

# Indigenous Perspectives on FPIC

**Second Regional Consultation between Indigenous Peoples Organizations from Asia and the Pacific and the UN-REDD Programme: Free, Prior and Informed Consent Processes and Recourse Mechanisms**

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# Outline

## **1. What are indigenous peoples' rights?**

- Main elements of UNDRIP**
- FPIC in the UNDRIP**

## **2. State of recognition and protection of indigenous peoples' rights**

## **3. FPIC in the Philippines**

## **4. Some Case studies on FPIC**



# Indigenous peoples' rights

- **Collective and individual human rights recognized under international human rights law**
  - UN Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007) -contains minimum standards to ensure survival, dignity, well-being of indigenous peoples (Art. 43)
  - Contains 24 Preambular Paras and 46 Articles



# **Main elements of Indigenous Peoples' rights as contained in UNDRIP**

- **Right to self-determination** – to freely determine their political status and freely pursue their economic, social and cultural development (Article 3)
- **Right to lands, territories and resources** (Arts. 25-30)



# Main elements 2

## **Right to subsistence (Article 20)**

- to be secure in the enjoyment of their own means of subsistence and development,
- to engage freely in all their traditional and other economic activities.

## **Free, prior and informed consent (FPIC)** (Arts.10,11,19,28,29,32)



## Main elements 3

- **Right to development (Arts. 23, 32)** – right to determine and develop priorities and strategies for exercising right to development and for the development and use of their lands, territories and resources.
- **Right to culture and identity** – 18 articles out of 46 deal with culture and identity.  
(Articles 2, 3, 5, 7, 8, 9, 11-15, 24-25, 31, 33-36)



# FPIC in the UNDRIP 1

- *Article 10*

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

- *Article 11*

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

- *Article 19*

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

# FPIC in the UNDRIP 2

- *Article 28*
  1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
- *Article 29*
  2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
- *Article 32*
  2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.



# Basis of Indigenous Peoples' FPIC

- due process - applies to everyone
  - “no person shall be deprived of life liberty and property without due process of the law”
- Internationally-recognized, collective, inherent and prior rights of indigenous peoples to:
  - their lands, territories and resources
  - culture
  - self-determination
- Resettlement of indigenous peoples - there is strong evidence that FPIC has attained the status of customary international law



# State of recognition and protection of Indigenous Peoples' Rights

- Constitutional amendments and recognition of multi-ethnic and multi-cultural character of nation-states
- National Laws recognizing rights of indigenous peoples (including forest laws)
- Decisions of Supreme courts and IACHR
- Policies of intergovernmental organizations



# Some bodies that have accepted FPIC:

- UN Committee on the Elimination of Racial Discrimination (CERD)
- UN Committee on Economic, Social and Cultural Rights (CESCR)
- UN Sub-Commission on Promotion and Protection of Human Rights
- UN Permanent Forum on Indigenous Issues (PFII)
- UN Working Group on Indigenous Populations (WGIP)
- UN Development Programme (UNDP)
- UN Centre for Transnational Corporations
- Convention on Biodiversity (CBD)
- Convention to Combat Desertification, particularly in Africa
- UN Development Group (UNDG)
- International Fund for Agricultural Development (IFAD)
- Inter-American Commission on Human Rights (IACHR)
- Inter-American Development Bank (IDB), Andean Community
- Asian Development Bank (ADB)
- European Council of Ministers, European Commission (EC)
- Organization of African Unity (OAU)
- World Commission on Dams
- World Bank Extractive Industries Review
- IUCN Vth World Parks Congress
- World Wildlife Fund
- International Petroleum Industry Environmental Conservation Association
- International Association of Oil and Gas Producers



# Main elements of FPIC

- **FREE** - freely given without coercion, intimidation or manipulation
- **PRIOR** - sought sufficiently in advance of final authorization of and implementation of activities
- **INFORMED** - founded upon an understanding of the full range of issues implicated by the activity or decision in question



