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Strengthening the Role of Indigenous Peoples and Their Communities in Nature Conservation:
A Project Ensuring the Full and Effective Participation of Indigenous Peoples in the
Implementation of the Expanded National Integrated Protected Areas System

LEARNING MATERIAL

Free, Prior, and Informed Consent (FPIC)

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Introduction

Free, Prior, and Informed Consent (FPIC) cannot be understood separately or independently from time immemorial ownership of ancestral domain, traditional lands and resource management systems, and the customary law that govern them. This inextricable link means one cannot be appreciated fully without the other. FPIC is therefore integral to indigenous peoples (IPs). Their communities' control and use of land and water bodies determined largely by their indigenous knowledge, systems, and practices (IKSP)¹ are hence, not new, but are long time practice. Access and use of resources is commonly sought between and among IPs and their communities in order to ensure harmonious relationships. Such relationships are also meant to address threats – natural or man-made. Communities adjacent to each other seek involvement or participation in decision making if a certain project in one community affects one or several adjacent communities. For example, community “A” agrees to a project that has impacts to adjacent community “B,” then the CONSENSUS of both communities are sought. This means community members from “A” and “B” come together and participate in making a decision. Pending “bilateral talks,” no project will ensue as a means to prevent tribal conflict.

Choosing or making a decision is based on customary law that is “legislated” and shaped by many years of practice and political processes INTERNAL to the life of the tribal community. A decision to consent or “veto” is undertaken **only if the affected people or groups in the community have given their permission**. Foremost in obtaining permission is the recognition of full property rights of a group over a certain area or resource within an ancestral domain.² Absent the recognition of property rights, no FPIC process can **successfully begin**.

FPIC forms part of indigenous peoples' right to self-determination already enshrined under the International Bill of Human Rights including: a) International Covenant on Civil and Political Rights; b) International Covenant on Economic, Social, and Cultural Rights; and, c) Universal Declaration on Human Rights.

As an environmental protection mechanism, local maintenance of primary forests and its use in traditional ways have gained increased recognition amongst global environmental science and policy circles, and found to be consistent with indigenous peoples' ecologically-sound traditional land use practices that are based firmly on self-determined local practices.

¹Reyes, Giovanni. “Lockdowns and indigenous peoples.” Online Conference: The State of indigenous peoples amid the global pandemic triggered by Covid19. Global Forest Coalition, May 10, 2020.

²Carino, Jill. Philippine Task Force for Indigenous Peoples Rights. “Customary Laws and Free, Prior, and Informed Consent.” 2013.

FPIC: Features and meaning

From the above, we can take stock at certain FPIC features.³

One, FPIC is a **collective right** accorded to IPs and their communities, and not as individuals. Two, FPIC is a **community process** of decision-making internal to the community. Three, FPIC is a **defense mechanism** by IPs to protect their lands and resources. Finally, FPIC **originates from customary law and traditions** recognized under international and national laws as well as environmental and social safeguards and treaty obligations where governments are signatory.

So what exactly do we mean by “Free,” “Prior,” “Informed,” and “Consent” as a “four-shield” word? Does it imply a process towards a “Yes” only? Or does it include the right to say “No?”

- **Free** means a process free from manipulation, interference, or coercion. Thus, the Indigenous Peoples Rights Act (IPRA) states, “FPIC shall mean the consensus of ALL members of the ICCs/IPs **free from any external manipulation, interference and coercion.**”⁴ It includes absence of any threats of retaliation if it results in the decision to say “no.”
- **Prior:** this includes initial stages where community desire and consensus are first determined and established to address whether or not to enter into a project agreement. Clearly, this means that long before a license for concessions or before project authorization by government or third parties takes place, that collective desire should first be determined. Thus, IPRA provides, “FPIC shall mean taking into consideration **“consensus approval of all members of the ICCs/IPs.”**”⁵
- **Informed:** a process that facilitates the sharing of project objectives, accurate, and easily understandable information. This means sharing information about the applicant corporation’s activities, what it is going to do, and whether a study has been made where risks may have been identified attendant to project operations, and which must be presented.

