

Free, Prior, and Informed Consent (FPIC): The Philippine Experience

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Free, prior, and informed consent (FPIC) is the “principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy, or otherwise use”.¹ International human rights laws recognize FPIC that protects communities from the violation of their rights, especially their land rights.

As its name implies, it has three elements. It is *free* – consent is freely taken and freely given, and free from whatever influence or pressure. It cannot be bought nor sold. It is *prior* – meaning consent is given *before* the action for which you are applying consent is done. Lastly, it is *informed* – based on *full* and unimpeded disclosure. This means the information is *true* i.e., not borne of deceit. Without these three elements, FPIC will be nothing.

FPIC in the Philippines

The Philippine experience of FPIC is a mixture of successes and failures.

FPIC is enshrined in at least two national statutes – the Mining Act of 1995 and the

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¹ Forest Peoples Programme. <http://www.forestpeoples.org/guiding-principles/free-prior-and-informed-consent-fpic>



Indigenous Peoples Rights Act of 1997 – as well as in numerous administrative guidelines. The current FPIC process is implemented through an Administrative Order that has penal provisions and the force of law.

FPIC is required for all externally introduced activities, including commercial initiatives, development projects, researchers, surveys, meetings, and in some instances, even taking photographs of indigenous peoples.

How has it been implemented?

Most, if not all development activities, i.e. mining, logging, pearl farms, that have been subjected to FPIC have been able to proceed.

However, there have been some successes in using FPIC for communities to regulate bio-prospecting. For example, Datu Vic Saway filed a case versus the National Museum concerning the illegal gathering of floral samples in Mt. Kitanglad.

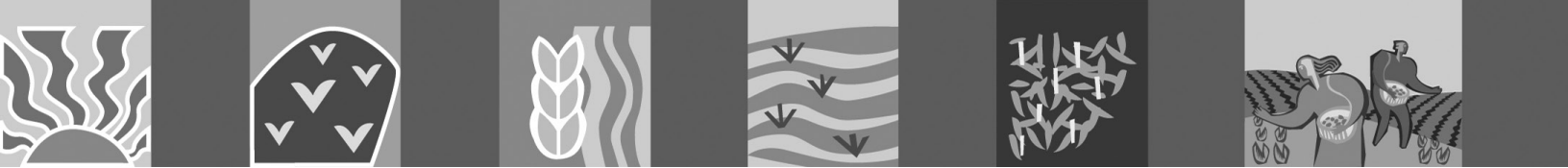
Similarly, some communities that refused to go through the FPIC process have been successful in rejecting the entry of most development activities. The Aetas of Pastolan, Zambales, denied the construction of a gold course by continuously saying no and refusing to engage the government.

Pitfalls of the FPIC

- FPIC has become an instrument used by the government to deny the right of self-determination of indigenous communities.
- Junk science and other deceitful means have been used to derail genuine FPIC. For example, drawing a line separating

the boundary of a mining claim versus an ancestral domain claim excludes the indigenous community from demanding an FPIC. Or the use of deceitful information so an IP community would allow the entry of a mining corporation.

- FPIC has divided communities and damaged people’s cultural ties by using non-traditional processes, such as voting for a simple majority in lieu of consensus-building.
- FPIC has exerted extreme stress on communities, who are forced to make hasty decisions within a very short period of time, hindering them from the benefit of sustained and comprehensive consultations to gain information and gather consensus.
- The FPIC process has shown its vulnerability to hijacking by big businesses wanting a favorable decision. For example, the FPIC’s implementing rules and regulations have been reviewed and amended at least twice upon the insistence of the mining industry, which feel that securing FPIC takes too long for a company. Consequently, the FPIC timeframe has been shortened from 120 days to 90 days.
- Extreme poverty, exacerbated by the lack of government resources, has made communities vulnerable, affecting their resolve in conducting genuine FPIC. To illustrate, mining companies shoulder the the costs for the filing of ancestral domain claims, as well as logistical requirements for an FPIC. Schools, water systems, and livelihood support have been doled out to secure favorable decisions in the FPIC process.



Challenges and lessons

- Consensus-building and decision-making among Indigenous communities are activities bound by culture and tradition. Placing these within the legal framework will restrict the practice of customary laws and the dynamic and adaptable character of indigenous institutions and customary governance systems. As a result, the FPIC regulatory guidelines, rather than reconciling government interventions within the framework of an indigenous community's space, raise the potential for conflict.
 - FPIC should be conducted alongside a community-based and community-controlled Environmental Impact Assessment (EIA) to ensure that all affected indigenous communities are not excluded or marginalized from the FPIC process. Currently, third parties define those affected or those outside the impact areas, and determine those who should be consulted or when the FPIC is mandatory.
 - Conditions that make poor communities as well as governments vulnerable to external manipulation should be addressed if we are to expect a genuine FPIC process.
 - Affected local and indigenous communities must have access to *all* relevant information to ensure *informed* consent.
 - Advocacy for adoption of the FPIC process in international as well as national laws is just part of the struggle. Real work starts with the formulation of the FPIC's Implementing Rules and Regulations and monitoring its on-ground application.
- The FPIC process is not a replacement for strong local and indigenous communities who are still capable of saying no! ■



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ANGOC is a founding member of the International Land Coalition (ILC). ANGOC is the regional convener of the Land Watch Asia (LWA) campaign and the Asian Alliance Against Hunger and Malnutrition (AAHM-Asia). ANGOC is also a member of the Global Land Tool Network (GLTN), and the Indigenous Peoples' and Community Conserved Areas and Territories (ICCA) Consortium.

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