Briefer

On the Draft 2025 Rules and Procedure on the Conduct of Free and Prior Informed Consent (FPIC)

LRC
LEGAL RIGHTS AND NATURAL RESOURCES CENTER

A Briefer: ON THE DRAFT 2025 RULES AND PROCEDURES ON THE CONDUCT OF FREE AND PRIOR INFORMED CONSENT (FPIC)

I. Introduction

The National Commission on Indigenous Peoples (NCIP) has circulated a draft administrative order entitled “The 2025 Rules and Procedures on the Conduct of Free and Prior Informed Consent (FPIC) Process,” released in November 2025, proposed to replace the existing NCIP Administrative Order No. 3, Series of 2012. While supposedly aimed at streamlining, the proposed changes risk systematically dismantling procedural and substantive safeguards for Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs), undermining the core principles of Free, Prior, and Informed Consent (FPIC), and facilitating environmental degradation. The proposed overhaul represents not an improvement but a systematic and alarming regression.

The deletion of the operating principles in the 2025 draft, Sec. 4 in the 2012 Guidelines, which enumerates empowerment, consensus-building, primacy of customary law, transparency and inter-generational responsibility reveals the abrogation of the guiding philosophy articulated in the 2012 Guidelines. By deleting the operating principles, the 2025 draft severs the procedural rules from their purpose—to actualize IP rights, particularly FPIC. This omission signals a shift to a state-centric, bureaucratic process.

A comparative legal analysis reveals that the draft rules strategically dismantle the procedural and substantive safeguards established under the Indigenous Peoples’ Rights Act (IPRA) and its 2012 implementing guidelines. By narrowing the scope of protected activities, compressing and corrupting the consent process, stripping away critical contractual protections for communities, and centralizing control over benefits, the 2025 draft facilitates corporate access to ancestral domains at the expense of Indigenous sovereignty, cultural integrity, and environmental stewardship.

This briefing paper details how the proposed changes contravene the spirit of both Philippine law and international human rights standards, transforming FPIC from a foundational right of self-determination into a perfunctory, fast-tracked permit for developers. Urgent and concerted advocacy is required to halt this regressive proposal and defend the hard-won protections, albeit still requiring more stringent mechanisms and their implementation, that are now at risk of diminution.

The 2025 FPIC Guidelines draft introduces several major departures from the protections established under IPRA and the 2012 Guidelines,[1] to highlight:

1. **Narrowing of Scope:** The 2025 draft's limited application[2] contravenes the broad, mandatory requirement for FPIC under IPRA Sec. 59 and 2012 AO Sec. 3(c). The Rules narrow FPIC coverage to projects with natural-resource permits, excluding large and high-impact activities such as major infrastructure, tourism developments, and relocation sites, even when these directly affect ancestral domains. This is inconsistent with IPRA Section 59, which requires FPIC based on impact, not permit type.

2. **Violation of the "Free" in FPIC:** Applicant-led assemblies,[3] drastically shortened deliberation times,[4] and decision-making by pre-selected leaders[5] create high risks of coercion, manipulation, and uninformed consent. The process is accelerated through strict deadlines that replace the flexible, customary timelines in the 2012 Guidelines, reducing the space for genuine consultation. Moreover, the mandatory video documentation intrudes on culturally private deliberations and raises privacy and safety concerns.

3. **Erosion of the "Prior" and "Informed" Elements:** Rushed Field Based Investigation (FBI) based on old records[6] and a compressed process timeline[7] prevent communities from adequately understanding projects, assessing impacts, and conducting customary deliberations. The removal of elders from the FBI team and the option to rely on existing records weaken customary authority and risk inaccurate overlap findings.

4. **Weakening of Substantive Outcomes:** The diluted MOA provisions,[8] especially on non-transferability and missing safeguards, and the proposed NCIP-controlled Trust Fund[9] leave communities with fewer guarantees and less control over benefits and protections. The shift of royalty management to an NCIP-controlled Trust Fund removes financial authority from the IPO and conflicts with the Supreme Court's *Mamanwa*[10] ruling, which limits government control over indigenous trust funds.

5. **Removal of Accountability Mechanisms:** The absence of detailed prohibited acts and sanctions dismantles a key enforcement framework, while the "as a matter of course" Certification Precondition (CP) issuance[11] turns a right into an administrative formality.

II. Discussion

A. Narrowing of FPIC Scope to Natural-Resource Permit Regimes

2025 Rules — Verbatim Provision

Section 2. Scope. This Rules and Procedures shall govern the processes from the filing of an application up to the issuance or non-issuance of the Certification Precondition. The monitoring and audit of compliance with the Memoranda of Agreement, including the utilization of royalties and other benefits accruing to the ICCs/IPs, shall be governed by separateguidelines.

Further, this Rules and Procedures shall only govern projects covering the exploration, development, and utilization of natural resources, as manifested through a permit, concession, license lease, production-sharing agreement, or similar instruments issued by the state granting its patrimonial rights to natural resources to private parties.

