

A Call for Effective and Genuine Consultations on the Revised FPIC Guidelines

We, the undersigned, are deeply concerned about the threats to Indigenous Peoples' right to self-determination under the proposed revised guidelines for Free, Prior, and Informed Consent (FPIC) being fast-tracked by the National Commission on Indigenous Peoples (NCIP) without the meaningful participation of Indigenous Peoples. Any move to rush the rules should not be allowed, and the NCIP should facilitate inclusive consultations with its core constituency: Indigenous Peoples.

On 14 May 2024, the NCIP conducted its first consultation to disclose the proposed new FPIC Rules. These rules are significant not only to the estimated 20 million Indigenous Peoples throughout the Philippines but also to all Filipinos, whose right to a balanced and healthful ecology hangs in the balance. After all, ancestral domains represent the country's—and the world's—last ecological frontiers that provide ecosystem services and our last defense against the climate emergency.

The requirement for the proper conduct of FPIC is an imperative for the protection and exercise of the rights of Indigenous Peoples to their lands, territories, resources, to their cultural heritage, and self-determination. It is characterized by good faith consultations on matters affecting the Indigenous Peoples and respecting their independent collective decision-making process and the result of such process. Securing the FPIC must follow the procedure created by the community, free from coercion, threats, or manipulation, and should occur at every project stage. Informed consent requires that proponents fully disclose project details, including its positive and negative consequences including adverse social and environmental impacts, projected income, and beneficial owners. These details should be provided in a language and manner used and understood by the community. Most importantly, consent in the FPIC grants Indigenous Peoples the power to reject a project outright, with no room for renegotiation. The absence of consensus means no consent.

The FPIC gives life to the inherent right to self-determination of Indigenous Peoples as provided under the 1987 Constitution and the Indigenous Peoples Rights Act (IPRA). The 2012 FPIC Rules, albeit with its limitations, collected the consensus of affected Indigenous communities as a basis for projects to go ahead. Case studies have also been provided to develop it. Unfortunately, the new proposed FPIC rules will undermine and diminish this fundamental collective right of Indigenous Peoples. The NCIP favors laws, such as the Ease of Doing Business and Efficient Government Service Delivery Act of 2018 (Republic Act No. 11032) that create hospitable investment climates, instead of ensuring the protection of the rights of Indigenous Peoples which are systematically discriminated against and disproportionately marginalized by those in power.

It is disturbing that the process of revising the FPIC guidelines denies the right to consultation and meaningful participation of Indigenous Peoples which is their inherent right, especially to any process affecting the exercise of their rights. As admitted by the Commission,

the proposal was only created in 2022, the finalization workshop was finalized in 2023, and there has only been one stakeholder's forum. This falls short of the rigor and nuance required of a process that will have fundamental and wide-ranging impacts on Indigenous Peoples and environmental conservation.

Indigenous Peoples and their supporters must be given sufficient time to study and discuss these proposed rules on FPIC and be given access to information, and Indigenous Peoples should be given decision-making powers in the revised FPIC guidelines process. The current draft contains the following provisions that seriously reduce, undermine, and violate the rights of Indigenous Peoples in decision-making as an essential element of FPIC:

1. ***Exemption of Certain Large-Scale Economic Activities:*** Sections 5 and 28 exempt certain activities such as mining exploration, bio-prospecting, and large-scale tourism from FPIC requirements. Despite the absence of full-scale extraction, these projects remain socio-economically and ecologically disruptive and should require a complete FPIC process.
2. ***Inaccessibility of Environmental Information:*** Section 29 (G) erroneously invokes the Data Privacy Act to restrict access to environmental impact statements and other relevant information. The Indigenous Peoples Rights Act and the Philippine Environmental Impact Statement System Law mandate the disclosure of a project's ecological, socio-economic, and cultural impacts on Indigenous Peoples. The Data Privacy Act pertains to the personal data of individuals, not information related to juridical entities. Further, an Environmental Impact Statement should be mandatory.
3. ***Military, Paramilitary, and Security Provisions:*** Sections 27 and 28 potentially exacerbate civil and political rights abuses against indigenous peoples by excluding military and paramilitary activities from FPIC requirements and requiring Indigenous Peoples to disclose security risks to project proponents, raising concerns over their safety and confidentiality.
4. ***Non-Inclusion of Indigenous peoples as part of the Field-Based Investigation Team (FBI);*** The new rules fail to include any member of Indigenous peoples in the FBI Team under the guise that they may not be made accountable. However, this can be easily remedied by explicit contractual arrangements between the NCIP and the chosen community members.
5. ***The Fixed Periods under the Rules, particularly for the Community Assembly;*** The new rules provide time-limits for the various steps of the FPIC, including the hard deadline of ten (10) days for conducting a Community Assembly. This period is prohibitive and violates the community's right to follow customary laws. To begin with, the process ought to be provided by the communities themselves.
6. ***FPIC is not mandatory for each stage of a project if mentioned in the Memorandum of Agreement (MOA);*** The new rules attempt to create an exception to

the need for an FPIC for the various phases of a project by adding that this may be dispensed with if there is an existing MOA.

7. ***Reiteration of Community Participation:*** The proposed FPIC is focused on government-imposed institutional representations, structures, and priorities. It fails to recognize that some communities follow customary leadership or community structures outside the Indigenous Political Structures and Mandatory Indigenous Peoples Representations. Any FPIC rules should always consider the diversity of the community and the unique dynamics within their ancestral domains.

It is thus surprising that the NCIP announced that it would release the new rules in June 2024. This rushed process alarms the undersigned, our communities, and our partner communities. Although CSOs provided some comments before the consultation, there is little indication that these will be incorporated into the final rules. There is also no information on whether Indigenous Peoples were genuinely and effectively consulted. This is troubling because over 50% of mining claims currently cover ancestral domains, and there is heightened pressure on the NCIP due to the Energy Virtual One-Stop Shop Act (Republic Act No. 11234), which enforces strict timelines and standards for project rejection.

While the 1987 Constitution mandates the State to recognize and promote Indigenous Peoples' rights within the framework of national unity and development, this should not override their rights. Instead, national unity and development should only be invoked if Indigenous Peoples' customary laws and rights are inconsistent with policies benefiting everyone. But as highlighted during a Forum last 10 May 2024, mining, as an example of development often favored over Indigenous rights, has contributed only a minuscule 0.5% to our GDP in 2023.

The right to FPIC should not be diminished through the proposed rules. It should be allowed to flourish, as it is integral to the overarching culture of Indigenous Peoples. They remain the collective owners and stewards of their ancestral domains.

We demand that the NCIP extend the duration and coverage of the consultation process to provide genuine, meaningful, and inclusive participation for all Indigenous Peoples. The NCIP should also consider the distinct customary laws of each Indigenous Peoples and their specific struggles. This includes seeking the effective and inclusive participation of communities in geographically isolated and disadvantaged areas and the Non-Moro Indigenous Peoples in the Bangsamoro Autonomous Region in Muslim Mindanao.

The mandate of NCIP is to “protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions, and institutions.” The NCIP is not a mere go-between for extractive Industries, the government, and Indigenous Peoples. The NCIP should, therefore, craft FPIC rules that genuinely express and protect Indigenous Peoples' rights in accordance with the UN Declaration on the Rights of Indigenous Peoples and other Human Rights instruments as part of the government's human rights obligation and commitments.

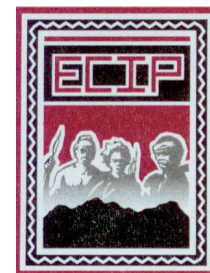
Nothing about us, without us.

