

An assessment of the implementation of the Free and Prior Informed Consent (FPIC) in the Philippines

Volume I: Main Report



Imprint

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Foreword

The World Bank reports that 1.6 billion people depend to varying degrees on forests for their livelihoods. Around 60 million of them are indigenous peoples that live inside or close to dense tropical forests. Their subsistence and culture is deeply connected with the forest. If destroyed, they not only lose the foundation of their livelihood and existence, but also their cultural identity. Forest loss and degradation also contribute to the release of greenhouse gases, amounting to about 15-17% of global emissions. At the same time, forests play an important role in mitigating the effects of climate change: they are capable of absorbing and storing carbon in vast quantities.

The future of forests, climate change and the survival of indigenous peoples are thus inextricably connected.

This relationship has been recognized at the level of the international climate negotiations, where Reducing Emissions from Deforestation and Forest Degradation and the role of conservation, sustainable management of forests and the enhancement of forest carbon stocks (REDD+) was agreed upon as an incentive mechanism to expand forest protection in countries that are willing and able to reduce their emissions from the forest sector.

The Parties to the United Nations Framework Convention on Climate Change (UNFCCC) have recognized that to achieve successful REDD+ implementation, it is crucial to render the mechanism inclusive, avoid harm to the environment and the people, and create benefits that reach the forest stewards, indigenous peoples and local communities.

At the 16th Conference of the Parties (COP) in Cancun, countries therefore agreed upon seven safeguards that aim at avoiding negative social and environmental impacts. Among others, these principles include the respect for the knowledge and rights of indigenous peoples as well as their full and effective participation in REDD+. The “Warsaw Framework for REDD+,” adopted in 2013 in Poland, links the respect of the seven safeguards to the financing of REDD+ activities: if the Cancun safeguards are not addressed, countries will not be able to receive results-based finance.

The Philippines has been and continues to be a strong advocate for the inclusion of strong safeguards into the international REDD+ architecture. At the national level, safeguards, particularly the protection of the rights of indigenous peoples and local communities, play a central role in the implementation of the Philippine National REDD-Plus Strategy (PNRPS), which was adopted in 2010.

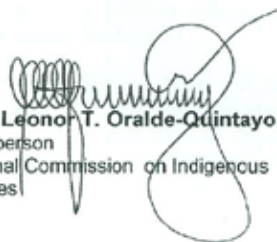
Domestically, the Philippines has already a strong institutional and legal framework for safeguarding indigenous peoples’ rights. In particular, the Indigenous Peoples Rights Act (IPRA) of 1997 is a landmark law for the recognition, protection and promotion of indigenous peoples’ rights. It includes the principle of Free and Prior Informed Consent (FPIC), which recognizes indigenous peoples’ rights to their lands and resources, and stipulates that an equal and respectful relationship, based on the principle of consent, shall be observed when third parties – companies, government or individuals – enter into indigenous peoples’ lands.

With IPRA being over 15 years into existence and FPIC being an important safeguard in the context of the PNRPS implementation, the National Commission on Indigenous Peoples (NCIP) recognized the usefulness of undertaking an independent evidence-based assessment of the FPIC implementation in the Philippines and requested partners for technical assistance. For that purpose, a Memorandum of Agreement was signed in May 2011 between the NCIP, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH and the Non-Timber Forest Products Exchange Programme for South and Southeast Asia (NTFP-EP).

The “Assessment of the Implementation of Free and Prior Informed Consent (FPIC) in the Philippines” was then undertaken in the frame of the joint project of the Department of Environment and Natural Resource and GIZ, entitled “Climate-relevant Modernization of the National Forest Policy and Piloting of REDD Measures in the Philippines,” and enabled with the funding support of the International Climate Initiative of the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) and the Swiss Agency for Development and Cooperation (SDC). Aside from the studies “Who Owns the Carbon in the Philippine Forests?,” “Analysis of Key Drivers of Deforestation and Forest Degradation,” and the “Review and Analysis of Forest Policy,” it is one of four policy studies undertaken under the DENR-GIZ REDD Project to support the PNRPS implementation.

The study provides substantial insights into the FPIC implementation and the varying degrees of compliance with procedures and principles. It also lays out a series of policy recommendations that constitute substantial inputs to the enhancement of the FPIC process in the Philippines.

Indeed, NCIP already took action on the issues raised in the study: the policy recommendations as well as the researchers' practical lessons informed the formulation of the 2012 FPIC Guidelines. It is hoped that the process of enhancing the implementation of FPIC is not halted here and that the joint endeavor of safeguarding the rights of the country's indigenous peoples will be continued, in the context of the PNRPS implementation and beyond.



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Together with three other policy studies, the results of this study were presented to the participants of the various focus group discussions and key informant interviews, consisting of representatives from government agencies, non-governmental organizations and peoples’ organizations. The draft was subjected to comments and consultations with key government officials and civil society colleagues involved in the implementation of the Philippine National REDD-Plus Strategy (PNRPS). Subsequently, the draft was subjected to a peer review.

The study was initiated by request of the National Commission on Indigenous Peoples (NCIP) to GIZ and Community Development for REDD (CoDe REDD), an informal association of civil society organizations, and research and academic institutions that support the PNRPS, represented by the Non-Timber Forest Products-Exchange Programme (NTFP-EP).

In this light, we would like to thank on behalf of my team members Atty. Nimreh L. Calde and Dr. Alejandro N. Ciencia Jr. the following persons and agencies for their invaluable contribution to the conduct and drafting of this study:

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- Coordinator and study leader: Jennifer Corpuz
- Site researchers: Mary Ann Bayang, Aida Cadiogan, Robeliza Halip

Cluster 2

- Coordinator: Abigail Lois Aguilar
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Cluster 3

- Coordinator: Aproniano Panorel
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Dr. Raymundo D. Rovillos

Acronyms and abbreviations

BMU	Federal Ministry for the Environment, Nature Conservation and Nuclear Safety
BMZ	Federal Ministry for Economic Cooperation and Development
DENR	Department of Environment and Natural Resources
CoDE REDD	Community Development for REDD
CNO	Certificate of Non-Overlap
COP	Conference of the Parties
COSERAM	Conflict-Sensitive Resource and Asset Management
CP	Certification Precondition
FBI	Field-based investigation
FGD	Focus group discussion
FMB	Forest Management Bureau
FPIC	Free and Prior Informed Consent
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
ICC	Indigenous cultural communities
IFMA	Integrated Forest Management Agreement
IP	Indigenous people
IPRA	Indigenous Peoples Rights Act
KII	Key informant interview
LGU	Local government unit
MOA	Memorandum of Agreement
NCIP	National Commission on Indigenous Peoples
NTFP-EP	Non-Timber Forest Products-Exchange Programme
PNRPS	Philippine National REDD-Plus Strategy
REDD+	Reducing Emissions from Deforestation and Forest Degradation, and the role of conservation, sustainable management of forests and enhancement of carbon stocks
RRT	Regional review team
SDC	Swiss Agency for Development and Cooperation
UNFCCC	United Nations Framework Convention on Climate Change

Contents

Foreword	v
Acknowledgments	vii
Acronyms and abbreviations	ix
Executive Summary	xi
I. Introduction.....	15
I.1 Study approach and objectives	16
I.2 Study methodology	16
I.3. Limitations of the study.....	17
II. Presentation of data and analysis	21
II.1. Key findings of the study	21
II.2. Types of projects and the affected IPs	22
II.3. Technical/procedural compliance with the FPIC Guidelines.....	27
II.3.1. Conduct of field-based investigation.....	27
II.3.2. Conduct of securing FPIC	28
II.3.3. MOA signing and post-FPIC activities	31
II.4. Substantial compliance with the principles of FPIC.....	34
II.4.1. Free consent	35
II.4.2. Prior consent.....	37
II.4.3. Informed consent	39
II.5. Post-FPIC phase	41
II.6 Cases of non-FPIC activities	44
II.7. Notion of consent	45
II.7.1. Community notions of consent in local languages	45
III. Conclusion and recommendations	57
References	59

Annexes

Annex 1. FPIC researchers' tool kit

Annex 2. Memorandum of Agreement between the National Commission on Indigenous Peoples, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH and Non-Timber Forest Products Exchange Programme for South and Southeast Asia

Executive Summary

The Indigenous Peoples Rights Act (IPRA) was adopted in 1997 and is the Philippine state's primary legal instrument for the recognition, protection and promotion of the rights of the indigenous peoples (IPs)/indigenous cultural communities (ICCs). In line with the principles of indigenous peoples' rights to land and resources, cultural integrity and self-determination, the law provides for the mechanism of the Free and Prior Informed Consent (FPIC). In the context of Reducing Emissions from Deforestation and Forest Degradation and the role of conservation, sustainable management of forests and the enhancement of forest carbon stocks (REDD-plus), the FPIC mechanism constitutes an important safeguard to avoid social or environmental harm from REDD-plus policies, measures and activities, and create multiple benefits. The Philippine National REDD-Plus Strategy (PNRPS) recognizes the importance of safeguards in ensuring that REDD+ policies and projects protect the rights of indigenous peoples and local communities, and guaranteeing their meaningful involvement and participation.

The project "Climate-relevant Modernization of the National Forest Policy and Piloting of REDD Measures in the Philippines," funded under the International Climate Initiative of the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) and implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH together with the Department of Environment and Natural Resources (DENR), supports the implementation of the PNRPS, with REDD-plus readiness activities including the conduct of policy studies. One of the four policy studies supported by the project under the PNRPS is on the "Assessment of the Implementation of the Free and Prior Informed Consent (FPIC) in the Philippines." The study seeks to address the lack of an evidence-based assessment and evaluation of the FPIC implementation in the country while providing insights into community notions of consent as well as policy recommendations for the enhancement of the FPIC process.

The objective of the study is to (1) assess the implementation of the FPIC provisions as an effective safeguard for IPs to assert their right to self-determination; (2) determine the definition of consent in affected communities; and (3) develop policy-related recommendations for enhancing the FPIC process in the Philippines, which can be helpful in the context of climate-relevant forest policies and their implementation.

The evaluation of FPIC implementation was carried out through an actual review of 34 real FPIC cases. A random selection of case studies was conducted in three clusters that represent different geographical regions, Luzon (n = 20), Visayas (n = 2) and Mindanao (n = 12). Aside from a geographic sampling, the cases also covered the range of projects for which the FPIC is normally sought, mainly for extractive processes such as mining (n = 17) and energy-related activities (n = 5) as well as integrated forest management agreements (n = 5) and only limitedly to conservation/ reforestation projects (n = 2) and others (n = 5). In addition to the 30 sites selected from random sampling, four special cases, known for questionable FPIC processes, were chosen. Hence, the study covered a total sample size of 34 study sites.

The study methodology included the review of relevant documents and community processes as well as the identification of key actors in relation to the FPIC process. This was followed by extensive fieldwork where focus group discussions and key informant interviews were conducted to assess whether consent was issued without coercion, fraud, manipulation and bribery (free); whether consent was obtained before the project started (prior); and whether thorough discussion of the rights of IPs, the processes they have to undergo and the powers that they possess was conducted. Areas of concerns in the FPIC process as well as recommendations were identified.

The assessment of "FPIC implementation" refers to the substantial compliance with the principles enunciated in the Indigenous Peoples Rights Act (IPRA) as well as to the technical/procedural compliance with the legal requirements of the NCIP's 2002 and 2006 FPIC Guidelines, which include, among others, the conduct of the field-based investigation (FBI); other pre-FPIC activities; FPIC mandatory activities; and post-FPIC activities, including the signing and implementation of the Memorandum of Agreement (MOA).

The study finds that no more than 50% of the studied cases attained the status of full and faithful compliance with the FPIC Guidelines and procedures. Although a considerable number of cases reported "no violations" in the field-based investigation stage (44.1%), there was a substantial number of cases that reported incidents of violations during

the actual conduct of the FPIC (38.2%), as well as during the conduct of the MOA signing and post-FPIC activities (29.4%), which are the phases where the more substantial aspects of the FPIC are deliberated and ultimately settled. The widespread negative perception about the FPIC is related to the non-implementation of agreed upon or promised benefits (80% of the violators were allegedly responsible for this).

With regard to the substantial compliance with the principles of FPIC, a considerable number (35.3%) of the case reports claim that the consent of the communities was freely given, although this does not account for half of the reports. More case studies (38.2%) report that the consent was given by IPs without sufficient information to arrive at a well-informed decision. In addition, a considerable number of FPIC applicants deliberately highlighted the material benefits that would be derived from the project while glossing over negative social and environmental impacts of the projects.

The analysis of the community notion of consent reveals that although there are culture-based and site-specific customary practices of giving consent, the modern and liberal concept of “majority rule” (50+1) has become widely utilized by IP communities. This shows that customary beliefs and practices have undergone changes through the process of accommodation and adaptation of non-indigenous practices by the IPs themselves.

To strengthen the implementation of the FPIC process, the study recommends: the inclusion of all areas and communities affected by the project; the provision that the ancestral domain, not the political boundaries, should be the primary unit for FPIC; the non-transferability of the certificate of compliance to other companies, except if the FPIC is obtained; the allowance of sufficient time to collectively deliberate on the application and the giving of consent; the strengthening of capacities of the NCIP to perform its mandate; the provision of guidance on the MOA, including on IP involvement and signing, translation to local languages, monitoring, benefit sharing and grievance mechanisms; the enhancement of the financing of the FPIC process, including the allocation of sufficient funds, provision of contingency funds, and clarity on transparency and audit; and the compliance with REDD-plus specific provisions in FPIC, prohibiting the non-respect of FPIC provisions as well as ensuring availability of information and the full and effective participation of the whole community.

The policy recommendations and insights informed the formulation of the 2012 FPIC Guidelines, adopted by NCIP in April 2012.

I. Introduction



I. Introduction

As the Philippine state's primary legal instrument in protecting and upholding the rights of the indigenous peoples (IPs)/indigenous cultural communities (ICCs), the Indigenous Peoples Rights Act (IPRA) provides for the mechanism of the Free and Prior Informed Consent (FPIC) in line with the principle of IP self-determination. This paper evaluates the implementation of the FPIC, particularly in relation to the 2002 and 2006 FPIC Guidelines. It seeks to (1) **assess the implementation of the FPIC provisions as an effective safeguard for IPs to assert their right to self-determination;** (2) **determine the definition of consent in affected communities;** and (3) **develop policy-related recommendations for enhancing the FPIC process in the Philippines, which can be helpful in the context of climate-relevant forest policies and their implementation, specifically with regard to the concept of Reducing Emissions from Deforestation and Forest Degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks (REDD-plus) in developing countries.**

The assessment is part of a series of policy studies undertaken in the Philippines under the project "Climate-relevant Modernization of the National Forest Policy and Piloting of REDD Measures in the Philippines" funded under the International Climate Initiative of the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) and implemented jointly by the Department of Environment and Natural Resources-Forest Management Bureau (DENR-FMB) and the German Development Cooperation-Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH. This project supports the Philippine National REDD-Plus Strategy (PNRPS) 2010-2022 that was crafted in 2010 to implement REDD-plus in the Philippines. The PNRPS is part of the Philippine National Framework Strategy on Climate Change of 2010 and of the National Climate Change Action Plan 2011-2028 and the Philippine Development Plan 2011-2016. The FPIC study was implemented by a team of researchers (see Volume II) in close cooperation with the National Commission on Indigenous Peoples (NCIP) under GIZ contract with support from the Non-Timber Forest Products-Exchange Programme (NTFP-EP) through the ASEAN Social Forestry Network supported by the Swiss Agency for Development and Cooperation (SDC). Case studies in the Caraga Region were supported by the GIZ COSERAM Project funded by the German Federal Ministry for Economic Cooperation and Development (BMZ).

The GIZ's commitment to the study can be linked to its engagement to support the elaboration and implementation of climate-relevant forest policies and REDD-plus in the Philippines (and other parts of the globe). Considering that most forest dwellers in the country are IPs/ICCs, and major natural forest areas are situated in ancestral domains, the implementation of such policies would certainly affect IPs/ICCs. Evidently, the effective implementation of climate-relevant forest policies in the frame of the PNRPS will require the active support and genuine consent of IPs/ICCs. The study also addresses the need for compliance with international decisions, as safeguards with regard to indigenous peoples have been made a binding element under the international discussion on REDD-plus (UNFCCC, 2010).

Since the implementation of the FPIC Guidelines and the issuance of the first Certification Preconditions (CPs)/ Compliance Certificates in 2004, numerous issues and complaints have surfaced regarding the FPIC process, alleging, among others, the FPIC Guidelines' infirmity and the susceptibility of concerned government personnel to engage in corrupt practices as cited in several position papers and statements of IP organizations, ICCs and NGOs. It bears noting, too, that the issuance of revised FPIC Guidelines in 2006 has seen a tremendous increase in the percentage of FPIC processes by 63%. Despite these developments, there have been no monitoring and evaluation of the FPIC processes since the issuance of the first CPs by the NCIP in 2004.

As of December 31, 2010, there were 309 areas with compliance certificates issued by the NCIP Commission en Banc on the basis of completed FPIC processes where consent was given by the communities. The latest data provided by the NCIP Ancestral Domain Office show that CPs may be disaggregated as follows: 53% of FPICs are in mining operations/ exploration projects; 12% are mini-hydro and dam projects; 20% are forestry/agro-industrial projects; 1% involves industrial small-scale mining; 2% dealt with research/plant/livelihood project/water system/tourism-related projects; 8% concern transmission line program/base television relay/special land use/others; and 4% involve the exercise of priority rights in natural resources/community-initiated and solicited projects. Undeniably, these programs, projects or activities have impacted the lives and well-being of IPs/ICCs, oftentimes threatening their ancestral domains.

These developments underscore the need to conduct a thorough study on the implementation of the FPIC provisions under the IPRA and the FPIC Guidelines of 2002 and 2006. The IPRA and its FPIC provisions present themselves as "safeguards" for the protection of IP rights in the Philippines. Arguably, the Philippines stands to benefit from

the advantages provided by the IPRA. It appears privileged compared with other countries that have no similar IP legislation. However, due to the concerns mentioned earlier, there is a felt need to take stock of how the law and FPIC Guidelines have been implemented. There is the urgency to study whether or not the FPIC process as implemented is in actuality an effective safeguard for indigenous communities to assert their right to self-determination. This study aims to contribute to the empowerment of IPs/ICCs in the Philippines and their attainment of self-determination by informing the future actions of the government – through the NCIP – and of the IPs/ICCs. Hopefully, it will also help pave the way for the adoption of climate-relevant forest protection initiatives such as REDD-plus in the Philippines with the active support and participation of IPs/ICCs for the collective good.