And, notwithstanding the primacy of this Rules and Procedures in regulating the general FPIC process, laws and their implementing rules and regulations covering specific applications like the Energy Virtual One-Stop Shop Act (EVOSS) shall prevail for their covered transactions.

The 2025 FPIC draft significantly narrows when FPIC applies. It limits the requirement to projects that involve the exploration, development, or use of natural resources under state-issued permits, the Rules shift the trigger away from a project's actual impact on ancestral domains and toward the type of permit a proponent holds. This change leaves out many activities that do not involve resource extraction but still have major consequences for indigenous territories. The 2025 draft excludes entire categories of projects listed in Sec. 19 of the 2012 AO (e.g., military facilities, bio-prospecting, resettlement programs, declaration of protected areas) unless they fit the narrow "natural resource permit" definition. This creates a major loophole contravening IPRA Sec. 59 and 2012 AO Sec. 3(c). Subordinating FPIC to other laws such as the EVOSS undermines the constitutional and statutory supremacy of IPRA as the special law governing IP rights.

The Kaliwa Dam illustrates the problem. It involves massive land alteration, community displacement, and long-term ecological change, yet it does not fall neatly within the category of resource extraction under concession. Under the 2025 Rules, a project of this scale may proceed without FPIC despite its clear impacts on ICCs/IPs.

The same pattern would apply to large infrastructure projects, tourism developments, government relocation sites, and renewable energy facilities that require land but no natural-resource permit. Under the 2012 Guidelines, all of these

were covered because FPIC applied whenever a project "affected" ancestral domains. The 2025 shift creates gaps that allow high-impact activities to move forward without FPIC and may even encourage proponents to structure projects to avoid the requirement.

This approach conflicts with IPRA Sec. 59, which directs all government agencies to secure a Certification Precondition before issuing, renewing, or granting any concession, license, lease, or production-sharing agreement, and states that no certificate may be issued "without the free and prior informed and written consent of the ICCs/IPs concerned." The law focuses on the area affected and the impact of the project, not on the type of permit involved. Section 59 also affirms the right of ICCs/IPs to stop or suspend any project that has not complied with FPIC, which assumes that FPIC applies broadly to all projects capable of affecting ancestral domains.

B. Removal of the Traditional Multi-Assembly FPIC Framework and Accelerated Timelines

Section 18. Consensus-Building After the community assemblies conducted by the Applicant, the community, to the strict exclusion of the applicant, shall convene an assembly within five calendar days to discuss among themselves the implications of the project to them, and in the same meeting, the community shall list down the terms and conditions that they may require from the proponent. This shall be facilitated by the FPIC Team.

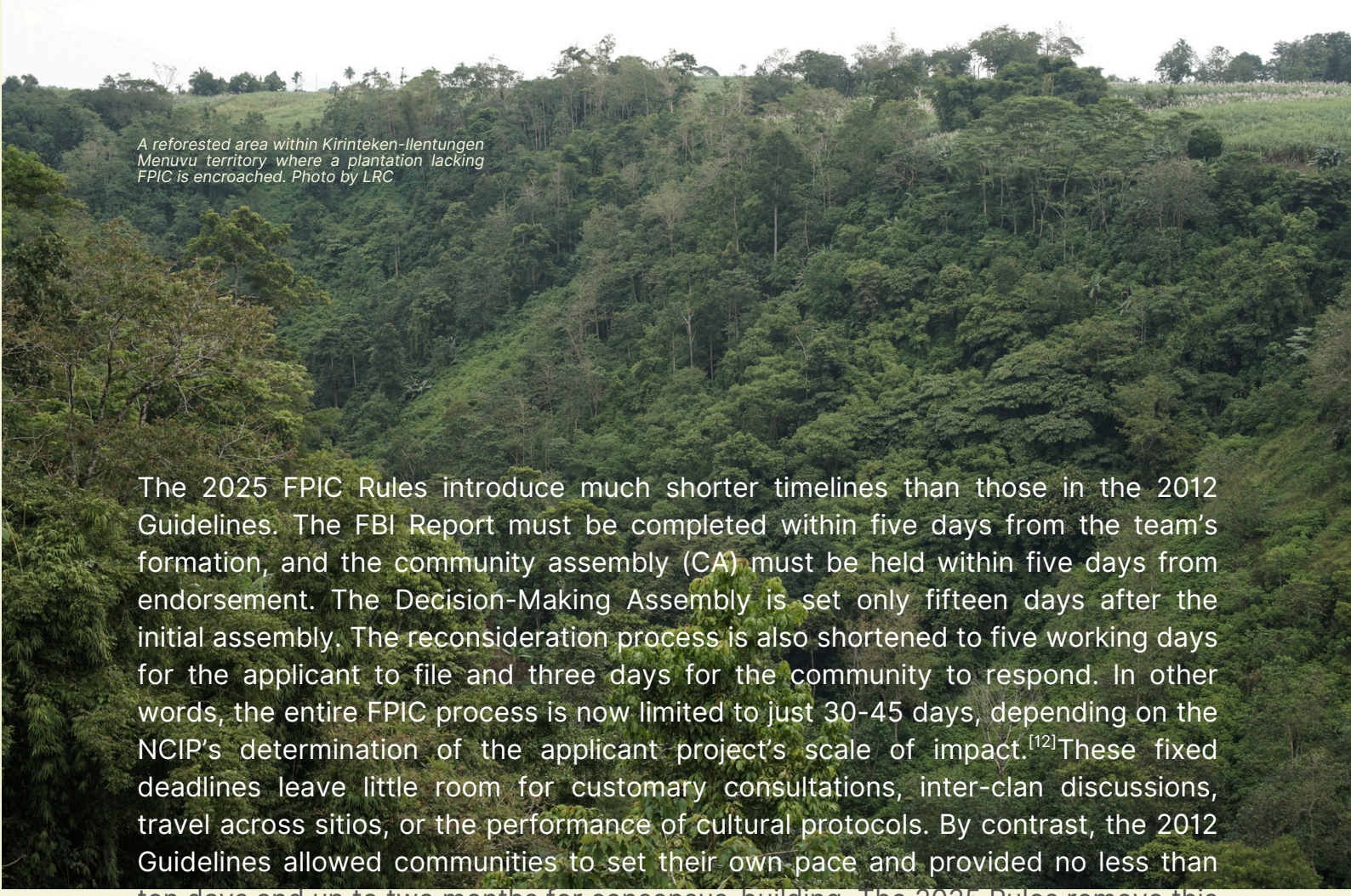
Section 19. Negotiations. Prior to the voting proper, the duly authorized representatives of the ICCs/IPs may engage in direct negotiation with the Applicant to clarify terms, address concerns, or propose modifications to the Access and Benefit-Sharing (ABS) arrangements and other project conditions.

