



Tebtebba Foundation

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“NGO in Special Consultative Status with the Economic and Social Council of the UN”

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Agenda item 4(e) Free, Prior and Informed Consent

STATEMENT – Recent experiences and recommendations on the concept and implementation of the principle of Free, Prior and Informed Consent

**Presented by Jennifer Corpuz, Tebtebba Foundation
In behalf of the Asia Indigenous Women's Network (AIWN),
the Cordillera Peoples' Alliance (CPA) and Tebtebba Foundation**

Madame Chair, we would like to make some recommendations on FPIC based on lessons learned from recent experience on the implementation of the FPIC guidelines in the Philippines.

The Philippines has in place a strong law on indigenous peoples' rights and effective guidelines on FPIC. Implementation, however, has been less than satisfactory, as shown by our recent experience.

In our experience, basic information about proposed projects that impact on indigenous peoples and their lands is provided in a language NOT understood by the community. The information includes only the expected benefits and not the potential adverse impacts. Independent studies are not provided. Consultations called by project proponents and government agencies center on promises of benefits rather than a thorough discussion on the impact of the project itself. This approach transforms the consultation process into an exercise in subtle bribery.

The consultation process imposes requirements and very short time frames that are not in accordance with the customary practices of the community. In particular, communities are forced to vote on a proposal when consensus building is the customary way of making decisions. When it seems that a project proposal is unlikely to be approved, fake tribal councils are formed and there are sudden designations of fake tribal leaders friendly to the project proponent and not accountable to the people. Further, the consultation lacks inclusiveness, as women and youth are frequently left out of the discussion. The final contract is in a language NOT understood by the community and is provided in limited copies. Communities have recommended that each household head be given a copy of the contract, so as to ensure transparency and facilitate monitoring.

In our experience, certificates of FPIC are issued despite the existence of official complaints on the FPIC procedure and protests against the proposed project. Given the frequent occurrence of irregularities and fraud in obtaining FPIC, it is surprising that mechanisms to ensure compliance and accountability are inadequate or lacking. Ideally, no FPIC certification should be issued unless protests and complaints are adequately addressed and settled with the community. There should be a mechanism for the revocation of FPIC and the project contract when it is shown that FPIC has been fraudulently acquired and when there are violations of the terms of the contract.

There should be an independent monitoring body to ensure that FPIC processes are in accordance with the substance and principles of FPIC legislation and with the defined process of the community. A complaints mechanism should be established and made available and accessible to affected communities, especially in cases of manipulation and subversion of the FPIC process and in cases of non-compliance with or violations of the contract. Groups responsible for such violations must be held to account for their actions.

Taking into account the observations above, we recommend the following:

1. That governments with existing FPIC legislation and guidelines ensure proper implementation by:
 - a. Disseminating the content of the law and guidelines widely and conducting capacity-building activities among communities and those expected to implement the law.
 - b. Ensuring that the project proponent provides balanced information in a language understood by the community.
 - c. Respecting the customary systems of the community in decision-making on proposed projects, including respect for the amount of time required for the community to come to a decision.
 - d. Making sure that women and youth are included in the discussions and in decision-making.
 - e. Providing each household head in the affected community with a copy of the final contract, written in a language understood by community, in order to ensure transparency and facilitate monitoring.
 - f. Establish or improve mechanisms to ensure compliance and accountability, in particular a mechanism for the revocation of FPIC and the project contract when it is shown that FPIC has been fraudulently acquired and when there are violations of the terms of the contract. Groups responsible for such violations must be held to account for their actions.
 - g. Refrain from issuing FPIC certification unless protests and complaints are adequately addressed and settled with the community
 - h. Designate an independent monitoring body to ensure that FPIC processes are in accordance with the substance and principles of FPIC legislation and with the defined process of the community.
2. That the Forum take active part in the further development of the principle of FPIC, with a view to setting international standards on FPIC, by actively advising relevant UN agencies and national governments on the development of legislation and guidelines on FPIC and their proper implementation.

Thank you very much, Madame Chair.