FPIC: A Shield or Threat to Indigenous Peoples' Rights?

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Summary

During the FPIC process, the bias of the National Commission on Indigenous Peoples for indigenous peoples should be clear.

While indigenous peoples are not free from poverty, there can be no freedom of choice. There can be no free, prior and informed consent.[1]

The Philippine government has adopted a development perspective that aggressively promotes extractive industries to support a debt-ridden economy. Liberalizing the mining industry, it allows purely foreign-owned corporations to explore and exploit the country's natural resources. Most of these resources, however, are found in territories of indigenous peoples whose traditional resource management, anchored on the principle of intergenerational responsibility,[2] has enabled them to preserve the natural wealth of their environs.

The history of the indigenous peoples in the Philippines is a paradox: the State has neglected and marginalized them while permitting business to ravage their forests and rivers for mining, dams and logging.[3] Their resources are rich but they are the poorest people in the country. As their remaining territories are targeted for more extractive projects, they are vulnerable to further abuse and exploitation.

The principle of free, prior and informed consent (FPIC) enshrined in the Indigenous Peoples Rights Act (IPRA) provides a shield against the oppression of indigenous peoples. It serves as a mechanism by which they can become part of the development process either by giving consent or withholding it when a project threatens their very existence or violates their rights. However, in myriad cases, this protection is theoretical as these peoples' consent has been misrepresented, extracted through deceit or machinations by a government in collusion with business, or obtained under an ambiance of trepidation including human rights violations. This has been made possible because of the following reasons:

1. The legal environment is double-edged: while it professes to protect indigenous peoples' rights, it legitimizes their emasculation because of its adherence to the time-honored Regalian Doctrine,[4] which takes precedence over private rights. It also gives the State the inherent power of eminent domain[5] by which it can take over indigenous lands for public use.

2. The present administration follows a development paradigm that identifies extractive industries particularly mining as a priority sector to pump-prime the sagging economy.

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3. The National Commission on Indigenous Peoples (NCIP), the bureaucratic apparatus mandated by law to implement the IPRA, is controlled by the Office of the President which openly promotes mining.

4. The bureaucracy is controlled by business interests, which is historical and rooted in a culture of corruption and bureaucratic ambiguity.

5. The protracted external oppression of indigenous peoples has pushed them to a state of internalized oppression, making them perceive their situation in the same manner as their oppressors do.

Several extractive industries have been operating with the permission of the State but without the consent of the affected indigenous peoples. The FPIC process has thus been reduced to a state mechanism to authorize or ratify the displacement of indigenous peoples from their territories and legitimize the plunder of their wealth by big business. It is not a guaranteed shield against erosion of their economic base, destruction of their socio-political institutions and desecration of their spiritual bond with their environment.

This paper deconstructs the FPIC process in the Philippines.

Indigenous Peoples and their Resources

A country with one of the richest biodiversities in the world, the Philippines, known as the Pearl of the Orient Seas, is an archipelago with a population of around 85 million people. Of this, it is estimated that 13 million or 17 percent are indigenous peoples who occupy 5-6 million hectares of the country's total area of 30 million hectares.[6] Sixty-six percent of the indigenous population is concentrated in Mindanao, 33 percent in Luzon and 1 percent in the Visayas.[7] According to the government, the indigenous peoples make up a total of 110 ethnolinguistic groups.[8]

The indigenous peoples were first called non-Christian tribes under the Public Land Law enacted in the early 1900s. Later, they came to be known as national minorities, and then cultural communities. It took years of local and international struggles and campaigns by indigenous activists and organizations for them to earn the politically correct label *indigenous peoples*.

While indigenous peoples make up less than a fifth of the Philippine population, most of the country's remaining biodiversity and other natural resources are located in their territories. The Philippines is one of the world's most highly mineralized countries, with untapped mineral wealth estimated at more than $840 billion. Citing data from the Department of Environment and Natural Resources, NCIP declared that the Philippines is one of the top five mineral exporters in the world. It has the potential to become the world's third biggest supplier of gold, fourth of iron, fifth of nickel and sixth of chromite.[9] Other important minerals include copper, silver, coal, gypsum, and sulfur as well as significant deposits of clay, limestone, marble, silica and phosphate (US State Department 2008). Of its nine million hectares of mineralized land, only about half a million hectares have been developed. Most of the mineralized lands are within the ancestral domains of indigenous peoples.

At present several extractive industries are operating in indigenous territories. In its 2008 report to the Committee on the Elimination of Racial Discrimination (CERD), the Philippine Government reported that it had already issued a total of 127 Certificates of Precondition,[10] more than half or 70 of these for mining projects, 11 for minihydro dam projects, four for forestry and 34 for smaller projects, among others.[11]

Ancestral Land Problem: A History

For more than 300 years of Spanish colonization, the native peoples, scattered across more than 7,000 islands now known as the Philippines, were subjugated and eventually surrendered to Spanish rule. Imposing the feudal theory of *jura regalia* commonly known as the Regalian Doctrine, the colonizers declared all lands in the conquered territories as belonging to the crown of Spain, resulting in the massive deprivation of the natives' right to their ancestral territories.

However, many of those living in the hinterlands remained autonomous either because they were not discovered by the colonizers or because they resisted colonization. Others hid in the mountains, in effect adopting seclusion as a form of resistance, a hardly known fact.[12] Thus, while the other populations lost their lands to the Regalian Doctrine and their ancient cultures practically swallowed up by the conquerors' way of life, these groups remained free to practice their customary ways and exist in their ancestral domains. Basically animists, they were able to preserve their environments and protect their natural bounties. Their political, socio-economic and cultural structures were protected from annihilation and persisted even in the wake of Spain's withdrawal from the Philippines after more than three centuries of colonial regime.

While these indigenous peoples survived Spanish colonization, they succumbed to the Americans who arrived in the archipelago at the close of the 19th century. Spain employed physical force and terror to colonize whereas the United States of America effectively exploited the legal system as a substitute for tyranny and brute force. The American colonial rule established the Bureau of Non-Christian Tribes in 1901 to integrate the so-called ethnic minorities into the polity (Chaffee 1969). This was a defining moment as it legally consummated the forced assimilation of the indigenous peoples who were no longer distinct peoples but were now "non-Christian tribes." This assimilation was followed by the passage of laws excluding them from their own lands classified by the colonial rule into public parks, forest reserves, town sites, and military and government reservations.

Ironically, it was during the American regime that the Supreme Court rendered a landmark decision on ancestral lands which now serves as legal vertebrae of the worldwide campaign for indigenous peoples' rights. In *Mateo Cariño vs. Insular Government*[13] the Court declared that ancestral lands and domains were never part of the public domain or subject to state ownership for the simple reason that these lands remained with the unconquered indigenous peoples, maintained as private lands owned either by clans or individuals. But *Carino* would evolve into a mere doctrine, honored more in the breach than in the observance as various laws were passed dispossessing indigenous peoples of their ancestral domains.

During the early years of the Philippine Republic, ancestral territories became resettlement areas under the Commonwealth period. It promulgated Commonwealth Act No. 141 otherwise known as the Public Land Law which, among others, vested the President with the power to classify and reclassify lands.[14] As a result of this law, succeeding Presidents issued various proclamations reserving indigenous territories for public use, effectively excluding the indigenous peoples from enjoyment of their rights.[15]

During the Marcos dictatorship, Presidential Decree No. 705 declared all lands 18 percent in slope or over part of the public domain,[16] imposing upon indigenous populations the status of squatters on their own lands as most of them inhabited the highlands. The Marcos export-oriented development program further offered indigenous territories to mining and logging concessions and other large-scale development projects like dams funded by foreign investors seduced by tax incentives and a lax regulatory policy climate.[17]

Then in 1987, the Philippine Constitution which is now the foundation of the present legal framework was adopted.

Legal Environment of Ancestral Land Rights

Philippine laws foster a natural resource management paradigm that rallies around the Regalian Doctrine and the concept of eminent domain. Since the Americans occupied the Philippines, wide tracts of ancestral territories have been lost to the State, either because they were regarded as State property or were forcibly taken from the indigenous peoples "for public use." The legal-political system became a substitute for force to legalize the methodical confiscation of ancestral territories.

The list of laws is long, but for limitations of space, this paper explores the Philippine Constitution, the Indigenous Peoples Rights Act, and the Mining Act of 1995 which have a direct and substantive bearing on the subject of this study. It also presents Supreme Court pronouncements on ancestral land rights and the present administration's development paradigm in relation to such rights.

The 1987 Philippine Constitution. Since it became a republic in 1898, the Philippines has seen several organic laws. For the reason alone that it recognizes the rights of "indigenous cultural communities" as a state policy, the 1987 Philippine Constitution is superior to all constitutions before it.[18] Further, it is categorical that "the State shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being"[19] and it "shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions and institutions." These rights, vows the latest Constitution, "will be considered in the formulation of national plans and development."[20]

However, these constitutional promises have to be regarded in the light of other provisions of the organic law. It situates the protection of indigenous rights "within the framework of national unity and development"[21] and subordinates the protection of indigenous peoples' ancestral territories "to the provisions of this Constitution and national development policies and programs."[22]

Further the Constitution mandates a natural resource management system with the Regalian Doctrine still as its bedrock. Originally "the universal feudal theory that all lands were held from the Crown,"[23] this doctrine has since evolved to vest ownership in the State as such rather than in the head thereof.[24] It is the same principle that anchors the provision: "All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State."[25]

The bipolar mood of the Constitution in dealing with indigenous peoples' rights mirrors the very same legal environment that emerged from it as can be seen in the following.

The Indigenous Peoples Rights Act. Pursuant to the constitutional mandate to protect indigenous peoples' rights, the Philippines passed Republic Act No. 8371 otherwise known as the Indigenous Peoples Rights Act.[26] Internationally, it is distinguished as a landmark legislation which saw the light of day ten years before the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Heavily, IPRA underlines the indigenous peoples' rights to their ancestral domains, to self-determination, to cultural integrity and identity, and collective human rights. The law also mandates the free, prior and informed consent of indigenous communities to the issuance,

renewal, and/or grant of any concession, license or lease to any entity. It stresses that the State may not enter into any production-sharing agreement without prior certification from the NCIP that the area affected by development projects does not overlap with any ancestral domain. The IPRA provides further that no certification shall be issued by the NCIP without the written consent of the concerned indigenous peoples**.**

The Indigenous Peoples Rights Act expands the definition of ancestral lands to embrace not only areas such as ancestral lands, forests, worship areas, hunting and burial grounds, but also pastures, residential and agricultural lands, bodies of water and other resources including mineral resources within the scope of ancestral domain.[27] However, excluded from the scope are those property rights within the ancestral domains already existing and/or vested prior to the effectivity of the law.[28] This implies that mining concessions, timber licenses and other permits for extractive industries existing before IPRA came into force must be respected. Also, it means that wide tracts of indigenous territories now in the hands of big landholders will not be reverted to the indigenous peoples.

The IPRA provides that indigenous peoples have the "the right to stay in the territory and not be removed therefrom." But it also says that "no ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain."[29] This means that ancestral land rights must capitulate to eminent domain.