The negotiations shall be facilitated by the Regional Legal Officer (RLO), while the FPIC Team shall negotiate alongside and for the benefit of the ICCs/IPs to ensure their full protection and guidance. In instances where the RLO is unavailable, other legal officers like the Provincial Legal Officer (PLO) shall be designated by the RD to facilitate the negotiations.

Section 20. Decision-Making. Upon conclusion of negotiations, the decision-makers shall decide using the documented customary decision-making process, which shall be openly cast and recorded by the FPICTeam.

The decision of the ICCs/IPs shall be made through a meeting of the identified anddocumented AD decision-makers, as determined in the FBI Report, fifteen calendar days after the completion of the community assembly without the Applicant. The FPIC Team shall convene and supervise this meeting always ensuring that the ICCs/IPs are guided and protected in all the processes.

This Decision-Making Assembly shall be video documented, and the documentation must have clear visuals and audio.



A reforested area within Kirinteken-Ilentungen Menuvu territory where a plantation lacking FPIC is encroached. Photo by LRC

The 2025 FPIC Rules introduce much shorter timelines than those in the 2012 Guidelines. The FBI Report must be completed within five days from the team's formation, and the community assembly (CA) must be held within five days from endorsement. The Decision-Making Assembly is set only fifteen days after the initial assembly. The reconsideration process is also shortened to five working days for the applicant to file and three days for the community to respond. In other words, the entire FPIC process is now limited to just 30-45 days, depending on the NCIP's determination of the applicant project's scale of impact.[12]These fixed deadlines leave little room for customary consultations, inter-clan discussions, travel across sitios, or the performance of cultural protocols. By contrast, the 2012 Guidelines allowed communities to set their own pace and provided no less than ten days and up to two months for consensus-building. The 2025 Rules remove this flexibility and replace it with rigid administrative schedules. This change shifts FPIC away from customary governance and creates time pressure that can weaken the quality and authenticity of community consent.

The requirement that community decisions be "openly cast and recorded… and video documented" also raises significant concerns. Many IP deliberations include sensitive cultural practices, rituals, and internal consultations that are meant to remain private or restricted. Mandatory audiovisual recording intrudes into these spaces and may force community members to express their views in a public and unfamiliar manner. This can expose dissenting voices to pressure or risk. It also creates issues of data privacy and cultural protection, since recordings stored in an NCIP-controlled system may be accessed, reused, or disclosed without full and informed community agreement. These requirements conflict with IPRA's recognition of customary law and the right of ICCs/IPs to determine how collective decisions are made and expressed.

Much of the roles in operationalizing the FPIC process have been transferred to the Project Proponents applying for FPIC, including public postings, the conduct of community assemblies, all financial and logistical costs, and the writing of the FPIC report itself, among others.[13] This puts the FPIC process at risk of regulatory capture.

