

# Indigenous Peoples versus the State: FPIC and Resource Extraction in the Cordillera Region, Philippines

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## Abstract

The discourse on indigeneity has been primarily framed within the context of identity politics, on the notion that being indigenous has a political meaning that needs articulation, recognition and representation. Indigeneity is also a matter of *positioning*. Given this, the political identity of the indigenous peoples is said to be forged in situations of strife and resistance. The indigenous peoples in the Philippines, commonly branded as among the “marginalized”, however, have found ways to strengthen their position within the decision-making arenas set-up by the state such as the Free and Prior Informed Consent (FPIC) process. This paper explores the ‘uneasy’ relationship between the indigenous peoples and the state when resource extraction is concerned. It particularly unpacks the power relations between the state, which strongly promoted mining during the administration of President Gloria Macapagal-Arroyo, and the indigenous peoples whose resource-rich lands have become the primary target of an aggressive mining industry. The indigenous peoples’ *positioning* on the issue of mining in the Cordillera Region, Philippines will be discussed along with the counter position of the state in order to illustrate how identity politics plays a crucial role in resource access, use and management in the region. The study adopts critical discourse analysis, which provides the lens that facilitates the discovery of possible convergence between the state and the indigenous peoples’ rendering of concepts like FPIC and resource extraction, so that a peaceful and productive engagement between these two contending parties may be established.

KEYWORDS: indigenous peoples, Cordillera region, resource extraction, FPIC

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## Introduction

The discourse on indigeneity has been primarily framed in the context of identity politics—on the notion that being indigenous has a political meaning that needs to be articulated, recognized and represented. Indigeneity is also a matter of positioning. It “draws upon historically sedimented practices, landscapes, and repertoires of meanings that emerges through particular patterns of engagements and struggles” (Li 2000, 151). Definitions of “indigenous” are thus quite varied and usually contested. As such, debates ensue not only in terms of defining “indigenous people” but also in terms of determining the political position or status of the indigenous peoples in society and therefore the “special” rights that should be accorded to them.

In the Philippines, Section 3 (h) of the Indigenous People’s Right Act (IPRA) defines indigenous people (IP) as a “group of people or homogenous societies identified by self-ascription or ascription by others who have continuously lived as organized community on communally bounded and defined territory.” Another element central to the definition of indigenous as provided in the IPRA is their being “historically differentiated from the majority of Filipinos” because of their distinct cultural traits and resistance to colonization.

The discourse on indigeneity is further complicated when viewed in the context of IP rights. In this light, the questions “On what basis should rights be accorded to IPs?” and “What specific rights constitute IP rights?” are asked. Ivison presents a basis why IPs are owed rights—indigenous difference: that is, their “radical otherness from Europeans” which consequently caused them to suffer harm (Ivison 2003, 325). However, such conception presents a serious challenge to IP’s claims since, when their “cultural distinctiveness” is lost, their claim on the rights accorded to them on the basis of their “cultural distinctiveness” or “otherness” may also be undermined (Ivison 2003, 325). The process of creating and maintaining indigenous identity is also heavily shaped by the state. Through its various structures and agents, the state can either work in protection or violation of IP rights, or perhaps serve either as IP’s main ally or its strongest adversary.

For instance, Hanson (1997) sees the role of the state as a guarantor; an entity that provides political opportunity and protection to indigenous people. This is

implied when he presents how the state recognized the need to establish national Indian organizations to facilitate easier engagement with political decision-makers. Alfred and Corntassel (2005), however, see the state as a problem for indigenous peoples because it sets the stage for the continued dispossession of IPs and their forced incorporation in an idealized nation-state through contemporary colonialism. Similarly, Pertierra and Ugarte (2002) and Scott (1982) discuss how the state—the Spanish and American colonial governments, in particular—has acted to create and reinforce the “notion of difference” that characterized indigenous identity in the Philippines and established the majority-minority dichotomy among the Filipinos. The state, through its policy-making and enforcing powers, also has a primary role in the process of IP recognition and authentication.

Policies legislated and implemented by the state define who the indigenous people are and the corresponding sets of rights and privileges they may claim within a state-defined boundary. Anderson (2007) shares a similar view of the state as an entity that facilitates division by “drawing lines between appropriate and inappropriate politics” and by promoting competition among IP organizations over access to state funding. However, Warren and Jackson (cited in Hale 2005, 19) point to the changing role of the state from being adversary to arbiter. As such, the state is seen to provide indigenous people with the political space to articulate their demands and engage government in relation to their meaningful recognition and representation.

