensure the effective implementation and enforcement of these rights.

#### SECTION 6. Right to Safe and Clean Air and Water. —

- a. The ICCs/IPs through their indigenous knowledge systems and practices and their customs and traditions have preserved the environment and have demonstrated their capability to conserve and protect the integrity of their ecological systems. To enable these ecologically-sound and sustainable practices to flourish, the ICCs/IPs have the right to regulate activities that may adversely affect their airspace, bodies of water and lands. Any violation of environmental laws adversely affecting the integrity of the ecological systems in ancestral domains/territories shall be penalized according to customary laws of the ICCs/IPs concerned.

The ICCs/IPs shall take necessary steps to source out adequate and effective technical and financial support to protect the environment. Government shall adopt effective measures to implement environmental laws that will preserve the quality of fresh water, surface and ground water and minimize air pollution and other forms of pollution that may affect the domains. cdpr

- b. Environmental Conservation and Protection Program (ECP). All persons or entities allowed under the Act to participate in land development, utilization, exploitation, and extraction of natural resources, and government offices or agencies allowed to undertake or implement infrastructure projects within ancestral lands/domains, shall submit to the NCIP, through the concerned Regional Office, a culture-sensitive Environmental Conservation and Protection Program (ECP) stating in detail the environmental impact of such activities or projects proposed, control and rehabilitation measures and financial resource allocations therefore, implementation schedules, compliance guarantees, and evaluation and monitoring schemes.

Within (20) working days from receipt thereof, the concerned Regional Office shall conduct preliminary evaluation of the ECP. Based on its findings, the Regional Office may order the ECP to be revised and/or additional requirements may be imposed and/or other documents may be required. The concerned Regional Office shall endorse the ECP, with recommendations, to the Commission.

Detailed guidelines for the preparation and implementation of the ECPs shall be prescribed by the Commission based on principles underlying the ICCs/IPs framework for sustainable development of the ancestral domains and nationally-defined environmental standards.

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#### SECTION 8. Right to Resolve Conflicts According to Customary Laws. — All conflicts pertaining to property rights, claims and ownership, hereditary succession and settlement of land disputes within ancestral domains/lands shall be resolved in accordance with the customary laws, traditions and practices of the ICCs/IPs in the area where the conflict arises.

If the conflict between or among ICCs/IPs is not resolved, through such customary laws, traditions and practices, the Council of Elders/Leaders who participated in the attempt to settle the dispute shall certify that the same has not been resolved. Such certification shall be a condition precedent for the filing of the complaint with the NCIP, through its Regional Offices for adjudication.

Decisions of the NCIP may be brought on Appeal to the Court of Appeals by way of a Petition for Review.

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#### **PART IV RESPONSIBILITIES OF ICCS/IPS TO THEIR ANCESTRAL DOMAINS**

**SECTION 1. Maintain Ecological Balance.** — Based on their indigenous and traditional practices, ICCs/IPs shall formulate and implement their respective systems for protecting and conserving the flora and fauna, watershed areas, sacred places and all other objects of ritual and ecological importance in order to preserve, restore and maintain a balanced ecology within their ancestral domains. To ensure biological diversity, sustainable indigenous agriculture shall be encouraged while the system of monocropping shall be discouraged.

The ICCs/IPs shall establish their own institutions, systems and standards for protecting their natural resources. Such standards shall consider the national standards as minimum, without prejudice to imposing stricter standards. For this purpose, the ICCs/IPs shall be authorized by the government, through appropriate issuance, to exercise powers to apprehend and prosecute all persons violating environmental and natural resources laws within ancestral domains in accordance with Section 72 of the Act.

The ICCs/IPs shall have access to all government funds earmarked for environmental protection in relation to their domains. For this purpose, the NCIP shall negotiate and enter into agreements with concerned agencies for the effective transfer of funds appropriated for such purposes to the concerned indigenous peoples' communities through the NCIP.

The ICCs/IPs may, on their own initiative, likewise secure funds for such purposes from other local and foreign sources.

**SECTION 2. Restore Denuded Areas.** — The concerned ICCs/IPs, in collaboration with appropriate government agencies, shall restore denuded areas within their ancestral domains.

In cases where the denudation of areas within the domains is caused by identified natural resource licensees, the ICCs/IPs through the NCIP shall make the proper representation to the appropriate government agency for the enforcement of the licensees' obligation under the contract to reforest said areas. Should the licensee fail to implement a restoration program, the concerned government agency shall cause the execution of the bond and apply the same in favor of the ICCs/IPs, without prejudice to payment of compensation for damages to the ancestral domains' ecosystems.

Through their own POs, the concerned ICCs/IPs shall develop their own systems for undertaking reforestation projects under such terms and conditions that will ensure the application of IKSPs and customary laws, and the promotion and propagation of indigenous species as well as those of ecological importance. All such projects shall be considered an integral part of the domains and are therefore communally-owned by such ICCs/IPs.

The management of all existing government reforestation projects within the ancestral domains shall be transferred to the NCIP through the execution of the appropriate instruments. The NCIP, in turn, shall execute Memoranda of Agreement with concerned ICCs/IPs for the implementation of the projects.

**SECTION 3. Observe Laws.** — In maintaining ecological balance and restoring denuded areas within their ancestral domains, the ICCs/IPs shall adhere to the letter, spirit and, intent of the Act.

## **RULE IV**

### **Right to Self-Governance and Empowerment**

SECTION 2. Authentication of Indigenous Leadership Titles and Certificates of Tribal Membership. — The ICCs/IPs concerned shall have the sole power to authenticate indigenous leadership titles and certificates of membership. Accordingly, the ICCs/IPs shall have the following powers and rights:

- a. Right to Confer Leadership Titles. The ICCs/IPs concerned, in accordance with their customary laws and practices, shall have the sole right to vest titles of leadership such as, but not limited to, Bae, Datu, Baylan, Timuay, Likid and such other titles to their members.
- b. Recognition of Leadership Titles. To forestall undue conferment of leadership titles and misrepresentations, the ICCs/IPs concerned, may, at their option, submit a list of their recognized traditional socio-political leaders with their corresponding titles to the NCIP. The NCIP through its field offices, shall conduct a field validation of said list and shall maintain a national directory thereof. cdtai
- c. Issuance of Certificates of Tribal Membership. Only the recognized registered leaders are authorized to issue certificates of tribal membership to their members. Such certificates shall be confirmed by the NCIP based on its census and records and shall have effect only for the purpose for which it was issued.

All Certificates of Tribal Membership previously issued under Executive Order No. 122-B, and 122-C, as amended, shall be validated by the ICCs/IPs in accordance with their own process and shall be endorsed to the NCIP for confirmation and recording purposes.

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SECTION 4. Recognition of Socio-Political Institutions and Structures. — The ICCs/IPs have the right to use their traditional justice systems, conflict resolution institutions or peace building processes which are oriented to settlements, reconciliation and healing, and as may be compatible with national laws and accepted international human rights, in all conflict situations between and among IP individuals and between and among other ICCs/IP communities.