1.1. Study approach and objectives

The study was initiated by request of the NCIP in August 2010 to Community Development for REDD (CoDe REDD), an informal association of civil society organizations, research and academic institutions that support the Philippine National REDD-Plus Strategy, represented by NTFP-EP, and GIZ. Through the cooperation among NCIP and these two organizations involved in REDD-plus development and implementation in the country, an agreement was inked among NCIP, GIZ and NTFP in May 2011 to conduct the analysis of FPIC implementation in the country. Fieldwork started in 2011 following an inception phase, the conduct of several consultative workshops and the signing of the Memorandum of Agreement (MOA) with NCIP on the joint implementation of the study (see Annex 2). In total, 34 case studies were conducted including field validation from May 2011 to mid-2012. First results were presented and discussed in a National REDD-plus Policy Workshop (DENR-GIZ, 2011), where a policy agenda was developed to address issues outlined in the FPIC field studies. Quite significantly, the findings and recommendations of the said workshop were included in the new version of the FPIC Guidelines, signed by NCIP in April 2012. The drafting of this report began in late 2012. The report underwent peer review in early 2013.

1.2. Study methodology

Assessment of the FPIC was carried out through a review of actual FPIC cases. A random selection of case studies for actual FPIC applications covering 10% of all areas was carried out. Aside from a geographic sampling, the cases also covered the range of projects for which the FPIC is normally sought (see Volume II for the detailed case study reports).

According to NCIP data, there were a total of 309 FPIC sites as of December 2010. There were three research teams, each of which was assigned to a cluster of field sites. The clusters are, per agreement, distributed among the three teams as follows: 1) CAR, Regions 1, 2, 3, and provinces of Region 4 that are not in Palawan and Mindoro; 2) provinces in Palawan and Mindoro, Regions 5, 6, 7 and 9; and 3) Regions 10, 11, 12 and 13. The proportions that each cluster represents in relation to the total number of sites are as follows:

- 101 sites in cluster 1 represent 33% of the total number of sites;
- 67 sites in cluster 2 represent 22% of the total number of sites; and
- 141 sites in cluster 3 represent 44% of the total number of sites.

The agreed sample size was 10% of 309 + 4 “special sites,” resulting in 34 sites. The 30 sites were selected randomly, whereas “special sites” were purposively selected. These special sites were chosen to get a flavor of sites with known reports of questionable FPIC processes. Special sites were added so as not to disrupt the randomness of the FPIC sites chosen and also to get a perspective of FPIC processes outside the total population of sites. The distribution is as follows:

- 33% of 31 sites is 10.23, rounded off to 10 sites assigned to cluster 1;
- 22% of 31 sites is 6.82 rounded off to 7 sites assigned to cluster 2;
- 44% of 31 sites is 13.64 rounded off to 14 sites assigned to cluster 3; and
- Each cluster will have 1 Certificate of Non-Overlap (CNO) site and 1 no FPIC site (this actually totaled to 4).

Prior to the fieldwork, the profile of the FPIC process was compiled. The following were conducted:

- a) collection of relevant documents
- b) identification of key actors
- c) outlining of the actual process that the community underwent, if possible, and the results
- d) inclusion of any and all relevant media reports

For the actual fieldwork, primary data were collected by conducting focus group discussions (FGDs) and key informant interviews (KIIs). The FGDs with the community covered an assessment of whether there was sufficient opportunity to discuss and debate the issues involved (free); the actual process the community underwent (prior); the sources of information available to the public (informed); discussion of the stance/s taken; the performance of the local government unit (LGU); and discussion of NCIP's performance and recommendations in handling the process. Finally, problem areas in the FPIC process were identified, and recommendations were collected. Key informant interviews were conducted with local government officials, concerned NCIP personnel and project proponents. A specific tool kit was jointly developed by the researchers to guide the actual implementation of the FPIC case studies (see Annex 1).

I.3. Limitations of the study

The present study has the objective of assessing the implementation of FPIC in the Philippines, providing policy-related recommendations and determining community definitions of “consent.” As the study aims to contribute to FPIC policy formulation, it has two practical limitations:

The field surveys were **NOT meant to be an assessment of the projects but of the process of granting/denying consent by indigenous communities** in relation to the operative FPIC guidelines.

The field surveys were NOT fact-finding missions meant to gather evidence for the prosecution of erring government officials and corporations.

It probably bears noting that the findings of the field surveys, particularly the responses gathered through the FGDs and KIIs, are to be regarded as reflective of the reported and documented sentiments and views of respondents in the communities that were studied, regardless of whether such are indeed factual or informed. Note, too, that the sentiments and views expressed by respondents may not be consistent with official or legal understandings of the IPRA and/or the FPIC concept.

Moreover, this synthesis report relied on case reports written by field researchers. Unfortunately, the quality of the individual case reports is rather uneven in terms of comprehensiveness, clarity and even consistency. In any case, the authors drafted the synthesis report using information found in the case reports. Appraisal of the synthesis report should take this matter into account.

II. Presentation of Data and Analysis



II. Presentation of data and analysis

This report synthesizes the findings of case studies conducted in a number of places in the Philippines, mostly among indigenous peoples (IP) communities, to assess the implementation of the Free and Prior Informed Consent (FPIC) principle as articulated in the Indigenous Peoples Rights Act (IPRA) and the National Commission on Indigenous Peoples' (NCIP) FPIC Guidelines.

The term “FPIC implementation” is used here to broadly refer to compliance with the FPIC Guidelines, which cover, among other things, the conduct of the field-based investigation (FBI); pre-FPIC activities other than the field-based investigation; FPIC mandatory activities; and post-FPIC activities, including the signing and implementation of the Memorandum of Agreement (MOA). Cases that involved the conduct of field-based investigation but did not entail the procurement of FPIC were also considered by the present evaluative study because the conduct of field-based investigation in such cases can still be assessed in terms of compliance with the FPIC Guidelines. Parenthetically, the term “FPIC implementation” is likewise used to indicate the technical/procedural observance with the legal parameters set by the FPIC Guidelines as well as substantial compliance with the fundamental tenets of FPIC. In short, FPIC implementation is taken to include a range of activities as well as compliance with the legal requirements of the FPIC Guidelines and substantial compliance with the FPIC principles.

II.1. Key findings of the study

In general, the study produced the following results:

1. On the whole, there are more cases reported as having no violations compared with those reported as having procedural violations of the FPIC. During the field-based investigation (FBI), around 8 (23.5%) of the 34 cases noted that there were violations of the rules on FBI, whereas 15 (44.1%) reported that the rules were strictly followed. Meanwhile, as regards adherence to the procedural requirements for the acquisition of the consent of the concerned IPs, 13 (38.2%) of the 34 case reports indicated that violations of the FPIC procedural requirements were observed. The same number of cases (13 or 38.2%) stated that all the procedural conditions were followed. With regard to post-FPIC activities, there are around 10 (29.4%) of the 34 cases that reported that violations of the rules were noted, whereas 14 (41.1%) of the 34 cases expressed that there were no procedural violations observed.

When it comes to the “substantial compliance” with the principles of freedom of consent, only 5 of 34 (14.7%) stated that their consent was not freely granted, whereas 12 of the 34 (35.3%) case reports noted that the consent was given freely. On the issue regarding prior consent, 8 of 34 (23.5%) observed that the projects already began despite the fact that the consent of the concerned IPs was yet to be sought, whereas another 8 (23.5%) claimed that the IPs consent was sought before the projects were implemented. Regarding informed consent, 13 of the 34 (38.2%) cases reported that the concerned IPs were not provided sufficient information in order to arrive at a reasonable decision. Only 4 of 34 (11.8%) declared that the IPs were given enough information as to the nature and scope of the projects affecting them.

2. With regard to the notion of consent as understood in IP communities, the study finds that “consent” is generally understood as “permission” or “agreement.” The modern-day procedure for giving consent generally involves a local leader (or set of leaders) gathering members of the community to get their views on an outsider’s request to pass through the territory of the community and/or to extract some natural resource found within. After consulting with the community, the leader (or set of leaders) relays the decision to the consent-seeker on behalf of the community. In some communities, obtaining consent also entails getting the approval of spirits (“diwatas”) who are consulted through the conduct of rituals by members of the community with links to the spirit world. The study also finds that “consensus” is now equated with “majority rule” in many indigenous communities in the Philippines.

The policy-related recommendations of the study are discussed at the latter part of the paper.

II.2. Types of projects and the affected IPs

A total of 34 cases were studied for this synthesis report. More than half of the cases (20 out of 34) are found in Luzon, with 12 cases found in Mindanao. There are only two cases coming from the Visayas. The location of the case studies is indicative of the number of activities that are conducted as well as the general geographic distribution of IPs in the Philippines. On the first point, that 20 out of 34 of the case studies are found in Luzon suggests that a large number of activities that involve IP land and resources are taking place in the island of Luzon. This also indicates that there is a great number of IPs in Luzon. In comparison, only 2 out of 34 case studies were conducted in the Visayas. This may be explained by the observation that fewer activities affecting IPs are being conducted in the Visayas area and/or there are fewer IPs in the Visayas (compared with Luzon or Mindanao).

Table 1 below shows the frequency of project types by island group.

Table 1. Distribution of project types by island group

Island group	Mining	Energy	IFMA	Conservation/ reforestation	Others	Total
Luzon	11	2	3	1	3	20
Visayas	1		1			2
Mindanao	5	3	1	1	2	12
Total	17	5	5	2	5	34

Disaggregating further the data by project type, it was found that 17 out of the 34 projects that had to undergo the FPIC requirements are mining related. Except for the two cases of conservation or reforestation projects – activities with an anticipated positive impact on the implementation of REDD-plus in the Philippines – all the cases studied involved extractive processes. This suggests the rich amounts of resources located within IP domains in the Philippines. As extraction of resources mostly has a direct or indirect negative impact on forests, all these projects are relevant to REDD-plus implementation, hence to the PNRPS.

Table 2 below specifies the 34 project proponents, type of the project, location of the project as well as the IPs who are affected by the project.

Table 2. Project proponents and affected IPs

Project proponent	Project type	Location (Municipality/Province)	Indigenous Peoples involved
MINING RELATED (17)			
Agusan Petroleum and Mineral Corporation (APMC)	Mineral exploration	San Teodoro, Oriental Mindoro and Abra de Ilog, Occidental Mindoro	Iraya Mangyans
Bulawan Mineral Resources Corporation (BMRC)	Mineral exploration	Jose Panganiban and Labo, Camarines Norte	Kabihug
Community-initiated partnership with Philsaga Mining Corporation (PMC)	Mining	Bunawan, Agusan del Sur	Manobo
Community-initiated partnership with Philsaga Mining Corporation (PMC)	Mining	Bunawan, Agusan del Sur	Manobo

Citinickel Olympic	Large-scale mining	Narra and S. Espanola, Palawan	Tagabanua and Palaw'an
Dominador Liwag	Small-scale mining	San Luis, Aurora	Alta/Dumagat
Marvin Lee Marcelino, Martin Lee Marcelino and Elizabeth Respicia	Mining exploration	Capalonga, Camarines Norte	Kabihog
Melva Vallesteros	Small-scale mining	El Salvador, Misamis Oriental	None. Certificate of Non-Overlap was issued
Mindoro Nickel Project (MNP)	Mining	Victoria, Oriental Mindoro	Not specified
Natural Resources Management Development Corporation (NRMDC)	Construction of mines tailing dam	Monkayo, Compostela Valley	Mandaya, Manobo, Mangguangan and Dibabawon
Olympus Pacific Minerals, Inc. (OPMI)	Mining exploration	Baay-Licuan, Abra	BinonganTingguian
Pacific Timber Export Corporation (PATECO)	Mineral exploration	Dinapigue, Isabela	Agta/Dumagat
Royalco Philippines, Inc.	Mineral exploration	Bakun, Benguet	Kankana-eyes
Shenzhou Mining Group Corporation (SMGC)	Mineral Production Sharing Agreement	Claver, Surigao del Norte	Mamanua
SR Metals, Inc.	Mineral Production Sharing Agreement	Tubay, Agusan del Norte	Mamanua and Manobo
Triple H Mining Philippines, Inc.	Mining exploration	Gabalton, Nueva Ecija	Dumagat
Wenifred Tupaz	Small-scale mining	Narra, Palawan	Palaw'an
Wolfland Resources, Inc.	Mineral exploration	Opol, Misamis Oriental and Iligan City, Lanao del Norte	Higaonon
Wolfland Resources, Inc.	Mineral exploration	Opol, Misamis Oriental and Iligan City, Lanao del Norte	Higaonon
ENERGY RELATED (5)			
ChevronT	Geothermal project	inglayan, Kalinga	Not specified
Hydroelectric Development Corporation (HEDCOR)	Hydroelectric power plant project	Davao City	Obo-Manobo and Clata Bagobo
Mindanao Energy Systems, Inc. (MINERGY)	Hydroelectric power plant project	Claveria, Misamis Oriental	Higaonon
National Transmission Commission (TransCo)	Construction of additional power line sub-stations	Davao City	Manobo-Matigsalug
North Luzon Power Development Corporation (NLPDC)	Mini-hydro project	Kibungan, Benguet	Kankana-eyes
INTEGRATED FOREST MANAGEMENT AGREEMENT (IFMA)(5)			
Agropolis Forest Farmers Association, Inc. (AFFA)	Integrated Forest Management Agreement (IFMA)	Candoni, Negros Occidental	None. Certificate of Non-Overlap was issued

Community-initiated partnership with Natural Resource Development Corp. (NRDC)	Integrated Forest Management Agreement (IFMA)	Eureka, Gingoog City	Higaonon
Jade Agri-Forest Corporation	Integrated Forest Management Agreement (IFMA)	San Marcelino, Zambales	Aeta
Pacific Timber Export Corporation (PATECO)	Integrated Forest Management Agreement (IFMA)	Dinapigue, Isabela and Dilasag, Aurora	Agta/Dumagats
RCC Timber, Inc.	Integrated Forest Management Agreement (IFMA)	Casiguran and Dinalungan, Aurora and Maddela, Quirino	Dumagat
CONSERVATION/REFORESTATION (2)			
Kauswagan sa Timogang Mindanao Foundation	Reforestation	Toril District, Davao City	Bagobo-Tagabawa
Palawan State University	Natural resources management and biodiversity conservation	Puerto Princesa City and Quezon, Palawan	Tagabanua and Palaw'an
OTHERS (5)			
Globe Telecommunications, Inc.	Telecommunications	Marilog District, Davao City and Kitaotao, Bukidnon	Matigsalug-Manobo
Gloria Alzadon-OredinaP	Forest Land Grazing Management Agreement	aracelis, Mountain Province	None. Certificate of Non-Overlap was issued
Robert Michael Tiu	Industrial sand and gravel project	Sudipen, La Union	Bago-Kankanaey
Talaandig community-initiated project	Not specified	Lantapan, Bukidnon	Talaandig
Community-initiated partnership with UNESCO-MBI	Wildlife Safari Tourism	Busuanga, Palawan	Tagbanua

Some of the cases studied in this report were covered by the 2002 FPIC Guidelines and the others by the 2006 FPIC Guidelines. This is because a number of the projects covered by the study were proposed and/or implemented between 2002 to 2005, whereas some undertakings were conducted in 2006 and subsequent years. This synthesis report thus employed both the 2002 and 2006 FPIC Guidelines in evaluating the case studies depending on the period when the project subject of the case study was conducted.

Table 3 presents some of the important processes that should be undertaken by a project proponent before commencing the activities within IP domains based on the 2002 and 2006 FPIC Guidelines.

Table 3. Summary of FPIC acquisition processes

2002 FPIC Guidelines	2006 FPIC Guidelines (Regular Process)
1. Endorsement of application for issuance of Certification Precondition (CP) to NCIP	1. Endorsement of application for issuance of Certification Precondition (CP) to NCIP
2. Payment of Field-Based Investigation fee expenses to be deposited with the NCIP regional office	2. Conduct of Pre-Field-Based Investigation Conference by the NCIP provincial officer or Service Center Officer to determine if the project affects ancestral domain/s
3. Conduct of Field-Based Investigation to determine if the affected area of the project is within the ancestral domain/s of the Indigenous Peoples: <ul style="list-style-type: none"> a. The NCIP Regional Director creates a field-based investigation team composed of 5 members, 2 of whom are from the regional office and 3 from the provincial office (PO) or Community Service Center (CSC). b. The field-based investigation team conducts assessment of secondary data and actual inspection of the proposed project site. c. If the field-based investigation team report requires FPIC, the project proponent should submit operation plan. 	3. Payment of Field-Based Investigation fee and expenses to be deposited with the NCIP provincial office's or CSC's Trust Account
4. Securing FPIC <ul style="list-style-type: none"> a. Depositing of FPIC fee with the NCIP regional office. b. Posting of Notices for preliminary consultative meeting and personal service of notices to members of council of elders/leaders to be made by NCIP personnel. c. Validation of members of the council of elders/leaders to be facilitated by NCIP personnel. d. Preliminary consultative meeting to be participated in by the council of elders/leaders, project proponent, collaborating NGO and civil society, and NCIP where the proponent should present the operation plan and discuss among others the cost, benefits and perceived adverse effects of the project. <ul style="list-style-type: none"> a. Consensus building to be conducted within 15 days from the last and final preliminary consultative meeting where the affected Indigenous Peoples will discuss the project proposal and come up with a decision. b. Community assembly to be called by the NCIP within 15 days after the lapse of the consensus building period to determine the community decision. 	4. Field-Based Investigation: <ul style="list-style-type: none"> a. The provincial officer constitutes the field-based investigation team, which shall be composed of at least 3 members, 2 of whom shall come from the NCIP provincial office and 1 from the CSC or vice versa. b. The field-based investigation shall commence 5 days from payment of field-based investigation fee and should be completed in 10 days. c. The field-based investigation team shall carry out an ACTUAL field investigation to determine the nature and extent of the proposed project, area and Indigenous Peoples affected, to identify the elders or leaders and to conduct an on-site preparation of the Work and Financial Plan (WFP). d. The field-based investigation team submits an field-based investigation report

<p>5. Issuance of the Certificate of FPIC and signing of the Memorandum of Agreement (MOA)</p> <p>If the Indigenous Peoples approve of the proposed project, the Certificate of FPIC is issued by the signing of the MOA. The MOA should be written in English or Tagalog AND in the appropriate Indigenous Peoples language, and signed by the Indigenous Peoples' representatives, project proponent and NCIP Regional Director.</p>	<p>5. Pre-FPIC Conference</p>
<p>6. Endorsement of the FPIC Certification to the Ancestral Domain Office (ADO)</p>	<p>6. Securing FPIC</p> <ol style="list-style-type: none"> The Regional Director creates the FPIC team composed of not more than 6 members who shall come from the provincial office or CSC. Payment of FPIC fee and expenses to be deposited with the NCIP provincial office's or CSC's Trust Account. Validation of members of the council of elders/leaders to be facilitated by NCIP personnel. Posting of Notices and personal service of notices to members of council of elders/leaders for Consultative Community Assembly (CCA). CCA to be participated in by the council of elders/leaders, IP households, FPIC team, applicant, NGOs and civil society, and NCIP where the proponent should present the operation plan and discuss among others the cost, benefits and perceived adverse effects of the project. Consensus building and freedom period where the affected Indigenous Peoples will discuss the project proposal. Decision meeting where the affected Indigenous Peoples shall formally convey to the applicant their decision. If the decision is in favor of the project, the parties shall proceed to finalize the terms and conditions of the MOA.
<p>7. Issuance of CP</p>	<p>7. Preparation and signing of the Memorandum of Agreement (MOA)</p> <ol style="list-style-type: none"> Preparation of the MOA by the FPIC team Drafting of the MOA by the provincial legal officer and the FPIC team, and the first draft shall be translated into the language or dialect understood by the IPs. Meeting at the provincial office or Service Office to be called by the provincial officer and to be attended by the legal officer and the Regional Review Team (RRT).