Cruz vs. Secretary of Environment. The constitutionality of IPRA was unsuccessfully disputed by a former Supreme Court Justice in the case of *Isagani Cruz and Cesar Europa versus Secretary of Environment and Natural Resource.*[30] The Supreme Court was evenly divided with a voting record of 7-7 even after re-deliberation.[31] Literally, it was a stalemate. However, a law is presumed valid unless declared void by the judiciary exercising its power of judicial review.[32] Since the requisite majority vote was not obtained by the parties seeking to have IPRA struck down as a nullity, there was no legal obstacle to its constitutionality and their petition had to be dismissed.[33]

Just like the passage of IPRA, the decision is considered a hallmark by the global community of indigenous peoples. But it is of significance that the seven justices[34] who voted to declare the IPRA constitutional said:

> *The 'existing rights' that were intended to be protected must, per force, include the right of ownership by indigenous peoples over their ancestral lands and domains.*
> *xxx*
> *Examining the IPRA**, there is nothing in the law that grants to the Indigenous peoples ownership over the natural resources within their ancestral domains.** The right of the Indigenous peoples in their ancestral domains includes ownership, but **this 'ownership' is expressly defined and limited in s 7(a) and does not mention ownership of minerals, coals, wildlife, flora and fauna in traditional hunting grounds, fish in traditional fishing grounds, forest or timber in the sacred places, and all other natural resources found within the ancestral domains. The IPRA does not therefore violate the Regalian doctrine** on the ownership, management and utilization of natural resources, as declared in s 2, art XII of the 1987 Constitution.* (Underscoring supplied.*)*

Very clearly, although Cruz sealed the constitutionality of IPRA, it did not demolish the Regalian Doctrine which is the biggest obstacle to the indigenous peoples' full enjoyment of their ancestral domains.

The Mining Act of 1995. Under the Mining Act of 1995, all public and private lands are vulnerable to mining operations. The law provides that "all mineral resources in public or private lands, including timber or forestlands... shall be open to mineral agreements or financial or technical assistance agreement applications." An obvious echo of the Regalian Doctrine subverting indigenous rights, the controversial law also allows 100 percent foreign corporations to exploit and develop the country's natural resources. In vain, indigenous peoples and environmental groups fought tooth and nail to have this law abrogated by the judiciary.

La Bugal B'laan vs. Secretary of Environment. Real fears of emasculating indigenous rights led to the filing of a case[35] by an indigenous group, among many others, before the Supreme Court questioning the constitutionality of the Mining Law. The Philippines' court of ultimate resort struck down the petition, asserting:

> *The Constitution of the Philippines is the supreme law of the land. It is the repository of all the aspirations and hopes of* ***all*** *the people. We fully sympathize with the plight of Petitioner La Bugal B'laan and other tribal groups, and commend their efforts to uplift their communities.*
>
> *We must never forget that it is not only our less privileged brethren in tribal and cultural communities who deserve the attention of this Court; rather, all parties concerned -- including the State itself, the contractor (whether Filipino or foreign), and the vast majority of our citizens -- equally deserve the protection of the law and of this Court.* ***To stress, the benefits to be derived by the State from mining activities must ultimately serve the great majority of our fellow citizens.*** *They have as much right and interest in the proper and well-ordered development and utilization of the country's mineral resources as the petitioners. (Supreme Court 2006)*

The Supreme Court was unequivocal: in case of a clash, the indigenous peoples' interests have to be subordinated to national interest that is served by the mining industry.

Arroyo Administration's Development Paradigm. Asserting that the mining industry is the fuel for the Philippine economy's "great leap forward," the present administration adopted the Mining Revitalization Program. This program virtually offers the country's mineral resources for plunder by foreign investors who, under the Mining Act, have as much right as Filipino citizens to exploit such resources. President Gloria Arroyo was the 1995 Mining Act's principal author when she was a senator.

The legal climate is propitious to foreign investments. Aside from various tax incentives, regulatory laws are leniently enforced, an added attraction to global financial conglomerates who often have to worry over environmental regulations in the core and semi-periphery states.

Free, Prior and Informed Consent: Nature, Rationale and Process

Indigenous peoples have long been susceptible to exploitation. Pushed to the fringes of society, they were rendered voiceless as various projects were carried out in their territories sans their consent, and in some cases, over their strong opposition. It is rather ironic that these peoples who preserved the bounties in their environment have materially benefited the least from them.

But the protracted struggle of the indigenous peoples has culminated in the legal recognition of their fundamental right to self-determination[36] both in international and domestic law. The International Covenant on Economic, Social and Cultural Rights states that

> *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
>
> *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."*

The Indigenous Peoples Rights Act has a parallel provision that states:

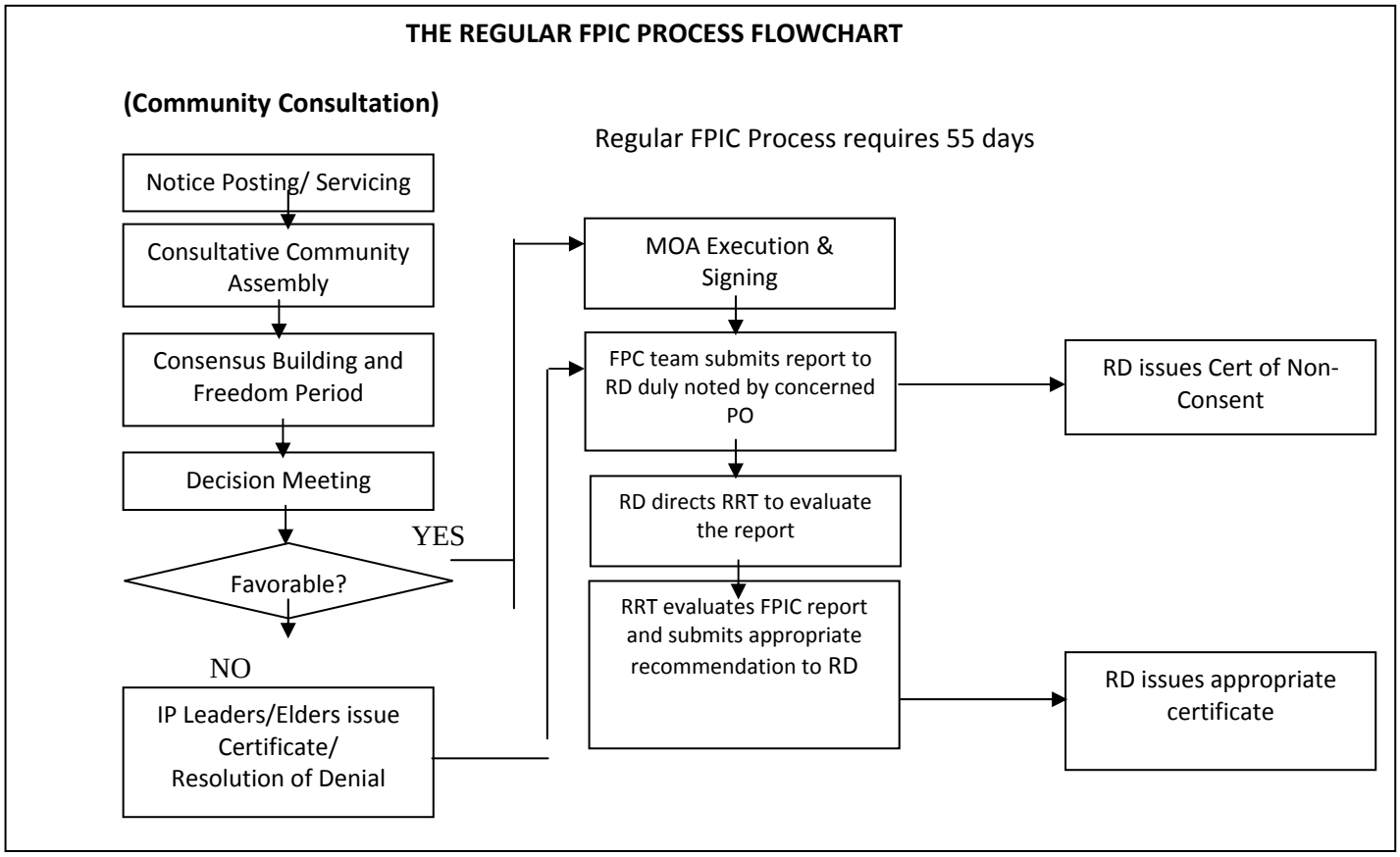
> *The State recognizes the inherent right of ICCs/IPs to self-governance and self-determination and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/IPs to freely pursue their economic, social and cultural development.*[37]

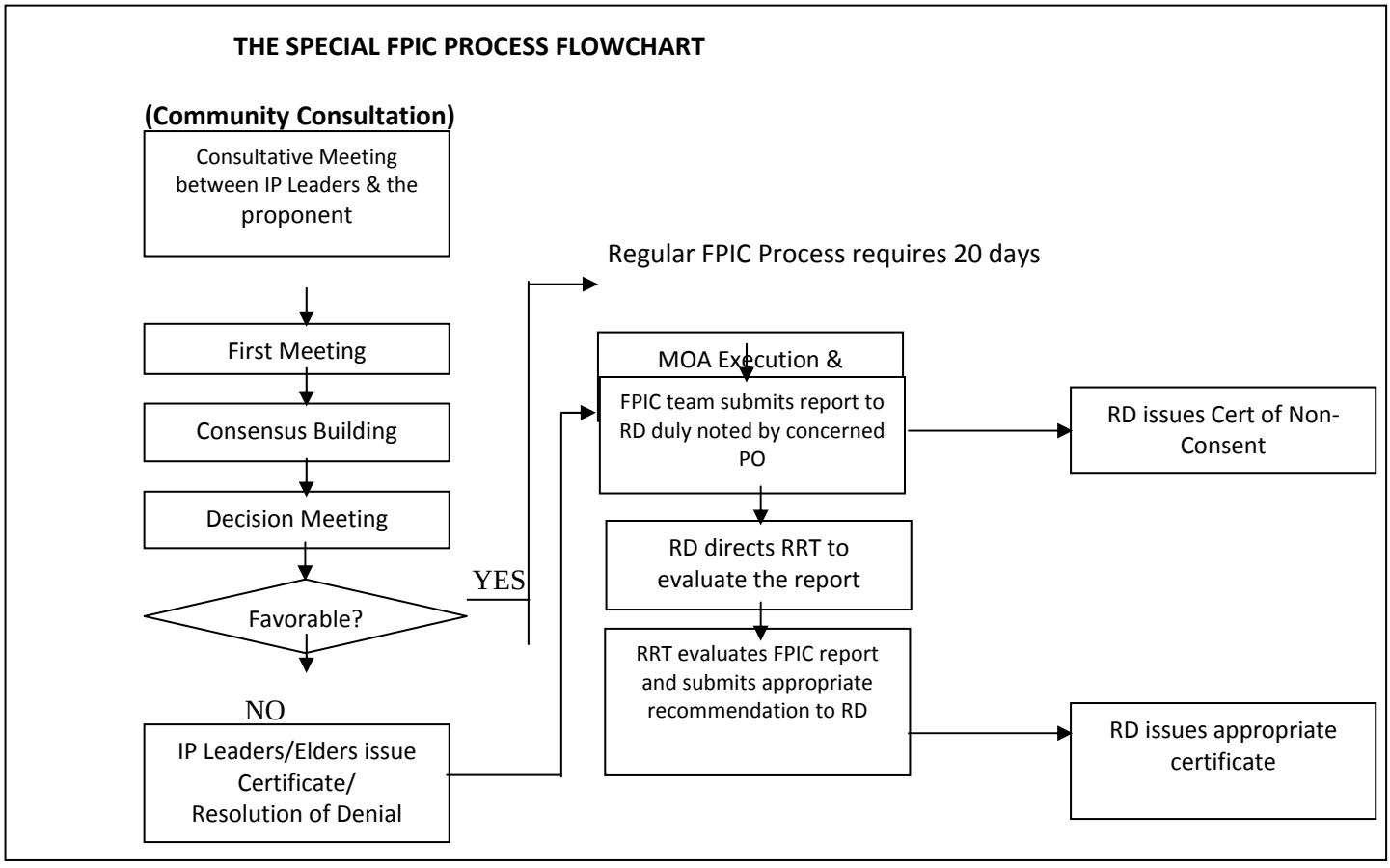
Self-determination is thus not a tapered concept limited to freedom to chart a people's political destiny but also takes account of the right "to freely pursue economic, social and cultural development" including the right to freely dispose of natural wealth and resources. This means that a people must have a voice in the manner that their resources are managed, utilized and disposed of. This voice is expressed in their free, prior and informed consent or in their withholding of it.