C. Authorization for NCIP to Rely on Existing Records in Lieu of Field Validation

Section 7. Use of Existing Records. The FBI Team may rely on existing field-based data, surveys, maps, and reports already forming part of the official records of the NCIP, in lieu of the conduct of a new fieldinvestigation, provided that:

a) Such records are sufficiently recent, reliable, and comprehensive to accurately represent the factual and physical conditions of the area;
b) The findings contained therein remain uncontested by any concerned ICC/IP community, claimant, or other stakeholder;
c) The evaluation conducted by the Technical Management Services Division (TMSD) and the RD clearly establishes the absence of doubt or conflicting informationregarding the existence or non-existence of ICCs/IPs or AD claims; and
d) The reliance on existing records is duly justified in writing and properly documented in the case file.

This provision allows NCIP to bypass actual field validation, potentially relying on outdated or incomplete records. Given that NCIP cadastral and ethnographic documentation is often partial or contested, this creates risks of erroneous determinations of overlap and community composition. It may lead to the issuance of Certificates of Non-Overlap despite the presence of undocumented customary use or occupancy, exposing communities to unconsented development.

D. Removal of Elders from the Field-Based Investigation(FBI) Team and Increased NCIP Technical Control

Section 5. FBI Team Composition. The FBI shall be undertaken by an FBI Team, composed of three NCIP personnel andIndigenous Peoples Mandatory Representative/s (IPMR/s), created through a written Regional Special Order (RSO) issued upon receipt of a complete application by the Regional Director, to be headed by the Provincial Engineer of the area concerned or, in the absence of aProvincial Engineer, an engineer from nearby NCIP offices.

The RD shall designate at least one IPMR per AD as member/s of the FBI Team. In theabsence of an IPMR, an IP leader shall be so designated.

The FBI Team shall be responsible for conducting the necessary field-based investigation, reviewing and validating documents, and preparing the corresponding report to the RD within five working days from constitution.

The NCIP is granted particular powers that potentially constitute overreach. NCIP has been given motu proprio powers[14] to initiate the FPIC process, which while likely intended to safeguard from other regulatory agencies' or project proponents' passivity if not active circumvention from undertaking the FPIC process, might also be leveraged to initiate the process contrary to the will of the Indigenous communities themselves. The NCIP FPIC Team is also given a direct role in the

negotiations which, despite the qualifier that their participation is "for the benefit of the ICCs/IPs to ensure their full protection and guidance," still violates the IPRA's articulation of FPIC as "free from any external manipulation."[15] Previous mechanisms such as the Pre-FBI Conference and the Final Review of the Memorandum of Agreement (MOA) by the NCIP Legal Affairs Office (LAO) are removed,[16] and the minimum required number of community assemblies to be conducted is reduced from two to just one.[17]

The MOA itself, as an instrument of accountability, has been watered down. Minor changes are now allowed without renewed FPIC if the LAO finds them "purely administrative and beneficial."[18] As what constitutes minor changes is not clearly defined, it can be interpreted in an overbroad manner to the detriment of IP rights. Previously mandated safeguards in the MOA on risk mitigation, transparency mechanisms on fund disbursements, measures for IP rights and values protection, and disaster assistance have been removed.[19]

The role of customary governance by Indigenous Political Structures has been heavily stripped down. Tribal elders/leaders, whose mandate comes from the indigenous political structure, are no longer included in FBI and FPIC Teams, and are instead replaced by Indigenous Peoples Mandatory Representatives (IPMR).[20] IPMRs are not required by policy to come from the customary governance structures of IPs.[21] Under the 2012 framework, elders played a central role in verifying overlap, identifying sacred sites, and providing cultural context. The removal of elders from the investigative team represents a significant departure from the principle of **customary authority** recognized by IPRA. The substitution of NCIP personnel and IPMRs, whose legitimacy may derive from political rather than customary processes, centralizes investigative authority within NCIP.

E.Transfer of Royalty Management to the NCIP Trust Fund

Section 36. Trust Fund. In the exercise of its mandate to protect and promote the rights and welfare of ICCs/IPs, and as the State's instrument in the exercise of parens patriae over them, the NCIP shall establish, administer, and manage a Trust Fund to hold, safeguard the financial benefits, royalties, and other monetary entitlements accruing to the ICCs/IPs from projects, contracts, or agreements within their ancestral domains and ensuring that such fund will be disbursed pursuant to the Community Resource/Royalty Management and Development Plan (CRMDP) in line withNCIP AO No._ series of 20__ and any subsequent amendment.

The transfer of royalty custody and financial management to the NCIP under Section 36 of the 2025 FPIC Rules conflicts with the fiduciary principles affirmed by the Supreme Court in Corvera-Cirunay and De Guzman v. Commission on Audit

("Mamanwa case").[22] The new rule authorizes NCIP to establish, administer, and manage a centralized Trust Fund that holds and disburses all royalties and monetary benefits intended for ICCs and IPs. This represents a significant departure from the 2012 FPIC Guidelines, which vested management authority in the duly organized IPO and recognized community control over benefit use. By placing the royalties under NCIP's administrative control, the 2025 Rules consolidate financial authority within the agency rather than within the indigenous communities that are legally entitled to these funds.