	<ul style="list-style-type: none"> d. The translated version and the English or Tagalog version of the MOA shall be presented and explained to the council of elders/leaders. e. If the contents of the MOA are affirmed, those authorized to sign shall affix their signature/thumb mark and present themselves before a notary public.
	8. Final review of the MOA by the Legal Affairs Office (LAO)
	9. Endorsement of the FPIC Report by the ADO
	10. Issuance of CP

Guided by the 2002 and 2006 FPIC Guidelines, this synthesis report evaluated the 34 case studies to determine the degree of compliance of the concerned parties to the technical/procedural and substantive aspects of the guidelines and the IPRA.

II.3. Technical/procedural compliance with the FPIC Guidelines

In determining the extent of conformity of the parties involved in the projects that were studied, the 34 cases were evaluated on the basis of whether in obtaining free and prior informed consent of IPs, the following were observed:

- a. “No violation”
- b. “Some violations”
- c. “Many violations”
- d. “No data”
- e. “Not applicable”

For this purpose, (a) “no violation” means that all the procedural and technical requirements were fulfilled; (b) “many violations” mean that more than two requirements were violated; (c) “some violations” indicate that there are one or two requirements that were not satisfied; (d) “no data” signifies that there is no factual basis to evaluate the conduct of the FPIC process; and (e) “not applicable” means that the FPIC process is not required.

II.3.1. Conduct of field-based investigation

The field-based investigation showed that in most case studies, “no violation” was reported. Out of the 34 projects, there were 15 cases where the FBI rules were reportedly satisfied by the NCIP personnel. There were, however, eight instances where some violations were reported. Most of the cases with some reported violations occurred in mining-related projects. In the forestry sector, there were two projects involving integrated forest management agreements (IFMAs) that registered some violations of FBI rules. Furthermore, no project recorded “many violations” of FBI rules. Six projects were not taken into account due to lack of data, and in five case studies, carrying out the FPIC process was not considered applicable.

Table 4. Procedural compliance with field-based investigation (FBI) rules

Project type	Mining	Energy	IFMA	Conservation/reforestation	Others	Total
No violation	6	3	2	1	3	15
Some violations	6	1	1	0	0	8
Many violations	0	0	0	0	0	0
No data	3	1	1	1	0	6
Not applicable	2	0	1	0	2	5
Total	17	5	5	2	5	34

The reported violations committed during the field-based investigation were varied. For the Shenzhou FPIC case report (Volume II, Case Study 1), the majority of the members of the field-based investigation were employees of the NCIP regional office, notwithstanding the rule that the field-based investigation members should be appointed from among the ranks of the NCIP provincial office. For the Agusan Petroleum and Mineral Corporation FPIC case report (Volume II, Case Study 3), the NCIP visited only a limited number of barangays rather than comprehensively conducting an investigation in all the affected areas. In the Royalco Philippines, Inc. FPIC report (Volume II, Case Study 6), the work and financial plan was not reflective of the actual circumstances on the ground. In the Marvin Lee et al. FPIC case (Volume II, Case Study 23), the NCIP was not concerned with verifying the health and school statistics to obtain a clear census of the population of the IPs in the place, and in the case of Citinickel (Volume II, Case Study 14), there was no field-based investigation report at all.

II.3.2. Conduct of securing FPIC

Table 5. Procedural compliance with FPIC rules and requirements

Project type	Mining	Energy	IFMA	Conservation/reforestation	Others	Total
No violation	6	3	2	1	1	13
Some violations	6	0	1	1	0	8
Many violations	2	2	0	0	1	5
No data	0	0	0	0	0	0
Not applicable	3	0	2	0	3	8
Total	17	5	5	2	5	34

A different scenario is observed when the activities for the acquisition of FPIC are compared with the conduct of the field-based investigation. As reported above, few cases of violations were reported during the field-based investigation phase. However, when looking at the conduct of the FPIC proper, there are many cases reporting incidents of violations of the FPIC rules and requirements. “Some violations” of the FPIC rules and requirements were reported in eight cases, and in five cases, “many violations” were noted. Still, it bears noting that 13 out of 34 cases did not register any violation of FPIC rules.

Table 6. Types of violations FPIC rules and requirements

Violations	Policy reference	Policy provision	Site of violation	Project proponent
Conducting activities without benefit of FPIC	Sec. 3 (e), 2006 FPIC Guidelines	It is the policy of the Commission to xxx guarantee that no concession xxx or other undertakings xxx will be granted or renewed without going through the process laid down by law and these Guidelines	Tinglayan Kalinga; Licuan-Baay, Abra	Chevron Olympus Pacific Mining, Inc.
Proceeding with construction despite NCIP's notice to the contrary for lack of FPIC	Sec. 6, 2002 FPIC Guidelines	Xxx The ICCs/IPs shall have the right to accept or reject a certain development, activity or undertaking in their particular communities	Kitatoto, Bukidnon and Davao City	Globe Telecom, Inc.
No FPIC process in one area even if it was covered by the MOA	Sec. 16 (c), 2002 FPIC Guidelines	When the xxx project xxx affects a whole range of territories covering two or more ancestral domains, the consent of all affected ICCs/IPs shall be secured	Abra de Ilog, Mindoro Occidental	Agusan Petroleum and Mineral Corporation
Lack of endorsement from regulating agency ¹	Sec. 7, 2006 FPIC Guidelines	The application for xxx permit, xxx shall be filed with the concerned government regulatory agency which shall then endorse it to the NCIP	Kibungan, Benguet	North Luzon Power Development Corporation
Other IPs were excluded in the FPIC process	Sec. 10 (a), 2006 FPIC Guidelines	When the area affected covers the entire ancestral domain, the consent of the concerned ICCs/IPs within the ancestral domain shall be secured	Dilasag, Aurora and Dinapigue, Isabela	PATECO Logging and PATECO Mining
Other IPs were excluded in the FPIC process	Sec. 10 (a), 2006 FPIC Guidelines	When the area affected covers the entire ancestral domain, the consent of the concerned ICCs/IPs within the ancestral domain shall be secured	Dilasag, Aurora and Dinapigue, Isabela	PATECO Logging and PATECO Mining

¹ In this case, the Department of Energy (DOE) entered into a service contract with the proponent despite the absence of FPIC of the affected indigenous peoples.

Votes from two separate municipalities were combined	Sec. 10 (f), 2006 FPIC Guidelines	When the area affected covers ancestral domain situated in two or more barangays, the assemblies may be conducted jointly or separately for each barangay	Labo and Jose Panganiban, Camarines Norte	Bulawan Mineral Resources Corp.
Consent was taken from a group not representing the community	Sec. 16 (b), 2002 FPIC Guidelines	When the xxx project affects the entire ancestral domain, the consent of the concerned ICCs/IPs within the ancestral domain shall be secured	Kitao, Bukidnon and Davao City	Globe Telecom, Inc.
List of elders was based on NCIP attendance sheet without validation NCIP facilitated the selection of "leaders"	Sec. 24 (a), 2006 FPIC Guidelines	NCIP shall facilitate the convening of the elders/leaders xxx, the participants shall be asked to validate the recognized leaders of the community	Tinglayan Kalinga and Capalonga, Camarines Sur	Chevron and Marvin Lee Marcelino et al.
Validation of elders was made after MOA signing Leaders were not validated "Leaders" deny being the representatives of the community	Sec. 14 (b), 2002 FPIC Guidelines	Xxx The purpose is to secure genuine representations for the community in the negotiations that will be had. It is a process in which each of them will present himself before the rest for confirmation as a recognized elder/leader of the community	Tubay, Agusan del Norte Kitao, Bukidnon and Davao City Abra de Ilog, Mindoro Occidental	SR Metals, Inc. Globe Telecom, Inc. Agusan Petroleum and Mineral Corporation
Traditional process of decision making of assembling all community members was not followed	Sec. 25, 2006 FPIC Guidelines	The customary decision-making process of the concerned ICCs/IPs shall be adhered to in securing their FPIC	Claver, Surigao del Norte Tinglayan Kalinga	Shenzhuo Mining Group Corporation Chevron
FPIC fees and expenses were directly paid to the IPs Funds were managed by the applicant ²	Sec. 16, 2006 FPIC Guidelines	Each provincial office and service center with no provincial office shall establish a trust account in an authorized government depository bank where all field-based investigation and FPIC fee payments shall be deposited as Trust Funds	Kibungan, Benguet Licuan-Baay, Abra	Northern Luzon Power Development Corporation Olympus Pacific Mining, Inc.

² Notwithstanding Sec. 16, 2006 FPIC Guidelines, it is accordingly not feasible for the service centers to maintain trust accounts. Besides, NCIP service centers are unauthorized to issue receipts.

No Posting of Notices	Sec. 14 (a), 2002 FPIC Guidelines	Posting of notices in conspicuous places in and around the area of the concerned ICC/IP community by NCIP that a preliminary consultative meeting will be held. The FPIC Team shall cause the posting of notices in conspicuous places in and around the concerned ICC/IP community xxx.	Puerto Princesa City and Quezon, Palawan	Palawan State University
	Sec. 26 (a), 2006 FPIC Guidelines		Kibungan, Benguet Gabaldon, Nueva Ecija	North Luzon Power Development Corporation (NLPDC) Triple H Mining Philippines, Inc.

Of these 13 cases where violations of the FPIC rules and requirements were found or alleged, the nature of the violations varies. These violations relate to validation or selection of elders/leaders; lack of FPIC process in areas that are covered; exclusion of some IP groups from the process; non-practice of the traditional method of decision making; lack of posting of relevant announcements; and management of funds.

II.3.3. MOA signing and post-FPIC activities

Table 7. Procedural compliance with the rules on MOA signing and post-FPIC activities

Project type	Mining	Energy	IFMA	Conservation/ reforestation	Others	Total
No violation	8	1	3	1	1	14
Some violations	4	4	0	0	0	8
Many violations	1	0	0	0	1	2
No data	0	0	1	0	0	1
Not applicable	4	0	1	0	3	8
Total	17	5	5	1	5	34

Notwithstanding reports of violations during the process of securing the IPs' consent, a number of these FPIC processes resulted in the crafting of a MOA. Worse, even in the MOA signing itself, there were "some violations" reported. 10 of the 34 cases reported violations committed during MOA signing.

This is very important to note because the act of signing the MOA presumably exhibits the conformity of the IPs to the project. The MOA is the document that evidences the fact that the project proponent may begin operation. The violations vary from case to case. Table 8 tabulates the different kinds of violations that were recorded.

Table 8. Types of reported violations during MOA signing and post-FPIC activities

Violations	Policy reference	Policy provision	Site of violation	Project proponent
MOA presentation and signing was conducted outside of the NCIP provincial office	Section 43, Part VIII, 2006 FPIC Guidelines	xxx The Provincial Officer or Service Center Head shall call the elders/leaders as well as the applicant to a meeting at the Provincial Office or Service Center. Xxx if the MOA is affirmed, those previously authorized to sign shall affix their signature/thumb-mark xxx.	Bakun, Benguet Tinglayan, Kalinga Claveria, Misamis Oriental Narra, Palawan Opal, Misamis Oriental and Mainit, Iligan City Kibungan, Benguet Calauit, Palawan	Royalco Philippines, Inc. Chevron Mindanao Energy Systems, Inc. WenifredTupaz Wolfland Resources Management Development Corporation Northern Luzon Power Development Corporation UNESCO-MBI
MOA was written in English only	Section 43, Part VIII, 2006 FPIC Guidelines Section 22, Part III, 2002 FPIC Guidelines	The first draft shall immediately be translated into the language or dialect understood by the ICCs/IPs concerned The agreement must be written in English or Tagalog, and in the appropriate IP language	Labo and Jose Panganiban, Camarines Norte Monkayo, Compostela Valley	Bulawan Mineral Resources Corp. Natural Resources Management Development Corporation
MOA signatories were not those initially validated MOA signatories are not authorized by the community	Section 46, Part VIII, 2006 FPIC Guidelines	The signatories of the MOA shall be those elders/leaders who have been identified during the validation and authorized by the community to sign	Bakun, Benguet Tinglayan, Kalinga	Royalco Philippines, Inc. Chevron
RRT was not around during the signing	Section 43, Part VIII, 2006 FPIC Guidelines	Xxx the Provincial Officer or Service Center Head shall inform the Regional Director and request the presence of RRT members	Bakun, Benguet	Royalco Philippines, Inc.

MOA does not include penalties for violation of terms	Section 23 (i), Part III, 2002 FPIC Guidelines	The MOA shall stipulate among others, xxx the penalties for non-compliance or violation of the terms and conditions	Abra de Ilog, Mindoro Occidental	Agusan Petroleum and Mineral Corporation
MOA exculpates the proponent from future damages	Section 45 (l), Part VIII, 2006 FPIC Guidelines	The MOA shall stipulate among others, xxx undertaking in writing to answer for damages which the ICCs/IPs may suffer on account of the plan, xxx.	Calauit, Palawan	UNESCO-MBI
MOA prevents IPs from filing cases in courts	Section 45 (f), Part VIII, 2006 FPIC Guidelines	The MOA shall stipulate among others, xxx detailed measures to protect IP rights	Calauit, Palawan	UNESCO-MBI
MOA is not notarized	Section 22, Part III, 2002 FPIC Guidelines	The parties executing the MOA shall acknowledge the terms, contents and due execution thereof before a notary public or persons authorized by law to administer oath.	Abra de Ilog, Mindoro Occidental	Agusan Petroleum and Mineral Corporation

The kinds of violations that were reported or discovered in the MOA and in the MOA-related activities cover a wide range of transgressions: from venue to parties and content. It is important to note that in a number of case reports, the NCIP provincial office or service center (if not a site within the community) was assumed – rightly or wrongly – by respondents and case report writers to be the proper venue for MOA signing. In these case reports, MOA signing outside the NCIP provincial office or service center was reported as a violation.

The 2006 FPIC Guidelines are not as specific as should have been desired. However, the pertinent provision that comes close to the determination of the venue of signing is Section 43, Part VIII, 2006 FPIC Guidelines:

“Section 43. Preparation of the Memorandum of Agreement. When the consent of the concerned community is obtained, the terms and conditions thereof shall be embodied in a Memorandum of Agreement (MOA) to be executed between and among the ICC/IPs, the applicant and the NCIP and any other party that may be necessarily involved. xxx The Provincial Officer or Service Center Head shall call the elders/leaders as well as the applicant to a meeting at the Provincial Office or Service Center. In this meeting, the presence of the Legal Officer is required. Prior to the scheduled date of meeting, the Provincial Officer or Service Center Head shall inform the Regional Director and request the presence of RRT members. The review authority of the RRT is to be performed in this meeting. The translated version along with the English or Filipino version shall be presented and explained to the council of elders/leaders. If the contents of the MOA is affirmed, those previously authorized to sign in behalf of the community shall affix their signature/thumb-mark and present themselves before a notary public to acknowledge the document they have executed. xxx”

It is noteworthy that the guidelines require that before the authorized signatories are to affix their signatures, a meeting should be conducted at the NCIP provincial office or service center. The presence of the parties to the MOA as well as that of the legal officer is mandatory. The guidelines likewise direct that the “review authority of the RRT is to be performed in this meeting,” which implies the necessity of the presence of the Regional Review Team (RRT) for the latter to properly exercise its review authority. The guidelines thereafter direct that the parties to the MOA shall affix their signature to the contract. The guidelines, however, do not specify the exact venue where the signatories should sign the MOA.

There are two views on this matter. One view is that the signing could take place outside of the provincial office or service center, as the guideline is not very specific on this matter. This view likewise asserts that the guidelines do not require the presentation of the MOA to the IPs at the provincial office or service center. The other view, however, is that the venue of signing is at the provincial office or service center, and the presentation of the MOA must be done in the same place. This is in line with the analysis that the requirement for a meeting at the provincial office or service center, and the statement on signing and presentation of the MOA is discussed and embraced in just one section, i.e. Sec. 43 as quoted above.

The second interpretation seems to be in consonance with the mandate of the NCIP. The NCIP was instituted to be the guardian of the rights of IPs. As the MOA signing is the important act that eventually binds the IPs to the contract, all possible mechanisms to ensure that the consent of the signatories is not vitiated should be employed. No other government agency is best positioned to perform this task but the NCIP. This is why Section 43, Part VIII, 2006 FPIC Guidelines can be interpreted to mean that the MOA be presented and explained to the parties at the NCIP provincial office or service center. It follows that the signing should likewise take place at the same office for the same purposes mentioned earlier. However, in numerous instances, the MOA signing was reportedly conducted at a hotel, resort, eatery or even in places that are far from the community and the NCIP provincial office.

Another substantial violation that was reported is the act of signing by individuals who were not at all authorized to represent the community sentiment, either because there was a lapse in the validation of the appointed signatories or the signatories were not even members of the community that they were supposed to represent. This would make the MOA void from the beginning.

Parenthetically, another glaring violation of the basic FPIC Guidelines is the absence (either intentional or not) of the NCIP officials particularly the Regional Review Team (RRT) during the MOA presentation and explanation. The presence of the designated NCIP officials is indispensable as, again, the NCIP officers are supposed to be the guardians of IP rights.

II.4. Substantial compliance with the principles of FPIC

Although procedural compliance means that the black letter rules and regulations embodied in the FPIC Guidelines are followed, substantial compliance refers to the degree of observance of the basic tenets of free and prior informed consent. Substantial compliance means that the pure meaning and intent of IP communities are followed. It is not only a matter of checking whether the documents are signed or the community members have met. Substantial compliance is an evaluation as to whether indeed the consent of the communities affected was not vitiated, coerced or disregarded. To assess the substantial compliance with the FPIC implementation, this report will evaluate the issuance of consent on the basis of whether consent was “free,” “prior” and “informed.” Free consent is used in this report to refer to situations where those who issued their consent actually did so without coercion, fraud, manipulation or bribery. Prior consent is understood to mean that the project proponent obtained the consent of the IPs before the project started. Informed consent refers to the issuance of approval after the NCIP has thoroughly discussed the rights of the IPs; the processes they have to undergo; and the powers that the IPs possess. Informed consent also means that the affected IPs are completely appraised as to the background and status of the project proponent, as well as the repercussions of the project that is supposed to be undertaken in their respective domains or areas.

