

# INDIGENOUS PEOPLES SHARE AND COMMUNITY BASED AGREEMENTS



Teresita Tabada

# Outline

---

- I. What is a community-based agreement
- II. What is the free and prior informed consent (FPIC) process
- III. What is the FPIC process for large-scale operations
- IV. What does a Memorandum of Agreement (MOA) contain
- V. How is the MOA reviewed
- VI. What are the royalty entitlements of the IPs



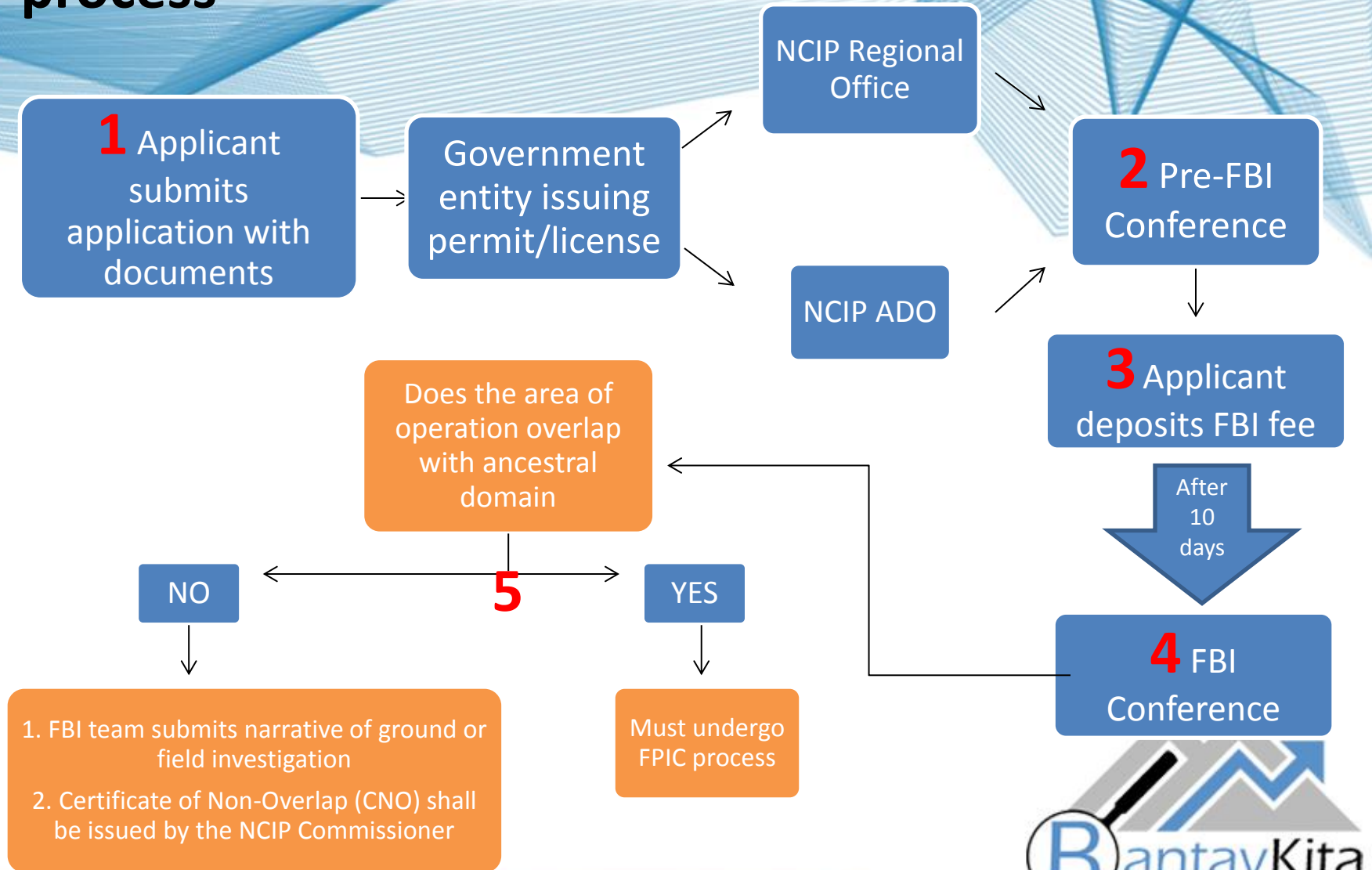
# What is a community-based agreement

---

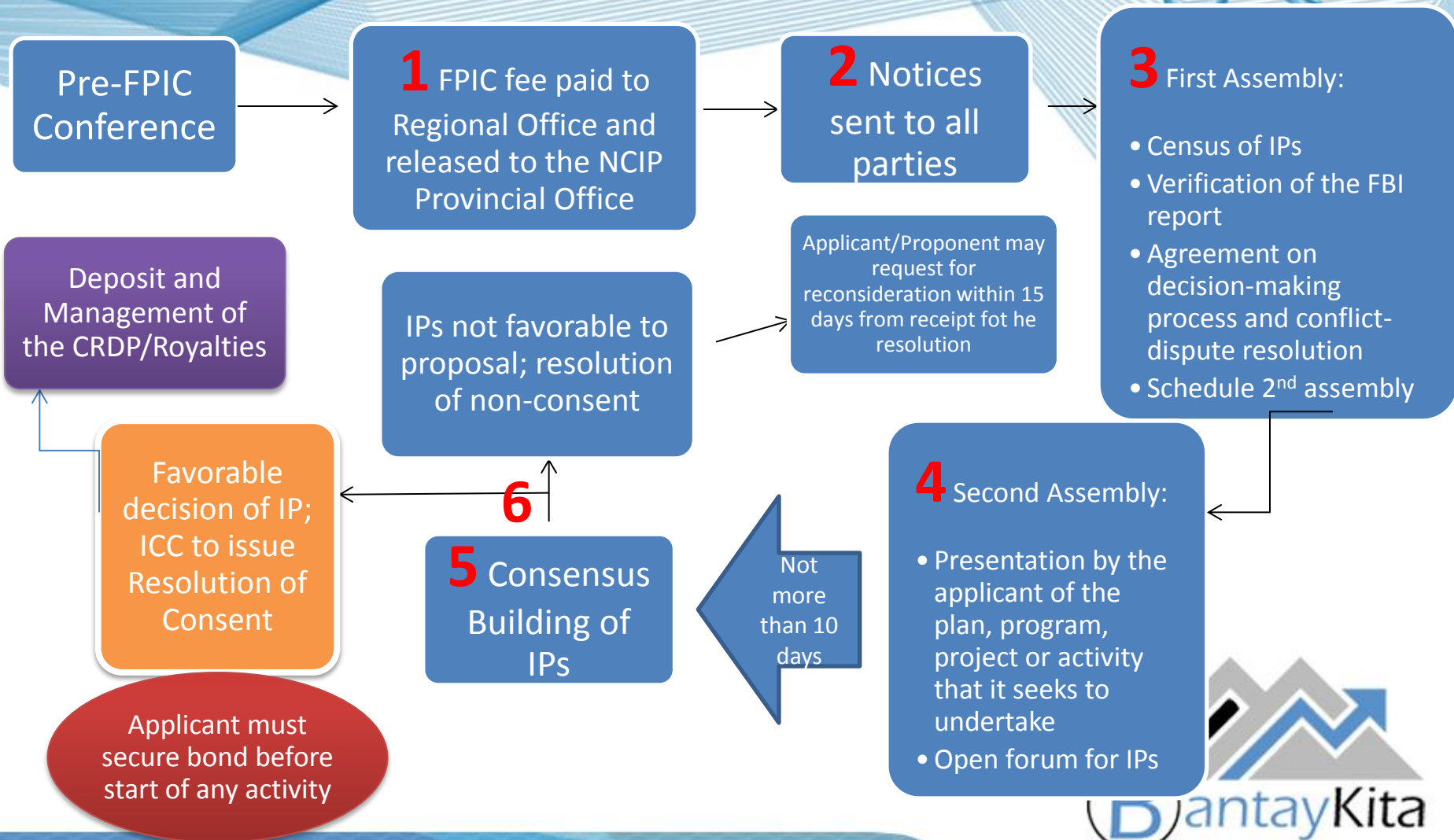
- It is the contract or Memorandum of Agreement executed between IPs and mining companies should operations be performed in an ancestral domain



# What is the free and prior informed consent (FPIC) process



# What is the FPIC process for large-scale operations



# What does a Memorandum of Agreement (MOA) contain

---

- Parties
  - ICC/IPs
  - Applicant/proponent
  - The NCIP
  - Other party that may be necessarily involved
- Preparation and drafting
  - Written strictly in accordance with what has been agreed upon by the parties



- 
- in the language of the ICCs/IPs, and translated into English and/or Pilipino
  - Drafted by the Legal Officer of the concerned provincial office, or one from another province so designated by the Regional Director



---

- Signing

- Signed within the affected AD by those duly authorized
- During a general assembly where its contents are fully read aloud and explained by the FPIC Team, and understood and affirmed by the community





---

## – Signatories:

- The elders or leaders or their alternates who have been identified during the validation and authorized by the community to sign;
- For corporations, partnerships or single proprietorship entities, the authorized officers, representatives, or partners per Board Resolution; and
- The Chairperson in behalf of the NCIP as Third Party. For projects where the Regional Director is authorized to issue the corresponding CP, the MOA shall be signed by the Regional Director in behalf of the NCIP as Third Party.