The NCIP shall assist ICCs/IPs to document cases resolved under the indigenous justice systems, conflict resolution mechanisms and peace building processes in order to provide references to be used in resolving conflicts involving ICCs/IPs.

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SECTION 6. Mandatory Representation in Policy Making Bodies. — The ICCs/IPs shall be provided mandatory representation in all policy making bodies and in local legislative councils. ICC/IP representation shall be proportionate to their population, and shall have the same privileges as the regular members of the legislative bodies and/or policy making bodies.

ICC/IP representatives shall be qualified and chosen by their own communities in accordance with a process to be determined by them. In consultation with ICCs/IPs, the NCIP in close coordination with DILG shall come up with appropriate measures to ensure the full participation of ICCs/ IPs in matters affecting their development. Such measures shall also include the provision of technical assistance to develop the ICC/IP representative's knowledge of traditional socio-political systems, customary laws, justice system and skills in interfacing with non-IP governance and policy making.

SECTION 7. Right to Determine and Decide Own Development and Right to Develop as Peoples. — The ancestral domains of the ICCs/IPs is the foundation of their right to self-determination. As such the ICCs/IPs shall have the right to decide their own priorities for development affecting their lives, beliefs, institutions, spiritual well-being and the lands they own, occupy and use. Towards these ends, the ICCs/IPs shall participate in the formulation, implementation and evaluation of plans, policies and programs for national, regional and local development which may affect them.

The NCIP shall take special measures to guarantee the right of ICCs/IPs to pursue their economic, social and cultural development at their own choice and pace and to ensure that economic opportunities created by the government are extended to them based on freedom of initiative and self-reliance.

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## **PART I/II INSTRUMENT OF EMPOWERMENT**

**SECTION 1.** Inroads into the ancestral domains/lands of ICCs/IPs resulted to their disenfranchisement and marginalization. Policies, plans, development programs and projects which may have been prejudicial to the rights and interests of ICCs/IPs have been adopted and implemented within ancestral domains/lands without the consent of concerned IP communities. Free and prior informed consent, as an instrument of empowerment, enables IPs to exercise their right to self-determination.

**SECTION 2.** General Application. — The provisions herein on free and prior informed consent shall generally be applicable to all the provisions of the Act and these rules requiring the free and prior informed consent of ICCs/IPs.

**SECTION 3.** Free and Prior Informed Consent. — The ICCs/IPs shall, within their communities, determine for themselves policies, development programs, projects and plans to meet their identified priority needs and concerns. The ICCs/IPs shall have the right to accept or reject a certain development intervention in their particular communities.

The acceptance or rejection of proposed policy, program, project or plan shall be assessed in accordance with the following IPs development framework and value systems for the conservation and protection of:

- a. Ancestral domains/lands as the ICCs/IPs' fundamental source of life;
- b. Traditional support system of kinship, friendship, neighborhood clusters, tribal and inter-tribal relationships rooted in cooperation, sharing and caring;
- c. Sustainable and traditional agricultural cycles, community life, village economy and livelihood activities such as swidden farming, communal forests, hunting grounds, watersheds, irrigation systems and other indigenous management systems and practices; and
- d. Houses, properties, sacred and burial grounds.

**SECTION 4.** Scope of ICCs/IPs whose Consent shall be Secured. — The scope of the ICCs/IPs whose free and prior informed consent is required shall depend upon the impact area of the proposed policy, program, projects and plans, such that:

- a. When the policy, program, project or plan affects only the particular community within the ancestral domain, only such community shall give their free and prior informed consent;
- b. When the policy, program, project or plan affects the entire ancestral domain, the consent of the concerned ICCs/IPs within the ancestral domain shall be secured; and
- c. When the policy, program, project or plan affects a whole range of territories covering two or more ancestral domains, the consent of all affected ICCs/IP communities shall be secured.

**SECTION 5.** Procedure and Requirements for Securing ICCs/IPs Consent. — The consensus building process of each particular indigenous cultural community shall be adhered to in securing the ICCs/IPs' Free and Prior Informed Consent. For purposes of documentation and monitoring, the NCIP shall assist, document and witness the process of securing Free and Prior Informed Consent. The basic elements in the consensus building process shall include, at the minimum, information dissemination to all members of the concerned indigenous peoples communities, assessment of the concerns or issues by appropriate assemblies in accordance with customs and traditions and discernment and initial decision by recognized council of elders, affirmation of the decision of the Elders by all the members of the community.

The following minimum requirements shall be strictly complied with:

- a. For every meeting, notices thereof written in English or Pilipino and in the IP language and authorized by community elders/leaders shall be delivered and posted in conspicuous places or announced in the area where the meeting shall be conducted at least two (2) weeks before the scheduled meeting;
- b. All meetings and proceedings where the proponent shall submit and discuss all the necessary information on the proposed policy, program, project or plan shall be conducted in a process and language spoken and understood by the ICCs/IPs concerned;
- c. The minutes of meetings or proceedings conducted shall be written in English or Pilipino and in the language of the concerned ICCs/IPs and shall be validated with those who attended the meeting or assembly before the finalization and distribution of the minutes;
- d. Consent or rejection by the ICC/IP community shall be signified by affixing signatures or thumb marks in a document written in their own language or dialect with corresponding English or Pilipino translation. Signatures or thumb marks shall be considered valid, only when it is affixed on each and every page of the document signifying consent or rejection. In case of rejection, the ICCs/IPs shall state in the document of rejection whether or not they shall entertain alternative proposals of similar nature; and
- e. Any alternative proposal shall be subject to the Free and Prior Informed Consent of the ICCs/IPs in accordance with the foregoing procedures and requirements.

SECTION 6. Obligations of the Proponent. — The proponent of any policy, program, project, or activity requiring the Free and Prior Informed Consent of the ICCs/IPs community shall:

- a. Submit to the IP community 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 policy, program, project or activity, and allow full access to records, documents, material information and facilities pertinent to the same;
- b. Submit to the IP community and the NCIP in a language understandable to the concerned community an Environmental and Socio-cultural Impact Statement, detailing all the possible impact of the policy, program, project or activity upon the ecological, economic, social and cultural aspect of the community as a whole. Such document shall clearly indicate how adverse impacts can be avoided or mitigated;
- c. Submit an undertaking in writing to answer for damages which the ICCs/IPs may suffer on account of the policy, program, project, plan or activity and deposit a cash bond or post a surety bond with the NCIP when required by the community equivalent to a percentage of its investments, subject to progressive increase, depending upon the impact of the project. The amount of bond shall be determined by the NCIP with the concurrence of the ICCs/IPs concerned; and
- d. Underwrite all expenses attendant to securing the Free and Prior Informed Consent of ICCs/IPs.