Assessments are then weighed in terms of harmful impacts and the benefits that the community is entitled to. **For IPs, this serves as the Environmental Impact Assessment (EIA) where likely environmental impacts of a proposed project are to be presented to the community.**

- **Consent:** This is not without the option of rejecting a project, hence, it is a process that **does not necessarily end with a “YES.”** This is about the ability of the community’s decision to give or withhold consent. It includes the **right to say “NO,”** that in a manner of speaking, an exercise of “veto powers.” This decision follows consideration of full transparency, the whole package of information, thorough investigation of the nature and scope of the project, and weighed against indigenous peoples’ use of resources.

Cultural and Legal Basis

FPIC is a right held by IPs under international and national law, and is emerging more broadly as a principle of best practice in sustainable development. It encompasses identity and tradition, a mechanism, a right, and a life principle. It is central to the whole notion of ownership over traditional lands, culture, and “indigenous peoples’ very existence.”⁶

As an identity and tradition, it is linked with customary law that includes an “*established system of immemorial rules which had evolved from the way of life and natural wants of the people.*”⁷ It is kept intact to be transferred from one generation to the next in a cycle like life itself. The systems and rules include traditional governance over resources including forests, water bodies, and wildlife areas found within the domains.

As a mechanism, it is the result of an independent and collective decision-making process, to repeat, INTERNAL to the community.

⁶Antoine Belle Rosemarie. Chair and Special Rapporteur on the rights of indigenous peoples, Inter-American Commission on Human Rights. “The right to say “NO”: Indigenous Rights Experts Weigh in On Community Consent.” Politics of Poverty, Oxfam. 20 August 2015.

⁷TFIP, 2013. “Customary Laws and Free Prior and Informed Consent.” The cases of Palaw-an of Sofronio, Espanola, Southern Palawan; Iraya Mangyan, Abra de Ilog, Mindoro Occidental; Higaonon of Opol, Misamis Oriental; Kankanaey and Bontok peoples of Sagada and Bontoc, Mountain Province; Ibaloi and Bugkalot of Yabbi, Dupax del Norte, Nueva Viscaya; Erumanen ne Menuvu of Aroman, Carmen, Cotabato and Barangay Renibon of Pigcawayan, North Cotabato.

³International Alliance of indigenous and Tribal Peoples of the Tropical Forest, South East Asia Region and the Indigenous Peoples Foundation for Education and Environment.

⁴Par. g), Sec. 3, Chapter II, RA 8371. 1997.

⁵Par. m), Sec. 44, Chapter VII, RA 8371. 1997.

As a right, FPIC is held by indigenous peoples under international law, conventions, treaties, and UN Declarations of which the Philippines is a signatory.⁸ The UN Declaration on the Rights of Indigenous Peoples of 2007 (UNDRIP) provides IP rights to participate in decision-making on matters affecting their life (Article 18). The declaration makes it obligatory for States to “consult and cooperate in good faith with the indigenous peoples concerned” (Articles 19, 28 & 32(2)).

While UNDRIP may not have the same legal force as other UN treaties, it reflects commitments of governments to various international instruments pertaining to IPs. The affirmation of the requirement to obtain FPIC, particularly in relation to extractive projects arises from the jurisprudence of the UN Human Rights Committee, the UN Committee on the Elimination of Racial Discrimination, and the UN Committee on Economic, Social, and Cultural Rights the government is a signatory to. Indigenous peoples’ special status and rights under international law reflect their standing as distinct, self-determining peoples with collective rights, and any conflict between indigenous and non-indigenous communities are to be resolved with particular regard to this special status.

Under national laws, the 1987 Philippine Constitution carries at least six (6)⁹ provisions which ensure indigenous peoples’ way of life by shifting policy “from assimilation and integration to one of recognition and preservation.¹⁰ FPIC is one of the most prominent features of the Indigenous Peoples Rights Act of 1997 which is defined as “the consensus of all members of the ICCs/IPs [indigenous peoples] to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference, and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community” (Art 3 (g)).