Scope of FPIC

Free, Prior and Informed Consent refers to the consensus of affected indigenous peoples to a project or undertaking in their ancestral domain. Giving or withholding it is an inalienable right. As a collective human right, it cannot be restrained or limited by any state. This FPIC is generated in accordance with customary laws and practices, quarantined from external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the project. The FPIC certification should be in the language and given after a process understandable to the community.[38]

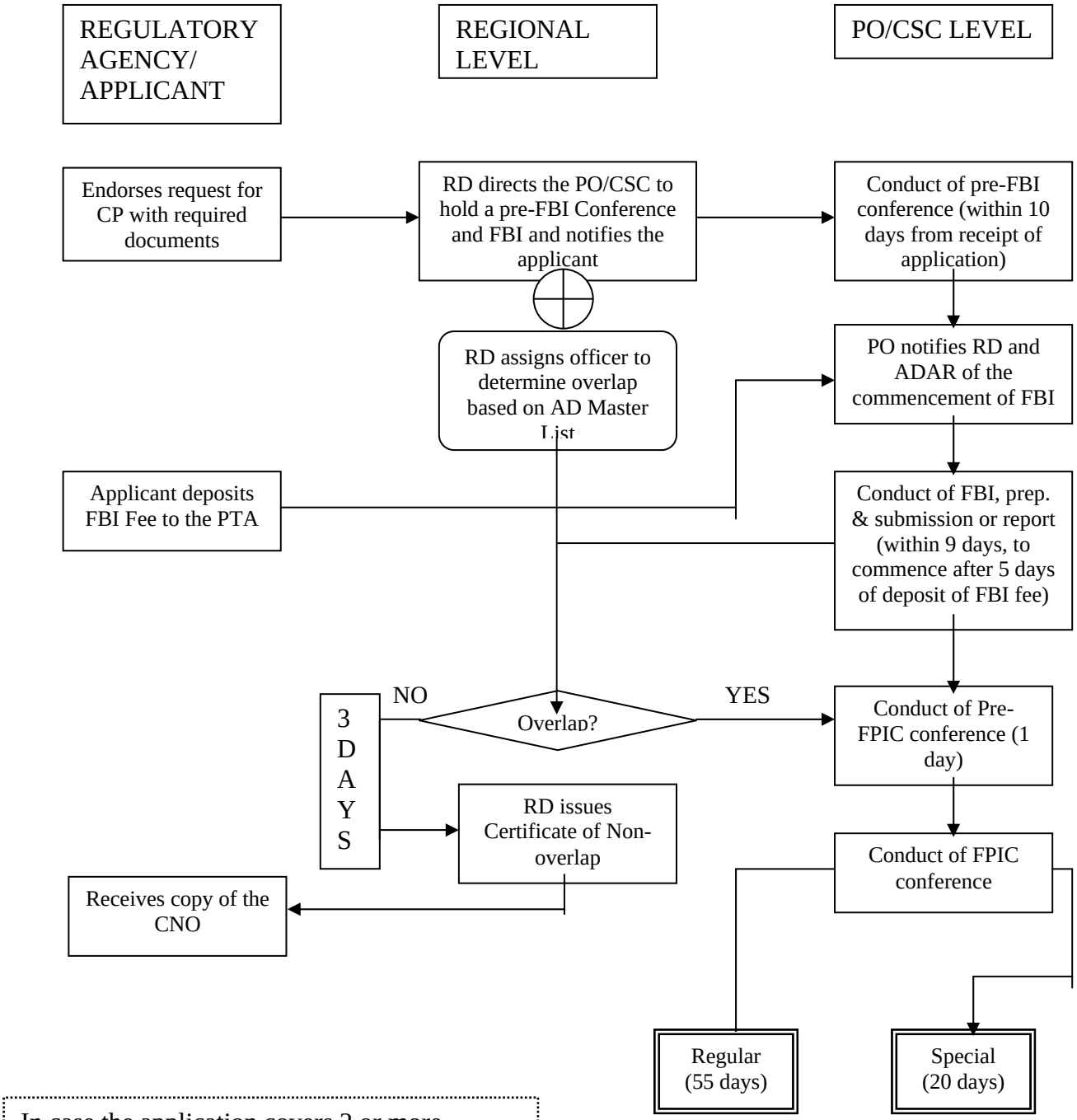
The principle of free, prior and informed consent is very useful in the protection of indigenous peoples' rights over their territories. As prescribed under IPRA, **any** project involving the extraction, development and utilization of resources within the ancestral domain should be carried out **after** obtaining the consent of indigenous peoples within the impact area. The project needs to be comprehensively assessed and evaluated, foremost to determine its possible adverse consequences on the stakeholder indigenous communities.[39] The NCIP Guidelines on the FPIC process are contained in NCIP Administrative Order No. 1, series of 2006 or the FPIC Guidelines.


THE REGULAR FPIC PROCESS FLOWCHART
(Community Consultation)
Regular FPIC Process requires 55 days
Notice Posting/ Servicing
Consultative Community Assembly
Consensus Building and Freedom Period
Decision Meeting
Favorable?
YES
NO
IP Leaders/Elders issue Certificate/ Resolution of Denial
MOA Execution & Signing
FPC team submits report to RD duly noted by concerned PO
RD directs RRT to evaluate the report
RRT evaluates FPIC report and submits appropriate recommendation to RD
RD issues Cert of Non-Consent
RD issues appropriate certificate


THE SPECIAL FPIC PROCESS FLOWCHART
(Community Consultation)
Consultative Meeting between IP Leaders & the proponent
Regular FPIC Process requires 20 days
First Meeting
Consensus Building
Decision Meeting
Favorable?
YES
NO
IP Leaders/Elders issue Certificate/ Resolution of Denial
MOA Execution &
FPIC team submits report to RD duly noted by concerned PO
RD directs RRT to evaluate the report
RRT evaluates FPIC report and submits appropriate recommendation to RD
RD issues Cert of Non-Consent
RD issues appropriate certificate

Source*: The Free and Prior Informed Consent (FPIC) Guidelines of 2006 by NCIP*

BASIC FPIC PROCESS



In case the application covers 2 or more regions, the concerned agency shall endorse the same ADO Director who will decide which RO shall take the lead.

**AD-Ancestral Domain; ADAR- ADO-Ancestral Domain Office; CNO-Certificate of Non-Overlap; CSC- FBI-Field-Based Investigation; PO-Provincial Office; PTA RD-Regional Director; RO-Regional Office*

Source*: The Free and Prior Informed Consent (FPIC) Guidelines of 2006 by NCIP*

No Certificate of Precondition may be issued by NCIP without FPIC of the affected indigenous community. Once a Certificate of Precondition is issued, the national government may issue, renew or grant a concession, license or lease covering natural resources within indigenous territories.

The experiences of Philippine indigenous peoples shatter illusions that the FPIC process is immune from manipulation or that its application generates the true sentiments of the people. As this paper's thesis asserts, the process is part of the overall design to subsume indigenous peoples' interest under the interests of business, which are promoted by a deceptive political and legal climate.

A Survey of Cases on the FPIC Process as administered in the Philippines

In its report to the Committee on the Elimination of Racial Discrimination, the Republic of the Philippines asserted:

> *It should likewise be stressed that there had been no formal protest from any Indigenous Peoples Community indicating that the FPIC process was not being followed, or that Administrative Order No. 1, Series of 2003 as strengthened by Administrative Order No. 1, Series of 2006, which laid down the procedure to be followed in the FPIC process, was defective.*
>
> *In mining areas where FPIC had been granted by the IP communities and where NCIP bestowed its Certificate of Precondition, there were no reported violations of the rights of the IPs/ICCs signifying that the FPIC process is a meaningful, effective and successful mechanism for IP rights protection and empowerment* (Republic of the Philippines 2008).

However, the experiences of indigenous peoples belie the State's claim "that there had been no formal protest" from them, that the FPIC process is not defective and that there were no reported violations of… rights." Hereunder are six cases:[40]

Bagobo-Tagabawa Tribes in Davao del Sur

One of the government's pet projects is a P5B 42.5-megawatt hydropower source in Davao del Sur in Mindanao awarded to the Hydro Electric Development Corporation (HEDCOR), a sister company of Davao Light and Power Company (DLPC) owned by the Aboitiz family known for its close ties with President Arroyo. The project was held out "not only to offer solution to the power crisis in the offing, but at the same time provide livelihood opportunities and other benefits to the communities."[41]

The hydropower plant harnesses the Tudaya Falls, Mt. Apo's highest and one of Mindanao's highest waterfalls. Tudaya Falls is bounded by the Sibulan and Baroring Rivers which HEDCOR diverts to generate electricity to supply to DLPC which in turn sells it. But the area is part of the ancestral land of the *Bagobo-Tagabawa*, a Mindanao indigenous group living in

the surrounding areas of Mount Apo. Sacred to them, Tudaya Falls is where they worship and perform rituals to their gods for every important event in the human life cycle. The waterfalls are also indispensable to their economic survival, naturally sprinkling mist to the natural vegetation and surrounding land which they cultivate for a supply of vegetables and fruits.

The indigenous peoples in the area specifically those from the *Bagobo-Tagabawa* tribes were reported by the Philippine Information Agency to have "easily accepted the entry of the project as it provided them a number of benefits.[42] This is however a misrepresentation. On November 22-23, 2006 *Sandawa Sariling Langis,* the oldest indigenous sect, held a ritual at the Tudaya waterfalls led by 106-year-old traditional leader Apo Adoc to signify their resistance to the project.

Despite the opposition, HEDCOR commenced construction in 2007. Prior to the ritual, HEDCOR had obtained a certificate of FPIC, which has been assailed because only individuals in favor of the project were invited to consultations, including people from neighboring towns. Also, the consultations presented the project in a very positive light, promising a better life for the affected communities, and utilized technical language not understood by the common people. Signatures were reportedly forged.

Protest against the project was widespread. Several organizations[43] brought complaints right to the doorstep of NCIP and DENR who were perceived to have been for the project from the start and to be inutile in protecting indigenous rights. The NCIP claimed to have conducted consultations twenty times, but these were questioned for preventing the surfacing of legitimate opposition, which was further muzzled by the presence of armed paramilitary units like the Civilian Armed Forces Geographical Unit and Civilian Volunteers Organization.[44]

To date, the opposition is sustained while HEDCOR continues to operate the project.

Subanons in Siocon, Zamboanga del Norte

In 1996, Toronto Ventures Incorporated (TVI) Resource Development Philippines, Inc., an affiliate of the Canadian mining company TVI Pacific, Inc., was granted a government permit to mine about 500 hectares in barangay Tabayo, Siocon town, Zamboanga del Norte. This area is included in the 8,000-hectare ancestral territory of the indigenous *Subanon*s in Siocon.[45]

As early as the late 1990s, TVI was mining the area despite opposition by the affected indigenous peoples. In 2001, they accused TVI of large-scale human rights atrocities against the *Subanon* tribe before the 19th Session of the United Nations Working Group on Indigenous Populations in Switzerland.[46] Before that body, they raised issues of militarization, the establishment of checkpoints and a blockade on the entry of food and other basic necessities,[47] and the disruption of movement and travel.

These acts by TVI prompted an investigation by the State's Commission on Human Rights (CHR) Region 9 which confirmed that "TVI secured its mining area with security forces belonging to the Special Civilian Armed Auxiliary (SCAA)." The investigation report further stated:

> *Basically SCAA members were trained, supplied with arms and with allowance from the Armed Forces of the Philippines (AFP). They were designed to assist the regular government forces in the maintenance of peace and order in their respective barangays. Surprisingly however, these SCAA under the TVI performed their duties in such a manner that as if the TVI is their employer when it should be the residents whom they should serve. These*

> *SCAA members even harassed the residents.* (Commission on Human Rights: 2002)

The CHR declared that a "representation be made before the AFP-Southern Command for administrative action against the erring SCAA members."[48]

On 12 June 2003, the *Subanon*s obtained a Certificate of Ancestral Domain Title (CADT) covering their 8,000-hectare territory in Siocon. The CADT was handed by President Arroyo inside the compound of the AFP-Southern Command in Zamboanga City. However the NCIP Regional Director took the original CADT copy on the pretext of registering the same at the Register of Deeds,[49] and for five years, it gathered dust at the NCIP Provincial Office. In the meantime, TVI started mining the area without the consent of the *Subanon*s while the State folded its arms. It also engaged in a character assassination campaign against the leaders opposed to its mining operations.

