

**REPUBLIC OF THE PHILIPPINES**  
*Office of the President*  
**NATIONAL COMMISSION ON INDIGENOUS PEOPLES**  
Quezon City

Administrative Circular No. 1  
Series of 2003

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**SUBJECT: RULES ON PLEADINGS, PRACTICE  
AND PROCEDURE BEFORE THE  
NATIONAL COMMISSION ON  
INDIGENOUS PEOPLES**

Pursuant to Sections 44 (o), and 69 (a) of R.A. 8371, otherwise known as "The Indigenous Peoples Rights Act of 1997," the following rules are hereby promulgated for the information and guidance of all concerned.

**RULE 1- PRELIMINARY PROVISIONS**

**Section 1. Title.** These rules shall be known as the "Rules on Pleadings, Practice and Procedure Before the NCIP".

**Section 2. Scope.** These rules shall govern the hearing and disposition of cases filed before the Regional Hearing Office (RHO) and the National Commission on Indigenous Peoples (NCIP).

**Section 3. Construction and Rules of Interpretation.** These rules shall be liberally construed to give meaning to the provisions of R.A. 8371. In the interpretation of the provisions hereof, the following shall apply:

- a. All doubts in the interpretation of the provisions of these Rules or any ambiguity in their application shall be resolved in favor of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs);
- b. In applying the provisions of these Rules 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 be given due regard;

- c. The primacy of customary laws shall be upheld in resolving disputes involving ICCs/IPs;
- d. In resolving cases, the customary laws, traditions and practices of the ICCs/IPs in the ancestral domain where the conflicts arises shall first be applied with respect to property rights, claims of ownership, hereditary succession and settlement of land disputes.

## **RULE II- DEFINITION OF TERMS**

**Section 4. Definition of Terms.** - The terms and phrases defined under Section 3 (a) to (p) of R.A. 8371 shall be given the same meanings when used herein and in addition thereto:

**(a). NCIP/Commission.** The terms NCIP and Commission for purposes of these rules shall be used interchangeably and shall mean the National Commission on Indigenous Peoples acting as a quasi-judicial body; and

**(b). Regional Hearing Officer/RHO** - The term Regional Hearing Officer refers to the duly appointed or officially designated as Regional Hearing Officer by the head of the agency authorized to hear and decide cases filed before it in accordance with these rules.

## **RULE III- JURISDICTION**

**Section 5. Jurisdiction of the NCIP.** The NCIP through its Regional Hearing Offices shall exercise jurisdiction over all claims and disputes involving rights of ICCs/IPs and all cases pertaining to the implementation, enforcement, and interpretation of R.A. 8371, including but not limited to the following:

- (1) Original and Exclusive Jurisdiction of the RHO:
  - a. Cases involving disputes and controversies over ancestral lands/domains of ICCs/IPs;
  - b. Cases involving violations of the requirement of free and prior and informed consent of ICCs/IPs;
  - c. Actions for enforcement of decisions of ICCs/IPs involving violations of customary laws or desecration of ceremonial sites, sacred places, or rituals;
  - d. Actions for redemption/reconveyance under Section 8(b) of R.A. 8371; and

- e. Such other cases analogous to the foregoing.

(2) Original Jurisdiction of the Regional Hearing Office:

- a. Cases affecting property rights, claims of ownership, hereditary succession, and settlement of land disputes, between and among ICCs/IPs that have not been settled under customary laws; and
- b. Actions for damages arising out of any violation of Republic Act No. 8371

(3) Exclusive and Original Jurisdiction of the Commission:

- a. Petition for cancellation of Certificate of Ancestral Domain Titles/Certificate of Ancestral Land Titles (CADTs/CALTs) alleged to have been fraudulently acquired by, and issued to, any person or community as provided for under Section 54 of R. A. 8371. Provided that such action is filed within one (1) year from the date of registration.

**Section 6. Filing of Case Directly With the Commission not Allowed.** No case shall be brought directly to the Commission except in cases where the Commission exercises exclusive and original jurisdiction.

When in the opinion of the Regional Hearing Officer the action filed involves a matter of national significance or concern, he may certify and elevate the same to the Commission for proper disposition. The Commission may, in its discretion, assume jurisdiction thereof or remand the same to the concerned RHO for hearing and proper disposition.

**Section 7. Rule on Criminal Actions.** For purposes of imposing the penal sanctions as provided for under Section 72 of R.A. No. 8371 that require criminal proceedings, offenses in violation of Sections 10, 21, 24, 33, and 59 of the same Act shall be prosecuted before the Regular Courts of proper jurisdiction. Jurisdiction over the civil and administrative aspect of said cases, however, shall be retained by the Commission and the RHO.