---

- **Terms and Conditions**

- Detailed benefit-sharing provisions in accordance with rules and regulations (i.e. not less than 1% royalty under mining act).
- Development projects based on the development priorities of the community.
- Monitoring of the implementation MOA to be implemented by NCIP in partnership with LGUs and Civil Society Organization (CSOs). This undertaking shall be paid for by the company.



- 
- Mitigation and resettlement plans for potential risks.
  - Redress mechanisms.
  - Clause on the non-transferability of the MOA.



- 
- Clause for renegotiation of the economic provisions.
  - Whether the concerned ICCs/IPs shall require another FPIC to be conducted in case of merger, reorganization, transfer of rights, acquisition by another entity, or joint venture.
  - List of responsibilities of the company and the affected community.



- 
- Inclusive dates/duration of agreement.
  - Other than what has already been granted by law, the benefits to be derived by the host ICC/IPs indicating the type of benefits, specific target beneficiaries as to sector and number, the period covered, and other pertinent information.



- 
- Detailed use of all funds to be received by the host ICC/IP communities, ensuring that a portion of such funds shall be allocated for development projects, social services and/or infrastructures in accordance with their development framework and the Guidelines on the Management of Royalty Share and Other Benefits promulgated by the Commission En Banc.
  - Transparency mechanism on transfer and disbursement of funds.
  - Detailed measures to protect IP rights and value systems.



- 
- Detailed measures to conserve/protect any affected portion of the ancestral domain critical for watersheds, mangroves, wildlife sanctuaries, forest cover, and the like.
  - Responsibilities of the applicant as well as the host IP community.
  - The monitoring and evaluation system of the MOA, to include submission of reports and creation of monitoring teams.



- 
- Remedies and/or penalties for non-compliance or violation of the terms and conditions which includes applicability of customary laws and imposition of sanction/s.
  - Deposit of cash or surety bond mentioned.
  - Provision to render assistance in the event of calamities/disasters in the community.





- 
- Provision to undertake a new FPIC Process in case of mining activities, after the exploration stage.
  - Provision on the effects of dormant Certification Precondition.
  - Membership of proponent in organizations requiring ethical standards in a particular line of activity.
  - Other requirements provided in these Guidelines



- 
- Also to be included in the MOA is a provision requiring that the consent of the ICCs/IPs shall not be transferable by the applicant to any other party except in cases of merger, reorganization, transfer of rights, acquisition by another entity or joint venture.
  - It is the transferee's responsibility to inform in writing to the ICCs/IPs concerned the impending merger, reorganization, transfer, acquisition, or joint venture.



- 
- The obligations and responsibilities of the transferor and transferee shall not apply when it is expressly provided in the original MOA that a new FPIC is required in the event of a merger, reorganization, transfer of rights, acquisition by another entity, or joint venture.



# How is the MOA reviewed

---

- A Regional Review Team (RRT) is constituted to review the FPIC report and the MOA.
- It shall also render a report, under oath, of its findings and recommendations to the Regional Director.



- 
- The RRT has the power to summon any member of the FPIC Team, representative of the ICCs/IPs, or representative of the proponent to clarify matters contained in the report and the MOA.
  - The RRT shall be composed of the TMSD Chief, Regional Attorney and duly designated Regional FPIC Focal Person.



- 
- After the receiving the report, the Regional Director shall direct the RRT to review the same within five (5) days.
  - Should the review be favorable, and the Director finds nothing wrong with it, the Regional Director endorses the record of the FPIC Process undertaken, together with his recommendation/s to the ADO for appropriate action.



- 
- The Legal Affairs Office (LAO) shall review the MOA prior to the endorsement of the FPIC report by the ADO to the Commission.
  - The MOA shall be reviewed by the Regional Legal Office or any Legal officer who has not participated in the FPIC process.



- 
- If no activity is undertaken by the proponent within a year from the approval or issuance of permit, the CP is considered dormant and thus, upon the report of the Regional Director, the Chairperson shall issue a show cause order directing the applicant or proponent to reply in 15 days why the CP should not be cancelled.





- 
- The following are some violations of the MOA:
    - Complaints involving the interpretation and implementation of the MOA shall first be resolved in the community using traditional conflict resolution processes.
    - If the complaint is not resolved using the customary system, the complaint shall be filed with the appropriate NCIP Regional Hearing Office (RHO) for disposition.