Further machinations resulted in the formation a Siocon Council of Elders which excluded the legitimate tribal elders in proceedings presided over by NCIP. This council then gave the alleged FPIC to mining and subsequently entered into a memorandum of agreement allowing TVI to mine Mt. Canauatan, a sacred site to the *Subanon*s.

However, *Subanon* leaders relentlessly protested the illegal mining operations and asserted their authority. In 2004, *Gukom* of the Seven Rivers, the highest judicial body of the *Subanon*s, demanded that the traditional leaders be respected and that FPIC be sought from them. It demanded that NCIP declare the Siocon Council of Elders "null and void" and nullify all agreements entered into by it. The demands fell on deaf ears, and human rights violations continued to be committed by TVI.[50] In 2007, the company was forced to apologize to the people for such violations, although its apology did not culminate in the cessation of violations.

Although unrecognized by NCIP, the legitimate elders continue to assert their leadership. When Mt. Canauatan was blasted after the 2007 apology, they sent statements of condemnation to the office.[51] In an ensuing dialogue, the NCIP Region 9 Director stated that the office recognized the otherwise ignored *Subanon* traditional leaders but would have to change the list of recognized leaders in its records.

Aside from the desecration of their sacred grounds, the *Subanon*s, 70 percent of whom depend on fishing and agriculture, face threats of food insecurity as silt is rising in rivers and coastal areas. Diminishing fish harvests have been reported as well as incidents of skin infections from contact with water from mine wastes spilling over into their agricultural lands. There seems to be no indication that the situation will be mitigated.[52]

TVI continues to mine the *Subanon*'s ancestral domain.

Baay Licuan in Abra and Similar Cases in the Cordillera

Baay Licuan, an 11-barangay[53] municipality in the province of Abra, comprises the ancestral domain of the *Binongan* people who belong to the *Tingguian* ethnolinguistic group.

In April 1998, Jabil (also Kadabra Mining Corporation) succeeded in obtaining a mining lease agreement covering Baay Licuan. Surreptitiously, this was converted into two Mineral Production Sharing Agreements (MPSA) by DENR in the name of Jabil and Abra Mining Industrial Corporation (AMIC) without the knowledge of the affected indigenous peoples. The NCIP certified there was no indigenous community affected based on the fact that neither a Certificate of Ancestral Domain Claim (CADC) was filed with the DENR nor a Certificate

of Ancestral Domain Title (CADT) with the NCIP.[54] To the government, the absence of such application means the non-existence of an ancestral domain. In other words, there can be no presumption that land is ancestral domain.[55] The burden of proving it is rests on the affected indigenous peoples.

On 23 November 2006, Jabil and AMIC signed a memorandum of understanding with the Canadian mining company Olympus Pacific Minerals to explore a 300-hectare project site in Mt. Capcapo in Baay-Licuan claimed by the two local companies.[56] In February 2007, Olympus deployed personnel and equipment in the area and initiated exploration activities.

The people took action to stop the mining project. Following an intensive four-month campaign with the assistance of peoples' organizations and the Cordillera Peoples Alliance, the *Binongan* people managed to have the NCIP temporally halt Olympus's exploration operations to allow the conduct of an FPIC process.

Prior to the start of the FPIC process, the government sent soldiers from the 41st Infantry Battalion[57] who camped near the residences of locals, justifying the deployment as part of a counterinsurgency operation. Community leaders opposed to mining were harassed and publicly accused of being members of the New Peoples Army, and some were subjected to death threats (Cordillera Peoples Alliance: 2008). The tag of NPA membership was exploited by local officials in favor of mining to legitimize their intervention in the FPIC process and by NCIP to virtually exclude indigenous leaders in the consultations.

Despite the formidable stumbling blocks put in their way by the State, the people of Baay Licuan resiliently resisted the entry of Olympus. Theirs is a success story.

Isnags in Conner, Apayao

One of the government's 24 priority development projects is the Conner Copper Gold Project which affects the provinces of Kalinga and Apayao, particularly the municipality of Conner. It is claimed that 81 percent of Conner is covered by mining applications, leaving only 19 percent for agriculture.[58] The indigenous peoples there include the *Isnag*, the original inhabitants of the area, as well as indigenous migrants from adjacent areas.

The US-based Newmont Mining Corporation first lodged an application for mining of gold and copper, which it sold in 2002 to Cordillera Exploration Inc. (CEXI), a subsidiary of UK-based Anglo American Platinum Corporation, the world's fourth largest mining company by capitalization. The Cordillera Peoples Alliance, a federation of peoples' organizations for the defense of ancestral lands and the right to self-determination, claims that Anglo American is notorious for human rights and environmental violations in its operations in South Africa and North America. The company has been named by the Canada Commission for Environmental Cooperation as one of the lead polluters in North America and has reportedly paid South Africans the world's lowest wages.[59]

In 2005 the NCIP conducted a series of consultations as part of the FPIC process, initially identifying four barangays as being directly impacted by the mining operations. At the first consultation, members of barangay Karikitan eloquently articulated their strong opposition to mining operations, and as a result, it was excluded as a target area, leaving the three other barangays as prospects. But in all three consultations conducted, the people there similarly objected to the project.

To secure a certificate of FPIC, the process swerved from the FPIC Guidelines. Meetings were held among the DENR Mines and Geo-Sciences Bureau (MGB), NCIP, the company and barangay officials, the last group subsequently campaigning aggressively for a pro-

mining stance. The communities and individuals who favored the mining exploration said the company promised to give P100,000 (US$1,782.53 based on $1=P56.10 exchange rate) to every barangay in exchange for a two-year period of exploration and also assured residents of road improvement and employment opportunities.[60]

With seeming deliberateness, NCIP neglected to validate the authority of leaders to stand for the affected community and scrutinize the customary law to determine the legitimacy of representation. Instead, it facilitated the installation of elected officials to the council of leaders. It also urged the community to choose leaders via voting, a concept strange to customary law which enshrines consensus-building. During one consultation, those present were mostly opposed to mining, thus voting was suspended. The NCIP then ordered that elders composed of five residents opposed to and five in favor of mining, together with the barangay officials, be constituted to determine how the voting would be done. The eventual voting of representatives was attended by rigging and vote buying, and in the end, mostly pro-mining residents were elected "representatives."

Harassment, intimidation and death threats against indigenous leaders were also employed. In 2007, the chair of the Save Apayao Peoples Organization who ran in the vice-mayoralty race to ensure the opposition's voice in the formal structure of leadership, was reportedly put on a military "black-list". *Innabuyog* (an alliance of indigenous women's organizations in the Cordillera region) reported that her opponent, an incumbent pro-mining public official, told voters in his campaign that "the number of votes for (the other candidate) will be the number of bodies that will float in the river."[61]

The government assigned military forces in the area and even set up a military barracks at the entrance to the municipality. Although the area was not mired in violence and no sightings were made of rebel groups, the military claimed it was there as part of a counterinsurgency measure.

The people filed petitions of protest against mining with the Mines and Geo-Sciences Bureau, the NCIP, and the municipal and provincial governments, but these were apparently ignored. In each of the three consultations held, community members registered their unwavering opposition, including in the last one when a memorandum of agreement was signed. Community representatives also attended the Anglo American shareholders meeting in London in 2007 to put on international record their objections to the conduct of the FPIC process.[62] Yet, all these legitimate objections were ignored by NCIP.

Migrant Ifugaos in Didipio, Nueva Vizcaya

In the middle of the 20th century, a number of *Ifugao*s, an indigenous people in Ifugao province, migrated to Didipio in the neighboring province of Nueva Vizcaya. At the time of the migration, Didipio was part of the ancestral domain of the *Bugkalot*s, another indigenous group, although the area was then an abandoned hunting ground. Gold was discovered in the 1970s by the Ifugaos,[63] spurring traditional small-scale mining and the arrival of *Kankanaey*s, another indigenous group.

The NCIP issued a Certificate of Precondition to Oceana Gold Corporation over 425 hectares based on FPIC obtained from *Bugkalot*s, overriding resolutions opposing it passed by the barangay council and Kasibu municipal council in 2002.[64] The indigenous migrants also protested, invoking their right to give or withhold FPIC. But the NCIP dismissed their protest on the grounds that the *Ifugao*s are mere migrants to the area and that their possession of the land for half a century cannot convert it into their ancestral domain as it is wanting of "possession since time immemorial."

The mining company meanwhile offered carrots to the affected families by dangling proposals to buy their homes at prices it dictated.[65] Those who refused to sell got the stick: they suffered demolition of their homes. As of 2008, 200 homes had been demolished.[66] The company also blocked residents' access to public roads and water supplies. It interdicted them from using the roads it constructed without its permission. A portion of the community dam from where the people draw water was barricaded.[67] Aside from these evident violations of human rights, the government deployed police and military personnel to assist company security forces in quelling public opposition to mining. Blood spilled as a man protesting demolition was shot by a company security guard while a village elder was murdered, believed to be because of his uncompromising rejection of mining.[68]

In their petition to stop Oceana's operations, the affected community also averred:

> *The residents of Didipio are largely dependent on local agriculture for both sustenance and livelihood. However, critical crop yields have been steadily declining due to the decreasing fertility of soil brought about by acid contamination from the mining operations. Arable and agricultural lands reserved for citrus and other vegetation have also been destroyed because of bulldozing and excavation in the area. This is contributing to the incidence of poverty and hunger in the region.*
>
> *The mining project site is located within a watershed area. Hundreds of hectares of forestlands have been cleared and denuded and fertile agricultural lands have been converted into mining areas, causing massive environmental damage in nearby communities. Mining operations have contributed to deforestation, biodiversity loss, and watershed degradation in this context.*
>
> *Water bodies, particularly the Cagayan River, the longest river in the Philippines, will be contaminated with heavy metals once the commercial mining operations start and reach their full capacity. An Environmental Impact Study (EIS) noted that the water supply and quality of Diduyon River, Camgat River and Addalam River watersheds in the area will be affected by the mining operation.* [69]

Yet, notwithstanding the damage and prejudice suffered by the *Ifugao*s, the NCIP continues to ignore their protest simply because of its position that legally they are not impacted as the affected land is not their ancestral domain. This argument is frail in the light of IPRA. Didipio has been an ancestral domain of *Bugkalot*s before it was devised to *Ifugao*s. The IPRA recognizes groups who have migrated from their original ancestral domains as indigenous peoples[70] impressed with the right to self-determination and, therefore, to FPIC. NCIP Administrative Order No. 1, series 2006 is emphatic that migrant indigenous peoples that have resettled, relocated or been displaced and that are occupying a portion of public domain "will not be treated as migrants and can likewise exercise their right to FPIC"[71] and that 'the right of FPIC of the resettled will depend on the custom, practice or tradition of the owners of the ancestral domain allowing or disallowing the exercise thereof.'[72]

Alangan, Bangon and Tadyawan Mangyans of Mindoro

Since 1999 the indigenous *Alangan, Bangon* and *Tadyawan Mangyans* in Mindoro province have been opposing the entry of Mindex, a Norwegian mining company, to extract nickel from their ancestral territory. But their opposition has been flouted because the mining project is one of the 23 prioritized projects of the Arroyo administration.

