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Department of Environment and Natural Resources
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MEMORANDUM

FOR : All Bureau Directors (Staff and Line)
All Regional Executive Directors
All Regional Directors
The Director, Legal Affairs Service

FROM : The OIC Director
Policy and Planning Service

SUBJECT : **REQUEST FOR COMMENTS/ INPUTS ON THE DRAFT DENR-DAR-NCIP
JOINT MEMORANDUM CIRCULAR**

DATE : **19 MAY 2022**

This refers to the draft Joint Memorandum Circular (JMC) endorsed by the Legal Affairs Office of the National Commission on Indigenous Peoples (NCIP) through e-mail dated 11 May 2022.

BACKGROUND

The JMC was drafted pursuant to the instruction of NCIP Chairperson Allen A. Capuyan and aims to have DENR and the Department of Agrarian Reform (DAR) assist the NCIP in their efforts to stop the rampant selling of portions of Ancestral Domains, institutionalize the requirement of Free, Prior and Informed Consent (FPIC) process/ Certification Precondition (CP), and other operational agreements to harmonize NCIP's programs and activities.

The salient features of the draft JMC are as follows:

- 1) Covers all lands considered as ancestral domains (AD) as defined under Section 3 (a) of Republic Act No. 8371 or the "The Indigenous Peoples' Rights Act of 1997"; all lands included in the definition of ancestral lands (AL) under Section 3 (b) of RA 8371; all lands covered with Presidential Proclamations or by law proclaimed as reservations or resettlement areas of particular Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs); and all lands certified by the Chairperson of the NCIP as AD/ AL pursuant to Section 52 (i) of the IPRA Law.
- 2) Reiterates that projects and activities regulated by DENR and DAR issued with permits/ licenses, concessions, shall undergo the Field-Based Investigation/ FPIC process facilitated by the NCIP.
- 3) Reiterates that all programs, activities and projects initiated and implemented by the DENR and DAR, including the delineation and titling of lands, which may

overlap with AD/AL or affect ICCs/ IPs shall undergo validation/ consultation with the community.

- 4) Provides for the mechanisms and procedures, including the responsibilities of NCIP, DENR, and DAR in the implementation of processes required in the IPRA Law. This includes providing data/ inventory on forest lands, mineral lands, agricultural lands, national parks, lands subject of agrarian reform, AD/ AL, titled and untitled agricultural alienable and disposable (A & D) lands, within three (3) months after the approval of the JMC.
- 5) Provides that the DENR shall assist in the conduct of investigation and gathering of data which may be used in the filing of appropriate actions against violators involved in the selling of lands within AD/AL, cutting, gathering, collecting, and harvesting of timber or other forest products inside the AD/AL without FPIC and required permit from DENR.
- 6) Provides that the DAR shall also assist in the conduct of investigation in land reform areas overlapping with AD/AL, in addition to its undertakings as part of the agreement between NCIP and DAR in the implementation of the Support to Parcelization of Lands for Individual Titling (SPLIT) Project.

ACTION REQUESTED

In this regard, we would like to request for your inputs/ comments on the attached draft JMC. We would appreciate receiving an advance copy of your comments/ inputs by **27 May 2022** through e-mail at psddivision@gmail.com, copy furnished this e-mail address: policy@denr.gov.ph.

For your preferential and appropriate action, please.



GLENN MARCELO C. NOBLE



Office of Head Executive Assistant <ohea@denr.gov.ph>

Draft Joint Memo Circular

1 message

NCIP LAO <lao@ncip.gov.ph>

Wed, May 11, 2022 at 2:06 PM

To: hea@denr.gov.ph, osec@denr.gov.ph, usecberniefcruz@gmail.com, hea@dar.gov.ph, deptsecretary@dar.gov.ph

Cc: chairperson external <chairperson.external@ncip.gov.ph>

Good afternoon Sirs/Madams,

Per instruction of Chairperson Allen Capuyan, we drafted a joint draft memorandum circular (still untitled) with the aim of having the DENR and DAR assist the NCIP in our effort to stop the rampant selling of portions of Ancestral Domains, institutionalize the requirement of FPIC process/Certification Precondition, and other operational agreements to harmonize our programs and activities.

We came up with an initial draft, hereto attached, and we hope we can discuss the same with your respective representatives/focal persons, in order that proposed provisions from DENR and DAR be included, and comments be considered.

We can set a meeting at your most convenient time to further clarify/discuss the draft.

Thank you very much.