The Supreme Court in the Mamanwa ruling held that trust funds created for the benefit of indigenous peoples must be used strictly for the purposes for which they were established and cannot be diverted or subjected to the operational or discretionary needs of the NCIP. The Court underscored that government agencies holding such funds act only in a limited fiduciary capacity and have no authority to alter the structure or purpose of the trust. Section 36 of the 2025 Rules recreates the conditions that led to the misuse addressed in the Mamanwa case because it places the entire financial mechanism under NCIP custody and decision making. This structure is inconsistent with both the statutory intent of IPRA, which protects the right of ICCs and IPs to manage and control their resources, and the Supreme Court's guidance that administrative agencies may not expand their control over indigenous trust funds beyond what the law permits.

III.CONCLUSION AND RECOMMENDATIONS

The 2025 FPIC Rules mark a shift away from the rights-based framework established by IPRA and the 2012 FPIC Guidelines. The consolidation of financial control in NCIP, the narrowed scope of projects requiring FPIC, the accelerated timelines, the intrusive documentation requirements, and the reduced role of customary authorities all point to a framework that prioritizes administrative efficiency over genuine indigenous participation and consent.

The 2025 draft is not a simple update but a regressive overhaul that threatens to nullify decades of advocacy for robust FPIC. These proposed rules are regressive and defective to FPIC, and must be withdrawn. Any revision must:

- Restore the full scope of the 2012 AO as mandated by IPRA.
- Reinstate community-led processes with timeframes set by customary law, not bureaucratic deadlines.
- Maintain all substantive MOA safeguards from the 2012 AO.
- Reject the NCIP Trust Fund model and reaffirm community management of royalties.
- Retain and strengthen the prohibitions and sanctions regime.

Indigenous peoples from various tribes across the country, sharing common experiences of FPIC violations. Photo by LRC

While a defense of the NCIP 2012 AO No. 3 as a superior framework to the proposed 2025 draft is warranted and urgent, it must also be acknowledged that the existing 2012 AO itself contains provisions that require strengthening to fully realize the community-sovereign intent of the IPRA. The inherent weaknesses in the 2012 AO, which the 2025 draft exploits and expands, highlight the need for reform in the opposite direction: towards greater community autonomy and more stringent protections. For instance, the 2012 AO's allowance for a "Request for Reconsideration"[23] of a community's non-consent inherently undermines the finality of a community's decision and subjects their sovereign choice to undue external pressure. Similarly, the imposition of arbitrary state-defined time limits on consensus-building (e.g., "not more than two (2) months"[24]) interferes with the community's right to determine its own pace for a "prior" and culturally appropriate deliberation. Furthermore, while recognizing the primacy of customary law in principle,[25] the 2012 AO fails to unequivocally establish it as the primary and final dispute resolution mechanism for Memoranda of Agreement (MOA) in Sections 37 and 38, leaving room for forum shopping. Further, the problematic carve-out that excludes Corporate Social Responsibility (CSR) or Social Development and Management Projects (SDMP) from being counted as part of negotiated benefits[26] allows proponents to frame legally mandated obligations as voluntary charity, diluting the community's bargaining power.

A truly empowering 2012 AO, would need amendments, as proposed herein:

- Delete Section 27 and affirm that the right to withhold consent is absolute;
- Remove all arbitrary time limits for community decision-making, ensuring timelines are community-driven;
- Explicitly guarantee the community's right to independent technical and legal advice at the proponent's expense and with absolutely no interference from the proponents;
- Clarify and strengthen the primacy of customary law as the final arbiter of MOA disputes;
- Remove the CSR/SDMP carve-out in Section 32 to ensure all benefits are negotiated; and

Reframe its preamble to explicitly state that FPIC is an inherent right and the NCIP's role is to facilitate, not administer, its exercise.

It is against this backdrop of an existing framework that requires fortification that the proposed 2025 draft must be understood not as reform, but as a further diminishment of IP rights. The 2025 draft does not merely retain these weaknesses; it systematically weaponizes them, engineering a process where community sovereignty is rendered ceremonial, dissent is procedurally sidelined, and consent is manufactured through speed and bureaucratic pressure. With this further diminution of their rights, Indigenous Peoples stand to lose the hard-fought recognition, respect, and protection guaranteed by the Constitution and the IPRA, reverting to a paradigm where their domains are treated not as territories of self-determining peoples, but as mere reservoirs of resources subject to efficient state-led extraction.

The goal is to defend FPIC as a right of self-determination, not to streamline it as a permit for developers.