The NCIP shall subsequently issue additional guidelines hereon whenever necessary.

SECTION 7. Development and Cultural Activities Subject to Free and prior Informed Consent(FPIC). — Policies, programs, projects, plans and activities subject to Free and Prior Informed Consent shall include but not limited to the following:

- a. Exploration, development, exploitation and utilization of natural resources within ancestral domains/lands;
- b. Research in indigenous knowledge, systems and practices related to agriculture, forestry, watershed and resource management systems and technologies, medical and scientific concerns, bio-diversity, bio-prospecting and gathering of genetic resources;
- c. Displacement and relocation;
- d. Archeological explorations, diggings and excavations and access to religious and cultural sites;
- e. Policies affecting the general welfare and the rights of ICCs/IPs; and

- f. Entry of the Military or paramilitary forces or establishment of temporary or permanent military facilities within the domains.

The NCIP shall prescribe terms and conditions regarding public presentation, display, performance and other forms of utilization of ICCs/IPs' lifeways and material culture.

SECTION 8. Memorandum of Agreement. — As a component part of the process of securing the free and prior informed consent of the concerned ICCs/IPs a Memorandum of Agreement (MOA) shall be executed by and between the proponent, host ICC/IP community, and the NCIP, written in the dialect or language of the concerned ICCs/IPs, with corresponding English and Filipino translation. The MOA shall stipulate, among others:

1. Benefits due the host ICCs/IP communities;
2. Measures to protect IPs' rights and value systems enumerated in the Section on Free Prior and Informed Consent of these Rules and Regulations;
3. Responsibilities of the proponent as well as those of the host ICC/IP community and the NCIP;
4. In case of change of proponent as a result of partnership, joint venture, reorganization, merger, acquisition, sale, or transfer of rights, the terms and conditions of the MOA shall bind the new proponent without necessarily executing another MOA; and
5. Penalties for non-compliance and or violation of the terms and conditions.

For the purpose of validity of the Memorandum of Agreement referred to above, the signatories thereto shall be; a) for corporations, partnerships or single proprietorship entities, the authorized officers, representatives, or partners as per Board resolution; b) for the ICC/IP community, all the authorized community elders or traditional leaders, who are registered with the NCIP in accordance with Section 2, Part III, Rule IV; and c) the NCIP or authorized representative. The NCIP shall keep a copy of the MOA for records and monitoring purposes.

SECTION 9. Non-Transferability of Consent. — The Free and Prior Informed Consent granted by the ICCs/IPs for a particular proposed policy, program, project or plan, as a general rule, shall not be transferable to any other party, except in case of merger, reorganization, transfer of rights, acquisition by another entity, or joint venture: Provided; that there will be no changes in the original plan, program, project or policy and: Provided further; that the same shall not prejudice the interest, rights and welfare of the concerned ICCs/IPs.

## *RULE V*

### *Social Justice and Human Rights*

SECTION 1. Equal Protection Before the Law. — With due recognition of the ICCs/IPs' distinct characteristics and identity, the State shall accord to members of the ICCs/IPs the rights, protections and privileges enjoyed by the rest of the citizenry. The NCIP shall ensure that fundamental human rights and freedom are guaranteed to all members of the ICCs/IPs as already accorded to every member of society.

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SECTION 3. Freedom from Discrimination. — ICCs/IPs are free and equal to all other individuals in their dignity as human beings and shall be free from any kind of adverse discrimination for reason of their indigenous origin or identity. The NCIP shall ensure that every member of the ICCs/IPs is accorded full respect as valuable citizens of the Republic of the Philippines.

The NCIP shall take special measures to ensure the effective protection with regard to the recruitment and conditions of employment of persons belonging to the ICCs/IPs to the extent that they are not protected by laws applicable to workers in general.

SECTION 4. Right to Employment.

- a. The right of members of ICCs/IP communities to employment includes the right to:

...  
7) Enjoy a wholesome and healthy working environment free from any forms of life hazards and dangers and other conditions hazardous to their health, in particular through exposure to pesticides and other toxic substances. . . .

SECTION 5. Right to Basic Services. — The ICCs/IPs are entitled to basic services. The equitable delivery of basic services to all ICCs/IPs all over the country shall be the focus of the NCIP's Five Year Master Plan. In close coordination with other government line agencies mandated to deliver basic needs the NCIP shall work towards the establishment of IP Desks with such agencies but not limited to Department of Labor and Employment (DOLE), Department of Health (DOH), Department of Education, Culture and Sports (DECS), Commission on Higher Education (CHED), National Housing Authority (NHA), Social Security System (SSS), Technical Education and Skills Development Authority (TESDA), National Commission on Culture and the Arts (NCCA), Department of Social Welfare and Development (DSWD), Department of the Interior and Local Government (DILG) and other offices for the delivery of basic services covering employment, vocational training and retraining, housing, sanitation, health, water, education, infrastructure, electrical facilities and social security.

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SECTION 6. Rights of Women. — In partnership with ICC/IP women's organizations and other GO/NGO support groups, the NCIP shall prepare and develop programs and projects to ensure that women shall fully participate in community and nation building through, among others, the following:

- a. Provision of appropriate support for women's groups/organizations to conduct research and document IP women's traditional roles in marriage, family, community, political and economic life to determine gender issues and concerns among ICCs/IPs;
- b. Development of appropriate programs and projects to respond to gender issues and concerns as these relate to the full realization and protection of women's rights for maximum participation in community and nation building; and
- c. Women community-based initiated projects aimed at empowering women shall be given priority in terms of financial and technical support.

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**RULE VI**  
**Cultural Integrity**

SECTION 1. Constitutional and Legal Framework. — The State shall recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions, and shall take measures, with the participation of ICCs/IPs concerned to protect their rights and guarantee respect for cultural integrity in order that ICCs/IPs shall at all times benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population.

It shall recognize its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICCs/IPs participation in the direction of education, health, as well as other services to the ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.

SECTION 2. Conceptual Framework of Cultural Integrity. — Cultural integrity shall refer to the holistic and integrated adherence of a particular ICC/IP community to their customs, religious beliefs, traditions, indigenous knowledge systems and practices and their right to assert their character and identity as peoples.

SECTION 3. Right to Cultural Integrity. — The rights of indigenous peoples to cultural integrity shall include:

- a. Protection of indigenous culture, traditions and institutions;
- b. Right to establish and control educational and learning systems;
- c. Recognition of cultural diversity;
- d. Right to name, identity and history,
- e. Community intellectual property rights;
- f. Protection of Religious, Cultural Sites and Ceremonies
- g. Right to indigenous spiritual beliefs and traditions;
- h. Protection of Indigenous Sacred Places
- i. Right to protection of indigenous knowledge systems and practices; and
- j. Right to science and technology.

