

## INDIGENOUS PEOPLES DEVELOPMENT FRAMEWORK

### I. PROJECT BACKGROUND

#### A. Project and Project Components

1. The Development Bank of the Philippines (DBP) is developing a new credit facility for the health sector to be funded by Asian Development Bank (ADB) under the proposed Credit for Better Health Care Project (the Project), Kreditanstalt für Wiederaufbau, and DBP. The credit facility will be available to public and private sectors. Private sector includes individuals, non-government organization (NGOs) and cooperatives, civic or religious foundations, and corporations. As the Project is national in scope and specific sub-loans cannot be determined in advance, in accordance with Operations Manual section F3/Operational Procedures Para 20, an Indigenous Peoples Development Framework (IPDF) has been prepared.

2. The purpose of the loan is to meet pent up demand for basic health services. The credit facility supports holistic development of health systems to increase access and efficiency and reduce both provider and user costs. The Project brings basic health care services of improved quality closer to the clients while reducing transportation and other costs. It increases the efficiency of health services provided resulting in reduced out-of-pocket expense for the patient expenses or for the public sector, enabling provision of more health services for the budget.

3. Eligible subloans support delivery of basic health services. The Project funds will support private financing of (i) doctor practices and lying-in clinics' (ii) laboratory and diagnostic centers linked to other Project investments, (iii) health sector business solution companies, (iv) drug procurement and distribution companies for distribution of drugs, and (v) public sector investment rehabilitating or establishing rural health units (RHUs) and expanding the capacity of over utilized secondary and tertiary public hospitals. Eligible public sector investments must be included in the Provincial Health Investment Plan (PIPH).

#### B. Description of Indigenous People in the Philippines

4. Indigenous People (IP) in the Philippines were estimated to comprise 16% of the total population, including 110 ethno linguistic groups distributed throughout the archipelago.<sup>1</sup> IPs are people present inside of current Philippine boundaries prior to colonization by the Spanish who have maintained different customs, language apart from the mainstream and self-organization from the mainstream.<sup>2</sup> Most IPs are land based agriculturalists although others such as the Badjao are maritime dwellers whose ancestral territory covers much of littoral Southeast Asia.

#### C. Legal Framework

5. The Republic Act No. 371 known as the Indigenous People's Rights Act (IPRA) of 1997 was enacted based on consultation, agreements on ancestral domain and lands, and international agreements on domain rights of IPs. The IPRA recognizes, promotes, and protects the rights of IPs related to (i) ancestral domain and lands, (ii) self-governance and empowerment, (iii) social justice and human rights, and (iv) cultural integrity.

6. The National Commission on Indigenous People (NCIP) was established in 1999 with a mandate to: protect and promote the interest and well being of the Indigenous Cultural

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<sup>1</sup> Source: National Commission on Indigenous People (NCIP) website for the number of IP (11.7 million): [http://www.ncip.gov.ph/resources/ethno\\_region.php](http://www.ncip.gov.ph/resources/ethno_region.php) and ADB Key Indicators 2001 for the estimated 1998 population (75.2 million): [http://www.adb.org/documents/books/key\\_indicators/2001/default.asp](http://www.adb.org/documents/books/key_indicators/2001/default.asp)

<sup>2</sup> Section 3 of the IPRA provides the full legal definition.

Communities (ICCs)/IPs (*sic*)<sup>3</sup> with due regard to their beliefs, customs, traditions, and institutions. As of 2002, it had 1,500 staff in 12 regional offices, 46 provincial offices, and 108 community centers. The Medium Term Plan for IP in the health sector prioritizes meeting health needs through promotion of Philippine Health Insurance Corporation, establishment of IP community health centers, promotion of nutrition posts, and provision of scholarships for training of IPs to become midwives.

7. The NCIP is mandated to: issue appropriate certification as a pre-condition to the grant of permit, lease, grant (*sic*), or other similar authority for the disposition, utilization, management and appropriation thereof on any part or portion of the ancestral domain taking into consideration the consensus (*sic*) approval of the ICCs/IPs concerned.<sup>4</sup> Consensus approval is defined as Free Prior and Informed Consent (FPIC).