To evaluate this, simple “yes,” “no,” “not sure,” “not specified or discussed” and “not applicable” answers were used. A “yes” answer means that the case study report illustrated that the consent was freely given; that it was given prior to the beginning of the project; or that the consent provider had ample information to give an intelligent approval. A “no” answer means the opposite: that consent was coerced and/or manipulated; that bribery or fraud was employed; that the project started already before the FPIC process; or that the consent giver does not have ample information in order to decide. A “not sure” answer means that the discussion of the case study report did not clearly establish whether the consent was given freely; the consent was obtained prior to the project implementation; or consent was given with sufficient information. It bears noting that the “not sure” category pertains specifically to how the case report was framed or phrased by the individual case report writer and does not categorically refer to how the law defined free, prior and informed consent; it is reflective of the quality of consent as judged by those who actually went through the process. “Not specified or discussed” means that these issues were not magnified in the case report. In other words, there was no discussion in the case report whether the consent was free, prior or informed. “Not applicable” means that there was no activity where free, prior or informed consent needs to be taken.

Tables 9–12 show the tabulation of the answers as culled from the FPIC case reports.

II.4.1. Free consent

The 2002 and 2006 FPIC Guidelines provide a similar definition of free consent, which requires that the agreement of the community to a particular proposal is “free from any external manipulation, interference and coercion.”³ In addition, both the 2002 and 2006 Guidelines give primacy to free consent to the point that there are sanctions imposed on the party responsible for violating the principle of free consent. The FPIC Guidelines provided specific acts constitutive of violation of the concept of free consent. Table 9 presents the operationalization of free consent as embodied in the 2002 and 2006 FPIC Guidelines.

Table 9. Operationalization of free consent

2002 FPIC Guidelines	2006 FPIC Guidelines
The project proponent violates the principle of free consent in any of the following forms¹:	
1. Employment or use of force, threat, intimidation, at any degree or in any manner, including those done by individuals or group of persons acting for the applicant	1. Employment or use of force, threat, intimidation, at any degree or in any manner, including those done by individuals or group of persons acting for the applicant
2. Bringing of firearm/s in the community during visits by the applicant or group of persons acting for the applicant. Xxx	2. Bringing of firearm/s in the community during visits by the applicant or group of persons acting for the applicant. Xxx
3. Bribery or promise of money, privilege, benefit or reward other than what is provided for in the FPIC Action Plan	3. Bribery or promise of money, privilege, benefit or reward other than what is presented by the applicant during the consultative community assembly/first meeting with the elders/leaders
4. Clandestine or surreptitious negotiations with the IP individuals or members of the community concerned done without the knowledge of the council of leaders or elders	4. Clandestine or surreptitious negotiations with the IP individuals or members of the community concerned done without the knowledge of the council of leaders or elders or majority members of the community
5. Delivery to the community or to any of its members donations of any kind	5. Donations to the community or to any of its members for the purpose of influencing the decision of the ICCs/IPs
	6. Holding of unauthorized meetings such as but not limited to wining and/or dining sessions, and the like or such activities with the NCIP Official and personnel and/or member of the affected community with the intention of unduly influencing the result of the FPIC process
	7. Deliberately delaying the progress of the FPIC process

³ Sec. 5, subpar. d, 2002 FPIC Guidelines; Sec. 5, subpar. a, 2006 FPIC Guidelines.

The NCIP personnel violates the principle of free consent in the following form ² :	
	1. Holding of unauthorized meetings such as but not limited to wining and dining drinking sessions, and the like or such activities with the applicant and/or members of the affected community with the intention of unduly influencing the result of the FPIC process in favor of the applicant
The members of the IP community violate the principle of free consent in any of the following forms ³ :	
1. Solicitation of any kind from the applicant	1. Solicitation and acceptance or receipt of gifts, money or other valuable things from the applicant intended to unduly influence the outcome of the FPIC process in favor of the applicant
2. Acceptance or receiving of gifts or money from the applicant	2. Consorting with the applicant or with any person connected to or mediating for the latter intended to unduly influence the outcome of the FPIC process
3. Consorting with the applicant or with any person connected to or mediating for the latter	3. Negotiating or mediating or transacting business with the applicant without proper authority from the affected ICC/IP
4. Giving or promising to give his consent in consideration of future reward, promise of money, privilege or benefit from the applicant other than what has been provided for or explained by the applicant to the Council of Elders or Leaders during the consultation meetings	4. Giving or promising to give his consent in consideration of any offer, promise, future reward, privilege or benefit from the applicant other than what has been provided for or explained by the applicant to the Council of Elders or Leaders and community members during the consultation meetings

¹ Sec. 31 (a) subpar.1-5, 2002 FPIC Guidelines and Sec. 49 (a) subpar. 1-7, 2006 FPIC Guidelines.

² Sec. 49 (b) subpar. 8, 2006 FPIC Guidelines.

³ Sec. 31 (c) subpar. 1-4, 2002 FPIC Guidelines and Sec. 49 (c) subpar. 1-4, 2006 FPIC Guidelines.

Based on this definition of free consent, the case studies report that in 5 out of 34 cases, the consent of the IPs to project proposals was not freely given. Of these cases, the most prevalent reason given was bribery. These were reported in the cases of Agusan Petroleum and Mineral Corporation; Royalco Philippines, Inc.; Chevron; Northern Luzon Power Development Corporation (NLPDC); and Citinickel Olympic. To illustrate, during the consultation for the application of Agusan Petroleum and Mineral Corporation, an “Iraya was allegedly offered PhP 10,000 monthly, if he would sign and ask others to sign too.”⁴ The same was likewise alleged in the case of Citinickel Olympic where Citinickel’s predecessor-in-interest “started making the 1% royalty payments prior to conduct of the FPIC.”⁵

Some clarification is needed with the use of the term “bribery.” Under the Philippine Revised Penal Code, the crime of bribery can only be committed by a public officer (Art. 210). However, in both the 2002 and 2006 FPIC Guidelines, bribery was given a different characterization, such that bribery is one which is perpetrated by the project proponent rather than the NCIP personnel. For the purpose of this paper, the description of bribery as employed under the 2002 and 2006 FPIC Guidelines will be followed. The case reports reveal that this understanding of bribery is mostly shared by the study’s respondents and field researchers.

⁴ Agusan Petroleum and Mineral Corporation case report, Volume II, Case Study 3.

Clandestine negotiation was observed in the case of Royalco Philippines, Inc. when it employed community relations officers of the Monkey Forest consultancy firm who “visited households whose lands will be explored and conducted information and education campaign about the project and the benefits they can get from the project.”⁶ A similar incident was detected in the case of the North Luzon Power Development Corporation (NLPDC),⁷ where the project proponent went directly to the community and obtained the general sense of approval before filing for an application for the conduct of FPIC.

Aside from bribery and clandestine negotiations, a form of coercion or intimidation was likewise noted during the FPIC acquisition for the project proposal of Agusan Petroleum and Mineral Corporation. An Iraya narrated that when they manifested their disapproval of the project, they were told to “pay for the food that you’ve eaten.”

Table 10. Was free consent obtained?

Project type	Mining	Energy	IFMA	Conservation/reforestation	Others	Total
Yes	5	3	2	1	1	12
Not sure	6	0	1	1	2	10
No	3	2	0	0	0	5
Not specified or discussed	1	0	0	0	0	1
NA	2	0	2	0	2	6
Total	17	5	5	2	5	34

It bears emphasizing that there are 10 out of 34 case reports that are categorized as “not sure.” To recall, a separate category labeled as “not sure” was included in order to capture the case reports that were not categorical in declaring whether free consent was given. To illustrate, in the Triple H Mining Phils., Inc. case report, it was stated that:

“Was the consent freely given? Freedom in giving consent should not be shaded by any other concern. It should be given, because it was what was intended, not because of the existence of some considerations. In the present case, the consent was given, not because the people wanted a mining exploration to be done, but because of the fact that if they agreed, social services will be delivered by the applicant company in the form of infrastructure, seedlings for agricultural crops, educational assistance and the promise of employment.”⁸

The passage above shows the difficulty in distinguishing a legitimate proposal of assistance to communities from an illegitimate offer of material inducements resembling a layman’s understanding of a “bribe.”

II.4.2. Prior consent

Prior consent would mean that the approval of the IPs should be given before any activity of the project proponent could commence. The 2002 and 2006 FPIC Guidelines declare that the consent of the indigenous peoples should be obtained “after fully disclosing the intent and scope of the plan/program/project/activity.”⁹

It is important to point out that under both the 2002 and 2006 FPIC Guidelines no categorical repudiation of the act of starting the project operation without the benefit of prior consent is made. Unlike in the case of violations of the rule on free consent where a significant effort was provided in explaining its character, as can be observed in the list of prohibited acts shown above (Table 9), only a general reference is made relative to violation of the requirement of prior consent. For instance, in the 2006 FPIC Guidelines, the allusion that is made regarding non-compliance of prior consent is embraced in Section 51, which provides:

⁵ Citinickel Olympic case report, Volume II, Case Study 14.

⁶ Royalco Philippines, Inc. case report, Volume II, Case Study 6.

⁷ North Luzon Power Development Corporation case report, Volume II, Case Study 5.

⁸ Triple H Mining Phils., Inc. case report, Volume II, Case Study 34.

⁹ Sec. 5, subpar. d, 2002 FPIC Guidelines; Sec. 5, subpar. a, 2006 FPIC Guidelines.

“Section 51. Jurisdiction of Regional Hearing Officer on FPIC Controversies. xxx For this purpose, cases involving violations of the requirement of FPIC which are within the original and exclusive jurisdiction of the Regional Hearing Officer as provided under Administrative Circular No.1, Series of 2003 shall refer only to cases where the plan, program, project or activity was implemented without the required FPIC.”

In cross reference with Administrative Circular No.1, Series of 2003, the relevant provision that comes close to the punishment of lack of prior consent is Section 5 (1) b, Rule III:

“Original and Exclusive Jurisdiction of the Regional Hearing Officer (RHO):

a. xxx

b. Cases involving violations of the requirement of free and prior and informed consent of ICCs/IPs;

xxx”

Of the 34 case reports, there were 8 instances reporting violations of the rule on prior consent as illustrated in **Table 11**.

Table 11. Was prior consent obtained?

Project type	Mining	Energy	IFMA	Conservation/reforestation	Others	Total
Yes	2	4	0	0	2	8
Not sure	5	0	1	1	1	8
No	5	4	1	1	0	8
Not specified or discussed	5	0	1	0	0	4
NA	2	0	2	0	2	6
Total	17	5	5	2	5	34

The proponents that reportedly failed to secure prior consent of the indigenous peoples before beginning with their activities were: Jade Agri-Forest, Citinickel, Chevron, NRMC, Olympus, KAUSWAGAN, SR Metals and Triple H. Notable is the observation that in 4 of these 8 alleged violators, namely: Jade Agri-Forest, Citinickel, Olympus and Kauswagan, the vigilance of the IPs in the respective areas resulted in the observance of FPIC processes. The concerned IPs, after noticing the activities of the project proponents, immediately reported the incident and brought their complaints to the NCIP. It is worth noting that in the case of Chevron, its predecessor-in-interest “was fined by [the] Colayo [community] an amount of PhP 500,000 for failure to seek permission of the community before entering the community.”¹⁰

The sentiments of the IPs whose prior consent was not acquired ranges from disgust to resignation. As one elder of Tubay, Agusan del Norte, exclaimed: “while we were doing the FPIC, mining is going on in the mountains xxx. How can we say ‘No?’ Can we say no when our girl is already pregnant? We might as well demand for the wedding!”

¹⁰ Dananao FPIC Case Report, p. 2.

Noteworthy, too, is the fact that there are 8 out of 34 case reports that were labeled as “not sure.” This stems from the lack of clarity in the case reports on whether the projects were conducted before initiating the process of acquiring the consent of the affected IPs. For example, in the Agusan Petroleum and Mineral Corporation case report, the following was reported:

*“Out of eight (8) barangays in Abra de Ilog that was part of the project we can only find schedules for the conduct of six (6) consultations
xxx*

The research also finds that the community was not given enough time to consider all the information (or the lack thereof) before making a decision. It was reported that the community was told that they can decide right there and then. It has become apparent that they were not given the freedom period supposed to be given a community before requiring their decision.”¹¹

The same situation is also apparent in the Marvin Lee Marcelino et al. case report when it was stated that:

“Based on the work program for the FPIC process by Marvin Lee Marcelino et al. as reported by the NCIP Provincial Office of Camarines Norte, the FPIC process was completed, including mandatory activities from Posting of Notices to Signing of Memorandum of Agreement, in just 38 days from Oct. 18 to November 24, in 10 working days covering 4 municipalities and a total of 7 barangays. xxx”¹²

II.4.3. Informed consent

Based on the 2002 and 2006 Guidelines, informed consent is understood as the approval to a particular act after full disclosure of the “intent and scope of the plan/program/project/activity.”¹³ Parenthetically, under the 2006 FPIC Guidelines, informed consent also refers to the act of the applicant in making “a full and accurate disclosure of information concerning the proposed program, project or activity in a manner that is both accessible and understandable to the concerned community.”¹⁴

It is also important to stress that like in the case of prior consent, both the 2002 and 2006 FPIC Guidelines provide only a general declaration on the meaning and signification of informed consent. When looking at the acts that are prohibited and thus constitutive of violations of the principles of consent, the 2002 and 2006 Guidelines only make reference to deeds that vitiate free consent.

Table 12 shows the frequency of those who claim that the informed consent of the community was given or not.

Table 12. Was informed consent obtained?

Project type	Mining	Energy	IFMA	Conservation/ reforestation	Others	Total
Yes	1	1	0	1	1	4
Not sure	4	1	3	1	1	10
No	9	3	0	0	1	13
Not specified or discussed	1	0	0	0	0	1
NA	2	0	2	0	2	6
Total	17	5	5	2	5	34

¹¹Agusan Petroleum and Mineral Corporation case report, Volume II, Case Study 3.

¹²Marvin Lee Marcelino et al., case report, Volume II, Case Study 23.

¹³Sec. 5, subpar. d, 2002 FPIC Guidelines; Sec. 5, subpar. a, 2006 FPIC Guidelines.

¹⁴Sec. 4, subpar. h, 2006 FPIC Guidelines.

Of the three measures of substantial compliance with the principles of consent, the standards for acquiring informed consent appears to be the most violated. There are 13 out of 34 case reports that claim that the consent of IPs was obtained without complete information. Meanwhile, there are only 4 case reports that noted that the principle of free consent was transgressed or violated, and in 8 other cases, it was observed that the projects began even if the consent of the IPs was yet to be acquired. These violations of informed consent refer to the lack of information or utter non-disclosure of the background of the applicant; the scope and extent of the project to be implemented; and the adverse effects that the project might bring.

The violation of the rule on disclosure of the background of the applicant was reported in the cases of SR Metals, Natural Resource Management Development Corp. and UNESCO-MBI. Meanwhile, lack of information about the extent and scope of the project being proposed was noted in the cases of Marvin Lee et al. and Mindanao Energy Systems, Inc. (MINERGY). One of the respondents in the MINERGY case lamented: “Had we known of the actual coverage of the project, we would not have agreed to its entry in the community.”¹⁵

Moreover, Shenzhou Mining Group Corp.; Northern Luzon Power Development Corp.; Citinickel Olympic; Mindanao Energy Systems, Inc.; Natural Resources Development Corp.; and Mindoro Nickel Project were found to have concealed information about the potential harmful repercussions of their projects. In the case of Shenzhou Mining Group, the Mamanuas claim that they were not informed about the destruction that their environment will suffer because of the project or that they will be prohibited from conducting traditional livelihood activities in the proposed project site once operations start. They complained that “they can no longer hunt in the remaining forests and fish in their seas.”¹⁶ In the case of the Mindoro Nickel Project, even the NCIP criticized the project proponent’s Environmental Impact Assessment for not providing “adequate information about a number of important aspects of the project. There is an absence of details on waste emissions, modeling of atmospheric emissions, and the potential for marine pollution.”¹⁷

The act of the proponent in conducting their presentation outside the community, where only a handful of IPs were invited to attend like in the case of Chevron, is also cited as a factor contributing to or constituting lack of information. This is similar to the case of Triple H Mining Philippines, Inc. where the meetings and presentations were held in a place outside the confines of the community, making it difficult for IPs at large to attend. Another violation of the principles of free consent was noted in the cases of Bulawan Mineral Resource Corp. and Agusan Petroleum and Mineral Corp., where the signatories were surprised to find out that what they have signed was a proof of approval to the activity when they thought that they were signing attendance sheets. As illustrated in the case of Bulawan Mineral Resource Corp., Tribal Chieftain Efren Targa stated: “pumirma ako diyan (referring to the MOA) pero hindi ako nagbigay ng pahintulot diyan” (referring to the project). The Chieftain narrated that he was under the impression that he was signing an attendance sheet.

Note that there were 8 out of 34 case reports that were categorized to have provided a “not sure” characterization as to whether an informed consent was acquired or not. The case reports in these instances did not present a clear categorical discussion on informed consent. To cite some of these cases, the RCC Timber, Inc. case report provides:

*“The community consultative assembly was attended by barangay officials, sangguniang bayan, members of the community and the FPIC team. The discussion during this meeting revolved around the livelihood, infrastructure and the royalty that the community will receive when the operation of the project starts. The activity of the company with regard to logging and the limits of the cutting of trees were also discussed. The FPIC team likewise explained the FPIC process and this was not new to the community because they had also undergone the same process with other companies intending to operate within their ancestral domain such as the Globe Telecom and KMMYC.”*¹⁸

¹⁵MINERGY case report, Volume II, Case Study 29.

¹⁶Shenzhou Mining Group case report, Volume II, Case Study 1.

¹⁷Mindoro Nickel Project case report, Volume II, Case Study 19.

¹⁸RCC Timber Inc. case report, Volume II, Case Study 32.

A similar observation is illustrated in the case of National Transmission Commission (TransCo):

“Understanding and compliance with the “informed consent” process should not be limited to the side of the investor applicant at the time when it presented its proposed venture inside ancestral domain and seeking response from the CADT holders or host communities. xxx.”¹⁹

II.5. Post-FPIC phase

The FPIC processes that result in consent culminate in the signing of the Memorandum of Agreement (MOA) between the project proponent and the concerned IPs in the presence of the NCIP, presumably at the NCIP provincial office or community service center. Rejection by IPs of the project, however, results in the drafting and submission of the Resolution of Non-Consent. The signing of the MOA will then jump-start the commencement of the project provided, however, that all other requirements from different government agencies are fulfilled. On a related note, a cursory reading of the 2002 and 2006 FPIC Guidelines reveals that sufficient provision to monitor the implementation of the MOA and to penalize violators of the MOA is wanting.

In the 34 cases synthesized in this report, only nine projects saw actual implementation. It is noteworthy, too, that it was only in one case where there was a Certificate of Non-Consent. **Table 13** shows the status of the projects that were studied in this report as well as the pertinent issues related to the project.