**Section 8. Effective Exercise of Jurisdiction.** The Commission or the RHO may adopt measures to carry into effect the jurisdiction of the NCIP, including the issuance of supplementary writs or processes, especially where no procedure to be followed in the exercise of such jurisdiction is specified by law or by these Rules unless the same is violative of customary laws or it does not conform with the meaning and spirit of R.A. 8371.

## **RULE IV- PRECONDITION FOR ADJUDICATION**

**Section 9. Exhaustion of remedies provided under customary laws.** No case shall be brought before the RHO or the Commission unless the parties have exhausted all remedies provided for under customary laws.

**Section 10. Indigenous System of Settlement.** The following rules shall apply in disputes involving ICCs/IPs, :

- (a) Where the parties belong to the same tribe or ethnolinguistic group, the same shall be referred for settlement in accordance with the dispute settlement institution in the ICC/IP community;
- (b) Where the parties belong to different tribes or ethnolinguistic groups, the dispute shall be referred for settlement in accordance with established procedures covering inter-tribal disputes, if any, or in its absence, the parties may agree on the applicable procedure. Failure of agreement on this matter shall be considered as failure of settlement; and
- (c) As a general rule, lawyers are prohibited to appear for any party as counsel, except when such lawyer is appearing in his/her capacity as a member of the council of elders or due to his/her obligation as member of the IP community or for the purpose of defending or prosecuting his/her case.

**Section 11. Effect of Settlement.** Settlement of disputes shall have the same force and effect as settlement arrived at or decision promulgated in accordance with these rules.

**Section 12. Failure of Settlement.** Where the parties fail to settle their disputes as provided herein, the members of the indigenous dispute settlement group or council of elders shall issue a certification to the effect that all diligent efforts for settlement under customary practices failed.

**Section 13. Certification to File Action.** Upon the request of the proper party, members of the indigenous dispute settlement group or council of elders shall likewise issue a certification to file action before the NCIP. In giving due regard to customary laws, the certification may be in any form so long as it states in substance the failure of settlement notwithstanding the efforts made under customary law or traditional practices.

**Section 14. Exceptions.** The certification shall not be required in the following cases:

- a. Where one of the parties is a public or private corporation, partnership, association or juridical person or a public officer or employee and the dispute is in connection with the performance of his official functions;
- b. Where one of the parties is non-IP/ICC or does not belong to the same IP/IC Community, except when he voluntarily submits to the jurisdiction of the Council of Elders/Leaders;
- c. Where the relief sought for in the complaint or petition seeks to prevent any grave, imminent and irreparable damage or injury that may result if not acted upon immediately; and
- d. Where the Council of Elders/Leaders refuse to issue the necessary certification without justifiable reasons.

**Section 15. Failure to Submit Certification.** The failure to submit the certification from the Council of Elders/Leaders shall be a ground for the dismissal of the action. The dismissal shall be without prejudice to the re-filing of the case.

**Section 16. Records.** The Provincial Office of the NCIP shall keep a file of all disputes brought before the indigenous system of dispute resolution, whether said dispute was settled or not and where they actively participated in the documentation of the settlement process of any case or dispute, it is their responsibility to transmit the settlement or certificate of non-settlement to the RHO.

## **RULE V- VENUE AND COMMENCEMENT OF ACTIONS**

**Section 17. Real Actions.** Actions arising out of disputes or controversies over ancestral domain/land, or actions involving real properties shall be filed with the RHO directly or through the Provincial Office of the NCIP having jurisdiction over the ancestral domain/land. In case the subject ancestral domain/land or portion/s thereof straddles two or more administrative or ethnographic regions, the action shall be filed with the RHO where a greater portion thereof is situated.

**Section 18. Personal and Other Actions.** Personal and other actions shall be filed with the RHO where the petitioner/plaintiff resides or where the respondent/defendant resides at the option of the Petitioner/plaintiff.

**Section 19. Waiver of Venue.** When improper venue is not objected to in the answer, it is deemed waived.

**Section 20. Commencement of Action.** An action shall commence upon filing of a complaint/petition in accordance with these rules.

## **RULE VI- PARTIES TO ACTIONS OR PROCEEDINGS.**

**Section 21. Proper Parties.** The parties to any case or proceeding before the RHO or the Commission may be natural or juridical persons and other entities authorized by law.

**Section 22. Real Party in Interest.** Every case must be prosecuted and defended in the name of the real party in interest who shall sue as "plaintiff" or "petitioner" for the complainant and in the case of the person being sued, shall be joined as "defendant" or "respondent."