Upon the enactment of IPRA or in 1998, the *Mangyan*s filed three applications for a Certificate of Ancestral Domain Title over their ancestral territory of 100 square kilometers located in the forests, which is their traditional source of livelihood, and extending to areas they hold sacred. On 12 June 1999, NCIP issued a Certificate of Precondition for Mindex, which began nickel mining exploration in 1997 over the said domains, even in the absence of an FPIC certification. In 2000, a mining permit was granted to the company, and three months after, NCIP began the FPIC process. In the same year, the Canadian Crew Development Corporation acquired Mindex, and in 2006 Crew created the Intex Resources, a separately listed Norwegian based company, which is now on top of the mining operation.

Since NCIP patently put the cart before the horse, its actions in subsequent proceedings were marked by bias in favor of the granting of an FPIC to ratify its prior illegal actions. In arbitrating the FPIC process, NCIP assumed the role of an interested party rather than a neutral agency, engaging in manipulations to guarantee a favorable endorsement of the Crew/Intex project. It scheduled a community consultation in a remote beach resort and limited the invitations to individuals and organizations supportive of mining (Gariguez 2008), including a widely perceived pro-mining NGO connected to a former NCIP Commissioner.[73] Naturally the group that gathered approved the project. The NCIP regional director also reportedly promoted the mining project actively, and as claimed by the company's public relations officer, received P2M from the mining company. She did not deny receiving money but claimed that the amount was "just enough for transportation."[74]

Further the FPIC process disregarded the *Mangyan* customary laws and practices in determining community representatives. Hell (2007) reported that indigenous leaders accused NCIP of facilitating and assisting in the conduct of a process whereby false promises were made, insufficient information was provided such that some individuals affixed their signatures on documents that they did not know was a project endorsement.[75] The company sank low by resorting to indirect bribery to win over public officials and the influential among the affected Mangyans. Thus:

> *'Development' projects such as water systems, scholarship grants, plant nurseries, free seeds and seedlings distribution, farm implements, and microcredit were offered. In Brgy. Alcate, Intex Resources has signed an agreement promising to give around PhP10 million to finance the river dike, under explicit condition that the barangay (village) will endorse the mining project…*
>
> *Such indirect forms of bribery have been used among the indigenous communities. Since the IP [indigenous peoples] communities lack basic services and are comparatively poorer than the lowlanders, they are even more prone in accepting the benefits that they can derive from cooperating with the mining company, such as in the case of Kisluyan, there was a basketball court, plant nursery and the water tank, among other so-called 'development support programs.' Crew/Intex company profile bragged about these programs which were but disguised forms of bait to lure the IP organizations, Kabilogan and Sadaki, into agreeing to the mining project.* (Gariguez 2008)

As the indigenous peoples opposed the project, the State intensified militarization in the area. Abductions, arbitrary detentions, harassment, labeling of *Mangyan* leaders as terrorists and extra judicial killings of indigenous leaders and human rights defenders ensued coincidentally with militarization.

The indigenous leaders thrust their issues to the attention of the nation, which alerted the Catholic Bishops who denounced the project. Their intervention resulted in the cancellation of

the mining permit by then Department of Environment and Natural Resources Secretary Heherson T. Alvarez. Justifying the cancellation, Alvarez pointed out the failure to secure the consent of all the affected indigenous peoples, and the impact of the operations on food security and environment, the area being a watershed protected by DENR, was also mined. In an article he wrote, Alvarez said,

> *(W)hat does it gain the nation to be shortsighted and merely think of money, when an irreparable damage to the environment will cost human lives, health, and livelihood capacity of our farmers and fisherfolk, endangering the food security of our people?*[76]

However in 2004, the Office of the President, exercising the executive power of control,[77] overrode the cancellation and revived the mining permit in 2005. To date, the explorations are ongoing and operations are scheduled to go full blast in 2011.

The *Mangyan*s are not fighting a lonely battle. The municipal and provincial governments have called for a 25-year moratorium on mining,[78] and civil society and religious groups have joined the mounting opposition. The Norwegian Ambassador Torstein Stale Risa took the initiative to investigate and reported that the project was met with massive local resistance, a claim which the company vehemently denied.[79]

However, NCIP has chosen to ignore the project's social unacceptability resonating from all political corners in the province by manipulating an FPIC process to favor Crew/Intex. The national government has also amply demonstrated that it has chosen to disregard the resounding, massive opposition to mining in Mindoro. With the blessings of the State, the company continues to operate.

Palaw'ans in Bataraza, Palawan

Since 1977 or for more than 30 years, the Rio Tuba Nickel Mining Corporation (RTNMC) has been operating in Bataraza, Palawan, but despite this, the municipality remains one of the most depressed in the entire province. In its own Environmental Impact Statement, RTNMC acknowledged that Bataraza municipality has the lowest access to electricity, water, transportation and education. In a 2001 survey conducted by the Palawan Council for Sustainable Development,[80] households affected by Rio Tuba's mining said they were economically worse off than five to 10 years ago.[81]

Notwithstanding its dismal record, RTNMC applied for the operation of a P180M Hydrometallurgical Power Plant (HPP), one of government's 23 priority projects. Ninety percent of the project is financed by Coral Bay Nickel Mining Corporation (CBNC), the majority of which is owned by the Japanese Sumitomo Metal Mining Corporation, and 10 percent by RTNMC. The CBNC processes RTNMC stockpiles of nickel and cobalt ore.[82]

The HPP involves extraction of limestone from Mt Gotok located in the ancestral domain of the *Pala'wan* people and home to several families who rely on it as the source of water, food, cash crops and medicinal plants and the seat of their sacred sites.

In 2002 however the DENR issued an Environment Compliance Certificate for the Hydrometallurgical Power Plant based on the official findings of NCIP's Field Based Investigations (FBI) that no indigenous peoples were in the area because no CADT had been applied for. The next year, the company began operations, including dynamite blasting in Mt. Gotok amid protests by environmental groups and the *Palaw'an* people.

This was followed by petitions to the DENR to reverse itself because the area is part of the *Pala'wan* ancestral domain and necessarily, no project may be undertaken therein without the

indigenous peoples' FPIC. The agency remained heedless. Incidents of fraud were reported during the environmental impact assessment through misrepresentation of signatures on the attendance sheets as signatures of consent. Worse, community members were required to sign documents of project endorsement in order to obtain hospital services, a case of holding the health of the powerless hostage to the greed of capital.

The mounting protests compelled NCIP to start the FPIC process. However, as in other FPIC processes involving other mining projects in Palawan, it was corrupted by NCIP. Among the complaints of the affected indigenous peoples were:

- NCIP organized an indigenous group which included migrants and pitted it against opposing community members. It also railroaded the selection of a leader.
- Money and contracts for small infrastructure projects were used to woo indigenous leaders and other community members to approve proposed project.
- NCIP did not explain the FPIC process and guidelines as well as the negative impacts of the extractive industries to them.
- A former NCIP official now occupies a top position in RTNMC.

In the end, it was the NCIP-appointed tribal chieftain who gave the FPIC[83] over the objection of the legitimate one whose protest was merely noted and eventually dismissed as inconsequential.[84]

The apparent railroading by NCIP of the FPIC process is easily explainable as the mining activities preceded it, and thus had to be legitimized. The withholding of consent by the community would have inevitably resulted in the stoppage of operations. Nongovernment and peoples' organizations continue to oppose the project, but the company has the upper hand as the opposition seems to fall on deaf ears of the power chambers.

Impacts of Extractive Industries on Indigenous Peoples

The hazardous effects of the mining industry need not be overemphasized. Several communities abandoned by mining corporations after depleting the minerals are now left to suffer the damage wrought on their environment: destroyed water systems, sinking of communities, debased sacred sites and food insecurity. A 2003 report of the Extractive Industries Review project commissioned by the World Bank warned of environmental degradation, social disruption, conflict, and uneven sharing of benefits with local communities that bear negative social and environmental impacts. There is no shortfall of well-intentioned reminders to the Arroyo administration on the dangers of mining and its effects on indigenous peoples,[85] but these serious concerns have not merited any genuine attention from it beyond sporadic rhetoric to evaluate them.[86]

Food Insecurity. Literature abounds proving that large-scale mining threatens people's food security. Mining displaces indigenous peoples from their traditional sources of livelihood. Mine tailings also contaminate river systems, which are traditionally a source of food, killing aquatic life and even the rivers themselves. These similarly poison agriculture lands, severely compromising their fertility and productivity.

Assault on Cultural Integrity. The ancestral domains of indigenous peoples "include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the area which the ICCs/IPs possess, occupy and use and to which they have claims of ownership."[87] This spiritual and cultural bond is essential to the perpetuation of their existence. Compared to the rest of the world, they have been able to preserve their environment because of the spiritual connection to nature. Their lands also contain sacred grounds and burial sites, and their desecration severs this

spiritual nexus that can lead to their extinction. Thus they are gravely concerned that mining, which destroys forests, will anger their gods[88] and that upsetting the sacred grounds will result in meager harvest if not famine, deaths and other calamities.

Mining-Induced Displacement and Resettlement. In the case of the indigenous peoples in Didipio, the onslaught of mining has displaced them from their ancestral lands. According to the Legal Rights and Natural Resources Center, in 2008 a total of 187 homes[89] were demolished, leaving "dozens of families homeless, with some setting up makeshift shelters amid the debris of their former homes, and forced some residents to leave the area entirely."[90] But displacement is not only deprivation of shelter.

The emerging concept of Mining-Induced Displacement and Resettlement (MDR) is "often accompanied by the resettlement effect defined by the loss of physical and non-physical assets such as homes, communities, productive land, income-earning assets and sources, subsistence, resources, cultural sites, social structures, networks and ties, cultural identity and mutual help mechanisms" and indigenous peoples are usually at risk (Downing 2002). In all the cases mentioned in this paper, displacement of indigenous peoples occurred.

Heightened Militarization and Human Rights Violations. What is common to all the cases and similar cases all over the country is that the indigenous communities opposed to mining were militarized, entrenching a climate of fear. Militarization, in the guise of counterinsurgency, is a recurring State action in areas targeted for mining and other extractive industries. Incidents were reported of abductions, arbitrary detentions, harassment, and extra judicial killings of indigenous leaders and human rights defenders.

The obvious intention is to neutralize opposition and pressure the impacted communities into giving their consent to the extractive industries. Militarization is an effective instrument of development aggression, and it has further been reinforced with the launching in early 2008 of the investment defense force (IDF). In essence IDF protects mines, power facilities and other infrastructure allegedly against communist guerrillas.[91] As in previous administrations, the current government exploits the communist insurgency to justify militarization and legitimize the use of state power and resources to protect capitalist interests. What are projected as counterinsurgency measures are in reality state terrorism to quell opposition to the plunder of resources. This allows the ruling elite and their foreign cohorts, whose interests appear to be supported by the bureaucracy, to profit from the legalized exploitation of ancestral domains.

Corruption of Traditions and Customary Political Institutions. The adoption of decision-making processes not consistent with indigenous peoples' customary ways erodes and weakens their traditional political institutions. This gravely affects their existence, as they are indigenous precisely because they still adhere to their pre-hispanic cultures. When their political institutions go, cultural erosion can ensue.

Environmental Degradation. The hazardous effects of large-scale mining on the environment need not be overemphasized. The Philippines is located in the Pacific Ring of Fire, making it prone to earthquakes, volcanic eruption and other earthmoving disasters which may be aggravated by development projects that test its carrying capacity. The country has experienced more than enough mining catastrophes to acquaint it to the potential risks arising from heavy extractive industries including those ones in this study. The most chilling mining disasters are those of Marcopper Mining Corporation in 1996 and of Lafayette Company in 2005.

Marcopper Mining Corporation's mine tailings spill of more than 1.6 million metric tons inundated farm lands and villages, displacing around 20,000 people and destroying crops. The contaminated Boac River was declared biologically dead.[92] The Lafayette Company's

polymetallic project in Rapu-Rapu Island in the province of Albay similarly spilled cyanide and tailings, which a government-constituted fact-finding commission attributed to Lafayette's gross negligence. The commission recommended the project's closure, a finding shared by DENR,[93] but the Arroyo administration ignored this, allowing Lafayette to resume operations after shutting down for a year. This presidential decision is symptomatic of the lax policy environment the State has with regard to the operation of foreign companies engaged in large scale extractive industries.