Endnotes

[1] See Annex 1. Comparative Table: NCIP AO 2012-03 and Proposed 2025 Rules
[2] Sec. 2 of the proposed 2025 FPIC Rules.
[3] Sec. 10 of the proposed 2025 FPIC Rules.
[4]Sec. 18 and 25 of the proposed 2025 FPIC Rules.
[5] Sec. 6 and 22 of the proposed 2025 FPIC Rules.
[6] Sec. 6 and 7 of the proposed 2025 FPIC Rules.
[7] Sec. 25 of the proposed 2025 FPIC Rules.
[8] Sec. 33 of the proposed 2025 FPIC Rules.
[9] Sec. 36 of the proposed 2205 FPIC Rules.
[10] Corvera-Circunay and De Guzman v. The Commission on Audit, et al., G.R. No. 278177, May 20, 2025 [Per J. Lopez, En Banc].
[11] Sec. 29 and 30 of the proposed 2025 FPIC Rules.
[12] Sec. 25 of the proposed 2025 FPIC Rules.
[13] Sec. 13, 16, 17, and 26 of the proposed 2025 FPIC Rules.
[14] Sec. 3 of the proposed 2025 FPIC Rules.
[15] Republic Act No. 8371 (1997), sec. 3 (g), Indigenous Peoples Rights Act (IPRA).
[16] Sec. 10 and 11 of NCIP Administrative Order No. 3 (2012), The Revised Guidelines on the Exercise of Free and Prior Informed Consent (FPIC) and Related Processes.
[17] Sec. 17 of the proposed 2025 FPIC Rules.
[18] Sec. 43 of the proposed 2025 FPIC Rules.
[19] Sec. 33 of the proposed 2025 FPIC Rules.
[20] Sec. 5 of the proposed 2025 FPIC Rules.
[21] Sec. 8 of NCIP Administrative Order No. 1 (2021), The Revised National Guidelines for the Mandatory Representation of Indigenous Peoples in Local Legislative Councils and Policy-making Bodies.
[22] G.R. No. 278177, May 20, 2025 [Per J. Lopez, En Banc].
[23] Sec. 27 of the 2012 Revised Guidelines on the Exercise of Free and Prior Informed Consent (FPIC) and Related Processes.
[24] Sec. 22 of the 2012 Revised Guidelines on the Exercise of Free and Prior Informed Consent (FPIC) and Related Processes
[25] Sec. 4 of the 2012 Revised Guidelines on the Exercise of Free and Prior Informed Consent (FPIC) and Related Processes
[26] Sec. 32 of the 2012 Revised Guidelines on the Exercise of Free and Prior Informed Consent (FPIC) and Related Processes

Annex 1. Comparative Table: NCIP AO 2012-03 and Proposed 2025 Rules

I. OVERALL ORIENTATION, SCOPE, and LEGAL FRAMEWORK

Aspect	NCIP AO 2012-03 (Existing Law)	Proposed 2025 Rules (Draft)	Legal and Rights-Based Analysis
Legal Basis and Title	"The Revised Guidelines on Free and Prior Informed Consent (FPIC) and Related Processes of 2012" Pursuant to specific sections of R.A. 8371 (IPRA).	**"The 2025 Rules and Procedures on the Conduct of Free and Prior Informed Consent (FPIC) Process"** No recital of IPRA as primary legal basis.	**Shift in Legal Character:** The 2012 AO is a "guideline" implementing IPRA's substantive rights. The 2025 draft is a "rule and procedure," suggesting a narrower, more procedural focus, potentially distancing itself from IPRA's rights-based foundation.
Declaration of Policy and Objectives	Sec. 2 and 3: Clear objectives to "ensure genuine exercise" of FPIC right, "protect the rights of ICCs/IPs," ensure just partnership, and guarantee protection of displaced IPs. Sec. 3(c): "No concession, license, permit... shall be granted or renewed without going through the process laid down by law and this Guidelines."	Sec. 2 (Scope): "This Rules and Procedures shall only govern projects covering the exploration, development, and utilization of natural resources... through a permit, concession, license..." "...laws... covering specific applications like the Energy Virtual One-Stop Shop Act (EVOSS) shall prevail."	**Dangerous Narrowing of Scope:** The 2025 draft excludes entire categories of projects listed in Sec. 19 of the 2012 AO (e.g., military facilities, bio-prospecting, resettlement programs, declaration of protected areas) unless they fit the narrow "natural resource permit" definition. This creates a major loophole contravening IPRA Sec. 59 and 2012 AO Sec. 3(c). Subordinating FPIC to other laws like EVOSS undermines the constitutional and statutory supremacy of IPRA as the special law governing IP rights.
Operating Principles	Sec. 4: Enumerates **Empowerment, Consensus-Building, Cultural Integrity, Primacy of Customary Law, Transparency, Inter-generational Responsibility.**	**Entirely Omitted**. No section articulating the foundational principles governing the FPIC process.	**Loss of Guiding Philosophy:** Removing the operating principles severs the procedural rules from their purpose: to actualize IP rights. The omission of "Primacy of Customary Law" is particularly egregious, signaling a shift to a state-centric, bureaucratic process.