SECTION 5. Protection of Indigenous Culture, Traditions and Institutions. — The NCIP in its coordinative role and through the IP Desks of government line agencies, particularly with the National Economic and Development Authority (NEDA), Department of Trade and Industry (DTI), Department of Tourism (DOT), Department of Justice (DOJ), Department of Education, Culture and Sports (DECS), Commission on Higher Education (CHED), National Commission for the Culture and the Arts (NCCA), and other government agencies or instrumentalities, shall ensure that ICCs/IPs' culture, traditions, and institutions are considered in the formulation and application of said agencies' national programs, plans and policies.

SECTION 6. Right to Establish and Control Educational and Learning Systems. — To enable the ICCs/IPs to exercise their right to establish and control their educational systems and institutions, the NCIP shall establish a program to, support the following:

- a. Establish, maintain and support a complete, adequate and integrated system of education relevant to the needs of the ICCs/IPs particularly their children and young people,
- b. Develop and implement school curricula for all levels relevant to the IPs/ICCs using their language, learning systems, histories and culture without compromising quality of education and building the indigenous children's capacity to compete for higher education;
- c. Encourage indigenous learning as well as self-learning, independent, out-of school study programs, school of heritage and living traditions that nurture cultural integrity and diversity and that responds to the needs of IP communities;
- d. Provide adult indigenous peoples with skills needed for civic efficiency and productivity; and
- e. Establish processes and implement affirmative action in the employment of indigenous teachers in schools within indigenous peoples communities and assist indigenous teachers in their professional advancement as this relate to the protection, promotion and protection of IP rights.

SECTION 7. Recognition of Cultural Diversity. — The NCIP, in coordination with concerned government line agencies shall ensure that the dignity and diversity of the cultures, traditions, histories and aspirations of the indigenous peoples are appropriately reflected in all forms of education, public information, public services, cultural-exchange programs. In particular, the NCIP shall work closely with the State-owned media to ensure that the ICCs/IPs' cultural diversity are reflected and presented within the proper context.

The NCIP in consultation with ICCs/IPs shall take effective measures to promote affirmative action to systematically eradicate prejudice and discrimination against indigenous peoples and engender understanding and unity among ICCs/IPs and all segments of society. The ICCs/IPs diverse cultures, traditions and beliefs shall not be allowed to sow divisiveness and disunity among them.

Through the IP Desks in government line agencies, the NCIP shall ensure that all policies, programs and services shall promote the recognition and respect for ICCs/IPs' cultural diversity.

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SECTION 10. Protection of Community Intellectual Property. — The ICCs/IPs have the right to own, control, develop and protect the following:

- a. The past, present and future manifestations of their cultures, such as but not limited to, archeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature as well as religious and spiritual properties;
- b. Science and Technology including, but not limited to, human and other genetic resources, seeds, medicines, health practices, vital medicinal plants, animals, minerals, indigenous knowledge systems and practices, resource management systems, agricultural technologies, knowledge of the properties of flora and fauna, and scientific discoveries; and
- c. Language, Music, Dances, Script, Histories, Oral Traditions, Conflict Resolution Mechanisms, Peace Building Processes, Life Philosophy and Perspectives and Teaching and Learning Systems.

In partnership with the ICCs/IPs, the NCIP shall establish effective mechanisms for protecting the indigenous peoples' community intellectual property rights along the principle of first impression first claim, the Convention on Bio-diversity, the Universal Declaration of Indigenous Peoples' Rights, and the Universal Declaration of Human Rights.

**SECTION 11. Protection of Religious, Cultural Sites and Ceremonies.** — The indigenous artistic and historic wealth, ceremonial objects, cultural properties and artifacts constitutes the cultural treasures of the ICCs/IPs and shall be under their protection and disposition: Provided; that cultural treasures and properties shall not be brought outside of the indigenous peoples' ancestral domains. Towards this end, the initiatives of indigenous peoples to establish museums or centers shall be supported financially and technically by the government.

**SECTION 12. Right to Indigenous Spiritual Beliefs and Traditions.** — The ICCs/IPs have the right to:

- a. Manifest, practice, develop and teach their spiritual beliefs, traditions, customs and ceremonies;
- b. Maintain, protect and have access to their spiritual and cultural sites;
- c. Use and control ceremonial objects; and
- d. Repatriation of human remains and artifacts collected without their Free and Prior Informed Consent.

To ensure that indigenous sacred places, including burial sites are preserved, respected and protected, the ICCs/IPs shall regulate access to these sacred sites.

**SECTION 13. Protection of Indigenous Sacred Places.** — Penal sanctions in accordance with Section 72 of the Act and customary laws shall be applicable in case of:

- a. Exploration and/or excavation of archeological sites in ancestral domains/lands for the purpose of obtaining materials of cultural value without the free and prior informed consent of the community concerned; and
- b. Defacing, removing or otherwise destroying artifacts which are of great importance and significance to the ICCs/IPs for the preservation of their cultural heritage.

**SECTION 14. Right to Indigenous Knowledge Systems and Practices and to Develop Own Sciences and Technologies.** — Indigenous knowledge systems and practices (IKSP) are systems, institutions, mechanisms, technologies comprising a unique body of knowledge evolved through time embodying patterns of relationships between and among peoples and between peoples, their lands and resource environment, including such spheres of relationships which may include social, political, cultural, economic, religious, and which are the direct outcome of the indigenous peoples responses to certain needs consisting of adaptive mechanisms which have allowed indigenous peoples to survive and thrive within their given socio-cultural and biophysical conditions.

The infusion of science and technology in the field of agriculture, forestry and medicine to ICCs/IPs is subject to their Free and Prior Informed Consent and shall build upon existing indigenous peoples knowledge and systems and self-reliant and traditional cooperative systems of the particular community.

SECTION 15. Protection and Promotion of Indigenous Knowledge Systems and Practices (IKSPs). — The following guidelines, inter alia, are hereby adopted to safeguard the rights of IPs to their indigenous knowledge systems and practices: dctai

- a. The ICCs/IPs have the right to regulate the entry of researchers into their ancestral domains/lands or territories. Researchers, research institutions, institutions of learning, laboratories, their agents or representatives and other like entities shall secure the Free and Prior Informed Consent of the ICCs/IPs, before access to indigenous peoples and resources could be allowed;
- b. A written agreement shall be entered into with the ICCs/IPs concerned regarding the research, including its purpose, design and expected outputs;
- c. All data provided by the indigenous peoples shall be acknowledged in whatever writings, publications, or journals authored or produced as a result of such research. The indigenous peoples will be definitively named as sources in all such papers;
- d. Copies of the outputs of all such researches shall be freely provided the ICC/IP community; and
- e. The ICC/IP community concerned shall be entitled to royalty from the income derived from any of the researches conducted and resulting publications.

To ensure effective control of research and documentation of their IKSPs, the IPOs' initiatives in this regard shall receive technical and financial assistance from sources of their own choice.