**Section 23. Class Suit.** When the issues and subject matter of the dispute or controversy involve common and general interest to many persons, one or more may sue or defend for the benefit of all. In such case, the RHO or the Commission shall ensure that the rights and interests of all parties are fully protected.

**Section 24. Indigent Litigant.** A party may be authorized to prosecute his action or defense as a pauper litigant upon a proper determination that the party is indigent. Such authority, once given, shall exempt said party from payment of filing, appeal, and other legal fees.

## **RULE VII- PLEADINGS AND MOTIONS**

**Section 25. Authorized Pleadings.** The pleadings allowed under these rules shall be the complaint/petition which must be verified by the parties before officers authorized by law to administer oath, and the answer.

**Section 26. Complaint/Petition.** The complaint or petition is the pleading containing the allegations of the plaintiff's or petitioner's cause of action. The complaint/petition shall state and narrate clearly the cause or causes of action in paragraphs and shall specifically state the substance of the claim made, the grounds relied upon, and the relief being pursued.

**Section 27. Answer.** An answer is a pleading containing the defendant's or respondent's affirmative and negative defenses. The answer shall state clearly in paragraphs the facts denying the material allegations in the complaint/petition. A Prayer for the dismissal of the complaint/petition for lack of jurisdiction, prescription, res judicata or for improper venue must be pleaded in the answer and not in a motion to dismiss.

**Section 28. Motions.** A motion is a prayer for relief other than by a complaint/petition or answer. Every application for relief through motions shall be set for hearing with notice to all parties concerned. The RHO or the Commission may grant the relief being prayed without need of a hearing if it is evident that the applicant is entitled to the relief and the conduct of a hearing entails additional burden and delay to the parties.

**Section 29. Motion to Dismiss, Prohibited.** No motion to dismiss on any ground shall be allowed. All defenses including grounds for a motion to dismiss shall be stated in the answer. The RHO may motu proprio dismiss the action on any of the following grounds:

- a.) Failure to comply with Rule IV, Section 9 of these Rules;
- b.) Improper venue;
- c.) Lack of jurisdiction;
- d.) Prescription; and
- e.) Res Judicata

For this purpose, the Hearing Officer may require the submission of memoranda/position papers to aid him in determining the propriety of dismissing the case.

## **RULE VIII- REPRESENTATIONS AND APPEARANCES**

**Section 30. Appearances.** Lawyers and NCIP legal officers within their respective assigned jurisdictions may appear before the Commission or the RHO as counsel for any of the parties.

A non-lawyer may appear in any proceedings before the Commission or the RHO provided that:

- a. He/she appears as a party to the case;
- b. He/she represents an organization or its members conditioned upon presentment of a written authority showing proper representation;
- c. He/she is a duly accredited member of any legal aid office;
- d. He/she is an NCIP accredited paralegal aide or member of an accredited Indigenous Peoples Organization (IPO) subject to the presentation of a written authority to represent the IPO;

**Section 31. Appearance of a Non-lawyer may be Denied.** When in the opinion or assessment of the Commission or the RHO that the rights and interests of a party litigant may not be best served or be compromised due to lack of skill and experience of a non-lawyer appearing as counsel in a case, the appearance of a non-lawyer may be denied. But where the party litigant cannot afford the services of a lawyer, the RHO or the Commission shall appoint a counsel for said party.

## **RULE IX- PROCEEDINGS BEFORE THE REGIONAL HEARING OFFICE**

**Section 32. Receipt of Complaint/Petition.** Upon receipt of the complaint/petition, the clerk of the RHO shall specify the date of receipt and shall assign the case number and immediately issue or cause the issuance of the corresponding summons to the defendant/respondent.

**Section 33. Summons.** The summons shall direct the defendant/respondent to answer the complaint/petition within fifteen (15) days from receipt thereof. The summons shall also contain a notice that unless the defendant/respondent so answers, judgment shall be rendered based upon the relief prayed for in the complaint/petition.

**Section 34. Service of Summons and Proof of Service.** The summons together with a copy of the complaint/petition shall be served to the defendant/respondent personally or if not practicable through registered mail at his given address. The process server shall certify on the manner, place, and date of service of the summons. Such certification shall constitute proof of service.

**Section 35. Failure to Answer.** Upon failure of the defendant/respondent to file his answer within the prescribed period, an order shall be issued directing the plaintiff to present his evidence ex parte. The defaulting defendant/respondent shall be entitled to subsequent notices or processes but shall not be entitled to participate in the proceedings.