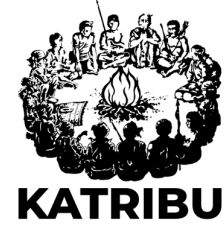
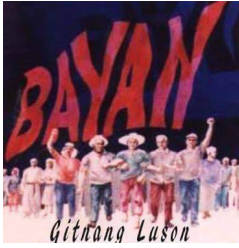
Signed,

Organizations

1. Indigenous Peoples Rights International
2. Legal Rights and Natural Resources Center
3. Alyansa ng mga Mamamayan para sa Karapatang Pantao
4. Alyansa Tigil Mina (ATM)
5. Anakbayan UPLB
6. Angat Kalikasan Katutubo Pilipinas
7. Apo Danao Ancestral Domain Community GBS - Ancestral Domain
8. Asia Indigenous Peoples Pact
9. Asia Indigenous Women's Network
10. Bai Indigenous Women's Network
11. Bangsa Sangil Federation
12. Bayan Gitnang Luzon
13. Bayan Rizal
14. Bigkis at Lakas ng Katutubo sa Timog Katagalugan
15. Bukluran – Philippine ICCA Consortium
16. Congress of Teachers/Educators for Nationalism and Democracy (CONTEND)
17. Cordillera Peoples Alliance
18. Cordillera Human Rights Alliance
19. Cortes Law Office
20. Environmental Defenders Congress
21. Episcopal Commission on Indigenous Peoples National Secretariat
22. Franciscan Solidarity Movement for Justice, Peace and Integrity of Creation – Young Franciscan Advocates
23. Gempa te Kelindaan te Erumanen ne Menuvu ne Kamal
24. Inagkodi/Kabugao Youth
25. INNABUYOG
26. IP Youth of Buhi
27. Kabataan para sa Tribung Pilipino (KATRIBU)
28. Katinnulong Daguiti Umili iti Amianan-Peoples Partner in Northern Luzon, Inc. (KADUAMI)
29. Kalikasan People's Network for the Environment
30. Karapatan Rizal
31. KASAMA TK
32. Kasimbayan
33. Kirenteken-Ilentungen Erumanen ne Menuvu
34. Klima Center of Manila Observatory
35. LILAK (Purple Action for Indigenous Women's Rights)
36. Lingap Magsasaka
37. Mge Memeritan Neumpong te Sezukadang

38. Nagkakaisang mga Tribu ng Palawan, Inc. (NATRIPAL)
39. National Council of Churches in the Philippines (NCCP)
40. Neumpong Ne Memenguhed Te Sezukadang
41. Non-Moro Indigenous Peoples Center
42. Non-Moro Indigenous Peoples Youth Network
43. Panalipdan Youth Davao
44. Partners for Indigenous Knowledge Philippines (PIKP)
45. Protect Sierra Madre for the People
46. PUNGANAY – Cagayan Valley Indigenous Peoples Alliance
47. Rural Missionaries of the Philippines
48. Sabokahan Tomo Kamalitanan (Unity of Lumad Women)
49. Sakatabi
50. Saribuhay National
51. Seriru an Lapaw Manubo Organization
52. Sërukadang Mënuvu Tribe Organization/Kirenteken-Ilentungen Erumanen ne Menuvu
53. Siklab Philippine Indigenous Youth Network
54. SILDAP-Southeastern Mindanao, Inc.
55. Sumpay Mindanao, Inc.
56. Task Force Bantay Kalikasan
57. Task Force Urban Poor Conscientization
58. Tebtebba Foundation Inc.
59. Teduray and Lambangian Ancestral Domain Claim (TLADC)
60. Timuay Justice and Governance
61. Tongtongan ti Umili
62. Tumanud Pusaka Subanen Dig Midsalip (Tupusumi)
63. Umalohokan, Inc.
64. Youth Advocates for Climate Action Philippines





LILAK
PURPLE ACTION FOR INDIGENOUS WOMEN'S RIGHTS

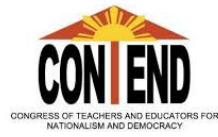


Sapokahan
UNITY OF LUMAD WOMEN



PANAGHIUSA
PHILIPPINE NETWORK TO UPHOLD
INDIGENOUS PEOPLES' RIGHTS





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