Best regards,

Gillian S Dunuan

Director, Legal Affairs Office

draft denr dar ncip jmc as of 11may.ado.docx
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JOINT DENR-DAR-NCIP MEMORANDUM CIRCULAR

No. _____

TO : All DENR Regional Executive Directors, All DAR Regional Directors, All NCIP Regional Directors, All PENROs, PAROs, Provincial Officers, CENROs, MAROs, Community Service Center Heads and Other Officials/Employees Concerned

SUBJECT : ----

1. Prefatory Statement. — Pursuant to the constitutional framework of national unity and development, Republic Act No. 8371, otherwise known as the Indigenous Peoples Rights Act (IPRA) of 1997, was enacted. The IPRA is considered as a landmark legislation because it seeks to address historical injustice justice and equity issues affecting the indigenous cultural communities/indigenous peoples (ICCs/IPs). For ICCs/IPs, the IPRA recognizes, protects and promotes ownership of their ancestral domains (ADs) and ancestral lands (ALs) and their rights to control, manage and develop the same; recognizes the inherent right of ICCs/IPs to self-governance and empowerment; accords to the members of the ICCs/IPs the rights, protections and privileges enjoyed by the rest of the citizenry; and respects, recognizes and protects the right of ICCs/IPs to preserve and protect their culture, traditions and institutions.

The IPRA has been in existence for nearly twenty-five years, yet its full implementation has not yet been achieved. Among the rights of the ICCs/IPs that need immediate and urgent attention and action is the rampant selling of lands that are portions or within the ancestral domains, which activities are express violation of the IPRA. It has come to the attention of the National Commission on Indigenous Peoples (NCIP) that selling of portions of ancestral domains is continuing despite the

earnest efforts on the part of NCIP in educating and inculcating the nature of ownership of the ICCs/IPs to their ancestral domains and the clear prohibition on the selling, disposition, and destruction thereof under the IPRA.

Reports have also been received by the NCIP that some National Government Agencies (NGAs), Local Government Units (LGUs), Government-Owned and Controlled Corporations (GOCCs) have been issuing permits to permit applicants/proponent, or are implementing their respective programs, projects and activities within ancestral domains without complying with the requirements of the Free and Prior Informed Consent process and issuance of the necessary Certification. Such non-compliance with the FPIC process is an utter disregard of the requirement of the Indigenous Peoples Rights Act and constitutes a violation of the ICCs/IPs rights;

2. Statement of Policies. — Pursuant to Section 5 of R.A. 8371 or "The Indigenous Peoples Rights Act of 1997" (IPRA), indigenous concept of ownership sustains the view that ancestral domains and all resources found therein shall serve as the material bases of the IP's cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights.

Section 3 (o) of IPRA provides for the Sustainable Traditional Resource Rights of the ICCs/IPs, which is defined as, the rights of the ICCs/IPs to sustainably use, manage, protect and conserve: a) land, air water, and minerals; b) plants, animals and other organisms; c) collecting, fishing and hunting grounds' d) sacred sites; and e) other areas of economic, ceremonial and aesthetic

value in accordance with their indigenous knowledge, beliefs, systems and practices.

Section 8 (a) of IPRA recognizes and protects the right of ownership and possession of the ICCs/IPs to their ancestral lands. Such right shall include the right to transfer land or property rights to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned.

Sections 7(b) of the IPRA provides that as owners of the Ancestral Domains, the ICCs/IPs have rights of ownership and possession to their ancestral domains which shall include the right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights.

Section 7 (e) of the IPRA provides that the ICCs/IPs have the right to regulate the entry of migrant settlers and organizations into the domains.

Section 10 of the IPRA provides that the unauthorized and unlawful intrusion upon, or use of any portion of the ancestral domain, or any violation of the rights hereinbefore enumerated, shall be punishable under this law. Furthermore, the Government shall take measures to prevent non-ICCs/IPs from taking advantage of the ICCs/IPs customs or lack of understanding of laws to secure ownership, possession of land belonging to said ICCs/IPs.

Section 57 of the IPRA provides that the ICCs/IPs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: Provided, That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally, That the NCIP may exercise visitorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract.

Section 59 of the IPRA directs that all departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no

department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

NCIP and DENR issued DENR-NCIP Joint Administrative Order No. 2008 (JAO), entitled, "Guidelines and Procedures for the Recognition, Documentation, Registration and Confirmation of all Sustainable Traditional and Indigenous Forest Resources Management Systems and Practices (STIFRMSP) of Indigenous Cultural Communities or Indigenous Peoples in Ancestral Domain /Land." This JAO, among others, recognizes the ICCs/IPs' sustainable traditional indigenous forest resources management system and practice having the maintenance and enhancement of the watershed areas including its biodiversity as the primary purpose and the personal uses thereof secondary, such as: (1) areas for planting of agricultural crop; (2) source of construction materials for residential homes and other wood products for home use; and (3) areas where to gather forest products on a regulated basis for livelihood and entrepreneurship development.

The National Commission on Indigenous Peoples (NCIP) issued National Advisory No. NA-2020-08-001, Series of 2020 dated August 10, 2020 "To Stop, Prohibit and Report Any Transaction, Dealing, Negotiation of Selling and Transfer of Lands within the Ancestral Domains", which provided that full sanctions will be imposed to those privies to any transactions pertaining to the selling of portion of the ancestral domain, among others. Exhaustive investigation shall be conducted by NCIP and cases shall be filed against erring individuals or groups

whether belonging to ICCs/IPs and national or local government units including law enforcers.