8. NCIP Administrative Order No. 1/2006 on the FPIC Guidelines of 2006 prescribes the detailed steps required to secure an FPIC taking into account the nature of the activity to be introduced. The guidelines encompass: who gives the FPIC, field based investigation procedures to plan the FPIC, fees, FPIC team composition, validation of the list of elders, determining the customary decision making process, duration for completion, posting of notices, serving of invitations, number of meetings, issuance of a resolution of consent or non consent, and reporting to the NCIP. The consent is recorded in a Memorandum of Agreement (MOA) detailing the conditions, requirements, responsibilities, benefits, penalties, and grievance procedures agreed. The guidelines prescribe the format of the MOA including location, involved parties, duration, mitigation measures required, monitoring and evaluation, remedies and penalties, grievance process, posting of a bond of at least 1% of the investment costs to ensure any damages can be covered. Complaints related to the MOA are submitted for resolution by the NCIP regional office. The guidelines also provide a process for appeal. The NCIP issues a Certificate of Precondition when all guideline requirements have been met. The procedure for securing the FPIC is of equivalent standard with ADB Operations Manual F3/Operational Procedure section C on Consultation, Participation, and Disclosure.

9. A full FPIC is required for large scale developments affecting natural resources, mineral and energy exploration, programs leading to displacement of IPs, resettlement of migrants into ancestral lands. Management of critical or protected areas, industrial land use, large scale tourism or agriculture projects. A less intensive process is required for small scale resource exploitation or utilization of natural resources, research with the intent to publish, unsolicited socio-economic government projects unless coordinated with the NCIP, activities affecting spiritual customs, feasibility studies for projects requiring a full FPIC, establishing temporary or permanent military facilities, and other analogous activities. The proponents bear all associated costs including that of the NCIP and IPs. The Project eligible investments are not included in the list of activities requiring an FPIC except as “such other activities analogous to the foregoing nature.”<sup>5</sup>

10. The guidelines also recognize ownership rights of non-IPs within ancestral domains.<sup>6</sup> If, in the exercise of these rights, any grievances arise, the local council of elders decides what mitigation is required. Non-IP migrants activities must be approved through an FPIC or community process.<sup>7</sup>

<sup>3</sup> Citation: IPRA Chapter 8. IPRA chapter 2 defines ICCs and IPs as Indigenous People.

<sup>4</sup> IPRA section 44 (m).

<sup>5</sup> NCIP Administrative Order No. 1/2006 part II section 6.b.8

<sup>6</sup> NCIP Administrative Order No. 1/2006 Part I section 5J: Recognition and Exercise of Ownership Rights Over Titled Properties within Ancestral Domain Areas.

<sup>7</sup> NCIP Administrative Order No 1/2006 Part IV Section 36. Regulation of Entry of Migrants and Other Entities

11. The Department of Environment and Natural Resources (DENR) and NCIP has guidelines on harmonizing policies and procedures to address the rights of IP with respect to the IPRA.<sup>8</sup> DENR classified Environmentally Critical Areas (ECA) includes areas which are traditionally occupied by cultural communities or tribes.<sup>9</sup> DENR, however, issues permits independently of other agencies hence an FPIC is not needed for environmental impact assessment (EIA) Review. Instead, NCIP will be advised of the Project's socio-cultural and economic impacts and benefits on IPs for consideration in issuance of FPIC and in drafting of IP Development Plan after Environmental Compliance Certificate is issued."<sup>10</sup> The NCIP would be able to obtain the initial environment examination (IEE) or IEE checklist from DENR as inputs to the FPIC.

#### D. Project Impacts on Indigenous People

12. While the Project is national in scope, the activities will be location-specific. The impact of the proposed loan on IPs will depend on the nature and location of eligible investments proposed by subloan borrowers interested in accessing the credit facility. The location includes IP locations such as Tribal *Barangays*, IP Ancestral Domains or proposed Ancestral Domains. Subloan proponents may be IPs, non-IPs, or other organizations.

13. Subloans categorized as Environmentally Critical Projects are not eligible for the Project financing. Eligible types of investments will not result in small scale resource exploitation or utilization of natural resources that necessitate an FPIC.

14. The types of eligible investments and their ADB IP Policy/IPRA compliance requirements and compliance actions are shown in Table SAF.1.