SECTION 16. Protection of Manifestations of Indigenous Culture. — Indigenous culture shall not be commercialized or used for tourism and advertisement purposes without the Free and Prior Informed Consent of the indigenous peoples concerned. Where consent is alleged, the NCIP will ensure that there is free and prior informed consent.

In instances where the presentation of indigenous culture and artistic performances are held, the IPs shall have control over the performance in terms of its content and manner of presentation according to customary laws and traditions, and shall have the right to impose penalties for violation thereof .

Indigenous peoples shall also have the right to equitably share in the benefits of such presentation or performance. All funds collected from these activities shall be managed directly by the community concerned through the registered IPO, otherwise, the same shall be held in trust by the NCIP for the benefit of the concerned IP community.

SECTION 17. Protection of Biological and Genetic Resources. — The ICCs/IPs may, on their own initiative, make an inventory of biological and genetic resources found inside their domains/lands, for their exclusive use. They shall retain and reserve all rights pertaining to the storage, retrieval, and dissemination of the information, in whatever form and system, gathered as a result of the inventory. A certificate of Free and Prior Informed Consent shall be required in case the concerned ICCs/IPs may enter into a joint undertaking with natural or juridical persons for the use of biological and genetic resources for industrial, commercial, pharmaceutical and other profit-making purposes and ventures. Violation hereof shall be strictly prohibited and subject to penalties under customary law and as provided for by the Act. The NCIP shall assist the concerned ICCs IPs in the enforcement hereof.

SECTION 18. Agro-technological Development. — The ICCs/IPs, in coordination with the NCIP may choose to establish cooperatives in accordance with the indigenous concept of cooperative system.

The NCIP shall adopt programs for research and development of the ICCs/IPs' agricultural systems and provide necessary funds therefor.

SECTION 19. Funds for Archeological and Historical Sites. — The ICCs/IPs shall initiate proposals for the management and preservation of their archeological and historical sites with the adequate and

effective technical and financial support of the appropriate government agencies. All funds allocated for the management of these sites shall be immediately transferred to the IPs concerned through the NCIP. For this purpose, the NCIP shall take the necessary steps to ascertain that these funds are transferred to the communities concerned.

#### ***RULE VII***

#### ***The National Commission on Indigenous Peoples (NCIP)***

SECTION 1. Creation of NCIP. — The National Commission on Indigenous Peoples shall be established as the primary government agency to implement the policies set forth in the Act.

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SECTION 3. Qualifications. — The seven Commissioners shall possess the following qualifications and submit the required documents to the Office of the President as indicated:

- a. He/She must be natural born Filipino citizen;
- b. He/She must be at least thirty five (35) years of age at the time of appointment;
- c. He/She must be bona-fide member, by consanguinity, of the ICCs/IPs as certified by his/her tribe, through the attestation of the Council of Elders, community barangay leaders, or IPOs. The aspirant must likewise submit anthropological proof of bona-fide ICC/IP membership, through the submission of his/her genealogy, at least, to the fourth generation in the ascending order, duly certified by traditional leaders in the role of key informants;
- d. He/She must submit a sworn statement containing his/her experience in ethnic affairs for at least ten (10) years with an ICC/IP community and/or any government agency involved with ICCs/IPs;
- e. He/She must be of proven honesty and integrity, and must not be convicted of any crime involving moral turpitude, graft and corruption or administrative charges. To this effect, the aspirant must submit clearances from the Ombudsman and/or National Bureau of Investigation; and in the case of aspirants in the public service, clearances from all liabilities and misconduct from the Commission on Audit and Civil Service Commission;
- f. All documents submitted by the aspirant-Commissioner shall be verified by the Office of the President through field validation; and
- g. Any act of public or ethnic misrepresentation by an aspirant shall be penalized according to the customary law of the aggrieved tribe and/or other related laws.

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#### **PART IV POWERS AND FUNCTIONS OF THE NCIP**

SECTION 1. Policy Review, Formulation and Implementation. — In relation to its function of policy review formulation and implementation, the NCIP shall have the following responsibilities:

- a. Review and assess the conditions of ICCs/IPs including existing laws and policies pertinent thereto and to propose relevant laws and policies to address their role in national development; LLjur
- b. Formulate and implement policies, plans, programs and projects for economic, social, political and cultural development of the ICCs/IPs and to monitor the implementation thereof;
- c. Convene periodic conventions or assemblies of ICCs/IPs to review, assess, as well as propose policies or plans;
- d. Submit to the Legislature/Congress appropriate legislative proposals intended to carry out the policies under the Act; and,
- e. Study areas of cooperation and complementation with other organizations in the public and private sectors for appropriate interface and agreements to enhance policy coordination.

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SECTION 3. Functions Pertaining to Ancestral Domains/Lands. — In relation to its functions pertaining to Ancestral Domains and Lands, the NCIP shall have the following responsibilities/roles:

- a. Tilting of Ancestral Domains/Lands. To issue certificates of ancestral land/domain titles in accordance with the procedures prescribed in these Rules and Regulations;
- b. Registration of CADTs/CALTs. To register all CADTs and CALTs with the appropriate Register of Deeds pursuant to these Rules and Regulations;
- c. Issuance of Certification as a Precondition. To issue appropriate certification as a precondition to the grant or renewal of permit, concession, license, lease, production sharing agreement, or any other similar authority for the disposition, utilization, management and appropriation by any private individual, corporate entity or any government agency, corporation or subdivision thereof on any part or portion of the ancestral domain taking into consideration the Free and Prior Informed Consent of the ICCs/IPs concerned.
- d. Action on Fraudulent Claims. To take appropriate legal action for the cancellation of illegally acquired titles and for the reconveyance of the areas to the ICCs/IPs concerned as provided for in these Implementing Rules and Regulations; and
- e. To take appropriate legal action for the enforcement of the rights of ICCs/IPs provided under the Act.

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SECTION 5. Power to Represent IPs. — To represent the Philippine ICCs/IPs in all international conferences and conventions dealing with indigenous peoples and other related concerns. The NCIP shall likewise authorize the attendance of a non-NCIP official or employee to international gatherings, conferences, convention, training, and similar undertakings who shall present the Philippine position in such activities. Such authorized individual or groups shall submit a written post-action report, and conduct briefings or re-echo seminars to the NCIP within thirty (30) days upon arrival.

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## **PART VI Offices of the National Commission on Indigenous Peoples**

SECTION 1. Offices within the NCIP. — The NCIP shall have the following offices which shall be responsible for the implementation of the policies, plans and programs herein provided.