**Section 36. Relief from Order of Default.** The defaulting defendant/respondent may, at anytime after notice but before judgment, may file a motion to set aside the order of default. The motion shall be accompanied by the defendant's answer together with an affidavit of merit upon any, but not limited to the following grounds:

- a. Observance or restrictions imposed by customary laws;
- b. Accident;
- c. Mistake or excusable negligence;
- d. Extrinsic fraud.

**Section 37. Preliminary Conference.** After the answer is filed and the case is not dismissed under any of the circumstance mentioned in Section 29 hereof, the RHO shall calendar the case for a preliminary conference and shall issue an order directing the parties to appear to determine:

- a) Whether there is a possibility of an amicable settlement;
- b) What issues must be resolved;
- c) What further evidence, oral or written, may be required;
- d) The date of submission of any further written material;
- e) The date and place of hearing for the reception of evidence;
- f) The fixing of a time and place for any inspection, if necessary;
- g) The date and place of hearing of final addresses or arguments; and
- h) Such other matters which may be necessary or relevant to case.

**Section 38. Judgment Based on Compromise.** Where the parties agreed to settle the controversy during the preliminary conference, an order shall be issued by the RHO directing the parties and their respective counsels to put in writing their compromise agreement within ten (10) days from the preliminary conference. Thereafter, a hearing shall be scheduled to consider the compromise agreement. Judgment shall then be rendered based on the compromise agreement. The judgment approving the compromise agreement shall be considered adjudication on the merits.

**Section 39. Reception of Evidence.** Evidence shall be presented as agreed upon during the preliminary conference. For this purpose, the stipulations made or agreements reached during said conference shall be in writing and signed by the parties and their respective counsels.

After the issues have been joined, the parties may opt to simultaneously submit their respective position paper/memoranda within twenty (20) days from the termination of the preliminary conference. All documents and evidences must be attached to the position paper/memoranda. Any move to extend the twenty (20) day period shall be filed and heard within five (5) days before the expiration of the original period upon application and only on justifiable reasons. The affidavits of the parties and their witnesses may serve as their direct testimonies.

**Section 40. Motions and Other Incidents.** The RHO, taking into consideration the restrictions of customary laws and practices, may hear and resolve motions or other incidents, including but not limited to ocular inspections, anywhere even outside of the Hearing Office at a specified time and date.

**Section 41. Hearing and Reception of Additional Evidence.** In cases where customary laws and practices are involved, hearing shall be mandatory. Should the RHO determine in the interest of justice and adhering to the primacy of customary laws, that there is a need to conduct a hearing even after the submission of the parties' position papers/memoranda, the case shall be calendared for hearing for the reception of such additional evidence or to ascertain truth on facts presented by the parties.

**Section 42. When Case is Deemed Submitted for Resolution.** The case is deemed submitted for resolution after the parties have finally offered their respective claims and defenses.

**Section 43. Period to Render Judgment.** When the case is submitted for resolution, the RHO shall decide the case within ninety (90) days from date of submission.

**Section 44. Judgment.** The decision, award or order shall determine the merits of the case stating clearly and distinctively the facts and the law on which it is based, personally and directly prepared by the Hearing Officer, signed by him, and filed with the clerk of the RHO.

**Section 45. Motion for Reconsideration.** Only one motion for reconsideration shall be allowed, which motion shall be filed within fifteen (15) days from receipt of judgment.

The filing of a timely motion for reconsideration shall interrupt the running of the period to appeal. An appeal to the Commission may be taken even without filing a motion for reconsideration.

**Section 46. Finality of Judgment.** A judgment rendered by the RHO shall become final upon the lapse of fifteen (15) days from receipt of the decision, award or order denying the motion for reconsideration, and there being no appeal made. If the 15<sup>th</sup> day falls on a Saturday, Sunday or a Holiday, the last day shall be the next working day.

**Section 47. Appeal to the Commission.** Decisions, awards, or final orders of the RHO may be appealed to the Commission by filing a Memorandum on Appeal with the RHO and serving a copy thereof upon the adverse party.

**Section 48. Perfection of Appeal.** The appeal shall be perfected upon payment of the appeal fee in the amount of FIVE HUNDRED PESOS (P 500.00). The Appeal Fee shall be paid by the Appellant upon the filing of the Memorandum on Appeal.

**Section 49. Transmittal of the record.** Upon receipt of the Memorandum on Appeal and the payment of appeal fee, the clerk of the RHO shall transmit the entire record of the case to the Clerk of the Commission within twenty (20) days from receipt of the Appellee's Memorandum on Appeal or the expiration of the period for filing the same as provided for under Section 53 of this rules.