Table 13. Status and issues of the project

Project proponent	Project status	Pertinent issues
MINING RELATED (17)		
Agusan Petroleum and Mineral Corporation (APMC)	The project did not push through	The Sangguniang Bayan of Abra de Ilog passed an ordinance imposing a 25-year moratorium on mining
Bulawan Mineral Resources Corporation (BMRC)	No discussion on project status	The IPs are unaware if the mining exploration did push through
Community-initiated partnership with Philsaga Mining Corporation (PMC)	No discussion on project status	No discussion of MOA implementation and issues related thereto
Citinickel OlympicT	he project is ongoing	The IPs complain about their diminished harvest, pollution, damage to their burial grounds and health problems. The IPs likewise raised the issue about Citinickel's company barring IPs who are not wearing shoes from entering the company's premises
Dominador Liwag	The project has yet to start	The proponent's permit before the provincial government is still pending

¹⁹National Transmission Commission (TransCo) case report, Volume II, Case Study 22.

Marvin Lee Marcelino, Martin Lee Marcelino and Elizabeth Respacia	The project did not push through	It was reported that the IPs were disappointed that the project was not implemented because the IPs can no longer claim the benefits stipulated in the MOA
Melva Vallesteros	Not applicable	No IPs affected
Mindoro Nickel Project (MNP)	Not discussed	No discussion of MOA implementation and issues related thereto
Natural Resources Management Development Corporation (NRMDC)	The project is ongoing	The IPs claim that they are not happy with the MOA as it does not contain their wishes. Besides, the company failed to deliver its obligations based on the MOA to provide scholarships, livelihood, functioning computers and ambulance
Olympus Pacific Minerals, Inc. (OPMI)	The project did not push through	Resolution of Non-Consent was issued by the community
Pacific Timber Export Corporation (PATECO)	The project did not push through	The project proponent was denied a permit by the MGB
Royalco Philippines, Inc.	The project is still pending	The community barricaded the sites where the company was supposed to conduct exploration
Shenzhou Mining Group Corporation (SMGC)	The project is ongoing	IPs complain that the project proponent did not comply with its obligations in the MOA especially on the release of royalty payments. The IPs are likewise barred from entering their ancestral domain for economic and sacred functions. The IPs also claim that the company encroached on areas that are not covered by the MOA
SR Metals, Inc.	The project is ongoing	The IPs filed a case for delayed payment of royalty fees. There are ongoing problems on the sharing of the royalty fees
Triple H Mining Philippines, Inc.	The project has yet to start	The proponent's application before the MGB is under reconsideration
Wenifred Tupaz	The project did not push through	The provincial government issued an ordinance banning the conduct of mining plus the municipal government did not endorse the project
Wolfland Resources, Inc.	The project is ongoing	Some IPs claim that the MOA was for exploration and yet the company is conducting mining operations. One barangay apparently received its royalties, whereas the other is still pending.

ENERGY RELATED (5)		
Chevron	Not discussed	No discussion of MOA implementation and issues related thereto
Hydroelectric Development Corporation (HEDCOR)	The project did not push through	The local government stopped the implementation of the project because of protest from non-IPs
Mindanao Energy Systems, Inc. (MINERGY)	The project is ongoing	The community passed a resolution revoking the MOA because of the company's failure to deliver its obligations
National Transmission Commission (TransCo)	The project is ongoing	Discussion on MOA implementation and issues related thereto are not sufficient
North Luzon Power Development Corporation (NLPDC)	The project has yet to start	The project proponent did not show up for at least a year after MOA signing. The community filed a resolution revoking the MOA
INTEGRATED FOREST MANAGEMENT AGREEMENT (IFMA) (5)		
Agropolis Forest Farmers Association, Inc. (AFFA)	Not applicable	No IPs affected
Community-initiated partnership with Natural Resource Development Corp (NRDC)	The project has yet to start	IFMA application is still pending before the DENR
Jade Agri-Forest Corporation	The project was stopped	Total log ban was imposed
Pacific Timber Export Corporation (PATECO)	The project was stopped	Total log ban was imposed. Although the IPs complained that before the log ban, the payments being made by the company was not enough. Worse, it was always delayed
RCC Timber, Inc.	The project was stopped	Total log ban was imposed. Although the IPs complained that before the log ban, the company only employed two IPs and that the company reneged on its promise to provide scholarships, housing and livelihood projects
CONSERVATION/REFORESTATION (2)		
Kauswagan sa Timogang Mindanao Foundation	The project was stopped	The proponent delivered its obligations to the IPs during the first year of operation, but when the founder of the proponent got sick, the MOA was not followed

Palawan State University	The project is ongoing	Some IPs believe that the proponent is a "front" of mining companies, an allegation denied by the proponent
OTHERS (5)		
Globe Telecommunications, Inc.	The project is ongoing	The payment of royalties and users' fees based on the MOA was not followed
Gloria Alzadon-Oredina	Not applicable	No IPs affected
Robert Michael Tiu	The project did not push through	The proponent's application before the MGB was denied
Talaandig community-initiated project	Not discussed	No discussion of MOA implementation and issues related thereto
Community-initiated partnership with UNESCO-MBI	The project did not proceed	The IPs are seeking the revocation of the MOA

Generally, most of the issues raised as regards the implementation of the MOA relates to economic benefits. The issue revolves around two general themes: issues on the release of the benefits and issues with respect to who are the recipients. On the first issue, the complaint is that the recipients received just a part of the benefits stipulated in the MOA or none at all. As regards the recipients, objections were raised as to why just a handful of recipients benefited. As cited above, there are also concerns about IPs being prevented from using their ancestral domains to perform economic and spiritual functions.

The failure to faithfully implement the agreement embodied in the MOA or even the simple handing of a MOA copy to the communities is closely associated with the lack of monitoring of the MOA implementation. This could have been easily addressed had there been a more stringent monitoring system that was adopted. Admittedly, however, the FPIC Guidelines are bereft of any strong regulations regarding the monitoring of the MOA implementation.

II.6. Cases of non-FPIC activities

There are case reports where FPIC was not required for two reasons: either the project was community initiated or there are no IPs found in the proposed project area, although despite the lack of the necessity of FPIC in such cases, a validation process is still needed. Of the 34 case reports, four cases were identified as community-initiated, whereas three cases were found to have no IPs in the affected area. As regards community-initiated projects, it must be emphasized that extreme care should be taken as the FPIC Guidelines provide that the FPIC process does not need to be undertaken in case the project is being pursued by the community itself. As such, this mechanism is very vulnerable for exploitation by project proponents who wish to circumvent the rules. Of the four reported cases that are community-initiated, only two cases appear to be genuine, namely: the Talaandig community-initiated project and the community-initiated partnership with Natural Resource Development Corp. (NRDC). Meanwhile, the project of the UNESCO-MBI Philippines is now being contested by the community, which is allegedly the same community that initiated it but later denied assenting to such project. The community-initiated partnership with Philsaga Mining Corporation (PMC), however, does not clearly show if indeed the community initiated it or if the mining company initiated the same and the community just adopted the project.

There are likewise three case reports where FPIC was not required because after the field-based investigation, it was discovered that there were no IPs residing in the area. These are reported in the cases of Gloria Alzadon-Oredina's application for Forest Land Grazing Management Agreement in Paracelis, Mountain Province; Agropolis Forest Farmers Association, Inc.'s application for Integrated Forest Management Agreement in Candoni, Negros Occidental; and Melva Vallesteros's application for small-scale mining in El Salvador, Misamis Oriental.

II.7. Notion of consent

Another issue that surfaced in the FPIC case reports is the indigenous peoples' notion of consent. This section discusses and analyzes the notion of consent as mentioned in the case reports. It seeks to address the following questions:

- 1) How is “consent” understood in the communities selected for the study?
- 2) Who are the recognized sources of consent in the community?
- 3) What are the recognized methods for generating consent?

II.7.1. Community notions of consent in local languages

In the 34 case reports, “consent” is generally understood as “permission” or “agreement.” In the Shenzhou case report, the Mamanua notion of consent is captured by the local terms “sugot” or “pagsugot,” meaning “to consent or agree.” For the Kabihug of Labo and Jose Panganiban, Camarines Norte, the act of seeking permission and giving consent is termed “hiyode.” Apart from “hiyode,” the term “sigede” is also employed by the Kabihug of Capalonga, Camarines Norte, to refer to consent. The terms are usually used in the context of a non-resident seeking to pass through the territory of the Kabihug. The Higaonon in different parts of Mindanao used the terms “pagho-o,” “pag-uyon” or “inuyonan” to mean “agreement,” and the term “panagbiya” is used to refer to the act of seeking permission. For the Mandaya, the terms for consent are “pangumbaid,” “pagbaid,” “pagbaid-baid” or “baid,” which should not be mistaken for “pagpahibalo” or “to inform.” The distinction between “seeking consent” and “informing” in the Mandaya language is significant for understanding the indigenous notion of consent because it indicates that the act of seeking consent actually entails the intention to get approval, i.e. permission, of the person from whom consent is sought, whereas the act of informing merely involves the intention to notify another person.

Setting aside the role of the seeker of consent, who usually is an outsider or a non-resident of an indigenous community, the act of giving consent basically involves a community and its leader (or set of leaders). The individual leader may be a “datu” or a chieftain, an interesting example of which is the chieftain of the tribal council that the NCIP facilitated to create as in the case of the Bago-Kankanaey of Sudipen, La Union. Collective leadership or decision making, however, may be exercised by a council of elders or by a collection of traditional and/or modern barangay leaders.

The case reports suggest that the modern-day procedure for giving consent basically involves a local **leader** (or set of leaders) gathering members of the **community** to get their views on an outsider’s request to pass through the territory of the community and/or to extract some natural resource found within. After consulting with the community, the leader (or set of leaders) relays the decision to the seekers of consent on behalf of the community. In some communities, however, obtaining consent also entails getting the approval of spirits (“diwata”) who are consulted through the conduct of rituals by members of the community with links to the spirit world. The approval or non-approval of the spirits is revealed to the community ritualist in the form of “signs.”

In any case, it bears noting that there is rich diversity among indigenous communities in the manner by which “community consent” is obtained, even in sites where rituals are no longer conducted and spirits are no longer consulted. **Table 14** illustrates the rich diversity in generating “community consent.” In 7 of the 34 case reports, the consent of the community was equated with the “**majority’s preference**,” expressed in a variety of ways, including (a) the use of “sweet smelling” jack fruit leaves to indicate a vote of approval or guava leaves to show rejection; (b) secret balloting; and (c) raising of hands.

Agusan Petroleum case report: Using leaves to extract a community's sentiments

In one community, it was reported that the IPs were asked to vote for or against the Agusan project through the use of leaves. Choosing “dahon ng langka” (jackfruit leaves) means they are in favor of the project, whereas “dahon ng bayabas” (guava leaves) means they are against it. The use of voting as the means of decision making was said to have come from NCIP but appears to have met little objection from the Iraya, as they have become used to voting for their “mayors” (community leaders)... The choice of leaves was also said to have come from NCIP, with the quip, that langka was chosen as the signifier of a “yes” vote because the leaves smell sweet. When questioned as to why they apparently accepted this form of decision making, the Iraya said they did so thinking that this was the “legal way” especially as NCIP was facilitating the method and they are the ones who advised them and have knowledge of the law. They also said that it was not explained to them that they could have adopted traditional processes in their decision-making process.

Also, in seven of the case reports, community consent was described to be the product of a “consensus” – suggesting the conduct of thorough deliberations; having ample amounts of time for discussions and clarifications; and considering all sentiments expressed by members of the community with the intention of arriving at a decision that all members will assent to.

Community consent as product of consensus: Royalco case report

The community in the Royalco case study still practices its indigenous justice system they call “tongtong” but now with the participation of Barangay Lupon. In this, disputing parties with their relatives attend the scheduled “tongtongan” (discussion and resolution of the issue) with the leaders and elders of the community and the members of Barangay Lupon. The parties are given time to present their sides of the issue. Elders (men or women) join in the discussion and give their interpretation of the customary law of the community in relation to the case. Other members of the community can also join the discussion but only to give advice to the disputing parties. After both parties presented their side, the group of leaders and elders convenes to discuss the merits of the case. Decision is done by consensus. Once a decision has been reached, one of the elders announces the verdict. When both parties accept the decision, the second part of the “tongtong” is conducted where they decide on the penalty.

A third set of seven case reports, meanwhile, provides the finding that “consensus” is actually understood as nothing but the “majority’s preference.” In the relevant case reports, the majority preference was arrived at using various methods, including (a) placing corn kernels in bottles to indicate approval or rejection; (b) raising of hands; and (c) choosing to stand on either side of a rope whereby standing on one side means approval and standing on the other side signifies rejection, etc. In this set of cases, there is the suggestion that the majority normally succeeds in winning over the minority to their position and consensus is thus achieved.

Interestingly, when the case reports equating community consent with the majority preference are combined with those equating consensus with the majority preference, a total of 14 cases (41.18%) can be identified as clearly indicating that the “majority rule” now means “consensus” in many indigenous communities in the country.

Use of corn kernels in registering votes W. Tupaz case report

The community in Aramaywan Proper relayed that their traditional decision-making process is with the use of corn kernels placed in a bottle or container to indicate their decision or preference. Only the “legitimate” members of the community and head of the family are allowed to vote. These are usually the male or the father in a family. The “legitimate” members are those who are part of the Palaw’an IP group. If, for example, the father in a family is not a Palaw’an, the head of the family is the mother, and she is the one who is allowed to vote in community decision-making processes.

Majority preference as consensus: RCC Timber case report

There was a consensus among the community members favoring the project. They used majority +1 in the voting. According to the interviewees, there may have been some in their community who were opposed to the project, but they did not state their opposition during the decision meeting.

In 2 of the 34 case reports (namely, Baliguihan and WRI), community consent actually refers to the preference of highly respected “datu.”

The datu’s preference as community’s position: Baliguihan case report

“What the ‘datu’ usually decides on is simply agreed to by everyone with the faith that the intention of the ‘datu’ is for the benefit of the entire community. Such is the respect accorded to the ‘datu’... Seldom is a datu’s decision contested by anyone in the community, even if the decision of the datu is perceived to be wrong or detrimental to the community welfare.”

“Community consent” actually means the preference of land-owning clans in two case reports, namely, the Jade Agri-Forest and PMDC case reports. In these sites, the preference of the community as a whole is set aside to give priority to the decision of clans whose lands will be directly affected by proposed projects. In the Triple H case report, the consensus of (male) elders and chieftains represents “community consent.” Note here that community consent actually refers, or is identical to, the decision of a small group of male leaders.

Clan land owners' views as key component of community consent Philippine Mining Development Corporation (PMDC) case report

At present times, if an outsider wants to ask consent, he/she shall ask the permission of the barangay captain as well as the 'datu' or tribal leader. And traditionally as well, the 'datu' will have to ask the consent of the concerned owners, usually the clan owners. The clan owners' decision or consent is very important in matters of land use. Moreover, in the Mandaya tradition, the 'datu' cannot automatically give consent in major cases – like involving huge tracts of land or property. This tradition is carried out to the present times where the datu usually calls for an assembly.

Jade Agri-Forest case report

As to decision making, decision is rendered by their elders upon consultation with their community members. Greater power on decision making is given to the spouse who owns the land. In each household, it is the family member who owns the land who gives the decision with regard to matters about the utilization of the said land. This was applied during the decision-making process where the elders of each clan directly represented their clan in the decision making or they identified representatives to present their decision. After the series of talks among the clan members during the freedom period process, the elder gave the decision that was either presented by him/her or their designated representative.

The Talaandig case report, meanwhile, highlights the significance of obtaining the approval of spirits through the conduct of rituals. Actually, consulting spirits and/or conducting rituals as part of getting community consent was also mentioned in three other case reports, namely, the WRI, PMDC and Minergy reports. This indicates that in 11.76% of the case reports, consulting spirits and/or conducting rituals is still seen as important, although in a great majority of the case reports, such practices are no longer seen as essential.

Community consent entails consulting spirits: Talaandig case report

The conversant 'datus' and 'baes' of the Talaandig defined "consent" not just an act of the human being but by the higher one, the Holy Spirit. Seeking "consent" passes through certain protocols, channels, processes and rituals, but in the end, true "consent" can only be obtained from the spirit, which gives "signs," a sign of approval for any decision or course of action. Without that sign, the community is believed to be facing imminent danger or disaster. This notion of "consent" is embedded in the Talaandig's culture and customary law, and is presently strengthened by IPRA. However, while that is so, modernity and environmental changes have seemed to gradually erode or influence this notion and practice as observed by the supreme datu of the Talaandig.

An examination of the case reports reveals that the traditional notion of community consensus is now being replaced by the concept of "majority rule." This suggests that the traditional practice of thorough discussions is giving way to time-bound deliberations inasmuch as the desire to achieve general agreement, let alone unanimity, in the community has now been replaced by the less difficult objective of obtaining a majority preference. Meanwhile, the observation that in some communities, a highly revered leader, like a datu, can make key decisions for the community without being challenged by community members may raise questions about the actual meaning of IP community empowerment. Similar questions can be raised against the practice of prioritizing the views of land-owning clans at the expense of, or as constituting those of, other members of the community.