**Table SAF.1: Project Eligible Investments with IPRA Requirements and DBP Compliance Actions**

Proposed Investment	Potential IPRA Requirement	DBP Compliance Actions
Public / Private Hospital / Rural Health Unit (RHU) new construction and rehabilitation or expansion  <u>Documents required</u>  1. Memo request for IP- PEER 2. List of AD (certified and under application) from NCIP regional offices to be updated each year end. 3. PEER 4. PMO semiannual report section on IP	An FPIC may be required if the project is for new facility to be located in an ancestral domain (AD) (certified or under application) and the proponent is a non-resident migrant to the AD. No FPIC is required for investments required to enable existing facilities to keep pace with population growth and the concomitant increase in services and does not/ will not result in an expansion of the service area or change in the types of level of services delivered.  RMCs each year should visit their NCIP regional offices and obtain a list of ADs (certified or under	<u>For new facilities:</u>  AO determines if the proposed site is in an AD;  If "yes", the AO determines the status of the proponent as IP, non-IP resident, or non-IP migrant;  For non-IP migrants, the regional branch of the National Commission on Indigenous People (NCIP) should determine what action is required.  Proponent must submit either a NCIP Certificate of Precondition or a letter from the NCIP stating that no requirements are needed. Otherwise, AO requests for PEER indicating in the request memo that (i) the proposed site is in an AD; and (ii) all NCIP requirements have been met and attaching therewith the documentary evidences.  PMO reports to ADB on approved subloans in IP areas attaching therewith the relevant NCIP clearances.

<sup>8</sup> Joint DENR Memorandum Circular 2003 on Harmonization of the Implementation of the IPRA and Environmental and Natural Resources (ENR) Laws and Policies.

<sup>9</sup> DENR Revised Procedural Manual of 2007 EIA coverage and requirements screening checklist page 53

<sup>10</sup> Environmental Management Bureau Circular 1/2007 on Environmental Assessment Review Manual appendix 1 on Relationship of EIA Findings to Requirements of Other Agencies Involved in the Project.

Proposed Investment	Potential IPRA Requirement	DBP Compliance Actions
	<p>application) and their locations and disseminate to all account officers (AOs) involved in the ADB-CBHC Project.</p>	
<p>Establishment or upgrading doctors, midwives, nurses, and birthing clinics, infirmaries, diagnostic centers / laboratories, and pharmacies / drugstores</p> <p><u>Documents required</u></p> <ol style="list-style-type: none"> <li>1. Finalize IP checklist</li> <li>2. Finalize appraisal report template</li> <li>3. IP PEER</li> <li>4. PMO semiannual report section on IP</li> </ol>	<p>If located in an AD (certified or under application) and the proponent is a non-resident migrant to the AD.</p> <p>RMCs each year should visit their NCIP regional offices and obtain a list of ADs (certified or under application) and their locations and disseminate to all account officers involved in the ADB-CBHC Project for guidance.</p>	<p><u>For new facilities:</u></p> <p>Account Officer (AO) determines if the proposed site is in an AD;</p> <p>If “yes”, the AO determines the status of the proponent as IP, non-IP resident, or non IP migrant;</p> <p>For non-IP migrants, regional branch of the NCIP should determine what action is required.</p> <p>Proponent must submit either a NCIP Certificate of Precondition or a letter from the NCIP stating that no requirements are needed. Otherwise, AO requests for PEER indicating in the request memo that (i) the proposed site is in an AD; and (ii) all NCIP requirements have been met and attaching therewith the documentary evidences.</p> <p>PMO reports to ADB on approved subloans in IP areas attaching therein the relevant NCIP clearances.</p>
<p>Microfinance activities involving existing private midwives or nursing practices, introduction of generic drug outlets,</p>	<p>Not required under the IPRA as the enterprises already exists</p>	<p>None</p>
<p>Provision of private business solution services such as drug procurement and distribution, laundry services, accounting, security, IT and backroom operations.</p>	<p>If located in an AD (certified or under application) and the proponent is a non-resident migrant to the AD.</p> <p>RMCs each year should visit their NCIP regional offices and obtain a list of ADs (certified or under application) and their locations and disseminate to all account officers involved in the ADB-CBHC Project for guidance.</p>	<p><u>For new facilities:</u></p> <p>Account Officer (AO) determines if the proposed site is in an AD;</p> <p>If “yes”, the AO determines the status of the proponent as IP, non-IP resident, or non IP migrant;</p> <p>For non-IP migrants, regional branch of the NCIP should determine what action is required.</p> <p>Proponent must submit either a NCIP Certificate of Precondition or a letter from the NCIP stating that no requirements are needed. Otherwise, AO requests for PEER indicating in the request memo that (i) the proposed site is in an AD; and (ii) all NCIP requirements have been met and attaching therewith the documentary evidences.</p> <p>PMO reports to ADB on approved subloans in IP areas attaching therein the relevant NCIP clearances.</p>

15. The Project is expected to have little or no impact on IPs. Eligible public sector subloans will not have an IP impact as these are required to maintain or restore level and type of service already provided. Private commercial sector subloans are not expected in most IP areas because remote and low population density areas generate little demand. Private charitable

organizations with outreach to IP areas generally meet their capital requirements from their membership. Credit demand may exist in the population centers of special areas where large parts or the entire province<sup>11</sup> has been designated as an IP area. An FPIC, however, is only required if the proponent is a migrant. As loan operational guidelines require the proponents to hold title to the proposed project site, subloan proposals from migrants are unlikely to qualify.