- a. Ancestral Domains Office
- b. Office on Policy, Planning and Research
- c. Office on Education, Culture and Health
- d. Office on Socio-Economic Services and Special Concerns
- a. Office of Empowerment and Human Rights
- f. Administrative Office
- g. Legal Affairs Office
- h. Office of the Executive Director
- i. Regional and Field Offices
- j. Other Offices

SECTION 2. Ancestral Domains Office. — The Ancestral Domains Office shall be responsible for the identification, delineation and recognition of ancestral lands/domains. Accordingly, it shall perform the following functions:

- a. Determine and define the boundaries of ancestral domains and ancestral lands in accordance with the procedure prescribed in these Rules and Regulations, provide cartographic services and upon the final and official delineation of the ancestral domain/land, endorse the same to the Commission for the issuance of the appropriate titles thereto;
- b. Conduct, upon the request of ICCs/IPs concerned, surveys of ancestral lands, verify and approve parcellary or subdivision surveys of the same;

- c. Issue, upon the Free and Prior Informed Consent of the ICCs/IPs concerned, certification prior to the grant of any license, lease or permit for the exploitation of natural resources affecting the interest of the ICCs/IPs and their ancestral domains;
- d. Assist the ICCs/IPs in protecting the territorial integrity of each and every ancestral domain;
- e. Coordinate and ensure the enforcement of policies and laws protecting the rights of ICCs/IPs to their ancestral domains and land, including the application of customary laws governing property rights and relations in determining ownership procedures and standards therefor; and for the purpose, seek the assistance of appropriate government and non-government agencies;
- f. Be responsible for conducting census of the ICCs/IPs within an ancestral domain;
- g. Keep a registry of CADTs and CALTs or any formal certificate of recognition which officially and formally acknowledges the existence of ancestral domain rights over the area;
- h. Compile information on the location, size, and number of people living within the ancestral domains;
- i. Review all government grants, reservations, franchises and projects, licenses, leases, concessions and titles which affect ancestral domains and recommend to the Commission the cancellation of the same or segregation of such portions within ancestral domains in order to reconvey the same to the ICCs/IPs concerned as part of the ancestral domains;
- j. Formulate and implement such procedures for the cancellation of officially documented titles which were acquired through spurious or illegal means and those for the redemption of lands lost through the ICCs/IPs vitiated consent or through sale for an unconscionable price;
- k. Establish its own, or in cooperation with other government agencies a Geographic Information System that would assist ICCs/IPs in formulating Ancestral Domains Sustainable Development and Protection Plans;
- l. Assist ICCs/IPs in the management of ancestral lands/domains in accordance with a master plan as well as the implementation of the Ancestral Domain Rights of the ICCs/IPs as provided in Chapter III of the Act;
- m. Conduct research and documentation on indigenous peoples property rights regimes, property relations, ownership systems and other related aspects of ancestral domains management; and
- n. Perform such other functions as the Commission may deem appropriate and necessary.

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SECTION 6. Office of Empowerment and Human Rights. — The Office of Empowerment and Human Rights shall ensure that indigenous socio-political, cultural and economic rights are respected and recognized. It shall:

- a. Ensure that capability building mechanisms are instituted and ICCs/IPs are afforded every opportunity, if they so choose, to participate in all levels of decision-making;
- b. Ensure that the Basic Human Rights and such other rights as the NCIP may determine, subject to existing laws, rules and regulations are protected and promoted;
- c. To assist ICCs/IPs work out an appropriate interface between customary political structures and self-governance with the mainstream machinery for governance including the establishment and administration of tribal barangays and support for autonomous regions;
- d. To ensure that the basic elements of Free and Prior Informed Consent are present and are complied with in all instances when such must be secured;
- e. To study and establish models for appropriate interface in tribal and non-tribal governance;
- f. Facilitate the participation of ICCs/IPs in all national and international fora where their effective representation is required;
- g. Conduct researches on the IP women and youth situation including their basic human rights situation and recommend programs for their development in accordance with indigenous practices;
- h. Empower ICCs/IP communities through community organizing; and
- i. Perform such other functions as the Commission may deem appropriate and necessary.

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SECTION 8. Legal Affairs Office. — The Legal Affairs Office shall:

- a. Advise the NCIP on all legal matters concerning. ICCs/IPs;
- b. Provide ICCs/IPs with legal assistance in litigation involving community interest;
- c. Act as the general counsel of the NCIP in all cases, in collaboration with the Office of the Solicitor General;
- d. Conduct preliminary investigation on the basis of complaints filed by the ICCs/IPs against natural or juridical persons believed to have violated ICCs/IPs rights. On the basis of its findings, it shall initiate the filing of appropriate legal or administrative action to the Commission;
- e. Initiate legal or administrative action as the case may be, against any person or government agency believed to have violated any of the rights of ICCs/IPs;
- f. Investigate and hear administrative cases filed against officers and employees of the NCIP; and
- g. Perform such other functions as the Commission may deem appropriate and necessary.

### **RULE VIII**

#### **Delineation and Recognition of Ancestral Domains**

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#### **PART II ANCESTRAL DOMAIN DEVELOPMENT AND PROTECTION**

**SECTION 1. Right to Manage and Develop Ancestral Domains.** — The ICCs/IPs shall have the right to freely pursue their economic, social, political and cultural development. In the exercise of this right, the ICCs/IPs shall formulate and pursue their own plans for the sustainable management and development of the land and natural resources as well as human resources within their ancestral domains based on their indigenous knowledge systems and practices and on the principle of self-determination. Such plans may be consolidated into an Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) which shall be the basis of the Five Year Master Plan defined under these Rules and Regulations.

**SECTION 2. Preparation and Adoption of Ancestral Domains Sustainable Development and Protection Plans (ADSDPP).** — With the assistance of the NCIP, the ICCs/IPs concerned shall prepare their own ADSDPP in accordance with their customary practices, laws and traditions. The ADSDPP shall contain the following basic information:

- a. Manner by which the ICCs/IPs will protect the domains;
- b. Kind or type of development programs adopted and decided by the ICCs/IPs, in relation to livelihood, education, infrastructure, self governance, environment, natural resources, culture and other practical development aspects;
- c. Basic community policies covering the implementation of all forms of development activities in the area; and
- d. Basic management system, including the sharing of benefits and responsibilities among members of the concerned ICC/IP community.

All ADSDPPs shall be disseminated among community members in any mode of expression appropriate to the customs and traditions of the ICCs/IPs including, but not limited to, writings in their own language, oral interactions, visual arts, and analogous modes.