The record containing a table of contents shall be accompanied by proof of payment of the appeal fee, and other legal fees, a certified true copy of the minutes of the proceedings, the order of approval, the certificate of correctness, all documentary evidence, and copies of transcripts chronologically arranged and appropriately paginated.

## **RULE X- PROCEEDINGS BEFORE THE COMMISSION**

### **PART I. APPEALED CASES**

**Section 50. Grounds for Appeal.** The appeal may be acted upon on any of the following grounds:

- a). Grave abuse of discretion on the part of the Regional Hearing Officer;
- b). On pure question of law; and
- c). Serious errors in the findings of facts which, if not corrected, would cause grave or irreparable damage or injury to the appellant.

**Section 51. Action on the appeal.** Upon receipt of the entire record of the case, the Clerk of the Commission shall forthwith docket the case and notify the Commission. Thereafter, the Commission may require the parties to submit their respective comment or memorandum within ten (10) days from receipt of the order.

**Section 52. Contents of the Memorandum on Appeal.** The Memorandum on Appeal shall indicate the parties to the appeal, specify the decision, award or final order appealed from, and state the material dates showing the timeliness of the appeal. It shall also contain a statement of matters involved, the issues or grounds relied upon and the relief prayed for. The Memorandum on Appeal shall be filed in ten (10) legible copies, printed on 8.5" x 11" letter-size papers, with proof of service of two (2) copies to the appellee. The original copy of the Memorandum on Appeal shall be indicated as such by the appellant.

**Section 53. Appellee's Memorandum on Appeal; contents.** Within ten (10) days from the receipt of the Appellant's Memorandum on Appeal, the appellee shall submit a Memorandum on Appeal containing a brief counter-statement of matters involved, the issues and the relief prayed for. The appellee's Memorandum on Appeal shall be filed in ten (10) legible copies printed on 8.5" x 11" letter-size papers, with proof of service of two (2) copies to the appellant.

**Section 54. Additional Evidence on Appeal, not Allowed; exception.** The Commission shall decide the appeal based upon the entire record of the proceedings before the RHO, and such memoranda and pleadings as are filed before the Commission. No additional evidence shall be introduced on appeal, except upon motion of any party in cases of newly discovered evidence, which could not, with reasonable diligence, have been discovered and produced during the conduct of the hearing before the RHO, and which if presented would probably alter the result. In which case, the Commission may remand the case to the concerned RHO for reception of such evidence.

**Section 55. Quorum.** In deciding cases on appeal, the Commission shall sit en banc and a majority of all the members of the Commission shall constitute a quorum.

**Section 56. Vote Required for Judgment or Final Order.** A majority vote of all Commissioners present during a session held en banc shall be required for the pronouncement of a judgment or final order.

**Section 57. Period to Render Decision.** The Commission shall resolve an appeal within ninety (90) days from receipt of the last memorandum or pleading required, or upon expiration of the period for filing the same.

**Section 58. Decision.** Judgment or decision of the Commission shall state clearly and distinctly the findings of facts and the conclusions of law on which it is based.

**Section 59. Opinions.** The Commission may adopt its own internal rules to govern the disposition of cases brought before it. However, Commissioners may write their own concurring, separate, or dissenting opinions in a case.

## **PART II- ORIGINAL CASES**

**Section 60. Title and scope.** In all cases originally filed with the Commission, the complainant shall be called the "Petitioner" and the adverse party the "Respondent." This Rule shall apply to original actions involving the cancellation of CADTs/CALTs, and such cases as may be determined by the Commission in subsequent issuances.

**Section 61. Number of Copies and Certification of Non-forum Shopping.** All petitions and actions under these Rules must be verified and filed in five (5) legible copies and shall contain a sworn certification of non-forum shopping.

**Section 62. Public Respondents as Nominal Parties.** Where the petition includes public respondents, they shall be joined only as nominal parties and shall not be required to participate in the proceeding, unless specifically directed by the Commission.

**Section 63. Order to Comment.** If the petition is sufficient in form and substance, the Commission shall order the respondent/s to comment on the petition within ten (10) days from receipt of the notice.

**Section 64. Expediting Proceedings; Injunctive relief.** The Commission may issue orders to expedite the proceedings, and it may grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings.

**Section 65. Action on the Petition.** After the comment is filed or the time for filing expired, the Commission shall order the parties to submit memoranda to support their claims and defenses within fifteen (15) days from receipt of notice.

**Section 66. Decision.** The Commission en banc shall render its decision within ninety (90) from receipt of the last memorandum or expiration of the period for filing the same.