### I. OBJECTIVE OF THE IPF

16. The IPF describes how ADB policy on IP will be complied including DBP's role as the Financial Institution, screening of potential IP impacts, required actions, verification process, financing arrangements, reporting, and monitoring and evaluation.

### II. STRATEGY FOR IP PARTICIPATION

17. All subloan proposals will be screened taking into account the investment type, site location, service area, and status of the proponent as IP or non-IP. For subloans required to follow the NCIP guidelines on FPIC and to secure evidence of compliance from the regional NCIP office, compliance to said requirements will be a pre-condition for credit approval.

### III. INSTITUTIONAL AND IMPLEMENTATION ARRANGEMENT

18. Role of DBP, subloan borrowers, and wholesale institutions: DBP acts on ADB's behalf to ensure all subloans comply with ADB safeguard policies and assumes all of the costs (and risks except for wholesale subloans which are assumed by the wholesale lending institutions) associated with marketing, assessment, credit evaluation, and monitoring. The subloan proponent is responsible for securing all required accreditations and certifications. DPB monitors the process to ensure all regulatory requirements are met. The agreement between DBP and its onlending partners spells out their responsibilities and reporting requirements.

19. As Project executing agency, the DBP will establish the Project Management Office (PMO) which will function as implementing unit. Lending activities will be carried out by the DBP Branch Banking Sector, LGU (Marketing) and Financial Institutions.

**Table SAF.2: DBP Responsibilities by Unit and Type of Investment**

Unit	Coverage of Responsibilities	Type of Investment
Program Development	All	All
Project Management Office	Project implementation, management and monitoring	All
Branch Banking Sector	Retail lending	Private sector: doctors' practice/clinics, lying-in clinics, business solution services, pharmacies, drugs distribution
LGU (Marketing)	Local government units (LGUs)	Public sector: hospital upgrading or construction, rehabilitation/construction of RHUs
Financial institution	Wholesale lending to MFIs and rural banks	Private sector: midwives, generic drug outlets, doctors' practice/clinics

20. The PMO will be responsible for certifying compliance with ADB safeguards on IP. The Account Officers of the lending units will be responsible for verifying compliance with IP

<sup>11</sup> including all provinces Cordillera Administrative Region and large parts of Regions X, XI, XII, and XIII,

requirements. As IP impact screening will be carried out as part of the initial credit evaluation, subproject proposals which may require an FPIC will be flagged for monitoring by the PMO.

21. Performance monitoring requirements, procedures and responsibilities are shown in Table 1. The attached annex includes reporting templates for each stage of the subloan cycle, sample documentation, lists of documentation to be submitted by the borrower, and references to appropriate NCIP and ADB regulations and guidelines. The annex also includes the format and contents of the 6-month compliance reports to ADB and the quarterly compliance reports. Loan Agreements will require compliance with NCIP Administrative Order No. 1/2006 guidelines related to agreements reached in the MOA including all monitoring and grievance procedures.

22. Each year, the DBP Regional Management Centers will submit to the PMO the location of existing, proposed ancestral domains, and lands, and IP *Barangays* obtained from the regional NCIP offices. The information will be included in the OPG as the geographic basis for determining FPIC compliance requirements.

#### **IV. BUDGET AND FINANCING**

23. The resources required to comply with ADB and NCIP requirements depends on the number of subprojects in IP areas, the nature of the activity, and whether the proponent is a migrant. Few, if any are expected. In the event an FPIC is required, the subproject proponent pays all cost associated with securing the NCIP Certificate of Precondition, implementing any specific agreements reached in the MOA including the cost of implementing grievance procedures. The cost of screening and monitoring compliance will be borne by DBP and can be carried out by existing staff in conjunction with the other screening, implementation, and monitoring requirements related to the credit evaluation process of DBP.

#### **V. MONITORING AND EVALUATION**

24. DBP will provide a report to ADB in compliance with IP safeguard requirements every six months. The report will include copies of credit evaluation summaries, certificates of preconditions, the updated list of IP areas, and on the conduct of any grievance proceedings conducted by the NCIP. On each project review mission, ADB will examine a random sample of credit evaluation reports and, where appropriate, conduct site visits to determine if the IP screening procedures are being followed and if they are adequate and meet with regional NCIP officials on project compliance.