Table 14. Meaning of consent/ methods for generating consent

Meaning of consent	Method of consent	Project	Project type	Location	Ethnic group	Island group
Majority preference	f=7 (20.59%)					
	Voting using jackfruit & guava leaves	Agusan Petroleum	Mining related	Abra de Ilog, Mindoro Occidental	Iraya Mangyans	Luzon
	Raising of hands, ½ + 1 voting, council of elders announce decision in behalf of community/ adopts majority decision	NLPDC (Northern Luzon Power Devt. Corp)	Energy related (mini-hydro)	Badeo, Kibungan, Benguet	Kankana-ey	Luzon
	Raising of hands, majority rule w/ people explaining their votes and reassuring oppositors	Unesco-MBI	Conservation (mgmt. of ancestral domain/ wildlife tourism)	Calautit, Busuanga, Palawan	Tagabanua	Luzon
	Raising of hands, leaders (panglima) ask community members' opinions, a leader announces decision	Citinickel	Mining related	Narra & Sofronio Espanola, Palawan	Tagabanua & Pala'wan	Luzon
	Majority rule where minority follows majority because consensus is difficult to achieve	Dominador Liwag (Diteki)	Mining related	Diteki, San Luis, Aurora	Alta/ Dumagat	Luzon
	Majority rule; traditionally, it was consensus	Marcelino et al.	Mining related (exploration)	Brgys. Tanuan, Magsaysay, Lukbanan, & Villa Aurora, Municipality of Capalonga, Camarines Norte	Kabihog	Luzon
	Secret balloting, no more rituals	Kauswagan sa Timogang Mindanao Foundation	Reforestation & livelihood assistance project)	Brgy Eden, Toril District, Davao City	Bagobo- Tagabawa	Mindanao

Consensus	f=7 (20.59%)					
	of assembly gathered by elders	Shenzou	Mining related	Taganito & Urbiztondo, Claver, Surigao de Norte	Mamanua	Mindanao
	of entire tribe membership gathered by Hawodon (chieftain)	Philsaga	Mining related	Bunawan, Agusan del Sur	Manobo	Mindanao
	of entire community, announced by one of the elders	Royalco	Mining related	Gambang, Bakun, Benguet	Kankana- eys	Luzon
	of community given ample time	Palawan State University	Conservation (natural mgmt. & conservation project)	Tagabinet (two sitios: Bayatao & Kayasan), Puerto Princesa & Sowangan, Quezon both in Palawan	Tagabinet: Tagabanua & Batak; Sowangan: Pala'wan	Luzon
	of community gathered by chieftain, rendered by chieftain, given ample time	Bulawan MRIM	ining related (exploration)	Labo & Jose Panganiban, Camarines Norte	Kabihug	Luzon
	tribe decides after series of consultations, each participant allowed to talk	Industrial Sand & Gravel	Sudipen Sand and Gravel Project of Mr. Robert Michael V. Tiu	Sudipen, La Union	Bago-Kankanaey (Kankana- eys from Mt Province who have settled in Sudipen)	Luzon
	made by elders who consider all sentiments, reason out with those with concerns to get a unanimous decision	Pateco Mining	Mining related (exploration)	Dinapigue, Isabela	Agta/ Dumagat (minority in own ancestral land)	Luzon

Majority's preference as consensus	f=7 (20.59%)					
	Use of corn kernels, preference of majority of heads of IP families	Wenifred Tupaz	Mining related (small-scale mining)	Narra, Palawan (two barangays: Aramaywan & Calategas)	Palaw'an and Tagabanua	Luzon
	Raising of hands by community members + consensus of leaders	Hedcor	Energy related (mini-hydroelectric dams)		Obo-Manobo and the Clata Bagobo	Mindanao
	In practice, majority rule was followed in thumb marking documents	Pateco Logging	Integrated Forest Management Agreement (IFMA)	Dinapigue, Isabelita & Dilasag, Aurora	Agta/Dumagats (minority), Igorots (migrant, majority)	Luzon
	Decision reached after thorough discussion, no time period, people choose where to stand between two lines	Olympus Pacific Mining Inc. (OPMI)	Mining Related (Exploration)	Licuan-Baay, Abra	Binongan-Tingguian	Luzon
	"Majority + 1" used, leaders announce decision, "done through consensus"	RCC Timber, Inc.	Integrated Forest Management Agreement (IFMA)/ logging	Casiguran and Dinalungan, Aurora and Maddela, Quirino	Dumagats	Luzon
	Community participants gathered in a circle discussing their views as they reach a unanimous decision sealed by voting of hand and exclaiming "oy-ya", male-dominated	Transco	Construction of additional power line sub-stations following overall policy contained in National Grid Code	Buda areas of Davao	Manobo-Matigsalug & Obo-Manobo	Mindanao
	Majority vote taken as community position, no registration of opposition during consensus building to prevent division in the community	Chevron, formerly GMC-APEC	Energy related (geothermal)	Dananao "Surong", Tinglayan, Kalinga	Not clear/ not specified in case report	Luzon

Decision of the datu	f = 3 (5.88%)					
	In most cases, datu decides, community merely assents; datu's decision is seldom contested; no more rituals	Baliguihan (Baliguihan CADC IFMA Application)	Integrated Forest Management	Eureka, Gingoog City	Higaonon (75%)	Mindanao
	Datu greatly respected, community relegates decision making to him; when datu asks community, not clear if decision reflects consensus or majority vote; permission of spirits (diwata) asked when intending to utilize natural resources	Wolfland Resources, Incorporated (WRI)	Mining related (exploration)	Limunda, Opol, Misamis Oriental & Mainit, Iligan City	Higaonon 90%	Mindanao
Decision of clan owners of affected land	f= 2 (5.88%)					
	Vote of land-owning clans, particularly of the spouse who owns land; rendered by elders	Jade Agril	FMA	Santa Fe, San Marcelino, Zambales (two sitios: Casapatan & Payudpud)	Aetas	Luzon
	Consent of clan owners of land affected by project; with ritual; datu cannot decide without convening an assembly	Natural Resources Management Corp (Philippine Mining Development Corporation) PMDC	Mining related (construction of mines tailing dam)	Sitio Mabatas, Brgy. Upper Ulip, Monkayo, Compostela Valley	Mandaya, Manobo, Mangguangan, & Dibabawon	Mindanao

Decision of selected leaders	f = 1 (2.94%)					
	Consensus of elders & chieftain, male leadership; no female participation in decision making; selection of chieftains, including the decisions they make, is done with the approval of community elders	Triple H Mining Phils., Inc.	Mining (exploration)	Sitio Pindangan & Sitio Mabaldog, Gabaldon, Nueva Ecija	Dumagats (traditionally nomadic, learning to settle in communities, swidden farming)	Luzon
Decision issued after consulting spirits	f = 1 (2.94%)					
	True "consent" can only be obtained from the spirit, which gives "signs"	Talaandig		Brgy. Songco, Lantapan, Bukidnon	Talaandig (70%) Tribe (special case: has not undergone FPIC process)	Mindanao
	Datu does not decide w/o consulting community; not clear if community relies on consensus or majority rule	SR Metals	Mining related	La Fraternidad, Tubay, Agusan del Norte	Manobos and Mamanuas	Mindanao
	Not clear if consensus or majority preference of assembly, of recognized leaders, etc.	Globe Telecom	Installation of cell site towers	Barangays Buda, Baganihan and Marahan, Marilog District Davao City (and Kitaotao, Bukidnon)	Matigsalug-Manobo	Mindanao
	Normally, datu convenes community; in Minergy's case, traditional leaders consulted, but non-IPs married to Higaonons and youth allowed to participate in consent-giving process; outsiders required to undergo ritual; not clear if datu relies on consensus or majority vote of community	Globe Telecom	Installation of cell site towers	Barangays Buda, Baganihan and Marahan, Marilog District Davao City (and Kitaotao, Bukidnon)	Matigsalug-Manobo	Mindanao

Did not discuss notion of consent	f = 1 (2.944%)					
	Intex Resources ASA (Mindoro Nickel Project)"	Mining related	Mining related	Victoria, Oriental Mindoro	Mangyan (Alangan and Tadyawan Mangyans)	Luzon
Not applicable/ no IPs in site	f = 3 (8.82%)					
		Agropolis	Integrated Forest Mgmt. Agreement	Candoni, Negros Occidental	None	Visayas
		Hinigdaan (Melva Vallesteros)	Mining related (small-scale mining)	Hinigdaan, El Salvador, Misamis Oriental	None	Visayas
		Gloria Alzadon-Oredina (Butigue)	Forest Land Grazing Management Agreement (FLGMA)	Butigue, Paracelis, Mountain Province (IPs already left place)	Baliwon/Gaddang	Luzon
	Total=34 (99.99%)					

III. Conclusion and Recommendations



III. Conclusion and recommendations

This qualitative and quantitative appraisal of the implementation of the NCIP Guidelines of the Free and Prior Informed Consent (FPIC) reveals mixed findings, depending on: 1) the stages/phases of the FPIC process and 2) the technical/procedural versus substantive aspects of FPIC. Overall, the analysis provides substantial insights into FPIC implementation and constitutes an essential input for improving the FPIC Guidelines and for developing and enhancing the effectiveness of social and environmental safeguards in the context of climate-relevant forest-related policy initiatives such as the REDD-plus undertaking.

The study found that although a considerable number of cases reported no violations committed in the field-based investigation stage (44.2%), there was a substantial number of cases that reported incidents of violations during the actual conduct of the FPIC (38.2%) and during the conduct of the MOA signing and post-FPIC activities (29.4%). The data on the last two phases (FPIC proper and MOA/post-FPIC) are quite alarming, as it is during these phases when the more substantial aspects (content-wise) of the FPIC are deliberated and ultimately settled.

The list of violations indicates a manipulative scheme on the part of the seekers of the consent in order to get the “consent” of indigenous communities. During the FPIC proper, for instance, FPIC is mostly conducted outside the community; the processes of selecting and validating leaders are questionable; some sectors and communities are excluded; funds are managed by the applicants; there was no consensus building and/or the freedom period was not followed; and the number of votes is manipulated to give a semblance of majority vote. The reported kinds of violations in relation to the MOA are as follows: signing conducted outside NCIP provincial office; lack of qualification and/or validation of signatories; lack of knowledge of what was being signed/forgery; absence of NCIP officials during signing; MOA was not presented to the community before signing; and MOA does not reflect the true intention of parties. The cause of the widespread negative perception about the FPIC is the non-implementation of agreed upon or promised benefits (80% of the violators were allegedly responsible for this).

Were the basic principles and “spirit” of the FPIC faithfully followed? Turning now to the substantial compliance with the principles of FPIC, a considerable number (35.3%) of the case reports claim that the consent of the communities was freely given, although this does not even account for half of the reports. However, there are more case studies (38.2%) reporting that the consent was given by IPs without sufficient information to arrive at a rational and well-informed decision. It also appears that a considerable number of FPIC applicants deliberately highlighted the material benefits that would be derived from the project while glossing over the externalities or negative social and environmental impacts of the projects.

On balance, therefore, this study shows that there were some procedural and substantial violations of the FPIC Guidelines. Not more than 50% attained the status of full and faithful implementation of the Guidelines. For the most part, the scenario that clearly emerged is the usual narrative wherein indigenous communities would warmly welcome guests who appear as benevolent visitors/guests, promising a good life, but in the end, such promises vanish into thin air once the IPs’ consent had been obtained.

Other tricky mechanisms are the so-called community-initiated projects or the certificate of no overlap. This study surfaced that, in the main, such mechanisms are very susceptible to manipulations by the applicants who wish to circumvent the rules. This has to be seriously looked into.

An interesting finding of this study is that although indigenous notions of consent do exist and that there are culture-based and site-specific customary practices of giving consent, the modern and liberal concept of “majority rule” (50%+1) has become widely utilized by IP communities. This may be seen as an effective imposition by the state and other modernizing institutions, but it may also be explained at the same time as an increasing accommodation by the indigenous peoples themselves of non-indigenous or modern practices. What is clear is that customary beliefs and practices have undergone changes through the process of accommodation and adaptation by the IPs themselves. An increasing number of IPs and IP communities may in fact choose to move from customary to state institutions, or both, single-mindedly or simultaneously, depending on the circumstances and perceived immediate benefits that they could derive from these institutions.

The study on FPIC implementation, even though applicable to all types of projects and programs affecting indigenous peoples’ domains, was conducted in the specific context of the BMU-financed DENR-FMB and GIZ project on the

“Climate-relevant Modernization of the National Forest Policy and Piloting of REDD Measures in the Philippines.” In the context of REDD-plus, where effective safeguards are fundamental, it shall be underlined that the legal entrenchment of the FPIC process in the Philippines constitutes a strong basis for protecting indigenous peoples against the adverse social and environmental impacts of forest carbon initiatives. The study has shown that the procedural and substantial implementation of FPIC is not fully effective yet. In order to further strengthen the implementation of the FPIC process, within the framework of REDD-plus, the study therefore puts forward the following **recommendations** toward improved FPIC Guidelines:

1. The FPIC process should include not only the directly affected areas and IP communities but also those areas that will be affected by the project (e.g. upstream and downstream communities, IPs and non-IPs, and migrant IPs).
2. The ancestral domain should be the primary unit for consideration in FPIC, not the political boundaries.
3. The certificate of compliance should not be transferrable to other companies without the FPIC of the indigenous peoples concerned.
4. The IP communities should be allowed sufficient time to collectively deliberate on the application and give their consent. They should not be tied to very tight time lines imposed by the applicants and NCIP.
5. Build the capacity of NCIP to perform its mandate:
 - a) NCIP staff must fully understand the principles and process of FPIC
 - b) NCIP needs to assess its capacity to perform its mandate
 - c) The NCIP should be beefed up by technical expertise, for example, during the field-based investigation, it should ensure that a geodetic engineer is assigned as a member of the team because the purpose of the field-based investigation, among others, is to define and identify boundaries, and to determine overlaps
 - d) Build capacity within the NCIP personnel body on safeguards under REDD-plus
 - e) Conduct a thorough background investigation about the applicants, including a projected income from the projects and make this information available to the IPs
 - f) Conduct a social and environmental impact assessment of projects and make the information available to the community
 - g) NCIP must be constantly reminded that its mandate is to protect the rights of IPs – it has a preferential bias for IP rights (NCIP should not work on behalf of companies)
6. There should be better guidelines on the MOA such that:
 - a) The deliberations on the content of the MOA should involve IPs as widely as possible (not just the leaders or a few representatives)
 - b) The draft MOA should be brought to the community, explained to the IPs and translated in their indigenous language, before it is finalized and signed
 - c) The signing of the MOA should be done within the community
 - d) The implementation of the MOA should be closely monitored by NCIP and/or a multi-stakeholder body – guidelines on monitoring should be put in place and integrated into existing FPIC Guidelines
 - e) Guidelines should include clear provision on royalties and benefit-sharing schemes in order that IPs are not shortchanged.
 - f) The MOA should explicitly include a grievance mechanism – a check against non-implementation of the provisions of the MOA
7. On financing the FPIC process:
 - a) NCIP should be provided with sufficient funding to insulate it from undue influence from vested interests
 - b) Contingency funds should be added in the work and financial plans for the field-based investigation and FPIC processes
 - c) There should be different requirements and expenses for projects according to coverage/scale. Expenses should be commensurate to project size
 - d) There should be a clear provision on what to do with unused FPIC funds. A time limit should be set for

the applicants to withdraw unused funds

- e) Expenses incurred for the FPIC should be audited, and the financial report should be presented to the community

8. General provisions on the FPIC process within REDD-plus:

- a) Ensure the availability of information on the modalities and requirements of the FPIC process in indigenous peoples' communities
- b) Prohibit the non-respect of prior and informed consent and subject it to penalties
- c) Ensure the participation and the empowerment of the whole community, by holding meetings, capacity building measures, etc., within the confines of IPs/ICCs

References

NCIP Administrative Circular No. 1, Series of 2003. “Rules on Pleadings, Practice and Procedure before the National Commission on Indigenous Peoples.

NCIP Administrative Order No. 3, Series of 2002 “Revised Guidelines for the Issuance of Certification Precondition and the Free and Prior Informed Consent in connection with Applications for License, Permit, Agreement or Concession to Implement and Operate Programs/Projects/Plans/Business or Investments including other similar or analogous activities or undertaking that do not involve issuance of License, Permit, Agreement or Concession but requires the Free and Prior Informed Consent of the ICC/IP Community in Ancestral Domain Areas in accordance with R.A. 8371.

NCIP Administrative Order No. 01, Series of 2006 “The Free and Prior Informed Consent (FPIC) Guidelines of 2006.”

Republic Act No. 8371. 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 therefore, and for other purposes.

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Annexes

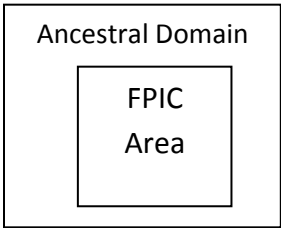
Annex 1.

FPIC researchers' tool kit

FPIC RESEARCHERS’ TOOL KIT

NOTES ON METHODOLOGY

The main objective of this study is to assess the implementation of the FPIC principle in the randomly selected IP communities in the Philippines. It also aims to capture in-depth, the dynamics of power relations within and outside the community with regard to the FPIC concept and process. Since indigenous communities may not always be homogenous and that they are at uneven degrees of acculturation, the researchers should be keen on the different voices and choices within a community. It is for these reasons that the study will use the qualitative research methodology, particularly the **case study method**. However, quantitative data shall also be gathered. The primary **unit of analysis of the case study is the FPIC coverage area within the ancestral domain**. The NCIP 2006 guidelines define an FPIC area as the direct impact area and/or area that had undergone the process of FPIC.



Data shall be gathered through a mix of qualitative research methods like document study, group interviewing, key informant interviewing (KII) and focused group discussion (FGD). Each of these methods is discussed below.

Document Study

Before conducting the interviews, researchers should first gather and study the documents related to the area. Primary and secondary documents usually provide background and contextualization to the main research problem. In this study, primary sources are documents that have not been published, for example, minutes of meetings, MOA, letters, process documentation, etc. Secondary sources are published materials like books, reports, etc.

Researchers should not proceed to the field without having studied the related literature and documents. The table below shows a list of primary sources and the relevant information that they may contain.

Relevant Data/Information	Sources (Documents to gather)
Socio-economic profile of affected barangays	Barangay Secretary; Barangay Health Unit.
Situation of ancestral domain and plans for its sustainable development	ADSDPP (Regional NCIP Office)
Domain socio-economic profile, ethnohistory, genealogy, Indigenous Socio-Political Institutions	CADT application (Regional NCIP Office); Claim Book

FPIC RESEARCHERS’ TOOL KIT

(IKSPs)	
Stakeholders’ analysis (i.e., list of elders and leaders, community whose consent should be sought, area covered, ethnicity of affected areas, customary decision-making system, NCIP recommendations how to proceed)	Field-based investigation (Regional Office of NCIP)
Proof of FPIC compliance	Certification Precondition (Regional NCIP Office)
FPIC Process, actors/players involved, content of consultation meetings	Process Documentation (Regional NCIP Office)
Indicates that the project area is not within AD, thus no FPIC	Certificate of non-overlap (ADO-NCIP)
Agreed benefits, benefit-sharing, responsibilities and applicability, duration of the project.	Memorandum of Agreement (Provincial and Regional NCIP)
Reason for non-acceptance or rejection of the project	Resolution of non-consent (NCIP and the barangay officials)
Environmental and Social risks involved in the project	Environmental and Social Impact Assessment (DENR Regional Office)

Group Interviews

We define a group here as a gathering of at least eight (8) individuals. In IP communities, a group interview may be composed of hundreds! The rule of thumb is to include as many people in the interviews, and to conduct as many group interviews as possible.

Research participants (respondents) in the group interviews should include, but may not be limited to, the following:

- 1. A group of those who were consulted and those were not; those who gave consent and those who did not;
- 2. Within each group, make sure to include respondents from different gender, age, class groups.

The interview should not last more than two (2) hours, unless the people are willing to stay on and continue beyond this time. Remain sensitive to the feelings of the people. They may express their reactions verbally or through non-verbal cues, so let us be sensitive to both.

For the group interviews, please use interview guide “A.”