The Philippines is considered to be one of the countries where IPs have successfully engaged the state in the process of their recognition and representation, as manifested in the passage of the IPRA in 1997. Although the IPRA is regarded as a landmark piece of legislation aimed to “correct historical injustices” suffered by the IPs, it has also exposed indigenous communities to serious problems relating to overlapping territorial boundaries and claims to land that pitted indigenous people against the state, private corporations and even against other indigenous people within and outside their own community.

This paper explores the dynamics of IP and state interaction when rights over resources are concerned. It primarily describes the ‘uneasy’ relationship between FPIC and extractive development projects. With an overwhelming 53 percent of all FPIC applications from 2004 to 2010 related to mining and mining exploration

projects, the discussion focuses on the political context within which the FPIC principle operates, i.e. the strong state support for mining during the administration of former President Gloria Macapagal-Arroyo. This social practice is taken into account in the production of texts and discursive practice/s on FPIC in the Philippines. The paper also unpacks the power relations between the state and the indigenous peoples whose resource-rich ancestral lands have become the primary site for aggressive extractive industries specifically large-scale mining in the country.

The paper posits that, while IPs in the Philippines are legally recognized and given “special” rights under the IPRA, the state remains largely in control of the nature and pace of development that happens within the IPs’ ancestral domains. With the instrument of FPIC, however, the IPs gain a powerful leverage to determine for themselves the kind of development that they wish to pursue in their own ancestral lands.

### **Methodology**

Using critical discourse analysis, the paper illustrates the dynamics of IP-state relations in the Philippines within the context of extractive industries. It further centers on mining as it is conducted or designed to be conducted in several indigenous communities in the Cordillera Administrative Region (CAR). Official government documents, statements and statistics from mining proponents, key informant interviews and newspaper articles were used as sources of data for this research. The newspaper articles were drawn from the *Baguio Midland Courier* (henceforth *Midland*) and the *Northern Dispatch Weekly* (henceforth *Nordis*) through a manual and digital search using key words such as FPIC, mining, extractive industries, and IP rights. The search for material covered the period from January 2006 to December 2010 and yielded a total of 83 articles.

Analysis of both written and spoken texts was done qualitatively. On a more general level, these texts were analyzed in terms of their content by asking the following questions:

- 1) Who are the producers/speakers of the text?
- 2) What is/are being said?

- 3) How are social identities (of the state and the IPs) represented in the text?
- 4) How are their (State-IP) social relations being represented in the text?

Using this framework as a guide in describing and analyzing state-IP relations in the Cordillera Region, this paper examines the respective positions of the state and the IPs on mining issues through the exposition of how the FPIC process is conducted in the region's ancestral domains.

### **Extractive Industries in the Philippines**

The Philippines, being situated in the Pacific Rim of Fire, is endowed with enormous mineral deposits making it the 5th most mineralized country in the world (DENR 2012). This makes the country an ideal site for extractive industries. Extractive industries refer to the extraction of natural resources including oil, gas, minerals and metals. Of these industries, it is mining that caught the attention of the Philippine government on account of the DENR estimate that the country's mineral reserves consist of "about 14.5 billion metric tons of metallic minerals and about 67.66 billion metric tons of non-metallic minerals (DENR 2012)," which could easily be worth billions of dollars of prospective income for the country.

Given the country's great potential to benefit from such extractive industries, the administration of President Gloria Macapagal-Arroyo in 2004 declared it the "policy of the Government to promote responsible mineral resources operation, development and utilization, in order to enhance economic growth (EO 270, Sec.1)." This statement is contained in Executive Order 270 (EO 270) or the National Policy Agenda on Revitalizing Mining in the Philippines, which officially recognized "the critical role of investments in the minerals industry for national development and poverty alleviation." This also affirmed the government's role to "provide support mechanisms for a sustained mineral exploration program, responsive research and development priorities and capability building for industry manpower" (EO 270, Sec 2[a]).