# FPIC Legislation and Policy in the Philippines

- Indigenous Peoples' Rights Act of 1997 (IPRA)
- FPIC Guidelines of 2006 - National Commission on Indigenous Peoples (NCIP) issued Administrative Order No. 1, series of 2006
- Regulations on Bioprospecting and ABS - Executive Order No. 247 (18 May 1995)
- Wildlife Protection Act (Republic Act 9147)
- Guidelines on Bio-prospecting Activities in the Philippines - Joint DENR-DA-PCSD-NCIP Administrative Order No. 1 Series of 2005
- National Integrated Protected Areas System Act of 1992 (Republic Act 7586)



# Indigenous Peoples' Rights Act of 1997 (IPRA)

- IPRA Sec. 3 (g) – Definition of Terms (same as Sec 1 (k) of the Implementing Rules of IPRA, A.O. 1, s. 1998)
- g) Free and Prior Informed Consent – as used in this Act shall mean the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community;



# Certificate Precondition

- IPRA, Sec. 59

SEC. 59. Certification Precondition. – All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the **free and prior informed and written consent** of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That 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.



# History of the FPIC Guidelines

- RA 8371 (IPRA) - 1997
- Implementing Rules and Regulations of IPRA (IPRA IRR – A.O. 1, s. 1998)
- FPIC Guidelines – A.O. 3, s. 1998
- FPIC Guidelines – A.O. 3, s. 2002
- FPIC Guidelines of 2006 – A.O. 1, s. 2006





# Activities Requiring FPIC

- exploration, development, and exploitation of natural resources
- research and bio-prospecting
- relocation and displacement
- archaeological explorations and access to religious and cultural sites
- entry of the military and of migrants intending to do business and development work
- management of protected and environmentally-critical areas
- implementation of government reforestation and infrastructure projects
- policies affecting the general welfare and rights of indigenous peoples; and analogous circumstances



# Regular and Special FPIC Process

<b><u>Regular FPIC Process</u></b>	<b><u>Special FPIC Process</u></b>
IP/ICC members and members of the council of elders/leaders	members of the council of elders/leaders only
90 days	47 days
Activities in Sec. 6.A.	Activities in Sec. 6.B.

# Six Case Studies on FPIC

Site	People	Project
Camp 6, Tuba, Benguet	Ibaloy	Mining Exploration
Kayapa, Bakun, Benguet	Ibaloy	River Diversion
Tabuk, Kalinga	Guilayon	Mining Exploration
Bataraza, Palawan	Tagbanua	Mining Operations
Siocon, Zamboanga Del Norte	Subanen	Mineral Production Sharing Agreement
Victoria, Oriental Mindoro	Mangyan	MPSA



# Findings from Case Studies

- Consent is frequently engineered and indigenous institutions manipulated and subverted by the government and project proponents through various means
- Providing indigenous peoples with incomplete information, biased in favor of the project
- Creating fake tribal councils that grant favorable FPIC
- Fast-tracking the FPIC process
- Outright fraud in the procurement of signatures indicating consent; by totally disregarding the requirement for FPIC
- Capitalizing on government neglect of indigenous peoples



# Indigenous Responses: Asserting the right to FPIC

- Use of their customary law, which they write into their Ancestral Domain Sustainable Development And Protection Plan (ADSDPP) and in other instruments
- Community protocols, cultural guards, forest guards and other policing systems
- Community registries
- Enactment of ordinances and resolutions at the local government level
- Protesting the absence of FPIC for certain projects

# Conclusion

- The UNDRIP mandates that indigenous peoples' FPIC be obtained before projects that affect their lands, territories, resources and cultures are carried out
- FPIC, though recognized in international and national laws is not always implemented properly

# Recommendations

- Recognize the right of indigenous peoples to FPIC in national laws
- Proper implementation of the FPIC
- Institute an effective grievance mechanism for instances where the right to FPIC is violated

# Thank You!