Key Informant Interviewing

FPIC RESEARCHERS’ TOOL KIT

Key-informant interviews (KII) “are generally qualitative, in-depth discussions guided by a set of open-ended questions to people who have knowledge and interest, in accordance to the research objective.” In this study, our key informants are persons who played a crucial role in the FPIC process. They are also those who are the so-called “culture bearers” of the IP group, meaning they have knowledge of the history, indigenous/traditional knowledge, etc. They are therefore the resource persons for the study. Examples of key informants are as follows:

- 1. Tribal leaders
- 2. Elders
- 3. Barangay Captain
- 4. Mayor
- 5. Project Proponent (CSR personnel, Community relations officer, engineers)
- 6. NCIP Personnel (Regional Director, Members of the FBI, FPIC team)
- 7. NGO and PO leaders

Here are some **tips in conducting the interviews**:

- 1. Note the place, date, time of day and reason for the session and venue. Describe the setting, number of participants and their gender.
- 2. Since conversations are dynamic, it is advisable to memorize or internalize the research questions before interviewing. However the interviewer should be flexible in using this guide.
- 3. New questions may arise in the course of the interview, and they may be incorporated into the process.
- 4. Capture the points made by the interviewee and the terms they use. “Glossed-out” (i.e. taken-for-granted) phrases like quips and anecdotes usually have deeper meaning such as but not limited to resentments, regard to authority, and others.
- 5. Interviews may be audio-recorded, with the permission from the respondent.

Focus(ed) Group Discussion

In Focused group discussion (FGD), the people are invited to participate in the discussion focusing on a specific problem. It consists of a facilitator and a documentor of the whole process. The facilitator leads the group by presenting information, asking questions, probing for details and ensuring that everyone participates. On the other hand, a documentor is a person designated to take notes, operate recording equipment (if appropriate) and keep track of documents from focus group activities. In some very special cases, a facilitator and documentor could be the same person.

FPIC RESEARCHERS’ TOOL KIT

PRE-FPIC PROCESSING

Objectives: To know how the IPs understand the concept of consent; 2) To establish the extent of IP knowledge about Free and Prior Informed Consent (FPIC).

- 1. Are you aware of the Free and Prior Informed Consent (FPIC) stipulated in the IPRA?
- 2. Can you tell us about your general knowledge of the FPIC?
- 3. What is your IP group’s idea of “consent”?
- 4. Is there an equivalent term or concept for “consent” in your culture? If so, what is this?
- 5. Do you have a customary way for securing “consent” to introduced projects? Explain/elaborate please.
- 6. Who gives the “consent”
PROBE: Are the participation/involvement of the:
 - 6.1. Baylans, etc. are the spirits sought?
 - 6.2. Tribal leaders
 - 6.3. Council of elders
 - 6.4. Women and Men
 - 6.5. Youth
 - 6.6. Non-IP/migrants within the FPIC area
- 7. What are the things considered by the decision makers in giving “consent”?

Note for the interviewer/researcher: YOU MAY START AT ANY POINT THAT IS MOST APPROPRIATE IN YOUR SITE.

FPIC PROCESSING

Objective: To evaluate how the process of FPIC was conducted in the selected IP community with reference to the international and national standards (or conditions) set for acquiring IP consent.

A. Free

- 1. What was the position of the community on the proposed project **before** the FPIC process started?
- 2. Is this position similar or different from the position of the community **after** the FPIC process?
- 3. If it is similar, do you think the final outcome of the FPIC process reflects the

FPIC RESEARCHERS’ TOOL KIT

sentiments of the community?

4. If it is different, what do you think are the factors that contributed to the change in the position of community?
5. How did you participate in the FPIC process (kindly narrate the process of the actual conduct)

PROBE Qs:

- 5.1. Did you participate in the FPIC process freely or voluntarily?
- 5.2. Were you offered incentives to participate in the FPIC process? If so, what are these? Did you actually get any of these?
- 5.3. Were the incentives (mentioned above, if any, e.g. money/good or actual distribution of money) offered in exchange of your favorable consent?
- 5.4. Did anyone from the community try to influence your position about the proposed project? If so, through what means?
- 5.5. What was the participation/involvement of tribal leaders (or whatever is appropriate to use based on IKSP) in the FPIC process?
- 5.6. Did the tribal leader receive any form of support from the LGUs in connection with the FPIC process? What kind of support?
- 5.7. Were there other groups (e.g. NGOs, Church, academe, politicians) who were involved in the FPIC process? If so, what was their participation?
- 5.8. How many times have your consent been sought for the same project?
- 5.9. What were your reasons for granting/not granting your consent?

B. Prior

1. When was the FPIC process conducted? (PROBE: allow the respondents to narrate, then do a chronology of events)
2. Did the consultations coincide with major community activities (PROBE: vis-a-vis cropping calendar, rituals, etc).
3. How much time was given to your community to arrive at a decision regarding the proposed project?

FPIC RESEARCHERS’ TOOL KIT

- 3.1. How much time do you think you need to make a decision about the proposed project?
- 3.2. Do you think you were given sufficient time to make a decision regarding the proposed project?
- 3.3 Was there any request made by the community to extend the time to arrive at the decision?

C. Informed

- 1. How did you come to know about the project?
- 2. What information was given to you about the project?
 - 2.1. Who provided you with the information about the proposed project?
 - 2.2. How was the information disseminated?
 - 2.3. Do you think you were given all the information you need to make a sound decision about the proposed project?
 - 2.4. Was there anything in the presentation of the proposed project that was not clear to you?
 - 2.5. What was the language/dialect spoken **during the FPIC process (consultations)**?
 - 2.6. Did you wish that another language was used instead? Why?
- 3. Was there a discussion during the FPIC process about the rights of the indigenous peoples?

Were you given information about:

<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure	Track record (i.e., history of engagement with IP communities, good/bad practices among IPs, established reputation in the field of operation) of the applicant proposing the project
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure	Projected income of the company (for the next 25 years)
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure	Nature, size and scope of the proposed development or activity;
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure	Duration of the project (including the construction phase to phase out);
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure	Areas that will be affected;
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure	Preliminary assessment of the likely impact of the development;
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure	Reasons/purpose for the development;

FPIC RESEARCHERS’ TOOL KIT

- ___Yes ___ No ___ Not Sure

Personnel likely to be involved in both construction and operational phases (including local people, research institutes, sponsors, commercial interests, and partners - as possible third parties and beneficiaries) of the development process;

___Yes ___ No ___ Not Sure

Specific procedures the development or activity would entail;

___Yes ___ No ___ Not Sure

Potential risks involved (e.g., entry into sacred areas, environmental pollution, partial destruction of a significant site, disturbance of a breeding ground);

___Yes ___ No ___ Not Sure

Benefits for the community

4. What was the language used **in the documents** presented to you during the consultations?

5. How well do you know this language?

6. Did the project conduct an environmental and social impact assessment? Was it fully discussed with the community?

7. Does your community/domain have an ADSPP?

7.1. Is the ADSDPP implemented or used as guide for project intervention in the ancestral domain area? If not, then what other plans as a basis for the project?

D. Consent

1. How was the FPIC process conducted? (Provide checklist on the mandatory requirements.)

PROBE on:

1.1. Posting of Notices (language, where posted, for how long)

1.2. Consultative Community Assembly

1.3. Consensus Building and Freedom Period

1.4. Decision Meeting

2. How was customary consent process, if any, involved in the FPIC process? Please narrate fully.

PROBE Qs:

2.1. Did it conform to the traditional consent process of the indigenous community?

2.2. Were you able to freely discuss and debate the pros and cons of the project?

2.3. Were you able to freely discuss and debate the impact of the project on their land and resources?

7

FPIC RESEARCHERS’ TOOL KIT

- 2.4. Who are being consulted? What are their functions? Who are more influential among the community members (the cultural leader? Political leader? Or both?)
- 2.5. Who gave the decision on behalf of the community?
- 2.6. How were the leaders selected?
- 2.7. Is consent sought from the spirits?
- 3. Were you informed about the grievance mechanism for violations of FPIC processes?
- 4. Are there any dispute / conflict resolutions mechanisms?

POST - FPIC PROCESSING / MOA

A. FPIC Monitoring

- 1. Did your community give consent to the proposed project?
 - 1.1. If yes, please answer the following questions:
 - 1.1.a. Are you aware of the MOA between your community and the applicant (state name of applicant)?
 - 1.1.b. Do you know about the full contents of the Memorandum of Agreement that your community signed with the applicant? Provide Checklist:
 - Reversibility clause (What will happen upon termination of the project or when it is canceled?)
 - Responsibilities of the Applicant
 - Responsibilities of the Host Community
 - Benefits of the Applicant
 - Benefits of the Community
 - Benefit sharing mechanism
 - Mechanism for redress (in case of non-compliance with the MOA, including penalties against violation)
 - Monitoring and evaluation system
 - 1.1.c. Are the contents of the MOA consistent with the minutes of the FPIC process? Were there items deleted? Were there items added?
 - 1.1.d. What are the most significant changes in the community as a result of the FPIC process?
 - PROBE: about relationships among people within the community
- 1.2. If no, please answer the following questions:
 - 1.2.a. Why did your community refuse to give FPIC to the applicant?
 - 1.2.b. Was the community asked to explain in writing the reason/s for not giving FPIC to the applicant?

FPIC RESEARCHERS’ TOOL KIT

1.2.c. Was the community asked to reconsider its decision not to give FPIC to the applicant?

B. IMPACTS AND IMPLICATIONS

- 1. Are you satisfied with the result of the FPIC process? Please explain your answer.
- 2. What major changes in the community have occurred as a result of the FPIC process?

PROBE:

2.1. What changes in economic, social, political, cultural arenas?

- Enhancement of cultural practices
- Livelihoods
- Tribal unity within and outside
- Strengthening of their cultural structure
- Participation in local governance
- Indigenous Knowledge, Skills and Practices transferred to children/youth
- Cultural values
- Access and control over resources
- Community perceptions on utilization of the natural resources in relation to their culture
- Food/economic security
- Peace and Order
- Human rights (freedom to move)

2.2. Were there unforeseen effects, and unexpected results?

**Free and Prior Informed Consent
INTERVIEW GUIDE B**

PRE-FPIC PROCESSING

Interview Guide for the NCIP

Profile of the KII: Name, age, gender, ethnicity, educational attainment, designation in the NCIP, years of service in the NCIP.

A. Knowledge of FPIC

- 1. Before you started with the FPIC process, what instruments (e.g. guidelines, laws, etc) did you rely on as a basis?

PROBE: Are you familiar with the UNDRIP? What is your general understanding of the UNDRIP?

FPIC RESEARCHERS’ TOOL KIT

- 2. What are the functions of NCIP in the FPIC process?
- 3. Do you agree with FPIC being a mandatory requirement for development projects conducted within IP domain? Why?

B. Knowledge about the applicant

- 1. What is the nature of business of the FPIC applicant as registered?
- 2. Who are the owners / shareholders (majority) of the company?
- 3. What is the nature of the project applied for?
- 4. What is their track record in implementing similar projects?
- 5. What is their track record in implementing social acceptability requirements?
- 6. What is their track record in relating with indigenous peoples?
- 7. Do they have a separate department or set of staff dedicated to community relations?

FPIC PROCESSING

Implementation of FPIC

- 1. Please narrate the whole process of the FPIC that was conducted in (site).
PROBE: when, (major stages), who were involved, where conducted, how?
- 2. What has been the role of the NCIP in the FPIC process conducted in _____ (community)?
- 3. Were there problems/difficulties encountered? What were these? What were the factors that contributed to these problems?
- 4. How did NCIP handle these?
- 5. Were there any restrictions (regulations) given to the applicant company?
- 6. Were these restrictions complied with by the company?
- 7. Were these monitored by the NCIP?

POST - FPIC PROCESSING / MOA

FPIC RESEARCHERS’ TOOL KIT

- 1. Kindly tell us about how the NCIP monitors the following:
 - 1.1. Compliance with the agreements made between the community and the applicant?
 - 1.2. Benefit sharing arrangement?
 - 1.3. Audits of the performance of the FPIC in order to seek out probable discrepancies or violations?
 - 1.4. Complaints against applicants by the members of the community?

PROBE:

- 1.4.a. What were these complaints usually about? How were you informed? How did you respond to the complaints?
 - 1.4.b. Have there been cases where the community revoked the FPIC they granted to the applicant? For what reasons?
- 2. Has the NCIP facilitated ADSDPP for the ancestral domain where the research site is located?

**Free and Prior Informed Consent
INTERVIEW GUIDE C**

PRE-FPIC PROCESSING

Interview Guide for the FPIC Applicant

Company Profile: (May be gathered from secondary sources, e.g. website)- name, location of mother office, nature of business, length of operations, total assets, scope of operations, track record with IP communities and environment, etc.

A. Knowledge of FPIC

- 1. Are you aware of the Indigenous Peoples Rights Act (IPRA)? What is your general understanding of the IPRA?
- 2. Are you aware of the Free and Prior Informed Consent (FPIC) requirement stipulated in the IPRA?
- 3. How did you learn about the FPIC?
- 4. Do you agree with FPIC being a mandatory requirement for development projects conducted within IP domain?

B. On the applicants views regarding the community and IP:

FPIC RESEARCHERS’ TOOL KIT

- 1. What can you say about the community where you applied FPIC for?
- 2. What are your views on IPs?
- 3. Do you have a separate department or set of staff dedicated to community relations?
What are functions of these units? (PROBE: impacts on marginalized/vulnerable sectors, environment)

FPIC PROCESSING

A. Field-based Investigation (FBI) by the NCIP

- 1. Please narrate the process that your company undertook to secure the consent of the community.
- 2. What kind of information do you provide the community in relation to you proposed project?

B. FPIC Mandatory Activities followed

- 1. Did you encounter any difficulty in complying with the mandatory requirements set by the FPIC Guidelines for seeking consent?
- 2. Do you have your own documentation of the proceedings of the FPIC in _____ (community)?
- 3. Is this accessible to the public?

C. FPIC MOA

- 1. Review of MOA contents vs. the ff. provisions:
 - Y ___ N ___ Benefits to be derived (from) by the Community?
 - Y ___ N ___ Use of all funds to be received from the host communities?
 - Y ___ N ___ Detailed measures to protect IP rights and value systems
 - Y ___ N ___ Detailed measures to protect/conserv e affected portion of the ancestral domain?
 - Y ___ N ___ Responsibilities of the applicant/proponent
 - Y ___ N ___ Responsibilities of the host communities
 - Y ___ N ___ Monitoring and evaluation system of the MOA
 - Y ___ N ___ Remedies and/or penalties for non-Compliance to the MOA
 - Y ___ N ___ Undertaking in writing to answer for damages—surety bond
- 2. Was there a discussion between the applicant/proponent and the community before the MOA was finalized and signed?

POST - FPIC PROCESSING / MOA

FPIC process expenses

How much did you spend during the entire process of FPIC?

FPIC RESEARCHERS’ TOOL KIT

Free and Prior Informed Consent
INTERVIEW GUIDE D

Interview Guide For Government Agencies/ Local Government Units

- A. Knowledge of FPIC
- 1. Have you ever participated in the process of FPIC within your municipality?
 - 2. Why did you participate? In what capacity?
 - 3. What do think of FPIC being a mandatory requirement for development projects conducted within IP domain?
 - 4. Who do you think in the community should be consulted when there is a proposed project?
 - 5. What can you say about the IPs in the area?
 - 6. Kindly tell us about your knowledge on the following:
 - Nature of business of the FPIC applicant as registered
 - Owners/shareholders of the company
 - Nature of the project applied for
 - Track record of the applicant (e.g. social acceptability requirements, dealing with IP
 - 7. Please tell us about the participation (roles, functions) of the LGU/agency in the whole FPIC process (narrate) that was conducted in the site.
PROBE:
 - 7.1. What the relationship of the LGU and applicant, NCIP, community, DENR and other stakeholders?
 - 7.2. Was the LGU involved in the negotiations for the benefit sharing arrangement between the community and the FPIC applicant? Please explain.
 - 8. What were the issues, problems you encountered in the process?
 - 9. How did you deal with these issues and problems?
 - 10. Has the LGU received any benefits from the project? What are these? Are these stipulated in the MOA? How are benefits shared between and among LGU, community?
PROBE:
Is there a percentage share earmarked for the affected communities from the benefits derived by the LGU?

NEXT STEPS:

- A. Administrative
- 1. Contract-signing- March 28-April 5, 2011
 - 2. Letters to NCIP, etc- c/o Crissy- First week of April
 - 3. Group Insurance
 - 4. ID
- B. Data-Gathering
- | | | |
|-----------------------|--------------------|----------------------------------|
| 1. Document study- | April 1-May1, 2011 | List of materials, KII, networks |
| 2. Interviews (site)- | May 2-July 31 | Bullets and matrix/site |
- C. Data Analysis/Writing

FPIC RESEARCHERS’ TOOL KIT

- | | | |
|--|------------------|------------------|
| 3. Outline of the case study report- c/o RR | | |
| 4. First draft of case study report – end August | | |
| 5. Validation | August | |
| 6. Second draft | | |
| 7. National Writeshop | September (pool) | Thematic reports |
| 8. Peer Review | October | Revised report |
| 9. Integration Report | October | |
| 10.Editing | November | |
| 12. Final Report | January | |

Prepared by:
Participants to the National Training/Workshop
Held on March 26-27, 2011
Robbinsdale Residences, Quezon City

Annex 2.

