

# **FPIC experience in the Philippines- towards developing an ASEAN FPIC Guidelines on SF and CC**

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## **LEGAL BASES**

### **Section 22, Article 2, 1987 Philippine Constitution:**

**The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.**

### **Section 17, Article 14, 1987 Philippine Constitution:**

**The State shall recognize, respect and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.**



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**Section 59, RA 8371**

**All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease..., without prior certification from the NCIP that the area does not overlap with any ancestral domain.**

## **FPIC PROCESS IMPLEMENTATION IN THE PHILIPPINES**

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History:

1. RA 8371 Implementing Rules and Regulations
2. NCIP Administrative Order No. 3, Series of 2002
3. NCIP Administrative Order No. 01, Series of 2006
4. NCIP Administrative Order No. 01, S. 2012 (IKSP Research and CL Documentation)
5. NCIP Administrative Order No. 03, S. 2012

## **NCIP A.O. 3, S.2012**

### **Coverage:**

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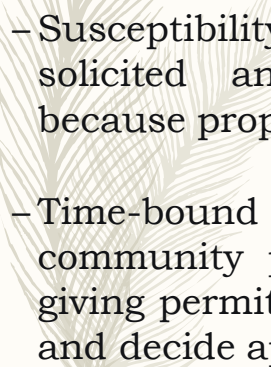
- **Extractive/Intrusive/Large-scale projects/ programs**
- **Non-extractive/small-scale projects/programs**
- **Community solicited or initiated activities**
- **Government projects**
- **Foreign-funded projects**
- **Exercise of traditional resource use right**
- **Exercise of priority rights**

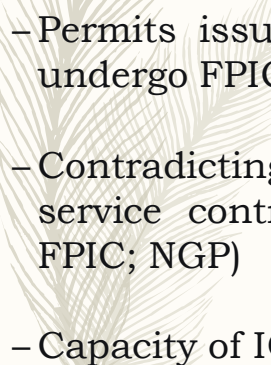
\* **Each project/program classification follows different FPIC or validation process**

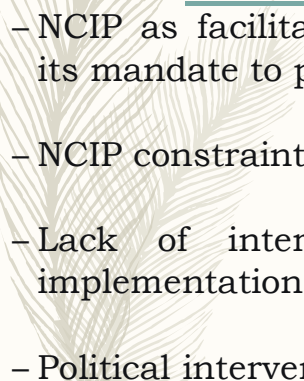
## **Constraints and Issues in the Implementation of the FPIC process**

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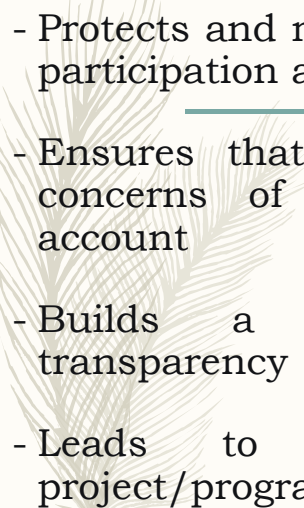
- Determination of ICCs/IPs whose consent should be secured (AD was not issued title, no technical description; how to determine effects of the project beyond the AD overlapped by the activities; non-IPs and migrant IPs inclusion)
- Consensus using customary decision making process versus 'majority concept' rule

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- Susceptibility to manipulation (community solicited and initiated, EPR and also because proponent funds the FPIC process)
  - Time-bound projects/tight timelines versus community process to decide (e.g. EO 30 giving permitting agencies 30 days to act on and decide applications)

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- Permits issued prior to IPRA that did not undergo FPIC process and are still existing
  - Contradicting policies (e.g. energy project service contracts issued prior to securing FPIC; NGP)
  - Capacity of ICCs/IPs to negotiate

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- NCIP as facilitator of the FPIC process versus its mandate to protect IP rights
  - NCIP constraints (budget, technical expertise)
  - Lack of inter-agency coordination in the implementation of the FPIC process
  - Political interventions

### **Importance of having an FPIC policy**

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- Protects and recognizes ICCs/IPs' rights to participation and self-determination
  - Ensures that the priorities, needs and concerns of ICCs/IPs are taken into account
  - Builds a trust-based relationship; transparency
  - Leads to the success of the project/program; minimizes risks

## **Recommendations in drafting the ASEAN Guidelines on FPIC process**

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### **FPIC policy provisions should:**

- Clearly identify who should be consulted;
- Ensure that customary decision-making processes/ structures are followed
- Ensure culture-sensitivity, full and effective participation, information exchange
- Provide guidance on FPIC process and project implementation and monitoring
- Have a provision on transparency and accountability; grievance mechanism

### **How do we proceed writing the regional policy:**

- Consult with the communities and other concerned sectors (on what programs or activities are to be covered; clarify what is their concept of FPIC/consent; process)
- Consult with governments and other stake holders, experts



**In FPIC policy implementation:**

- Consider capacity of communities; capacitate them if needed
- Capacitate the implementing agency
- Continuing IEC
- Process should be conducted and documents should be written using local language