**Section 67. Dismissal of the Petition.** The Commission may dismiss the petition if it finds the same to be clearly without merit or filed merely for delay.

**Section 68. Service and Enforcement of Order or Judgment.** A certified true copy of the decision or judgment shall be served upon the tribunal, corporation, board, officer, person and all parties concerned in such manner as the Commission or RHO may direct, and disobedience thereof may be punished as contempt. Service to counsel shall be deemed service upon the party.

**Section 69. Appeal to the Court of Appeals.** Decisions or judgments of the Commission may be appealed to the Court of Appeals only by way of petition for review on certiorari.

## **RULE XI- EVIDENCE**

**Section 70. Flexible Approach.** The Commission and its Regional Hearing Officers shall not be bound by technical rules on evidence provided under the Rules of Court, but shall proceed to hear and decide all cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case with due respect to the manner or mode of presenting evidence by ICCs/IPs as their customs, traditions and practices may allow. In the reception of evidence, relevancy shall be the controlling test.

**Section 71. Oath or Affirmation.** In accordance with the culture and tradition of IPs, witnesses shall be asked to take an oath of affirmation before testifying individually or as a group. Oath calls for the raising of one's right hand and swearing before God to tell the truth. For affirmation, the RHO or the Commission will simply ask the witness or witnesses to affirm that when asked questions in the hearing, he/she/they will tell the truth.

**Section 72. Members of ICCs/IPs as Expert Witnesses.** Expert witnesses are qualified as such on account of their education or training, experience and expertise. Education or training does not necessarily refer to formal education but also includes non-formal education or training received from elders or experts in the IC/IP Community. Thus a member of the IC/IP Community possessing the appropriate non-formal education or training, experience and expertise on matters relating to their customary law and traditions shall be considered as an expert witness. In case of conflict between the learned opinion of an anthropologist and the ICC/IP expert witness on customary law and traditions, the opinion of the latter shall prevail.

**Section 73. Quantum of Evidence.** Substantial evidence is necessary to establish a claim or defense under these rules.

## **RULE XII- SUBPOENA AD TESTIFICANDUM AND SUBPOEANA DUCES TECUM.**

**Section 74. Power to issue subpoena.** The Commission and the RHO in the exercise of its quasi-judicial function may issue subpoena and subpoena duces tecum to compel the attendance of a witness or persons in a proceeding before it and to require the production and presentation of documents during a hearing.

**Section 75. Service of the Subpoena.** The subpoena may be personally served to the person named therein or by registered mail.

**Section 76. Failure to Appear.** Failure to appear despite receipt of subpoena shall be punished as contempt of judicial process except when justified as when the non-appearance is due to restraints imposed by customary law and tradition.

## **RULE XIII- CONTEMPT**

**Section 77. Direct Contempt.** The Commission or any of its members or its Regional Officers may summarily pass judgment on acts of direct contempt committed in the presence of, or so near the Chairman or any member of the Commission or its Regional Hearing Officers, as to obstruct or interrupt the proceeding before the same, including disrespect towards the Commission or its Hearing Officers, offensive behavior towards other or refusal to be sworn in, or to answer as a witness, or to subscribe to an affidavit or disposition when lawfully required to do so. Those found to be in direct contempt shall be punished by a fine not exceeding two thousand pesos (P2,000.00) or imprisonment not exceeding ten (10) days, or both, if it be the Commission, or by a fine not exceeding two hundred pesos (P200.00) or imprisonment not exceeding one day, or both, if it be the RHO.

**Section 78. Indirect Contempt.** The Commission or its Regional Hearing Officers may cite and punish any person for indirect contempt on any of the grounds, and in the manner prescribed under Rule 71 of the Revised Rules of Court.

If the respondent is adjudged guilty of indirect contempt committed against the Commission, he may be punished by a fine not exceeding thirty thousand pesos (P30,000.00) or imprisonment not exceeding six (6) months, or both. If he is adjudged guilty of contempt committed against a lower court, he may be punished by a fine not exceeding five thousand pesos (P5,000.00) or imprisonment not exceeding one month, or both.

**Section 79. Appeal from Indirect Contempt.** Any person found guilty of indirect contempt by the Hearing Officers, may within a period of five days from notice of judgment, appeal the same to the Commission, and the execution of said judgment shall be suspended pending the resolution of the appeal upon filing of said person of a bond on condition that he will abide by, and perform the judgment should the appeal be decided against him. The judgment of the Commission or any of its Hearing Officers on direct contempt shall be immediately executory and non-appealable.

#### **RULE XIV- EXECUTION OF JUDGMENT**

**Section 80. Execution of Judgment, Basic Rule.** Only judgments, decisions, or final orders that finally disposes of the case shall be subject of execution as a matter of right.