Memorandum of Agreement between the National Commission on
Indigenous Peoples, Deutsche Gesellschaft für Internationale
Zusammenarbeit (GIZ) GmbH and Non-Timber Forest Products-
Exchange Programme for South and Southeast Asia

KNOW ALL MEN BY THESE PRESENTS:


This Memorandum of Agreement hereinafter referred to as "Agreement" is entered into by and among:

The **NATIONAL COMMISSION ON INDIGENOUS PEOPLE**, hereinafter referred to as "**NCIP**" and FIRST PARTY with office address at 2/F Delta Building, corner West and Quezon Avenue, Quezon City, duly represented by its Chairman, **ATTY. ROQUE N. AGTON JR.**

The **Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH** hereinafter referred to as the GIZ and SECOND PARTY with office address 2/F, PDCP Bank Centre; Corner V.A. Rufino & L.P. Leviste Streets, Salcedo Village, Makati City; Philippines duly represented by **DR. BERND-MARKUS LISS**, Principal Advisor GIZ-BMU;

The **NON-TIMBER FOREST PRODUCTS EXCHANGE PROGRAMME FOR SOUTH AND SOUTHEAST ASIA** hereinafter referred to as NTFP and THIRD PARTY with office address at #92 Masikap Extension Barangay Central, Diliman, Quezon City duly represented by represented by **MA. CRISTINA GUERERRO** Executive Director, NTFP-EP, member of CoDe REDD Philippines


WITNESSETH



WHEREAS, during the UNFCCC COP-13 in Bali on December 2007, the international community called upon countries to explore the concept of reducing emissions from deforestation and forest degradation (REDD) as a new mechanism to combine forest protection with objectives of climate protection, biodiversity conservation and livelihood improvements. During the recent international discussions the concept has been expanded to include conservation, sustainable management of forests and enhancement of forest carbon stocks under REDD+;

WHEREAS, during UNFCCC COP-16 in Cancun on December 2010, parties to the Convention decided to request developing country Parties to ensure the full and effective participation of relevant stakeholders, inter alia, indigenous peoples and local communities in REDD+ approaches and to apply related safeguards, including respect for the knowledge and rights of indigenous peoples and members of local communities;

WHEREAS, in March 2009, the DENR through the Forest Management Bureau, worked with CoDe REDD Philippines to initiate activities towards drafting of the Philippine National REDD+ Strategy (PNRPS). From April 2009 to April 2010, consultative sessions, workshops and writeshops were conducted to develop the PNRPS;



WHEREAS, the NCIP participated in the drafting of the Philippine National REDD+ Strategy (PNRPS) focusing on the safeguards for indigenous cultural communities as well as for any carbon forest engagements;

WHEREAS, on May 14, 2010, the drafters of the PNRPS submitted the same to the DENR which approved it on August 9, 2010. The PNRPS was endorsed on August 27, 2010 to the Climate Change Commission (CCC) for adoption. In between activities in drafting the PNRPS, The Philippines requested to participate in the UN-REDD programme which resulted to the country's observer status in February 2010. This also paved the way for UN-REDD Program to consider project activities in support to the PNRPS which was expressed in November 2010;

WHEREAS, in April 2010 pursuant to the Climate Change Act of 2009, the PNRPS was included as an important element for mitigation and adaptation, and the President issued Executive Order 881, dated 26 April 2010, under this regime the Climate Change Commission will oversight the REDD+ and DENR will serve as the operational arm to implement REDD+. The CCC initiated the drafting of the National Climate Change Action Plan (NCCAP) that will be elaborated until April 2011;

WHEREAS, at the project level, the 'Climate-relevant Modernisation of the National Forest Policy and Piloting of REDD Measures in the Philippines', hereinafter called 'Forest Policy and REDD', funded under the International Climate Protection Initiative of the German Federal Ministry for the Environment (BMU) supports the country's efforts towards forest and climate protection and the development of appropriate policy instruments. The Project is implemented by the GIZ with DENR as the main partner, in cooperation with local government units (LGUs) and a wide range of stakeholders;

WHEREAS, the Project aims to 1) improve forest policy and the development of incentives for forest protection and rehabilitation, 2) reduction of greenhouse gases (GHG) and conservation of biodiversity, and building of capacities towards this end. It focuses on forest policy reforms and REDD+ development and pilot activities in and around selected protected areas 3) a major component is the establishment of co-management agreements (or forest protection agreements) With local communities that will be integrated as an important element of the PNRPS;

WHEREAS, the NCIP, in ensuring safeguards for IP communities under the REDD+ development and implementation submitted a project proposal requesting for technical assistance for the undertaking of an independent evidence-based assessment and evaluation of the Free, Prior and Informed Consent (FPIC) implementation to make the output more credible and objective. From the results, the NCIP will translate the study into community policies/protocols as well as basis for evidence-based review and amendment of the FPIC guidelines as of NCIP Administrative Order No. 01, Series of 2006, which will be more protective of the indigenous communities and as recognition of their right to self-determination;

WHEREAS, four (4) areas of interest for more studies were selected under the DENR-GIZ 'Forest Policy and REDD' Project, these are: (1) analysis of Forest Policy

(FP), (2) Analysis of key drivers of deforestation and forest degradation (DD), (3) Clarifying Carbon Rights (CCR), and (4) Assessment of FPIC Implementation (FPIC);

NOW THEREFORE, for and in consideration of the aforementioned premises and in consideration of the recognition by the parties of the right of the indigenous communities' right to self-determination and the benefits that will redound to their benefit do hereby formalize their respective intentions to collaborate as follows:

ARTICLE I

PROJECT IMPLEMENTATION

SECTION 1. The parties agree that the four policy researches are to be conducted in recognition of the right of indigenous communities under Section 5 and 7, Chapter III of the Indigenous Peoples' Rights Act or RA 8371 viz. the Indigenous Concept of Ownership and the Right to Ancestral Domains specifically the Right of Ownership over domain land and resources (7a), and in furtherance of their rights enshrined under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP);

SECTION 2. The parties agree that the joint implementation is following a rights-based approach with respect to the following four (4) bundle of rights at all times:

- 1) Right to Social Justice and Human Rights;
- 2) Right to Ancestral Domain/Ancestral Lands;
- 3) Right to Self-Governance and Empowerment;
- 4) Right to Integrity of Culture.

SECTION 3. The Parties agree that the conduct of the first three policy studies, namely (1) Analysis of Forest Policy (FP), (2) Analysis of key drivers of deforestation and forest degradation (DD), and (3) Clarifying Carbon Rights (CCR), shall be the primary responsibility of the SECOND and THIRD PARTIES. The NCIP Provincial officer may accompany the researchers at his discretion and upon agreed arrangements with the Research Team. However, travel and other expenses shall be covered by the FIRST PARTY.

SECTION 4. The Parties agree that the fourth policy study dealing with the Assessment of Free Prior and Informed Consent Implementation coincides with ongoing efforts of the Commission to revise and improve the FPIC Guidelines. In order for the research to effectively inform the existing efforts in the Commission, the Research effort shall ensure NCIP Participation in the data gathering, analysis and policy reformulation.

1. **Role of Research Team** - The Research Team shall be conducting an independent research on how the right of Indigenous Peoples to Free Prior and Informed Consent is carried out in the Philippines and how mechanisms implementing FPIC can help ensure that the rights of Indigenous Peoples are respected in the implementation of REDD+ projects.

WHEREAS, the NCIP participated in the drafting of the Philippine National REDD+ Strategy (PNRPS) focusing on the safeguards for indigenous cultural communities as well as for any carbon forest engagements;

WHEREAS, on May 14, 2010, the drafters of the PNRPS submitted the same to the DENR which approved it on August 9, 2010. The PNRPS was endorsed on August 27, 2010 to the Climate Change Commission (CCC) for adoption. In between activities in drafting the PNRPS, The Philippines requested to participate in the UN-REDD programme which resulted to the country's observer status in February 2010. This also paved the way for UN-REDD Program to consider project activities in support to the PNRPS which was expressed in November 2010;

WHEREAS, in April 2010 pursuant to the Climate Change Act of 2009, the PNRPS was included as an important element for mitigation and adaptation, and the President issued Executive Order 881, dated 26 April 2010, under this regime the Climate Change Commission will oversight the REDD+ and DENR will serve as the operational arm to implement REDD+. The CCC initiated the drafting of the National Climate Change Action Plan (NCCAP) that will be elaborated until April 2011;

WHEREAS, at the project level, the 'Climate-relevant Modernisation of the National Forest Policy and Piloting of REDD Measures in the Philippines', hereinafter called 'Forest Policy and REDD', funded under the International Climate Protection Initiative of the German Federal Ministry for the Environment (BMU) supports the country's efforts towards forest and climate protection and the development of appropriate policy instruments. The Project is implemented by the GIZ with DENR as the main partner, in cooperation with local government units (LGUs) and a wide range of stakeholders;

WHEREAS, the Project aims to 1) improve forest policy and the development of incentives for forest protection and rehabilitation, 2) reduction of greenhouse gases (GHG) and conservation of biodiversity, and building of capacities towards this end. It focuses on forest policy reforms and REDD+ development and pilot activities in and around selected protected areas 3) a major component is the establishment of co-management agreements (or forest protection agreements) With local communities that will be integrated as an important element of the PNRPS;

WHEREAS, the NCIP, in ensuring safeguards for IP communities under the REDD+ development and implementation submitted a project proposal requesting for technical assistance for the undertaking of an independent evidence-based assessment and evaluation of the Free, Prior and Informed Consent (FPIC) implementation to make the output more credible and objective. From the results, the NCIP will translate the study into community policies/protocols as well as basis for evidence-based review and amendment of the FPIC guidelines as of NCIP Administrative Order No. 01, Series of 2006, which will be more protective of the indigenous communities and as recognition of their right to self-determination;

WHEREAS, four (4) areas of interest for more studies were selected under the DENR-GIZ 'Forest Policy and REDD' Project, these are: (1) analysis of Forest Policy

- a. **Research Methodology.** The Research Team shall be primarily responsible for identifying its research methodology and ensuring the independence and objectivity of the Research. It shall be looking at the existing NCIP Guidelines embodied in NCIP Administrative Order No. 1 Series of 2006, and other governmental policies which promote and protect the rights of Indigenous to Free Prior and Informed Consent, details of which are contained in the agreed Research Methodology. The Research Methodology is attached and made part of this Agreement.
- b. The Research Team is primarily accountable to the SECOND AND THIRD PARTIES. The team is encouraged to identify its full and objective observations of the FPIC implementation for presentation to the NCIP.
2. **NCIP Participation** – The NCIP shall form an FPIC Policy Review Team which shall act as the counterpart of the Research Team of this project. It will be composed of policy staff who have not been involved in FPIC operations.
- a. **Policy Workshop** – The results of the research shall feed into a process of policy reform. A Policy Workshop shall be conducted to help assist the NCIP in translating the recommendations of the research into actual reformulation and harmonization of existing NCIP policies.
- b. **Peer Review Process** – The Results of the research shall also be subject of a Peer Review Process composed of a multi-disciplinary panel of Technical Experts from academe, government and civil society. The NCIP FPIC Policy Review Team shall be a member of this Peer Review Panel.
- c. **Field Study** – NCIP FPIC Policy Review Team may observe the conduct of the field study by the Research Team in selected sites of the research.

Primacy will be given to ensuring that the Research Team is able to conduct its evaluation work following recognized basic protocols of independence of audits and evaluations.

3. **Access to Data.** The NCIP shall ensure that all available data currently held by its offices related to the implementation of Free Prior and Informed Consent, processing of Certificate Preconditions, Certificate of No Overlaps and Complaints on violations related to Free Prior and Informed Consent shall be made available to the Research Team.

The Research Team borrowing the data shall ensure that utmost care and confidence in the handling of data shall be followed.

SECTION 5. The SECOND and THIRD PARTIES herein agree to undergo the FPIC process for the four policy studies as provided for under Section 41 of the FPIC GUIDELINES OR ADMINISTRATIVE ORDER NO. 1 SERIES OF 2006;

SECTION 6. The specifically, the FPIC assessment falls under Section 41(c) or researches necessary to implement the mandates of the NCIP and the 3 other researches fall under section 41(b) or researches conducted in aid of policy viz 1) analysis of Forest Policy (FP), (2) analysis of key drivers of deforestation and forest degradation (DD), (3) Clarifying Carbon Rights (CCR);

SECTION 7. All parties agree to substantially implement Section 41, as provided:

1. The research applicant (SECOND and THIRD parties) *shall notify in writing* the concerned Provincial Office prior to the conduct of the research;
2. The research applicant shall secure the consent of the concerned ICC/IPs;
3. Upon obtaining the consent, the research applicant shall obtain a Certificate Precondition(CP) from the concerned Regional Director;

The Certificate Precondition shall contain:

- a. Terms and conditions provided by the *concerned ICC/IPs and/or the Regional Director*;
- b. The CP bearing the conformity of the authorized elders/leaders and the applicant shall constitute the contract between them;

SECTION 8. The WRITTEN CONSENT shall be in the form of a Memorandum Of Agreement between the research applicant and the ICC/IP community and the following terms and conditions shall be sufficient, any other additional terms and conditions shall be guided by the intent of the study under Section 41(b-c), to wit:

1. Co-authorship of the research output by the herein parties. The indigenous communities concerned shall be consulted in an appropriate manner to validate the research findings and shall be properly acknowledged when the research will be published or if reflected in the other media form;
2. The result of the researches shall be translated in a language understood by the IP community and submitted back to the community and discussed with them;
3. The FIRST PARTY agrees to give its full cooperation in the conduct of the researches especially on the FPIC ASSESSMENT;
4. The SECOND AND THIRD PARTIES subject to agreements with the community will underwrite all expenses of the ICC/IPs attendant to the securing of the FPIC under Section 41 ;

ARTICLE 2

PROJECT WORKPLAN AND FUNDING, FINANCIAL RECORDS, AND ACCOUNTABILITY

SECTION 1. Research Design - The conduct of the policy studies will be implemented according to the research designs and work plans that are contained in duly approved Inception Reports of the policy studies, herewith attached as Annex A and B;

SECTION 2. Provision of Funds- The budget cost of the four policy studies reflecting the budget for the research and indicative budget for NCIP are herewith attached as Annex C and D;

In the case of the fourth policy study on the Assessment of FPIC Implementation, the operational costs necessary to conduct the Research, Peer Review Process, and Policy Workshop shall be shouldered by the SECOND and THIRD PARTIES.

The SECOND and THIRD PARTIES are amenable to a **COST-SHARING ARRANGEMENT** for the travel costs of NCIP FPIC Policy Review Team who shall join the Field Study as observers, and for the POLICY WORKSHOP.

Salaries and other remuneration of the NCIP FPIC Policy Review Team shall be shouldered by the NCIP.

ARTICLE 3

OWNERSHIP, PUBLICATION AND CONFIDENTIALITY OF RESULTS OF THE PROJECT

SECTION 1. Recognition of principal authors and institutions. All reports or articles including tri-media presentations using project data and output shall recognize and acknowledge the indigenous cultural communities;

SECTION 2. Ownership. In accordance with the provisions of RA 8293 - the Intellectual Property Code of the Philippines - the research output produced by the First Three Policy Researches commissioned by the SECOND and THIRD PARTIES shall be owned by the SECOND and THIRD PARTIES jointly.

The Fourth Policy Research covering the Assessment of Free Prior and Informed Consent Implementation shall be jointly owned by the FIRST, SECOND and THIRD PARTIES.

Research output that documents Indigenous Knowledge Systems and Practices related to the areas of inquiry by the four policy researches shall be owned by the Indigenous Cultural Community/ IP group subject of the research.

SECTION 3. Copyright. Section 176.1 of RA 8293 (Intellectual Property Code of the Philippines) provides that "no copyright shall subsist in any work of the Government of the Philippines. However, prior approval of the government agency or office wherein the work is created shall be necessary for exploitation of such work for profit." Further, Section 178.1, 178.4 and 178.6 the research output shall be the copyright of the authors of the research namely the Researchers commissioned by the SECOND and THIRD PARTIES;

Copyright over the Indigenous Knowledge Systems and Practices documented by the research shall remain with the Indigenous Cultural Community/ IP group subject of the research.

SECTION 4. Patents. The researches shall in no way confer patent rights over plant and animal species found within ancestral domains in the course of conducting the research.

SECTION 5. Confidentiality clause. Notwithstanding the foregoing provision, because the FIRST PARTY is the proponent of the FPIC assessment, the Second and Third parties agree that the results of the research will be regularly submitted to the FIRST PARTY and discussed in accordance with the intent and objectives of the assessment.

SECTION 6. Agreement on the Handling of Information Generated in the Fourth Policy Study.

The parties agree that information generated in assessing the implementation of the FPIC shall be handled with utmost care and confidence.

The parties further agree that the information contained in the following reports shall be shared in the following manner

- (1) Initial Draft - Cluster Reports for sharing through the Validation Meeting;
- (2) First Draft – Overall Research Results for sharing through Peer Review; and
- (3) Final Research Report – for publication and shared to the public.

The House Committee on National Cultural Communities, the Office of the Presidential Adviser on the Peace Process and the National Anti-Poverty Commission shall be invited to attend the above information sharing sessions.

ARTICLE 4

PROJECT MANAGEMENT, IMPLEMENTATION, MONITORING, AND EVALUATION

SECTION 1. Regular Assessments. All parties agree for steering and have at the maximum monthly regular assessments and discussions of their duly assigned representatives or as often as possible, the schedule for such shall be reflected in

the work plan and thereafter a summary of the initial results, discussions and agreements shall be immediately submitted to the FIRST PARTY;

SECTION 2. All parties agree that the First Party especially under the FPIC ASSESSMENT shall have full access to and validate the results under its processes subject to the work plan as agreed purposely for policy discussion and formulation, review of the FPIC GUIDELINES and for other purposes necessary to implement the FIRST PARTY's mandate and improve its system;

SECTION 2. While the SECOND and THIRD PARTIES shall be primarily responsible for their own safety and security while conducting the policy studies, all parties shall cooperate to ensure sharing of information on risks in the areas, proper endorsement of the project to other government agencies and the Armed Forces of the Philippines is done and prompt coordination is conducted between all parties in cases of emergency and the need to embark on life-saving operations is proper. ; Contracted personnel of the SECOND and THIRD PARTIES shall work in compliance with the GIZ Security Regulations;

SECTION 3. It was also agreed that there will be sharing of information and resources on the FPIC ASSESSMENT in but not limited to the CARAGA region with the COSERAM Project also funded by the GIZ;

ARTICLE 5

DISPUTE AND ARBITRATION AND FORCE MAJEURE

SECTION 1. Amicable settlement – All parties shall endeavor to settle amicably all disputes, controversies or differences, which may arise between them out of or in connection with this agreement, or for breach of any provision.

SECTION 2. Force majeure - If either parties hereto are temporarily unable to meet any of its obligations under this Agreement, by reason of an event constituting *force majeure*, the obligation of the party affected shall be suspended until such time as the event of *force majeure* shall have ceased.

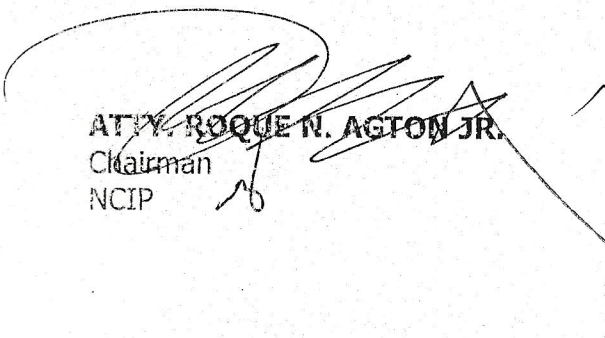
ARTICLE 6

FINAL PROVISION

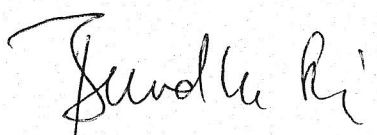
SECTION 1. Duration Clause. The duration of this MOA shall be for 1 year or until the researches are finished.

SECTION 2. Amendments - It is mutually agreed that this Agreement will not be modified except by written amendment executed by both parties hereto.

Done this 20th day of May, 2011 in Quezon City.

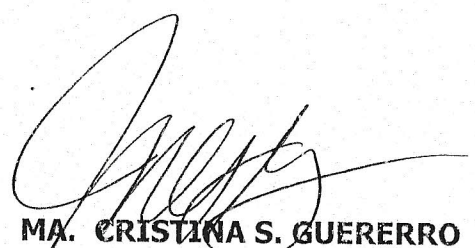


ATTY. ROQUE N. AGTON JR.
Chairman
NCIP



DR. BERND-MARKUS LISS
Principal Advisor
GIZ-BMU

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Issued on: 29 March 2010
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