⁸Article 7, Par. 5 Paris Climate Change Agreement 2016; Articles 10, 11, 18, 19, 32, United Nations Declaration on the Rights of Indigenous Peoples, 2007; Article 16, ILO 169 otherwise known as Convention concerning Indigenous Tribal Peoples in Independent Countries, 1989; Article 1, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1976; Article 1, International Covenant on Civil and Political Rights (ICCPR), 1976; Par. 4 (d) General Recommendation XXIII on the Rights of Indigenous Peoples, UN Committee on the Racial Elimination of Racial Discrimination (CERD), 1965; E/C.12/1/Add.100, para.12, UN Committee on Economic Social and Cultural Rights; Article 8 (j) UN Convention on Biodiversity, 1992

⁹Sec. 22, Article II, Sec. 5, par 2, Article VI, Sec. 5, Article XII, Sec. 6, Article XIII, Sec. 17, Article XIV, and Sec. 12 Article XVI of the 1987 Constitution; Sec 9, 13 and 29 of RA 11038 or the Expanded National Integrated Protected Area Systems Act; Sec. 3 (g) & Sec 59 of RA 8371 otherwise known as Indigenous Peoples Rights Act of 1997; Revised FPIC Guidelines of 2012, NCIP AO 3 Series of 2012; EO 247 Prescribing Guidelines and Establishing a Regulatory Framework for the Prospecting of Biological and Genetic Resources of 1995; Philippine Mining Act of 1995.

¹⁰Puno, Reynato. “The IPRA: Indigenous Peoples and their Rights. 2008.

The recently passed Republic Act 11038 or the Expanded National Integrated Protection Areas System Act of 2018 ensures IP rights in the context of protected area systems. Where ancestral domains overlap with protected areas, it states that “ancestral domains and customary rights shall be accorded due recognition.” Further, that the IPs concerned shall have the responsibility to govern, maintain, develop, protect such areas in accordance with their indigenous knowledge systems and practices.” (Par. 4 Sec. 13, & Sec. 9).

As a principle (in the context of extractives, i.e. oil, gas, and mining), IPs and their communities must be informed adequately about these projects, and in a timely manner. The community desire must first be determined and should be given the opportunity to decide before any project operations begin. The opportunity includes participation in setting the terms and conditions that address the economic, social, and environmental impacts of all phases of extraction and post-extraction operations. This must be free from force, manipulation, coercion, or pressure.

Importance of FPIC

Underlying the importance of FPIC is that it does not merely involve the life of the present generation but of the next. Harmony amongst communities adjacent to each other is to be sustained. This alone has since contributed significantly to environmental protection.

- It ensures harmonious relationship, peace, and cooperation amongst communities as this has been practiced for a long time;
- It strengthens customary laws to ensure enforcement of traditional decision-making as seen through consensus. Here, diverse views converge as added strength. These have resulted in rules that prohibit threats to the communities including encroachment of sites or areas designated with spiritual, economic, and cultural values such as hunting grounds, burial sites, watershed areas, and biocultural heritage sites. Such consensus, rules, and enforcement evolved into stewardship or community protocols that result in the conservation and protection of environmentally critical areas;
- It is also a community protocol that allows community members to perform active roles resulting in their empowerment, capacity building, confidence, and organizational strengthening;

- It is also a community protocol that allows community members to perform active roles resulting in their empowerment, capacity building, confidence, and organizational strengthening;
- It informs local and national policy decision-makers because it matches the ways of Environmental Impact Assessment (EIA) since FPIC involves environmental consequences of implementing proposed projects including identification of risks likely to occur on the physical environment as well as social, cultural, and health of the community; and,
- Respect and recognition of customary rules on FPIC and genuine implementation by government contributes highly to meeting biodiversity targets,¹¹ and for effective mitigation, if not prevention of climate change impacts.

How to Conduct FPIC

According to the National Commission on Indigenous Peoples (NCIP) FPIC Guidelines of 2012, its Operating Principles include, among others the following:

- **Consensus-Building and Decision-Making Process.** The ICC/IPs shall participate in the decision-making processes primarily through their indigenous socio-political structures. They shall likewise affirm the decisions of their duly authorized representatives.
- **Primacy of Customary Law.** In the conduct of Field-Based Investigation (FBI), FPIC, and other processes provided under this Guidelines, including but not limited to dispute resolutions in relation thereto, the primacy of customary law and decision-making processes as determined by the ICCs/IPs shall be observed and adhered to.
- **Inter-generational Responsibility.** The indigenous concept of ownership sustains the view that ancestral domains are considered community property that belongs to all generations and therefore cannot be sold, disposed, or destroyed. The ICCs/IPs shall have priority rights to manage and pursue sustainable and responsible development plans, programs, projects, or activities within their ancestral domain.
- **Transparency and Clarity.** The processes under these Guidelines shall be transparent to all stakeholders.