**Section 81. Effective Enforcement of Judgments, Decisions, or Final Orders of the Commission and the RHO.** In order for the Commission and the RHO to effectively enforce its decisions, awards or final orders, any suitable process or procedure may be employed and adopted unless it does not conform with the spirit of R.A. 8371 and these Rules and violates customary laws and practices.

#### **RULE XV- INJUNCTION**

**Section 82. Preliminary Injunction and Temporary Restraining Order.** A writ of preliminary injunction or restraining order may be granted by the Commission pursuant to the provisions of Sections 59 and 69 of R.A. 8371 when it is established, on the basis of sworn allegations in a petition, that the acts complained of involving or arising from any case, if not restrained forthwith, may cause grave or irreparable damage or injury to any of the parties, or seriously affects social or economic activity. This power may also be exercised by RHOs in cases pending before them in order to preserve the rights of the parties.

**Section 83. Grounds for Issuance Writ of Preliminary Injunction and Temporary Restraining Order.**

- a. Free and prior informed consent of concerned ICC/IP has not been secured as required under Section 59 of R.A. 8371 and its implementing rules and regulations;
- b. The consent of the ICC/IP as required under Section 59 of R.A. 8371 was irregularly or improperly obtained thereby rendering the FPIC void ab initio;
- c. Prohibited or unlawful acts are threatened to be done or would be committed unless restrained; and
- d. Grave or irreparable injury would result if not restrained;

**Section 84. Verified petition.** Injunction or temporary restraining order may be granted only upon verified petition showing facts that would entitle the petitioner to the relief demanded.

**Section 85. Temporary Restraining Order may be Issued Ex Parte.** The Commission or the RHO may issue ex parte a temporary restraining order for a period of twenty (20) days from service to the party or person sought to be enjoined upon showing that the applicant would suffer great or irreparable injury before the matter can be heard on notice.

The RHO shall furnish the Commission copies of the Temporary Restraining Order(TRO) together with the copy of the petition and other material pleadings for the information and guidance of the Commission.

**Section 86. Period to Resolve the Prayer for a Writ of Preliminary Injunction.** Within the 20 – day period of the temporary restraining order, the Commission or the RHO shall order the respondent to show cause, at a specified time and place, why the injunction should not be granted. Within the same period, the Commission or the RHO must resolve whether the writ of preliminary injunction should be granted or not, and accordingly issue the order.

**Section 87. Grounds for Dissolution of the Injunction or Temporary Restraining Order.** The TRO or writ of preliminary injunction may be dissolved on the following grounds:

- a. Upon proper showing of its insufficiency; and
- b. If it appears after hearing that although the applicant is entitled to the restraining order or the injunction, the continuance thereof would cause

irreparable damage to the party enjoined while the applicant can be fully compensated for such damages as he may suffer.

**Section 88. Injunctive Bond.** A writ of preliminary injunction shall be issued only upon filing of the required bond as may be determined by the Commission or the RHO, which bond shall answer for any damages that might be suffered by the adverse party. An indigent litigant may be exempt from payment as provided for in Section 24, Rule VI hereof.

**Section 89. Grant of Final Injunction.** The Commission or the RHO shall grant a permanent injunction confirming the preliminary injunction or preliminary mandatory injunction if after hearing the applicant is found to be entitled to have the acts complained of permanently enjoined. An order shall be issued ordering the respondent to perpetually refrain from the commission or continuance of the act or acts subject of the petition.

## **RULE XVI- PRELIMINARY INVESTIGATIONS AND PROSECUTION OF OFFENSES DEFINED AND PENALIZED UNDER R.A. 8371**

**Section 90. Nature of Offenses.** Offenses or crimes in violation of customary laws and offenses provided for and defined under R. A. No. 8371 shall be treated as violations of Special Laws.

**Section 91. Scope.** This Rule shall govern the following cases:

- a). Violations of customary laws providing for penal sanctions;
- b). Violation of Sections 10, 21, 24, 33, and 59, R.A. 8371; and
- c). Such other special laws necessarily affected by the application of R.A. No. 8371.

### **PART I. PRELIMINARY INVESTIGATION**

**Section 92. Preliminary Investigation.** A preliminary investigation under these Rules is an inquiry to determine whether a probable cause exist to prosecute a person or persons for offenses under customary laws, and offenses punishable under R.A. No. 8371.