The ICCs/IPs shall submit to the municipal and provincial government unit having territorial and political jurisdiction over them their ADSDPP in order for the said LGU to adopt and incorporate the same in the Municipal Development Plan, Municipal Annual Investment Plan, Provincial Development Plan, and Provincial Annual Investment Plan. dctai

**SECTION 3. Basic Steps in the Formulation of an ADSDPP.** — For purposes of ensuring the authenticity and effectiveness of the Plan, the community members, through their PO and/or Council of Elders, and with the assistance of the NCIP, shall follow the following basic steps in the formulation process:

- a. **Information Dissemination.** The Council of Elders/Leaders, with the assistance of the NCIP, shall conduct intensive information-dissemination on the Indigenous Peoples Rights Act (IPRA)

- among the community members. For the purpose of information-dissemination, the NCIP may engage the services of an authorized NGO or IPO;
- b. Baseline Survey. The Council of Elders/Leaders, with the assistance of the NCIP, shall conduct a participatory baseline survey of the ancestral domain focusing on the existing population, natural resources, development projects, land use, sources of livelihood, income and employment, education and other concerns. For the purpose of the baseline survey, the NCIP may engage the services of an authorized NGO or IPO;
  - c. Development Needs Assessment. The Council of Elders/Leaders, with the assistance of the NCIP, shall conduct workshops in every village within the ancestral domain to determine the will of the community members regarding the kind of development the community should pursue in terms of livelihood, education, infrastructure, self-governance, environment, natural resources, culture and other aspects. For the purpose of the Development Needs Assessment, the NCIP may engage the services of an authorized NGO or IPO;
  - d. Formulation of Ancestral Domain Sustainable Development and Protection Plan (ADSDPP). The concerned ICC/IP, through its IPO and/or Council of Elders, and with the assistance of the NCIP, shall formulate its Ancestral Domain Sustainable Development and Protection Plan;
  - e. Validation of ADSDPP. With the assistance of the NCIP, the IPO and/or Council of Elders shall conduct assemblies among the ICC/IP members for the validation and approval of the ADSDPP.
  - f. Submission of ADSDPP to NCIP. Upon validation and approval, the IPO and/or the Council of Elders shall submit the ADSDPP to the NCIP for their information and concurrence. The ADSDPP shall form part of the data base on ICC/IP communities in the country, in relation to development projects, programs and activities within the ancestral domain, which the NCIP is mandated to establish.
  - g. Conversion of Ancestral Domain Management Plans (ADMPS) to Ancestral Domain Sustainable Development and Protection Plans (ADSDPPs). ICCs/IP communities have the option to convert or modify their existing Ancestral Domain Management Plans prepared and completed pursuant to DENR-DAO 96-34 \* into Ancestral Domain Sustainable Development and Protection Plan in accordance with these rules.

**SECTION 4. Management of Joint Undertakings Within Ancestral Domains.** — The ICCs/IPs shall have priority rights in the harvesting, extraction, development or exploitation of the natural resources within the ancestral domain. Should the ICCs/IPs give their free and prior informed consent to any development activity, project, program or plan to be implemented by any government or private entity, they shall have the following rights:

- a. The right to an informed and intelligent participation in the formulation and implementation of the project;
- b. The right to receive just and fair compensation for any damage or loss which may be sustained as a result of such project;
- c. The right to benefit sharing; and
- d. The right to exercise visitorial powers and take appropriate action to safeguard the rights of the community under the same contract.

**SECTION 5. Existing Property Rights Regimes.** — Property rights within the ancestral domains already existing and/or vested upon effectivity of the Act, shall be recognized and respected.

**SECTION 6. Existing Contracts, Licenses, Concessions, Leases, and Permits Within Ancestral Domains.** — Existing contracts, licenses, concessions, leases and permits for the exploitation of natural resources within the ancestral domain may continue to be in force and effect until they expire. Thereafter, such contracts, licenses, concessions, leases and permits shall not be renewed without the free and prior informed consent of the IP community members and upon renegotiation of all terms and conditions thereof. All such existing contracts, licenses, concessions, leases and permits may be terminated for cause upon violation of the terms and conditions thereof. cdrep

SECTION 7. Right to Manage Protected and Environmentally Critical Areas. — The ICCs/IPs, through their POs and/or Council of Elders, shall determine the terms and conditions for the exploration of natural resources within the ancestral domain for the purpose of ensuring ecological balance, environmental protection and conservation. Accordingly, the ICCs/IPs, with the assistance of the NCIP, shall:

- a. Inventory of all Portions of Ancestral Domains. — Conduct an inventory of all portions of ancestral domains which have been determined by appropriate government agencies as necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover or reforestation, national parks, or natural parks for purposes of evaluating the same under their own parameters;
- b. Environmentally Critical Areas. — All areas found by the concerned community as environmentally critical areas as determined in paragraph (a) above shall be maintained, developed, protected and conserved in accordance with their indigenous knowledge systems and practices (IKSPs) and Customary Laws;
- c. Turn-over of Funds to Community. — Funds previously allocated by government for the management of the area shall be turned over, through the NCIP, to the community to be used for the same purpose; and
- d. Transfer of Management Responsibility. — Should the community decide, on the basis of Free and Prior Informed Consent, to transfer management responsibility over the area to another entity, such decision shall be made in writing to be signed by all members of the community's Council of Elders. Provided, that all forms of exploitation of the natural resources in the area shall not be allowed and that appropriate technology transfer aimed at speeding up the reversion of management of the area to the community is effected. The process of transfer of Management Responsibility shall be witnessed by the NCIP, without prejudice to its visitorial and monitoring powers.

SECTION 8. Five Year Master Plan. — Based on the Ancestral Domain Sustainable Development and Protection Plans (ADSDPP) of the various ICCs/IPs and other relevant information, the Office on Policy, Planning and Research shall formulate a Five-Year Master Plan for the delivery of appropriate support services to the ICCs/IPs.

Such support services, which include infrastructure, health and educational services, training, credit facilities, community production and marketing facilities, organizational support services and the like, shall be identified by the ICCs/IPs themselves through traditional and customary consultative processes facilitated by the community-recognized POs and/or Council of Elders.

The allocation of funds for and delivery of such support services shall be made with utmost transparency and with the involvement of the community POs, Councils of Elders and community members. Any violation of this provision shall be subject to administrative sanction and be punishable under Section 72 of the Act.

The Five-Year Master Plan shall also indicate the priorities for development of the ICCs/IPs affecting their lives, beliefs, institutions, spiritual well-being and ancestral domains or lands pursuant to Section 17 of the Act.

SECTION 9. Certification Precondition Prior to Issuance of any Permits or Licenses.

- a. Need for Certification. No department of government or other agencies shall issue, renew or grant any concession, license, lease, permit, or enter into any production sharing agreement without a prior certification from the NCIP that the area affected does not overlap any ancestral domain.
- b. Procedure for Issuance of Certification by NCIP.

- 1) The certification, above mentioned, shall be issued by the Ancestral Domain Office, only after a field based investigation that such areas are not within any certified or claimed ancestral domains.
  - 2) The certification shall be issued only upon the Free, Prior, Informed and Written Consent of the ICCs/IPs who will be affected by the operation of such concessions, licenses or leases or production-sharing agreements. A written consent for the issuance of such certification shall be signed by at least a majority of the representatives of all households comprising the concerned ICCs/IPs.
- c. When the Areas Affected are within Ancestral Domains. — When the areas affected are certified to be within ancestral domains, all licenses, leases, permits or the like may henceforth be issued only upon compliance with the procedures for securing of Free and Prior Informed Consent, pursuant to these Rules and Regulations.