¹¹Swiderska, Krystyna et.al. "Biodiversity and Culture: Exploring community protocols, rights and consent." International Institute for Environment and Development. London. 2012

The applicant shall make full and accurate disclosure of information concerning the proposed program, project, or activity in a manner that is both accessible and understandable to the concerned community.

Challenges in implementing FPIC.

Some key challenges have been identified during project entry into indigenous peoples' territories. These include:

- A clash often occurs between Customary Law and the implementation of the State's FPIC process. In this case, Customary Law should prevail. IPRA should always be interpreted with liberality in favor of customary FPIC as against the State FPIC process. After all, it is not State lands or properties that are involved, but private-communal lands owned by indigenous peoples;
- Bribery of self-declared tribal leaders as revealed by a nationwide case study.¹² Some community leaders are susceptible to the dictates of corporate interests and of pro-large-scale mining LGUs and NCIP personnel;
- Disrespect of customary laws and traditional governance by project proponents and outsiders. The imposition of State policies tends to cause fragmentation of territories thereby undermining traditional structures that facilitate the practice of customary laws. By fragmentation is here meant that results directly from bribery of self-declared tribal leaders.

Some Findings on FPIC as implemented by government

As early as 2001, findings on FPIC including by a government-formed body¹³ reported "*defective FPICs and permits covering millions of hectares of ancestral domains, and not a single square meter titled in favor of indigenous peoples,*"¹⁴ and as implemented "*is not guaranteed to ring out the true aspirations of the indigenous peoples.*"¹⁵ The following institutions and groups made their respective reports and findings from the period 2004 to 2013.

¹²TFIP. "Customary Laws and Free Prior and Informed Consent." The cases of Palaw-an of Sofronio, Espanola, Southern Palawan; Iraya Mangyan, Abra de Ilog, Mindoro Occidental; Higaonon of Opol, Misamis Oriental; Kankanaey and Bontok peoples of Sagada and Bontoc, Mountain Province; ibaloi and Bugkalot of Yabbi, Dupax del Norte, Nueva Viscaya; Erumanen ne Menuvu of Aroman, Carmen, Cotabato and Barangay Renibon of Pigcawayan, North Cotabato. 2013.

¹³Administrative Order 108 Creating the Presidential Task Force on Indigenous Peoples. Malacanang. February 10, 2000.

¹⁴Claver, William Billy. "Terminal Report." Presidential Task Force on Indigenous Peoples. 2001.

¹⁵Yangot, C.L. "FPIC: A Shield or Threat to Indigenous Peoples' Rights?" As published in "Customary Laws and Free Prior and Informed Consent," by the Task Force for Indigenous Peoples. 2013.

Task Force for Indigenous Peoples (TFIP)¹⁶

- a. NCIP is not an independent body;
- b. National development thinking favors the interests of business over those of indigenous peoples;
- c. The legal system is caught in a conflict between indigenous peoples' interest and "national interest;" and,
- d. The State-led FPIC process is tainted by the bureaucratic culture of corruption and has rendered indigenous peoples vulnerable to business manipulations.

UP-Baguio and Tebtebba¹⁷

- The two groups found that NCIP's total collection of FBI/FPIC fees for the period 2004-2009 has reached Php 34.5 million while it has only reflected a combined total of Php 9.2 million funds released for cash payments (Php 5.1 million) and remittance to Local Currency, Current Account (LCCA)/FBI Account (Php 4.1 million).
- Commission on Audit (COA) Audit Certificate (2009) reports that no proper accounting of the transactions involving receipts and disbursements were made resulting in the understatement of NCIP's financial reports on its assets and liabilities.

German Agency for International Cooperation (GIZ) and Non-Timber Forest Philippines (NTFP)

- a. Economic benefits – primary consideration of communities in giving their consent;
- b. No monitoring mechanism – Memorandum of Agreement (MOA) implementation and other violations of companies;
- c. Insufficient Information, Education, and Communication (IEC) to the communities on their rights and the value of the FPIC requirement;
- d. Lack of capacity building on negotiation skills;
- e. Lack of IEC on available grievance mechanisms for communities;
- f. The role of NCIP as a facilitator is contradictory to their mandate to protect the rights of indigenous peoples; and,
- g. Documents reviewed by the FBI/FPIC team is limited to what is provided by the regulating agency/proponent.