Polarization of Communities. The extractive industries have resorted to the Machiavellian divide-and-conquer strategy to secure the consent of even a segment of the impacted communities. What they do is to strengthen the faction favorable to mining and secure its consent to their projects.

The polarization of indigenous communities will be a very sad footnote in their history. When they are polarized, for instance, as to the interpretation of their customary laws, it indicates the pollution of their value system, which is a core foundation of their collective identity. Once the collective identity collapses, the people, as an indigenous group, will culturally become extinct.

Summary Issues in the Conduct of FPIC Process

In many cases, the process merely ratifies ongoing mining activities.
The FPIC process is perceived by many affected indigenous peoples as merely a technicality that has to be complied with and must be dispensed with the soonest. This arises from the fact that in particular cases, the issuance of Certificates of Precondition and mining permits precede the FPIC process. In those cases, NCIP is believed to railroad the process to secure an FPIC. When regarded as a mere technicality, the FPIC process ceases to be a very essential and mandatory instrument of the indigenous peoples in their exercise of their fundamental right to self-determination.

The process alienates customary ways.
In some of the cases where the consent of the indigenous people has not been forthcoming, non-representative indigenous leaders have been created and recognized by NCIP and the mining companies. Concerned indigenous people view the selection of elders through procedures that do not respect customary laws as invalid. According to them, consent obtained in this manner should not and cannot be the basis of FPIC, a position supported by no less than IPRA and the FPIC Guidelines.

The participation of elective officials affects the credibility of the process.
In more than one case, NCIP allowed the inclusion of local government officials in the Council of Elders or in the governing council. In Carasi, Ilocos Norte, for example, the municipal mayor was a member of the three-member Council of Elders with the knowledge of NCIP.[94] Local governments are stakeholders and their positions on projects should also be taken, but they should not substitute the judgment of the affected indigenous peoples who should be free to decide on their own.

The determination of the presence or absence of consent is dependent on the caprices of NCIP.
The National Commission on Indigenous Peoples has been certifying FPIC even amid conscientious objections, and in cases where communities are divided, it merely notes dissenting voices. It is no wonder that, in spite of publicly reported popular opposition to mining in certain areas, the Philippine Government claimed to the Committee on the Elimination of Racial Discrimination that there have been no reports of protests.[95] Indigenous peoples have a collective spirit, so their decisions are indivisible. Conscientious objections

should not be dismissed with a grain of salt or reduced into mere footnotes, as these indicate the absence of collectiveness in the endorsement of mining. FPIC is a collective act, emanating from the community and not from only a segment thereof.

NCIP does not apply consensus as basis of FPIC.
It is very evident that in determining the presence or absence of consensus NCIP looks at the decision of the majority. The dictionary meaning of consensus is the decision reached by a group as a whole. Even the FPIC Guidelines state that FPIC is the "consensus of **all** members of the ICC/IPs." Thus, when protests are made by members of the community, there is no FPIC.

The FPIC process is administered in an atmosphere of fear and coercion.
In all the cases cited, instances of militarization were reported; and in some, extrajudicial killings, death threats, labeling of leaders opposed to mining as terrorists, and as in Didipio, cutting off access to the water supply and public road. These human rights violations weaken the resolve of the people in their well-founded opposition to extractive industries. Any consent obtained under such circumstances can hardly qualify as free and informed, and is akin to employing torture to extract a confession from a criminal suspect.

According to Rodolfo Stavenhagen when he was UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, the lethal combination of militarization and large-scale mining has led indigenous peoples to coin the expression "development aggression." They blame development aggression for a wide range of human rights violations, including murders, massacres and illegal detention.[96]

Bribery and deceit are employed during the FPIC process.
In many cases, attendance sheets at meetings with a mining company were used as proof of consent such as in the case of the *Mangyans*.[97] Bribery undermines the will of people and clouds their judgment. It is thus foul because it takes advantage of the economic helplessness of indigenous peoples.

NCIP is not impartial in arbitrating the FPIC process.
In all the cases presented, a common sentiment of indigenous peoples prevailed: that NCIP was railroading the FPIC process to favor the mining companies. This perception naturally emerges when, for instance, the agency holds consultations in remote places, issues invitations to the individuals and organizations that support the project, or actively constitutes Councils of Elders whose members favor mining.

There is insufficient information during the FPIC process to form basis of collective consent.
Indigenous voices complain that during consultations, no full disclosure is made of project impacts on affected communities. Mining companies are not candid in their presentations and downplays the effects of mining on their environment, food security and spirituality. This is due in part to exclusion of some NGOs from participating in the process and the inclusion of those obviously in favor of the project. It is said that knowledge is power, and to withhold or misrepresent information is to take away the power of the indigenous peoples. Left hapless, they are incapacitated from giving their FPIC.

NCIP lacks data on indigenous peoples and their territories.
Mining activities undertaken in the Cordillera Region including Baay-Licuan and in Palawan preceded the conduct of the FPIC process. Defending the lapse that certainly prejudiced indigenous communities, the State claimed that since no application was filed for a Certificate of Ancestral Domain, it presumed that the impacted area was not an ancestral domain. This is a flimsy argument considering that indigenous peoples are not required to obtain CADTs. The IPRA itself is clear that securing a CADT is a right which the indigenous peoples may waive. Needless to state, the waiver is not tantamount to waiver of the indigenous territory.

The NCIP FPIC Guidelines are liberal towards extractive industries.
The FPIC Guidelines are favorable to the extractive industries that have all the resources to engage in the FPIC process. This is injurious to the interest of indigenous peoples, considering the bureaucratic culture of ambiguity which is more often than not resolved in favor of the powerful.

Analysis of FPIC Process as applied in Above Cases

Even with the presence of laws supporting the concept of participation anchored on indigenous practices, the FPIC process in the Philippines is not guaranteed to bring out the true aspirations of the indigenous peoples for a host of reasons gathered from the experiences of several indigenous communities cited in this study:

The NCIP is not an independent body.
The NCIP, the lead agency in protecting indigenous peoples' rights, is rendered a lame duck by the very law that created it. It is a subaltern of the Office of the President whose Mining Revitalization Program is antithetical to indigenous interests. It has no fiscal autonomy, and the commissioners are appointed by the President who may remove them before their terms expire. Hence, as an organic unit under the Office of the President, NCIP is perceived as an aggressive promoter of the administration's mining programs and a "facilitator of mining companies" instead of a protector of the rights of indigenous peoples.[98]

The national development paradigm favors the interests of business over those of indigenous peoples.
The national development framework of the government favors industries and economic concerns over indigenous peoples' interests. This includes a Mining Revitalization Program actively pursued to prop up the sagging Philippine economy. In line with this program, the government has identified 24 priority mining programs, of which 18 are in indigenous territories covering some 107,933.4879 hectares.[99] Ten of the targeted mining sites will be operated by transnational corporations.[100]

As of 2007, the Arroyo administration had already approved 359 mineral agreements covering 514,949 hectares of land and 1,760 applications are to be approved by 2009 (Center for Environmental Concerns, 2008). This fast-tracking of mining permits issued to private firms starkly contrasts with the lax enforcement of laws on mining and its impacts on community welfare.

The legal system is caught in a conflict between indigenous peoples' interest and national interest.
While the Constitution and prevailing laws recognize that indigenous peoples have a right to their ancestral domains, the same is subject to the Regalian Doctrine. The indigenous peoples own the surface but not the natural resources beneath, and this has been emphasized in all Supreme Court decisions involving ancestral land rights. Where there is a clash between indigenous peoples' interest and the national interest, the latter must prevail as a matter of State policy.

Protracted marginalization has rendered indigenous peoples vulnerable to business manipulations.
The unexpected decision of communities to accept projects that are obviously deleterious to their interest may be understood in the light of the concept of internalized oppression. This arises when the oppressed, who have adapted and become resigned to the structure of domination in which they are immersed, are inhibited from waging the struggle for freedom; and they cannot take up the struggle as long as they feel incapable of running the risks it requires (Freire 2000).

Promises of employment and better lives has proven to easily convince many indigenous peoples, long mired in poverty, to give in to extractive industries and to view their situation with the eyes of the mining industry and the government agencies that protect it. Thus they succumb to offers of jobs and social services that have long been denied them. The consent is not genuine and therefore not free, prior and informed, in that it did not evolve from a clear understanding of mining and its consequences to the life of the community beyond the promised jobs and opportunities.

The FPIC process is a casualty of the culture of bureaucratic ambiguity.
Indeed, the Philippine legal system is a jungle where paths and directions are unclear. On the one hand, there is IPRA which professes defense of indigenous peoples' rights, and yet, a host of other laws directly conflict with it. The interpretation that prevails is thus left to the mercy of the biases of the administration which, unfortunately for indigenous peoples, gravitate toward the interest of business and against them.

The FPIC process is tainted by the bureaucratic culture of corruption.
The acceptance by NCIP of donations from the mining industry and the giving of bribes to local government officials to ensure their favorable posture is symptomatic of the culture of corruption that pervades the Philippine bureaucracy. Relative to this is a pronounced impunity with regard to actions of NCIP officials and staff who facilitate the FPIC process to favor business entities.

Recommendations for Effective FPIC Process

Thus, to make the FPIC process a meaningful tool to protect indigenous peoples' rights, the following are recommended:[101]

Towards ensuring that FPIC is free:

- No consultations should be held outside the affected community.
- The community should be given the opportunity to discuss among themselves without the presence or interference of the project proponent/company or government representatives.
- The NCIP should only be an observer and should not direct or intervene in the decisions of the community regarding the entry of projects.
- Attendance sheets should not be taken as the same may be misrepresented as signatures signifying consent.
- The NCIP should not serve as spokespersons or representatives of the company/project proponent but rather should support the right of the indigenous peoples to be heard and their decisions to be respected. In the entire process, it should display bias for the indigenous community.
- Elected officials should not be allowed to sign the memorandum of understanding on behalf of the community.
- Elective officials should not be made part of governing councils in areas where such councils are allowed by customary laws.
- Any money or compensation should be for the whole community and not given to individuals.
- Dole-outs, bribes, gifts should be prohibited since these create *utang na loob* (sense of indebtedness).
- Company/project proponent should not be allowed to hire liaison officers from the community and NCIP.

- The State should not deploy police and military personnel in areas affected by extractive industries especially during the conduct of the FPIC process.
- The government should immediately abrogate the Investment Defense Force.
- The NCIP should closely monitor cases of human rights violations and take the initiative to prevent them, considering that it has become the State's standard operating procedure to deploy the military in mining areas.
- The Commission on Human Rights should also closely monitor human rights situations in areas affected by mining applications in indigenous territories and demand from NCIP and DENR reports on the same.

Towards ensuring that consent is prior:

- The affected community should be consulted even prior to the making of a project feasibility study, and they should be involved in the planning phase including research activities.
- The NCIP should adopt a strict policy that any company that operates prior to the conduct of the FPIC process, even if granted a permit by DENR or any other government agency, shall not be granted a Certificate of Precondition and shall be blacklisted.
- The NCIP should *motu proprio*[102] exercise its injunctive power and order the cessation of mining operations without the FPIC of impacted communities.
- The NCIP should conduct a census of indigenous peoples *with or without CADTs* and disaggregate them from the rest of the population.
- The NCIP should prepare a Philippine map highlighting indigenous communities. The map, along with the census, will serve as an automatic notice to the government of those areas where FPIC is necessary for any project.