The NCIP, upon complaint of the ICCs/IPs, or on its own initiative, shall issue compulsory processes to stop or suspend any project that has not satisfied the consultation process and the requirements of Free and Prior Informed Consent of the ICCs/IPs or upon violation of any of the terms and conditions of the contract, lease, permit or production sharing agreement.

The NCIP in collaboration with the ICCs/IPs concerned shall closely monitor the implementation of the Project and for this purpose may gain access to the premises, facilities, records and documents of the project to ascertain that their rights are adequately protected.

**SECTION 10. Right to Stop and Suspend Projects.** — The NCIP, may motu proprio or upon the instance of ICCs/IPs, shall have the right to stop and suspend the implementation of any development program, project, policy or plan, and after due investigation and proof that consent was obtained due to manipulation, coercion, intimidation and deceit or where proponent has violated any or all of the items and conditions stipulated in the Memorandum of Agreement. Whenever applicable and after due notice, the cash bond deposited or surety bond posted by the proponent shall be confiscated and forfeited to answer for compensatory measures shall be imposed upon the proponent.

**SECTION 11. Exemption from Taxes.** — All lands certified as Ancestral Domains shall be exempt from the payment of real property taxes, special levies, and other forms of exaction except such portions of the ancestral domains as are actually used for large-scale agriculture, commercial forest plantations and residential purposes or upon titling by private persons.

All exaction shall be used to facilitate the development and improvement of the ancestral domains. For this purpose the NCIP shall coordinate with the appropriate government offices to facilitate the transfer of such revenues to the concerned ICC/IP community.

For purposes hereof, residential houses refer to buildings or structures used as the personal residence of an individual and shall not include any indigenous houses that are used communally, such as, but not limited to, houses of worship and other similar structures for ritual purposes.

**SECTION 12. Temporary Requisition Powers.** — Prior to the establishment, organization and staffing of its survey divisions and/or units through which it can effectively fulfill its mandate, and within three (3) years after its creation, the NCIP may request the Department of Environment and Natural Resources, or engage private survey companies, to conduct the survey of ancestral lands/domains, under a Memorandum of Agreement. Such Memorandum of Agreement shall stipulate among others, a provision on technology transfer to the NCIP. The Secretary of the DENR shall accommodate any such request within one (1) month from its issuance.

**SECTION 13. Expropriation.** — Pursuant to Section 64 of the Act, expropriation of lands under existing laws may be resorted to for purposes of resolving conflicts of interest in relation to ancestral domains or for the promotion of the "common good".

**RULE IX**  
**Jurisdiction and Procedures for Enforcement of Rights**

SECTION 1. Primacy of Customary Law. — All conflicts related to ancestral domains and lands, involving ICCs/IPs, such as but not limited to conflicting claims and boundary disputes, shall be resolved by the concerned parties through the application of customary laws in the area where the disputed ancestral domain or land is located.

All conflicts related to the ancestral domains or lands where one of the parties is a non-ICC/IP or where the dispute could not be resolved through customary law shall be heard and adjudicated in accordance with the Rules on Pleadings, Practice and Procedures before the NCIP to be adopted hereafter.

All decisions of the NCIP may be brought on Appeal by Petition for Review to the Court of Appeals within fifteen (15) days from receipt of the Order or Decision.

SECTION 2. Rules of Interpretation. — In the interpretation of the provisions of the Act and these rules, the following shall apply:

- a. All doubts in the interpretation of the provisions of the Act, including its rules, or any ambiguity in their application shall be resolved in favor of the ICCs/IPs.
- b. In applying the provisions of the Act in relation to other national laws, the integrity of the ancestral domains, culture, values, practices, institutions, customary laws and traditions of the ICCs/IPs shall be considered and given due regard.
- c. The primacy of customary laws shall be upheld in resolving disputes involving ICCs/IPs.
- d. Customary laws, traditions and practices of the ICCs/IPs of the land where the conflict arises shall first be applied with respect to property rights, claims and ownership, hereditary succession and settlement of land disputes.
- e. Communal rights under the Act shall not be construed as co-ownership as defined in Republic Act No. 386, otherwise known as the New Civil Code of the Philippines;
- f. In the resolution of controversies arising under the Act, where no legal provisions or jurisprudence apply, the customs and traditions of the concerned ICCs/IPs shall be resorted to; and
- g. The interpretation and construction of any of the provisions of the Act shall not in any manner adversely affect the rights and benefits of the ICCs/IPs under other conventions, international treaties and instruments, national laws, awards, customary laws and agreements.

SECTION 3. Appeals to the Court of Appeals. — Decisions of the NCIP is appealable to the Court of Appeals by way of a petition for review within fifteen (15) days from receipt of a copy thereof.

SECTION 4. Execution of Decisions, Awards, and Orders. — Upon expiration of the period herein provided and no appeal is perfected by any of the contending parties, the Hearing Officer of the NCIP, on its own initiative or upon motion by the prevailing party, shall issue a writ of execution requiring the sheriff or the proper officer to execute final decisions, orders or awards of the Regional Hearing Officer of the NCIP.

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**RULE XI**  
**Penalties and Sanctions**

**PART I UNLAWFUL ACTS**

SECTION 1. Punishable Acts Related to Ancestral Lands/Domains. — Any person found guilty of any the following acts shall be penalized:

- a. Unlawful or unauthorized intrusion into ancestral domains/lands;
- b. Misrepresentation in obtaining the free and prior informed consent of ICCs/IPs;
- c. Usurpation of real rights in property;
- d. Forcible displacement or relocation of ICCs/IPs from their ancestral lands/domains;
- e. Pollution of the air and bodies of water within the ancestral domain/land;

SECTION 2. Punishable Acts Related to Employment. — Any person who commits any of the following acts are subject to punishment as prescribed in the Act:

- a. Exposure to hazardous working conditions;
- b. Non-payment of salaries, wages and other work benefits;
- c. Violation of the freedom of association and trade union activities;
- d. Exploitation of child labor;
- e. Sexual harassment; and
- f. Other analogous circumstances

SECTION 3. Punishable Acts Related to Cultural Integrity. — Commission of any of the following acts or violation of any of the following rights are punishable under the Act:

- a. Exploring, excavating or making diggings on archeological sites of the ICCs/IPs for the purpose of obtaining materials of cultural value without the Free and Prior Informed Consent of the community concerned; and
- b. Defacing, removing or otherwise destroying artifacts which are of great importance and significance to the ICCs/IPs for the preservation of their cultural heritage.

## **PART II PERSONS LIABLE**

SECTION 1. Persons Liable. — The following are liable for punishment for violation of the rights of ICCs/IPs enumerated in the Act:

- a. Any individual, whether a member of the same or different ICC/IP community or not;
- b. Any individual who is non-IP, whether a Filipino or alien;
- c. In case of violation of rights committed by juridical persons, the Manager, President, Chief Executive Officer, or any of the officers of such juridical persons; and
- d. Government officials, officers or employees.