¹⁶Yangot, C.L. "FPIC: A Shield or Threat to Indigenous Peoples' Rights?" As published in "Customary Laws and Free Prior and Informed Consent," by the Task Force for Indigenous Peoples. 2013.

¹⁷Corpuz, Vicky Tauli. Powerpoint presentation on FPIC. 2013.

GIZ and NTFP findings on NCIP as an agency

- a. Lack technical know-how and capacity to implement;
- b. Lack interagency coordination between, for example, the NCIP and DENR, MGB and DOE;
- c. Non-involvement of the LGU in the FPIC process;
- d. Even with observed irregularities in the conduct of the FPIC process, CPs are still issued by the NCIP (high threshold);
- e. CSOs are not usually involved/invited by NCIP in the FPIC process, and,
- f. Many IP communities do not trust NCIP.

The 2012 FPIC Guidelines: Key Contents

Coverage:

On Extractive, Intrusive, Large Scale

- a. Exploration, development, exploitation, utilization of lands, energy, mineral, forest, water, marine, air, and other natural resources, including feasibility studies;
- a. Programs leading to displacement and resettlement;
- b. Declaration & management of protected and environmentally critical areas;
- c. Bio-prospecting and related activities;
- d. Programs or activities affecting spiritual or religious tradition, customs, and ceremonies of IPs;
- e. Industrial or large-scale tourism/agricultural/forestry land uses;
- f. Carbon trading activities; and,
- g. Establishment of military facilities, conduct of military activities, and organizing paramilitary forces.

On Non-Extractive/Small Scale Activities

- a. Non-extractive exploitation and utilization of natural resources;
- b. Programs, plans, activities not covered in the enumeration above;
- c. Activities not requiring government permits;
- d. Feasibility studies on subject not covered by the enumeration above; and,
- e. Other Small-Scale Quarrying.

Areas EXCLUDED from any Applied Area

- a. Sacred grounds and burial sites of indigenous communities;

- b. Areas inhabited and utilized by indigenous peoples for their subsistence;
- c. Communal forests of indigenous communities;
- d. Watershed areas;
- e. Identified international and local heritage sites; and,
- f. Indigenous communities with existing boundary disputes or conflict.

Resolution of Non-Consent

- a. If the community issues a Resolution of Non-Consent, it shall be final and no request for reconsideration shall be allowed. The same proponent will not be allowed to conduct another FPIC process with the community with the same project.
- b. No similar activity shall be simultaneously entertained at a given time covering the same area.

Community-Solicited Projects

Programs, projects, and activities solicited or initiated by the concerned ICCs/IPs themselves where the activity is strictly for the delivery of basic services to be undertaken within or affecting the ancestral domain, do not require compliance with the FBI/FPIC requirement, however, they shall be subjected to a validation process.

Prohibited Acts

In relation to the applicant:

- Employment of threat, coercion, or intimidation;
- Bribery

In relation to NCIP Officers or Employees:

- Acceptance or receipt of money, gifts, or any valuable things from the applicant;
- Use of falsified narration of facts.

In relation to IP community or member and/or Elder/Leader:

- Solicitation and acceptance or receipt of gifts, money, or other valuable things from the applicant;
- Consorting or mediating with the applicant to unduly influence the result of the FPIC Process.

NGOs/CSOs/Government Agencies/ Local Government Units/Other Groups

- Undue influence or interference with the FPIC process or to the community.

Practical Tips Towards Genuine FPIC

- **Capacity Building.** This means strengthening the institutional capacities of NGOs and IPO partners, and government agencies or private corporations with programs on indigenous peoples to provide appropriate support to communities affected. The creation of a team with expertise in communication and languages, concepts, and culture of parties is **required or needed**. Team members are to be **chosen by the affected community** – NOT the government agency, NOT the NGO, NOT the applicant corporation;
- **Develop communication and information strategy.** Once risks, adverse impacts, and benefits are identified, ensure that information is properly transmitted taking into account cultural context, languages, literacy level, political organization, and local styles of exchanging information, learning, and negotiating;
- **Creating participatory partnership.** The affected community decides how they wish to represent themselves. Appropriate support should be provided to ensure the internal flow of communication necessary for informed negotiation and full participation related to **consent**. The information **MUST** include project activities on lands, negative, and positive impacts, the right to refuse consent or demanding protection of key resources or benefit sharing. The required information enables the private company, State agency, and NGO to provide key information during the entire duration of the project;
- **Participatory mapping of land use.** Participatory mapping must be conducted. Mapping helps accurate inventory of community resources, as well as the economic and cultural activities carried out can be made (i.e. sacred sites, hunting grounds, fishing zones, food trees, etc.). The Philippine ICCA Consortium provides models where mapping has helped in project success and negotiations as well as demonstrating how mapping help retain carbon in the biomass.