In Taboli Manobo territory, where agribusiness interests have longstanding violations of FPIC rights. Photo by LRC

II. CRITICAL PROCEDURAL WEAKENING

Aspect	NCIP AO 2012-03 (Existing Law)	Proposed 2025 Rules (Draft)	Legal and Rights-Based Analysis
Field-Based Investigation (FBI)	**Sec. 8 and 9:** FBI Team includes 2 IP elders/leaders identified by the Community Service Center. **Sec. 9(3):** Duties include undertaking FBI to determine affected area, probable effects, and number of ICCs/IPs affected. **Sec. 13:** FBI must be completed within 10 working days from commencement.	**Sec. 5:** FBI Team led by an Engineer, with IPMR(s) designated by the RD. **Sec. 6:** FBI Report due within 5 calendar days from team constitution. **Sec. 7:** Allows reliance on "existing records" in lieu of new fieldwork if conditions met (records recent, uncontested, no doubt).	**Desk-Based, Rushed, and Less Inclusive:** Replacing elders with IPMRs (who are LGU officials) may politicize the process. Allowing desk reviews (Sec. 7) based on old data risks missing recent settlements, cultural sites, or environmental sensitivities. The 5-day deadline (Sec. 6) is impossibly short for meaningful ground truthing, jeopardizing the "Prior" and "Informed" basis for any subsequent decision.
Certificate of Non-Overlap (CNO)	**Sec. 15:** Issued only if area is "patently and publicly known to be outside any AD" or FBI determines "not to affect an AD." Requires applicant undertaking to conduct FPIC if overlap is later discovered.	**Sec. 9:** Expands grounds to include projects on "private lands or lands covered by vested rights pursuant to Section 56 of the IPRA" and "government reservations... prior to the effectivity of IPRA." **Sec. 8:** Issuance within 10 calendar days from application.	**Creates Massive FPIC Avoidance Loopholes:** Using "vested rights" (Sec. 56 IPRA)—a provision for individual native title holders—to grant CNOs to corporate projects is a legal distortion. Claiming areas are "government reservations prior to IPRA" ignores the law's retroactive recognition of ancestral domains. This allows the state to unilaterally extinguish the need for FPIC, violating the very purpose of IPRA.
Community Assemblies and Process	**Sec. 22:** Two mandatory community assemblies (First & Second) with strict 7-day notice posting and service. Between assemblies, a consensus-building period where ICCs/IPs consult "among themselves" for a "reasonable time but not more than two (2) months." Applicant strictly excluded.	**Sec. 17:** "Community assemblies conducted by the Applicant" in all barangays. FPIC Team member only explains rights. **Sec. 18:** Single "assembly without the applicant" for consensus-building, to be held within 5 calendar days after applicant-led assemblies. **Sec. 25:** Total FPIC process (assemblies to decision) must conclude in 30-45 working days.	**Undermines "Free" Consent and Rushes "Prior" Deliberation:** Allowing the applicant to lead assemblies (Sec. 17) is a profound conflict of interest, opening the door to coercion, selective information, and community division. The consensus period is slashed from up to 2 months to just 5 days (Sec. 18), which is culturally absurd and denies communities time for reflection, consultation with absent members, and customary deliberation. The rigid overall timeline (Sec. 25) prioritizes corporate efficiency over meaningful consent.

II. CRITICAL PROCEDURAL WEAKENING

Aspect	NCIP AO 2012-03 (Existing Law)	Proposed 2025 Rules (Draft)	Legal and Rights-Based Analysis
Decision-Making Body	**Sec. 4(b):** Decision-making through "indigenous socio-political structures" as validated in assembly. Emphasizes communal decision.	**Sec. 6(4), 20, 22:** Decision by "validated community leaders" or "validated elder or decision-makers" identified in FBI Report. For Low-Impact Projects, consent can be given by "duly validated Elders only" (Sec. 22).	**Facilitates Elite Capture and Marginalizes Community:** By focusing decision-making power on a pre-validated list of individuals (Sec. 6), the process sidelines broader communal participation. For "low-impact" projects, a handful of elders can bind the entire community (Sec. 22), contradicting the communal nature of ancestral domain ownership and making consent vulnerable to co-option.
Resolution of Consent	**Sec. 5(m):** Resolution adopted by affected ICCs/IPs "by themselves or through their duly authorized elders/leaders." **Sec. 22:** MOA and Resolution finalized and signed after validation assembly where contents are explained and affirmed by the community.	**Sec. 22:** Resolution signed by "majority of household representatives" for high-impact, or by "duly validated Elders only" for low-impact. Resolution issued within 3 days from the decision-making assembly. **Sec. 29 and 30:** CP shall be issued "as a matter of course" if RD/CEB fails to act on a Resolution of Consent within the prescribed period.	**Diminishes Community Validation and Creates Automatic Consent:** Reducing the signatory pool for low-impact projects is dangerous. The "as a matter of course" (Sec. 29, 30) provisions effectively create deemed consent through bureaucratic inaction, turning FPIC from an active right into a passive administrative step. This violates the principle that consent must be affirmative, explicit, and conscious.