Towards ensuring that consent is informed:

- In consultations, all stakeholders -- affected indigenous peoples, settlers, migrants and communities around the project -- should be made participants.
- Consultations should be conducted not only among people in the project site but also among those in areas affected by the impacts of the project, e.g. downstream communities.
- Information and education campaign, including the project's environmental impact assessment, must be part of the FPIC process and should also be conducted in adjoining areas.
- Communities need an overview of all information, both positive and negative impacts, of development projects. This should be given by third parties or an independent body to ensure that indigenous peoples have access to full information and that their concerns are adequately articulated. Such a body will safeguard the indigenous peoples from being disenfranchised in the decision making.
- In every community, the NCIP should facilitate the creation of such a body which is not selective in membership. The office should also send notices to all local and national NGOs working on indigenous issues whenever a particular indigenous territory is targeted for a development project, in order that any organization concerned can take the initiative to participate in the process.
- Information on the project and all its impacts should be given/written in the language understood by the community. Information should include proponent/company profile.
- Funds should be provided by the government for the community to get expert advice from independent experts/consultants.
- Education on the FPIC process should be undertaken among proponents, affected community and concerned NCIP personnel.

Towards ensuring that "consent" is indeed consent:

- Consent should be understood to mean the decision of 100 percent of the community, expressed either directly or through their legitimate representatives.
- Where a project is rejected by the community, the FPIC process should no longer be conducted, even with the entry of a different project proponent. To keep implementing the FPIC process is tantamount to harassment of the community. No other business entity should be allowed to file the same application over the area for the next ten years, unless the community itself makes the invitation to interested entities.
- If the period for the conduct of the FPIC lapses without the consensus of the people, this should be taken to mean denial of consent, unless the community itself, acting in consensus, asks for extension. The process should not be fast-tracked to comply with the prescribed period.
- The NCIP should not impose a decision-making process unknown to customary ways such as secret balloting to choose elders or to give consent.
- Decision-making among indigenous peoples always involves consensus building and not the tyranny of numbers which has the potential of creating factions and destroys the collective spirit of the community. Dividing the community through votation should be avoided.
- The organization of a Council of Elders should not be made mandatory by NCIP. Where a community practices direct democracy and does not have a Council of Elders, there should be no attempt to organize one; otherwise NCIP becomes a tool to corrupt the culture contrary to its mandate to defend it.
- The council whose voice will be heard should be an existing council and not one formed for the purpose of the FPIC process. Otherwise, it is artificial and alien to the customary ways of the community.
- Traditional leaders should be recognized. NCIP should desist from the practice of giving certification to leaders appointed by officers/agencies of government.
- The NCIP should create positions for anthropologists[103] who possess the necessary knowledge of customary ways and the social skills in facilitating proceedings in indigenous communities.
- To safeguard the integrity of NCIP and remove doubts that Certificates of Precondition are issued in spite of legitimate opposition, a national multisectoral committee should be formed to review the FPIC process conducted for every application to operate an extractive industry. This committee recommends to NCIP the issuance or non-issuance of a Certificate of Pre-Condition. To be headed by NCIP, the committee should include credible NGOs with a track record of promoting indigenous peoples' rights.

To ensure NCIP is an impartial body:

- The IPRA should be amended to constitute the agency as a meaningfully independent body with fiscal autonomy.
- A policy should be made prohibiting NCIP officials from accepting positions to mining companies or other businesses that engage in projects requiring FPIC, within five years from severance of employment with NCIP.

To ensure a meaningful FPIC process:

- The infirmities of the FPIC process are institutionalized in the NCIP's FPIC Guidelines. The guidelines should be amended to provide for more stringent rules against business and to include the previous recommendations.

- If there is a violation of the FPIC process and the rights of indigenous peoples are violated, then the process should be stopped and the project, withdrawn.
- The community should determine the process for obtaining FPIC in accordance with their traditional customs and should thus be given the option to disregard the FPIC Guidelines.
- NCIP personnel should come from the area/community where they are assigned; if not they should be familiar with the cultures, traditions and norms of the community.
- In cases of multiplicity of affected communities, they should be consulted as if they are a single community, without regard for political boundaries. Likewise, they should adopt a consensus as one entity.
- A complaint mechanism should be set up to take cognizance of questions on the conduct of the FPIC process. For this purpose, an independent body, which may or may not include NCIP and which includes civil society organizations, should be established to operationalize the mechanism.

Towards international solidarity:

- International campaigns should be launched against international investors/companies that have violated the rights of indigenous peoples.
- Affected indigenous peoples should build networks with other indigenous groups/organizations in other countries and with international organizations working for the protection of indigenous peoples' rights.
- Affected peoples should hold or participate in international exchanges to learn from the experiences of similarly circumstanced indigenous peoples in other countries.
- Non-government organizations should help affected indigenous communities to bring their cases on FPIC process violations to the appropriate forums including international tribunals.

Parting Words

The following lines by Wayne Perry and Gerald Smith perhaps best express to the State the sentiments of indigenous peoples who object to extractive industries because of irreversible deleterious consequences to their life, liberty and property:

What part of "No" don't you understand?
To put it plain and simple
I'm not into one night stands
I'll be glad to explain it
If it's too hard to comprehend
So tell me what part of "No"
Don't you understand?

Endnotes

[1] Participants to the *National Dialogue on Indigenous Peoples and the Right of Free, Prior and Informed Consent*, International Alliance of Indigenous and Tribal Peoples of the Tropical Forests (IA) held in Sagada, Cordillera Region, Philippines, April 28-29, 2009.
[2] This principle is expressed in the statement, *"Man ... bears a solemn responsibility to protect and improve the environment for present and future generations"* incorporated in the Stockholm Declaration, Principle No. 1, and the Rio Declaration, Principle No. 3.
[3] During the deliberations on the drafting of the 1987 Philippine Constitution which recognizes the rights of indigenous peoples, the drafters acknowledged that indigenous peoples had been neglected by the national government.
[4] This doctrine states that all natural resources belong to the State.
[5] Eminent domain is the inherent power of the State to take away private property for public use after payment of just compensation. Section 2, Art. III of the Philippine Constitution states that *"(n)o private property shall be taken for public use without just compensation."* The very essence of eminent domain is forced taking and thus, the property owner's consent is not required.
[6] *Philippine Periodic Report on its compliance to the International Convention on the Elimination of All Forms of Racial Discrimination, covering the period 1998 to 2008, submitted to the Committee on the Elimination of Racial Discrimination.*
[7] These data are based on the pronouncement of the National Commission on Indigenous Peoples, the Philippine government agency mandated to take the lead in the protection of indigenous peoples rights. However, no census has been taken by the government to determine the actual indigenous population.
[8] This is based on *Isagani Cruz, et alis versus Secretary of Environment and Natural Resources, et alis (infra).*
[9] Speech of Atty. Eugenio A. Insigne, Chairman, National Commission on Indigenous Peoples on "The Important Role of Free and Prior Informed Consent (FPIC) in Responsible Mining" before the Chamber of Mines on November 19, 2007.
[10] Under IPRA, prior to the issuance of a Certificate of a Precondition, the free, prior and informed consent of the affected indigenous peoples must be secured. Once a Certificate of Precondition is issued, the national government may issue, renew or grant a concession, license or lease covering natural resources within indigenous territories.
[11] Periodic Report of Philippines from 1998 to 2008 submitted to the UN Committee on the Elimination of Racial Discrimination, page 30.
[12]In his work, *Of Igorots and Independence: Two Essays* (ERA Publications; Baguio City: 1993) the historian William Henry Scott wrote: *It is a strange thing that history textbooks commonly in use in…the Philippines never mention the fact that the Igorot peoples of Northern Luzon fought for their liberty against foreign aggression during the 350 years that their lowland brethren were being ruled over by Spanish invaders…They were never slaves to the Spaniards nor did they play the role of slaves. Quite the contrary, Spanish records make it clear that that they fought for their independence with every means at their disposal for three centuries, and that this resistance to invasion was deliberate, self-conscious and continuous.*
[13] 41 Phil 935 (1909)
[14] Sec. 6
[15] Wide tracts of indigenous territories were reserved, under presidential proclamations, for educational, military, resettlement, health and other public purposes, or classified into forest or timberlands, mineral lands and national parks.
[16] Sec. 15
[17] Swenson, Sally: "National Minorities." In *The Philippine Reader*. Boston: South End Press, 1987.
[18] Art. II, Sec. 22
[19] Art. VII, Sec. 5
[20] Art. XIV, Sec. 17
[21] Art. II, Sec. 22
[22] Art. VII, Sec. 5
[23] *Carino vs Insular Government, 1909*
[24] *Lee Hong Kok vs David, 48 SCRA 372.*
[25] Section 2, Art. XII, Philippine Constitution
[26] *"An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor and for other Purposes. "*
[27] (Sec. 3(a), RA 8371
[28] Sec. 56, supra.

[29] Sec. 7, par (c), RA 8371
[30] G.R. No. 135385, December 6, 2000
[31] The Supreme Court voted 7-7. Former Supreme Court Justice Isagani Cruz filed a Motion for Reconsideration. The voting record remained unchanged.
[32] The power of the courts to test the validity of acts of the executive and the legislative branches in the light of their conformity with the Constitution.
[33] Rule 56, Sec. 7 of the Rules of Court of the Philippines
[34] These were Chief Justice Davide and Justices Kapunan, Besillo, Quisumbug, Santiago and Puno.
[35] *La Bugal-B'Laan Tribal Association, et alis v. Ramos, et alis*, G.R. No. 127882. December 1, 2004
[36] This right is enshrined in Article 1 of the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.
[37] Sec. 13, RA 8371
[38] Section 3, par. (g), RA 8371
[39] United Nations Declaration on the Rights of Indigenous Peoples
[40] The cases are among those presented during the *National Dialogue on Indigenous Peoples and the Right of Free, Prior and Informed Consent* sponsored by the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests held in Sagada, Cordillera Region, Philippines, April 28-29, 2009.
[41] Fiel, Cheryll D. "The Ritual at Tudaya Falls" In *Davao Today*; 3 December 2006. Accessed on 12 January 2009 from *http://davaotoday.com/2006/12/03/the-ritual-at-tudaya-falls.*
[42] Guevara, Mai. Davao Sur welcomes newest hydro plant. Accessed on 12 January 2009 from *http://www.pia.gov.ph/?m=12&fi=p070908.htm&no=1*.
[43] *Davao Today* reported that the organizations include *Sinubadan ka mga Lumad Bagobo Mekatanod, Kalumaran,* a federation of *lumad* organizations in Mindanao, Apo Sandawa Lumadnong Panaghiusa, Solidarity Action Group for Indigenous Peoples (SAGIP), Pasaka, a confederation of indigenous peoples' groups in the region, and Panalipdan Southern Mindanao, an alliance of environment advocates, academe, church people, youth, farmers and indigenous groups.
[44] Fiel, Cheryll D. "On Earth Day, environmentalists denounce Tudaya power plants," In *Davao Today*. 24 April 2008. Accessed on 12 January 2009 from *http://davaotoday.com/2008/04/27/on-earth-day-environmentalists-denounce-tudaya-power-plants/*3/.
[45] Fiel, Tito Natividad. "TVI mining sets to blast Subanon sacred ground." In *Inside Mindanao.* Accessed from *http://www.insidemindanao.com/article103.html. 19 December 2008.*
[46] Red, Ellen. **"**TVI exec apologizes to Subanon tribe for human rights violations committed by company." In *Inside Mindanao*. Accessed from *http://www.insidemindanao.com/j1.html. 20 June 2007.*
[47] This was also raised in *The Situation of the Indigenous Peoples of the Philippines*; paper presented by the National Federation of Indigenous Peoples in the Philippines for the Asia Workshop on the Promotion of the UN Declaration on the Rights of Indigenous Peoples, 8-11 June 2008.
[48] Also reported in "UN summons Philippine gov't to respond to Subanons' complaint of racial discrimination and other related human rights violations" in *Inside Mindanao,* 13 February 2008.
[49] Red, Ellen. **"**Gov't agency recognizes Siocon traditional leaders" In *Inside Mindanao*. 20 November 2008. Accessed from *http://www.insidemindanao.com.*
[50] *Ibid.*
[51] Timuay Anoy and Timuay Tii, the legitimate elders of the affected Subanons said in their statement to NCIP, "*We reiterate our position since the beginning that we oppose the operations of TVI Resource Development Inc. (TVIRD) in the ancestral domain to which the Siocon Council of Elders had entered a Memorandum of Agreement when it did not have the right and authority to do so."*
"We greatly mourn the destruction in the ancestral domain because of TVIRD. At present, TVIRD is continuously destroying Mt. Canatuan with its ongoing project that does not have our consent. We demand that the NCIP and the DENR–MGB [Department of Environment and Natural Resources–Mines and Geosciences Bureau] stop this!"
[52] *http://www.dcmiphil.org*
[53] This is the smallest local government unit or political subdivision of the Philippines. The barangay is unique to the Philippines.
[54] Cordillera Peoples Alliance. "Bayan Muna, GWP and Anakpawis Partylists support Binongan Indigenous Peoples Struggle in Baay Licuan, Abra." In *CPA Website.* 11 September 2008. Accessed on 21 December 2008 from *http://www.cpaphils.org.*
[55] Cordillera Peoples Alliance. "Bayan Muna, GWP and Anakpawis Partylists support Binongan Indigenous Peoples Struggle in Baay Licuan; *supra.*