- **Identify resources to be protected including areas or sites that are considered non-negotiables.** Using resource inventory and mapping a focused discussion takes place to identify and protect resources. This also facilitates discussions over compensation for intended AND unintended damages caused by activities of third parties.
- **Benefit-sharing.** More often, the uses that third parties make of the land/resources within ancestral domains generate benefits or wealth for third parties while reducing the value of the area to affected people or limiting the people's access to these resources. Dams, for example, create benefits alongside negative impacts for many years. But for whom? What is the affected community entitled to?
- **Record and formalize the process of obtaining consent.** Steps and procedures for obtaining consent must be recorded in various forms satisfying the understanding of consent for both parties involved. This may include a document for the company, administration and exchange of goods and services, and holding of rituals and ceremonies.
- **Maintain relationships on which consent is based.** Consent relies on the trust of parties satisfied with the relationship. It is important to maintain the quality of relationships throughout negotiations and beyond. Obligations of each party must be respected to maintain good relations. If agreements are not honored, the affected community has the right to withdraw consent.
- **Utilize community experience on participatory process.** Community members define or co-define with outsiders (researchers, project proponents, policy-makers, etc.) rules of engagement, cooperation, and ways of working. Processes undefined by them and imposed on them merely results in adversity and resistance.
- **Adherence to meetings and consultations within the community.** If a MOA for example involving Iraya territory is signed outside of Iraya territory, the well-being of the community is here compromised.¹⁸
- **“IP Elders and Leaders” Who?** They are known in the community for their history of decision-making acceptable to community members. They stand in contrast to “tribal dealers“ or for that matter, lack traditional status whatsoever in any tribal community or society;

¹⁸Respondent Iraya youth from Mindoro who witnessed MOA signing between Irayas and Agusan Petroleum Mining Corporation, outside their territory in Batangas. 2008.

- **Clarity of role.** IP leaders who choose to participate in official layers of governance and are “elevated” to the formal structures of the State, do not make them “better off,” than practitioners of customary law. The role of IPs who occupy positions in government (Barangay to Municipal and Provincial LGU, and even an IP Congressman), is to thrust into official policy models of environmental protection that correlate with IP practices on resource management. During community interactions, their role, when taken as a government official, is mostly **technical** in the sense that they may act as conveners or facilitators of community meetings, and upon request by them. The position of IPs in State bureaucracy is regarded with respect but that position and concomitant respect do not replace customary decision-making as practiced by elders under their institutions of self-rule.

Complementary to the above is:

- **Reorganization of the NCIP.** This is not just a practical step, but out of necessity. The findings by UP Baguio, Tebtebba, GIZ, and NTFP should be taken into account. An Executive Order or a resolution from Congress to reorganize NCIP from national to local level¹⁹ has been a persistent call since the Estrada administration.²⁰ Government inaction on this has since turned this demand from “NCIP Revamp” into “NCIP Abolition” from the Cordillera IP organizations²¹ as well as Mindanao IP organizations.²² A post reorganization period includes capacity building for NCIP's rank and file and establishment of grievance mechanism.

Conclusion

FPIC is a mechanism and a process where indigenous peoples and their communities undertake their own collective and independent decision on matters that affect them. It is integral to the exercise of their right to land, territories, and resources. It is embedded in customary law and applied by IPs and their communities through collective decisions and consensus.

¹⁹Beyer, Lorelei. “Struggle for the Big River: Case Study on Blian Customary Laws, FPIC and Mining in Bong Mal.” Philippine Task Force on Indigenous Peoples. 2013

²⁰Claver, William Billy. “Terminal Report.” Presidential Task Force on Indigenous Peoples. 2001

²¹Interaksyon. “CPA Calls for NCIP Abolition.” Business World. September 15, 2017.

²²Canedo, Karina. “Lumad groups call for NCIP Abolition.” SunStar Philippines. August 13, 2016.