**Section 93. Persons Authorized to Conduct Preliminary Investigation.**

Concurrently with persons authorized to conduct preliminary investigations under Section 2, Rule 112 of the Rules of Court, all Legal Officers and Regional Hearing Officers of the NCIP are authorized to conduct preliminary investigations to determine whether a probable exists to prosecute cases of violation of R.A. 8371.

**Section 94. Conduct of preliminary investigation.** Preliminary investigations shall be conducted as follows:

**a). Fact-finding investigation.** Upon verbal report or written complaint of the ICCs/IPs, a fact- finding investigation may be initiated which includes the preparation of affidavit or sworn statement of witnesses, gathering of facts and evidences, and preparation of the complaint. The conduct of a fact-finding investigation shall be the primary function of the Provincial Legal Officers of the NCIP.

**b). Investigation Report.** Upon the completion of the fact-finding investigation, the investigator shall submit, within ten (10) days, to the NCIP Regional Legal Officer an investigation report which shall include the formal complaint with its annexes, affidavits, and evidences.

**c). Preliminary Investigation proper.** Upon receipt of the investigation report, the NCIP Regional Legal Officer shall set the case for preliminary investigation to determine whether a probable cause exists to prosecute the offender. The notice of preliminary investigation to the respondent shall contain a copy of the formal complaint with a directive for the respondent to file the necessary counter-affidavit or answer, not a motion to dismiss, within ten (10) days from receipt thereof. With the submission of the answer/counter-affidavit, the case may be set for hearing to consider the evidences of both parties. The preliminary investigation shall be completed within a period not exceeding twenty (20) days from receipt of the answer/counter-affidavit and the resolution thereon shall be issued within fifteen (15) days from date of termination.

**d). Dismissal of the Complaint and Remedy.** If no probable cause exists, the case shall be dismissed. The complainant may file a motion for reconsideration with the NCIP Regional Legal Officer. In case of denial, the complainant may file an appeal with the Legal Affairs Office (LAO), NCIP Central Office, whose decision shall be final.

**e). Information, Where filed.** In case the Regional Legal Officer determines that there is a probable cause to prosecute the respondent, he/she shall forthwith, for the purpose of filing the necessary information, file an investigation report with the

Provincial or City Prosecutor's Office on his/her findings within ten (10) days from the termination of the preliminary investigation.

## **PART II. PROSECUTION OF OFFENSES.**

**Section 95. Procedure for Prosecution of Offenses in violation of R. A. 8371.** Prosecutions for offenses under R.A. 8371 shall be in accordance with the Revised Rules of Criminal Procedure in so far as they are applicable. The determination of a probable cause shall be under the direct control and supervision of the Public Prosecutor's Office of the Province or City where the alleged violation was committed.

**Section 96. Participation of NCIP Lawyers and Legal Officers.** In the prosecution of offenses resulting from the violations of the provisions of R.A. 9371, NCIP Lawyers and Legal Officers may be deputized by the Department of Justice (DOJ). However, the prosecution of cases shall be under the direct control and supervision of the Provincial or City prosecutor assigned to the case, and the case shall be filed with the proper court having jurisdiction thereof.

## **RULE XVII- FINAL PROVISIONS**

**Section 97. Applicability of the Rules of Court.** The provisions of the Rules of Court which are not inconsistent herewith shall apply in an analogous and supplementary character whenever practicable and convenient.

**Section 98. Separability Clause.** In case any clause, sentence, section, or provision of these Rules or any portion hereof is held or declared unconstitutional or invalid by a competent court, the other sections or provisions hereof which are not affected thereby shall continue to be in full force and effect.

**Section 99. Repealing Clause.** All administrative orders, rules and regulations, guidelines, circulars, and other issuances inconsistent herewith or contrary to the provisions of these Rules are hereby repealed or modified accordingly.

**Section 100. Effectivity.** These rules shall take effect fifteen (15) days after its complete publication in two (2) newspapers of general circulation.

Approved this 9th day of April 2003.

**(SGD.)**  
**HON. EVELYN S. DUNUAN**  
Commissioner for CAR and Region I

**(SGD.)**  
**HON. CORAZON M. ESPINO**  
Commissioner for Region II

**(SGD.)**  
**HON. PABLO SANTOS**  
Commissioner for Region III  
and Rest of Luzon

**(SGD.)**  
**HON. LAGTUM A. PASAG**  
Commissioner for Island Group  
and Rest of Visayas

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**HON. NORMA M. GONOS**  
Commissioner for Southern  
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**(SGD.)**  
**HON. EDTAMI P. MANSAYAGAN**  
Commissioner for Central Mindanao

**(SGD.)**  
**HON. REUBEN DASAY A. LINGATING**  
Chairman  
and Commissioner for Northern and Western Mindanao