



## **Tebtebba Foundation**

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Working Group on Indigenous Populations  
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Agenda Item 5a

Standard Setting

**Free and Prior Informed Consent**

Catalino L. Corpuz, Jr.

Thank you Mr. Chairperson for giving me the opportunity to speak on this Agenda Item. I will not go into the substance of the Working Paper as our colleague, Joji Carino, is one of the drafters of this and our views are adequately reflected in this paper. So what I will do is just to refer to the results of a national consultation we had in the Philippines on free, prior and informed consent.

The indigenous peoples throughout the world continuously aspire for instruments that would advance their recognition and further strengthen their rights as indigenous peoples.

In the Philippines, a law was passed in 1997 that recognizes indigenous peoples rights. This was a clear result of the indigenous peoples' struggles in the country to have their rights recognized. A key provision of the law is on Free, Prior and Informed Consent. This is, undoubtedly, one of the best features of the law. However, there are serious deficiencies in the guidelines created by the National Commission on Indigenous Peoples for its operationalization.

We, in Tebtebba, held a national consultation which was held in February of this year, to look at the experiences of indigenous peoples in terms of how FPIC is

operationalized by the government. Some observations which arose from the consultation are the following;

1. The National Commission on Indigenous Peoples, the government agency tasked to implement the law, has not been very effective in ensuring that free, prior and informed consent is implemented properly. In some cases it even became part of the problem because some commissioners or regional directors have colluded with proponents of development projects to obtain FPIC in a fraudulent manner. There were key NCIP personnel involved in the creation of fake tribal councils from whom certifications of FPIC were obtained.
2. There is still a gap between the indigenous peoples' concept of FPIC and the guidelines made by the NCIP. For example, on decision making, the law prescribes 10 days to one month for consultation and decision-making which is unacceptable to indigenous peoples. Having such a short-timetable favors corporate interests because substantial information dissemination and consultations cannot be undertaken. This is contrary to the customary and traditional practices of indigenous peoples in terms of consensual decision-making. Most indigenous peoples' communities are very isolated and remote and to have substantial discussions and consultations a month is not even enough.
3. Securing FPIC through fraudulent means come in various forms. One is through misrepresentation such as the creation of fake tribal councils or getting FPIC from those who are not directly affected by the projects. Another way is through the conduct of social and environmental impact analysis in a haphazard manner. The results of such studies are then used to deceive people into thinking that there are no negative impacts.
4. Some government representatives and the proponents of so-called development projects see FPIC just as a requirement and if this is applied to indigenous peoples it is not appreciated as a recognition of indigenous peoples rights. Crucial to FPIC is the community's right to veto development projects when they see that these would destroy them as indigenous peoples and would not benefit at all from these projects.

So while the law is there and guidelines were prepared there is still a long way to go to make this right and principle implemented in a way that truly respects indigenous peoples' rights and integrates indigenous peoples customary laws and practices.

#### **Recommendations:**

1. The international community should strengthen further FPIC as a tool by further clarifying its concept. It is very important that indigenous peoples themselves should take a closer look at its concept and make concrete recommendations for its operationalization.

2. That multi-lateral agencies such as the World Bank should enhance, and not to weaken, indigenous peoples rights.
3. That there should be sanctions for the proponents of development projects if they are involved in obtaining FPIC through fraudulent means and if they do not follow the right process of obtaining.
4. If there is an FPIC that was already issued, the indigenous peoples have the right to withdraw from an agreement if the conditions agreed upon are not adhered to by other parties.
5. More effective consultations should be done by the Philippine government with indigenous peoples to improve further the guidelines that they have on FPIC so that this will be made more sensitive to indigenous peoples customs, values and norms.

Thank you Mr. Chairperson and I reiterate our thanks to the Working Group for involving Tebtebba in preparing this working paper.

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