Held as a right inherent to an indigenous peoples' community, it is not necessarily tied to the State-defined process or government-imposed "priority" projects.²³ To be implemented. It is the prerogative of IPs and their communities to exercise their own processes under customary law which government is duty-bound to respect.

For IPs and their communities, FPIC is not new. What is new is its acknowledgment by State and non-State entities. The consent is a product of a process shaped by many years of practicing customary law, and one that has found prominence in international and national laws. Thus, Section 59 of the Indigenous Peoples Rights Act states, "No certification shall be issued by the NCIP without the free and prior, informed and written consent of ICCs/IPs concerned." The same provision further states, "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.**"

As part of IP rights to self-determination, consent for project activities comes only after the affected community has arrived at a consensus or made a decision. On the other hand, IP communities can almost certainly use provisions of law or Administrative Orders as a legal remedy or additional layer of protection to customary law, where the case of Non-Consent, for example, "**shall be final and no request for reconsideration shall be allowed**" as provided under the NCIP's own FPIC Guidelines of 2012.

Finally, FPIC thrives from the perspectives of IPs and their communities very notion of, and concept of development itself, hence, the oft-repeated query: "for whom is development?" Otherwise stated, must the life of a small segment of a population give way to the life of the bigger segment of the nation? If asked, would the bigger segment of society's population agree to the destruction of smaller communities of their fellow human beings in order to survive? Can a project that is interpreted by IPs themselves to mean their death²⁴ as the Bontoks and Kalingas exemplified then against the proposed Chico River Dam, and at present the Dumagats do against the Kaliwa Dam, really be equated with "national interest" as defined and practiced by the government? □

²³Energy projects including dams under the "Build, Build, Build" program of the Duterte government.

²⁴Dulag, Macliing. "Land is Life. Take away our land, and you take away our life. Only the race owns the land." The opposition to the Chico river dam and the murder of Macliing sparked significant strides and contributions in efforts to defend indigenous peoples' ancestral domains and their identities. These strides inspired the crafting of at least six provisions in the 1987 Philippine Constitution, enactment of IPRA (1997), and crafting of the United Nations Declaration on the Rights of Indigenous Peoples (2007).



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This learning material was prepared by Giovanni Reyes for the project "Recognizing the Indigenous Communities behind the Conservation of Nature: A Project Pursuing the Full and Effective Participation of Indigenous Communities in the Implementation of the Expanded National Integrated Protected Areas System" Jointly implemented by ANGOC, Bukluran, and PAFID, this initiative is supported through the Sudden Opportunity Grant Facility of VOICE, an initiative by the Netherlands Ministry of Foreign Affairs executed in a consortium between OXFAM Novib, and Hivos.

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The Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) a regional association of national and regional networks of civil society organizations (CSOs) in Asia actively engaged in promoting food sovereignty, land rights and agrarian reform, sustainable agriculture, participatory governance, and rural development. ANGOC member networks and partners work in 10 Asian countries together with some 3,000 CSOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy discussions with national governments, intergovernmental organizations (IGOs), and international financial institutions (IFIs).

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The formation of Bukluran Para sa Pangangalaga ng Kalikasan ng Pilipinas (BUKLURAN, Inc.) or the Philippine Indigenous Peoples Community Conserved Territories and Areas Consortium (Philippine ICCA Consortium) is a nationwide network of community membership-based indigenous people's organizations (IPOs) of all ethnographic types. It is premised on bringing together indigenous peoples who assert and utilize traditional governance to protect community-conserved areas. Common to its members is the shared view that indigenous peoples' survival depends on the protection of valuable knowledge systems and the ancestral lands on which we thrive and persist. Our community-conserved areas can become the ultimate driving force in the conservation of biodiversity when our rights to our land and resources are respected and recognized.

Our main purpose is to carry out and realize the full recognition and respect for the rights, governance and self-management of our ancestral lands.

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Philippine Association for Intercultural Development, Inc. (PAFID) is a social development organization which has been assisting Philippine indigenous communities to secure or recover traditional lands and waters since 1967. It forms institutional partnerships with indigenous communities to secure legal ownership over ancestral domains and to shape government policy over indigenous peoples' issues. PAFID works exclusively with the indigenous peoples' sector, specifically upon written or signed requests for assistance from indigenous communities or their representatives. PAFID envisions indigenous communities as responsible stewards of their resources.

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