[56] Lucas, Daxim. "Cordillera Day in Abra to call for mining pull-out." In *Philippine Daily Inquirer.* April 21, 2008.
[57] Cordillera People's Alliance. *"Statement and Appeal from the Cordillera Peoples Alliance, Philippines"* dated 18 April 2008.
[59] Quitasol, Kim. "Mining Protest Goes To England - IP Leaders Register Opposition To CEXI." In *Northern Dispatch Weekly.* 20 April 2007.
[59] Unrepresented Nations and Peoples Organizations. "Cordillera: Call for Pro-Mining Policy." In *UNPO Website.* 26 June 2007. Accessed from *http://www.unpo.org.*
[60] Dekdeken, Sarah. **"**Apayao Folk Oppose Anglo-American Mining Firm." In *Bulatlat.* 23 July 2005. Accessed on 12 January 2009 from *http://www.bulatlat.com.*
[61]A presentation in the Inter-disciplinary Conference on Mining in the Asia-Pacific 26-28 November 2007, Quezon City, Philippines by Vernie Yocogan-Diano, Chairperson, Innabuyog (an alliance of indigenous women's organizations in the Cordillera, Philippines)
[62] Teague, Ellen. "Indigenous Filipinos tackle mining giant at its AGM." In *Independent Catholic News*, 20 April 2007. Accessed *from http://www.indcatholicnews.com.*
[63] Paul Joyce and Robert Thomson. Didipio Gold-Copper Project-Moving Towards Development. Undated. Accessed on 21 December 2008 from *http://www.smedg.org.au.*
[64] Oxfam Australia. Mining Ombudsman Case Report: Didipio Gold and Copper Mine. 2007 Accessed on 12 January 2009 from *http://www.oxfam.org.au/campaigns/mining/ombudsman/cases/didipio/docs/2007-Didipio-Case-Report.pdf*
[65]Oxfam Australia. "Didipio, the Philippines." Undated. Accessed on 12 January 2009 from *http://www.oxfam.org.au/campaigns/mining/ombudsman/cases/didipio/.*
[66] *Petition Campaign against Oceana Gold mining in Didipio, Nueva Vizcaya, Philippines.* In *Kalikasan: Peoples Network for the Environment.* Accessed from *http://www.kalikasan.org/kalikasan-cms-new/* on 15 January 2009.
[67] *Ibid.*
[68] *Ibid.*
[69] *Ibid.*
[70] According to IPRA, indigenous peoples 'refer to a group of people or homogenous societies identified by self ascription and ascription by others, … who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains.'
[71] Sec. 37, NCIP AO No. 1, s. 2006
[72] Sec. 38, NCIP AO No. 1, s. 2006
[73] Plantilla, Annabelle. "Deception in Mindoro." In *Manila Times Internet Edition*. 16 August 2008. Accessed on 12 January 2009 from *http://www.manilatimes.net/national/2008/aug/16/yehey/opinion/20080816opi5.html.*
[74] Gariguez, Edwin A. "FPIC Process: Defective, Anomalous and Questionable." In *Haring Ibon* Issue 35, July-_Sept. 2008. Also accessible from *http://www.haribon.org.ph.*
[75] Hell, Knut-Erik. "The Alangans: Forest Tribe on the Verge of Mining." *Norwatch*: 2007
[76] Alvarez, Heherson. Letter to the Editor. In *Philippine Star,* November 13, 2001.
[77] This is the power of the President to set aside or modify decisions of subordinates notwithstanding that they acted in accordance with law. It is a power involving discretion.
[78] The Municipality of Sablayan, Occidental Mindoro unanimously passed Ordinance No. 2007-GO03B, prescribing a 25-year moratorium on mining under their jurisdiction. Earlier, the Provincial Government of Oriental Mindoro passed an ordinance prohibiting any form of mining activity in the province.
[79] Intex Resources. "Crew Minerals Disagrees with Ambassador Risa." Accessed from *http://www.intexresources.com* on 15 January 2009.
[80] PCSD is the body that implements Republic Act No. 7611, otherwise known as the "Strategic Environmental Plan (SEP) for Palawan Act," which declares that it is the policy of the State to protect, develop and conserve the country's natural resources by supporting the implementation of plans, programs and projects formulated to preserve and enhance the environment while pursuing socio-economic goals.
[81] Dante A. Dalabajan. "The inconvenient social realities of protected area management in the Philippines: The case of Pala'wan of Mt. Mantalingahan range protected landscape in southern Palawan." Paper presented at the 8th International Conference on Philippine Studies (ICOPHIL). Quezon City, Philippines. 23-26 July 2008.

[82] Foundation for Environmental Security and Sustainability. "A Double-Edged Sword? Implications of Mining for Environment Security in the Philippines," p. 37; April 2007. Accessed from *http://www.fess-global.org/files/philippines_esaf_report.pdf*

[83] Environmental Legal Assistance. Revitalized Mining Alarms South Palawan. 12 July 2005. Accessed on 15 January 2009 from *http://elac.org.ph.*

[84] This is similar to the NCIP action on the protest of *Subanon* indigenous leaders over the mining activities in Midsalip, Zamboanga. The protest was a mere footnote in the Certificate of Precondition.

[85] On 29 January 2006, the very influential Catholic Bishops Conference issued A Statement on Mining Issues and Concerns which stated: *"We believe that the Mining Act destroys life. The right to life of people is inseparable from their right to sources of food and livelihood. Allowing the interests of big mining corporations to prevail over people's right to these sources amounts to violating their right to life.*

Our experiences of environmental tragedies and incidents with the mining transnational corporations belie all assurances of sustainable and responsible mining that the Arroyo Administration is claiming. Increasing number of mining affected communities, Christians and non-Christians alike, are subjected to human rights violations and economic deprivations. We see no relief in sight.

President Arroyo's 'Mining Revitalization Program' is encouraging further the entry and operation of large-scale mining of (transnational corporations). …The promised economic benefits of mining by these transnational corporations are outweighed by the dislocation of communities especially among our indigenous brothers and sisters, and the risks to health and livelihood and massive environmental damage. Mining areas remain among the poorest areas in the country… The cultural fabric of indigenous peoples is also being destroyed by the entry of mining corporations."

[86] Arroyo publicly promised to review the Mining Act in 2006 after stinging criticisms coming from various sectors including the powerful Catholic Bishops Conference.

[87] Sec. 4, RA 8371

[88] According to the report of the Indigenous Peoples Rights Monitor, a scoping exercise "conducted for the company recognized that *'Mangyans' sacred places will be affected /destroyed by the construction activities'* and *'affected by the project operation'*.

[89] Earlier in this paper, it is stated that 200 homes, more or less have been demolished as alleged in the petition calling for a stop to the mining in Didipio, Nueva Vizcaya. The petition is more recent than the LRC report.

[90] Legal Rights and Natural Resources Center. "Environmental and human rights groups submit report against Australian mining company to CHR." Undated press release. Accessed from *http://www.lrcksk.org on 15 January 2009.*

[91] Lim, Frinston and Dennis Jay Santos. "Arroyo forms 'investment defense force.'" In *Philippine Daily Inquirer*, 9 Feb. 2008. Citing reports from PASAKA-Confederation of Lumad Organizations, the National Federation of Indigenous Peoples Organizations in the Philippines declared that the government intensified militarization in some areas identified as the country's main sites for logging, mining and bio-fuels. Soldiers belonging to the Armed Forces of the Philippines have been deployed to these areas, allegedly to protect such vital national industries from communist attacks and sabotage.

[92] Environmental Justice Case Study: Marcopper in the Phillippines. Accessed from *http://www.umich.edu/~snre492/Jones/marcopper.htm.*

[93] Department of Environment and Natural Resources 2005. "DENR Assessment of the Rapu-Rapu Polymetallic Project." Accessed from *http://www.greenpeace.org/raw/content/seasia/en/press/reports/denr-assessment-of-the-rapu-ra.pdf.*

[94] In this case, the NCIP acted as a mere observer and arbiter. Its one lapse however is that it allowed the Mayor to sit in the governing council.

[95] The *Philippine Periodic Report on its compliance to the International Convention on the Elimination of All Forms of Racial Discrimination, covering the period 1998 to 2008, submitted to the Committee on the Elimination of Racial Discrimination.*

[95] Sec. 4(j), NCIP AO No. 1, s. 2006 provides: Titled property holders within ancestral domain areas can exercise all the rights of an owner accorded to them by law, but the exercise of such rights shall carry with it the responsibility of respecting the rights of the ICCs/IPs within the domain. If the exercise of such rights by the titled property **owner** is such that the rights of the ICCs/IPs can be adversely affected, consultations among the affected ICCs/IPs shall be undertaken…but **the subject of the consultation shall be limited only to the determination and proper compensation through agreement of the loss, damage or injury that may be suffered,** and to the satisfaction of the

ICCs/IPs that measures shall be undertaken to mitigate if not totally avoid such loss, damage or injury. (Emphasis supplied)

[96] Stavenhagen, Rodolfo. "Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people" in the *United Nations Sixth Session of the Human Rights*. 15 November 2007. Accessed on 21 December 2008 from *http://daccessdds.un.org.*

[97] This was also done in the case of the passage of an ordinance in Palawan prohibiting fishing in pearl farms which are part of Molbogs and Palaw'ans' ancestral domain. No consultation was made, and an attendance sheet was attached to the ordinance to pass for consent. In the case of the Subanons in Midsalip, Zamboanga, an attendance sheet was misrepresented as their consent to mining.

[98] Speech of Atty. Eugenio A. Insigne, Chairman, National Commission on Indigenous Peoples on "The Important Role of Free and Prior Informed Consent (FPIC) in Responsible Mining" before the Chamber of Mines on November 19, 2007. See also *http://www.sunstar.com.ph/local-news/group-accuses-ncip-being-pro-mining* where international group Catholic Agency for Overseas Development (Cafod) lambasted the National Commission on Indigenous Peoples for becoming a "facilitator of mining companies" instead of protecting the rights of indigenous people.

[99] "The Situation of the Indigenous Peoples of the Philippines," paper presented by the National Federation of Indigenous Peoples in the Philippines for the Asia Workshop on the Promotion of the UN Declaration on the Rights of Indigenous Peoples, 8-11 June 2008.

[100] *Ibid.*

[101] Many of the recommendations came from participants in the *National Dialogue on Indigenous Peoples and the Right of Free, Prior and Informed Consent*, International Alliance of Indigenous and Tribal Peoples of the Tropical Forests (IA) held in Sagada, Cordillera Region, Philippines, April 28-29, 2009.

[102] IPRA gives NCIP the power to act on its own initiative to protect indigenous peoples' rights.

[103] Dr. Michael Tan, Chairman of the Department of Anthropology of the University of the Philippines, expressed to this writer his observation that NCIP does not have *plantilla* positions for anthropologists.

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