III. DILUTION OF SUBSTANTIVE SAFEGUARDS AND ACCOUNTABILITY

Memorandum of Agreement (MOA) Contents	**Sec. 32:** Comprehensive list of 24 mandatory provisions including: (f) Clause on non-transferability of MOA. (g) Clause for renegotiation of economic provisions. (h) Requirement for new FPIC in case of merger, transfer, etc. (n) Detailed measures to protect IP rights and value systems. (o) Measures to conserve/protect affected environment.	**Sec. 33:** Reduced list of 17 "Mandatory MOA Provisions." CRITICAL OMISSIONS: - No non-transferability clause. - No renegotiation clause. - No requirement for new FPIC for merger/ acquisition (Sec. 33(q) implies it's not needed if MOA is honored). - No detailed measures to protect IP rights/value systems. - Weaker environmental clause focused on "conservation and rehabilitation."	**Guts the Community's Enforcement Tool:** The MOA is the primary contract securing benefits and protections. Removing these clauses drastically weakens the community's legal position. The new transfer rule (Sec. 33(q)) allows projects to be sold like commodities without fresh community consent, violating the personal nature of FPIC recognized in Sec. 36 of the 2012 AO. Lack of renegotiation and specific cultural/ environmental protections leaves communities exposed to long-term harm.

III. DILUTION OF SUBSTANTIVE SAFEGUARDS AND ACCOUNTABILITY

Aspect	NCIP AO 2012-03 (Existing Law)	Proposed 2025 Rules (Draft)	Legal and Rights-Based Analysis
Management of Royalties and Benefits	**Part VIII (Sec. 58-64):** Dedicated section. Sec. 59: "Only the duly organized, NCIP registered, IPO... shall be authorized to receive and manage the royalties." **Sec. 61:** Requires a Community Royalty Development Plan (CRDP).	**Sec. 2:** Explicitly excludes "monitoring and audit of compliance with the MOA, including utilization of royalties" from its scope. **Sec. 36:** Proposes a "Trust Fund" to be "established, administered, and managed" by the NCIP to hold community royalties.	**Disempowers Communities, Centralizes Control:** The 2012 AO empowers the IPO as manager (Sec. 59). The 2025 draft proposes a state-controlled Trust Fund (Sec. 36), stripping communities of direct control over their resources and creating bureaucratic bottlenecks. Separating benefit management from the FPIC process (Sec. 2) fragments accountability and makes it harder to link benefits to project impacts.
Certificate of Non-Overlap (CNO)	**Sec. 15:** Issued only if area is "patently and publicly known to be outside any AD" or FBI determines "not to affect an AD." Requires applicant undertaking to conduct FPIC if overlap is later discovered.	**Sec. 9:** Expands grounds to include projects on "private lands or lands covered by vested rights pursuant to Section 56 of the IPRA" and "government reservations... prior to the effectivity of IPRA." **Sec. 8:** Issuance within 10 calendar days from application.	**Creates Massive FPIC Avoidance Loopholes:** Using "vested rights" (Sec. 56 IPRA)—a provision for individual native title holders—to grant CNOs to corporate projects is a legal distortion. Claiming areas are "government reservations prior to IPRA" ignores the law's retroactive recognition of ancestral domains. This allows the state to unilaterally extinguish the need for FPIC, violating the very purpose of IPRA.
Prohibited Acts and Sanctions	**Part IX (Sec. 65-71):** Detailed list of prohibited acts for Applicants, NCIP, IP members, and NGOs. **Sec. 66:** Specific sanctions for grave/less grave violations, including disqualification from future applications. **Sec. 67-71:** Clear jurisdiction and procedures for complaints.	**Virtually Nonexistent.** No equivalent section. Brief mentions in Sec. 12 (Preliminary Conference orientation on prohibited acts), Sec. 40 (administrative sanctions for NCIP officials and/or employees), and Sec. 42 (recommendation for suspension).	**Removes Critical Deterrents:** The 2012 AO's detailed prohibitions and sanctions were essential to deter coercion, bribery, and bad faith. Their absence in the 2025 draft creates a permissive environment for abuse with no clear, immediate consequences for violating the integrity of the FPIC process.
Exercise of Priority Rights (EPR)	**Part VII (Sec. 50-57):** Detailed process for communities to declare and validate their EPR to develop resources themselves or choose a partner.	**Completely Omitted.**	**Eliminates a Key Empowerment Mechanism:** EPR is a crucial right under IPRA (Sec. 57) allowing communities to be primary developers. Removing the entire process denies communities a proactive tool for self-determined development and forces them into a reactive FPIC mode with external proponents

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