The NCIP National Advisory No. NA-2020-08-001, Series of 2020 dated August 10, 2020 also advised the Local Chief Executives (LCEs) to refrain from facilitating, dealing and negotiating transactions involving transfer and sale of any portions of the ancestral domains and/or any unlawful and illegal intrusion of the ancestral domain including, being a signatory as witness to any transfer or sale document.

NCIP issued National Advisory No. 2021-08-001, series of 2021, entitled, "Compliance with the mandatory requirement for securing the free and prior informed consent (FPIC) of indigenous cultural/communities (*sic*) (ICCs/IPs) and the necessary certification precondition from the National Commission on Indigenous Peoples (NCIP) pursuant to Republic Act No. 8371 or the Indigenous Peoples Rights Act of 1997 (IPRA)". This advisory further enjoined heads of National Government Agencies and Government-owned and controlled Corporations, and Local Chief Executives to comply with the FPIC requirement provided for under the IPRA.

NCIP has furnished the agencies concerned with copies of National Advisory No. 2021-08-001, series of 2021, but there are still activities that have been undertaken by companies/entities without the requisite Certification Precondition (CP) from the NCIP and without securing the FPIC from the ICCs/IPs

- 3. Coverage.** — This Memorandum Circular shall cover all lands encompassed in the definition of ancestral domains under Section 3 (a) of RA No. 8371; b. All lands included in the definition of ancestral lands under Section 3 (b) of RA No. 8371; c. All lands covered with Presidential Proclamations or by law which proclaimed the same as

reservations or resettlement areas of particular ICCs/IPs; and d. All lands certified by the Chairperson of the NCIP as AD/AL pursuant to Section 52 (i) of IPRA. III

Projects and activities regulated by the DENR and DAR, and accordingly issued with permits/licenses, concessions shall undergo the Field-Based Investigation/Free and Prior Informed Consent Process facilitated by the NCIP. Likewise, all programs, activities and projects initiated and implemented by the DENR and DAR, including delineation and titling of lands, which may overlap with ancestral domains/lands or affect ICCs/IPs shall undergo validation/consultation with the community.

4. Mechanisms and Procedures

4.1 DENR and DAR Regional Offices shall indorse all applications for issuance or renewal of permit, license, concession or joint venture agreement to the concerned NCIP Regional Office for the conduct of field-based investigation/free and prior informed consent process as required under RA 8371 and following the process provide in existing NCIP guidelines.

4.2 Titling activities undertaken by the DENR and DAR in accordance with their respective mandates shall be coordinated with the NCIP in order for the latter to first verify whether or not the lands subject of the DENR or DAR titling applications are within ancestral domains/lands.

4.3 The DENR, DAR, NCIP field offices shall provide data/inventory on forest lands, mineral lands, agricultural lands, national parks, lands subject of agrarian reform, ancestral domains/lands, titled and untitled agricultural alienable and disposable (A & D) lands within three (3) months after the approval of this Joint Memorandum Circular.

The data/inventory shall be used to update existing inventory of lands and identify what, respectively, are within the mandate and jurisdiction of the three agencies. Proper turn-over of jurisdiction shall follow.

4.4 In order to assist the NCIP in its effort to stop the rampant selling of lands within ancestral domains/lands and the cutting, gathering, collecting, harvesting of timber or other forest products inside the ancestral domains/lands without FPIC and the required permit from the DENR, the latter shall assist in the conduct of investigation and gathering of data which may be used in the filing of appropriate actions against violators. The DAR shall, likewise, assist in the conduct of said investigation in land reform areas overlapping with ancestral domains/lands, in addition to its undertakings pursuant to the agreement between NCIP and DAR in the implementation of the DAR-SPLIT project.

In the conduct of investigation and gathering of data on the above where ICCs/IPs are involved, the concerned DENR or DAR officials, together with the NCIP and authorized/recognized IP elders/leaders, shall determine whether or not the foregoing acts were exercised using customary laws of the ICCs/IPs or covered by the sustainable traditional and indigenous forest resources management systems and practices of the ICCs/IPs.

4.5 The concerned Secretaries of DENR and DAR and Chairperson of the NCIP shall issue, whether individually or jointly, more detailed guidelines to the field offices of each respective agency in order to carry out the goals and objectives of this Joint Memorandum Circular.

5. Effectivity. —This Joint Memorandum Circular shall take effect immediately.

All DENR, DAR and NCIP Regional Directors shall cause the immediate and widest dissemination and implementation of this Joint Memorandum Circular in their respective areas of jurisdiction.

Quezon City, _____, 2022.

JIM O. SAMPULNA
Acting Secretary, DENR

BERNIE F. CRUZ
Acting Secretary, DAR

ALLEN A. CAPUYAN
Chairperson, NCIP