The notion that mining facilitates national development and poverty alleviation clearly stems from the estimate that nine million hectares of Philippine lands are “high potential sites for copper, gold, nickel, chromite etc.” according to former DENR Secretary Michael Defensor (2005). With this, Defensor also asserted that the “Philippines has the potential to be the 10th largest mining power in the world.” The economic benefits of this could be staggering as Defensor further argued that the economic potential of mining could amount to US\$90.8 B in Gross Value of mineral deposits, US\$6.5 B in Foreign Direct Investment, US\$3.4 B in annual sales and foreign exchange and additional hundreds of millions of dollars in taxes. There is also an estimate of 200,000 direct and indirect employments that can be generated by the industry (also cited in the Foundation for Environmental Security and Sustainability Report 2007, 19).

With such potential benefits from mining alone, the administration of President Gloria Macapagal-Arroyo officially shifted its policy from “mere toleration” to “active promotion” of mining (Mines and Geosciences Bureau 2010). In support, then DENR Secretary Defensor (2005) proclaimed that “the business of mining is the business of nation-building.” The Arroyo administration also aggressively formulated the Mineral Action Plan (MAP), which laid down the fundamental steps the government had to undertake in order to create conducive social, economic and political climate for mining. The plan included “the streamlining of procedures of concerned government agencies and instrumentalities relating to the grant of mining tenements, responsive research and development priorities and capability building for industry manpower” (MAP 2004).

As such, government agencies especially the Department of Environment and Natural Resources and the NCIP were enjoined to simplify the permitting process for mining operations. The DENR and its attached agency, the Mines and Geosciences Bureau (MGB), were directed to “issue mining permits/contracts in accordance with the new streamlined/simplified procedures reducing the overall processing time of mining applications from 3 years to 7 months” and also “to strengthen One Stop Shop for Area Clearance, Mineral Investment Assistance Center, etc.” (MAP 2004). The NCIP, on the other

hand, was enjoined to amend its process for issuing Certification Precondition/FPIC and to reduce such “from 185 days to 107 days and reduce requirement in non-IP areas, without compromising the IP rights and environmental protection” (MAP 2004).

In light of these directives, the DENR-MGB and NCIP, along with other government agencies and the Chamber of Mines of the Philippines, worked together toward encouraging mining in the Philippines through the specific policy agenda of instituting “clear, stable and predictable investment and regulatory policies... to facilitate investments in mining, leading to a prosperous minerals industry” (MAP 2004). This policy agenda entailed the strengthening and harmonization of existing national policies related to mining such as, among others, the Mining Act, Local Government Code, IPRA, National Integrated Protected Areas System (NIPAS) and Omnibus Investment Code. The primary objective was to extend full support for mining and ensure the maximum utilization of the country’s mineral wealth, all within the framework of environmental sustainability, meaningful community consultation and equitable distribution of mining’s economic benefits.

Naturally, such concerted effort to promote mining also involved identifying potential sites for mining operations. As such, the Mineral Action Plan contained a directive to “establish and maintain a mineral resources data base that is readily available to various clientele.” In response, the DENR-MGB was tasked to formulate an inventory of mineral resources in the country along with completed 1:50,000 scale quadrangle geologic, geochemical and geophysical maps of the Philippines (MAP 2004). The plan also included as its top priority the “remediation and rehabilitation of abandoned mines/sites,” specifically to address the negative impacts of mining operations conducted in the past.

All these efforts done by the government to actively promote mining seem to have paid off. The mining industry was revitalized and there were increasing applications for mining and mining exploration in the country. This mining industry, comprised of 28 large-scale mines, operated within 60,000 hectares of land spread across the country (Chamber of Mines of the Philippines, Philippine Mining Footprint, n.d.). While it occupied only 0.2 percent of the total Philippine

landmass, the Chamber of Mines of the Philippines (COMP) claims that the mining industry was a major contributor to the Philippine economy as it attracted investments in the country, generated employment, increased government revenues and improved the quality of life of its host communities while doing responsible mining (COMP, *Responsible Mining Boosts the Economy*, n.d.). In economic terms, the industry brought about a total of \$2.99 billion in investments and \$8.5 billion total worth of mineral exports from 2007-2010 (see table 1). In addition, the mining industry also contributed a 0.5 percent share to total employment and some PHP 43.9 billion worth of taxes, fees and royalties to the Philippine economy within the same period.

These huge economic benefits from mining substantiated government support for this specific extractive industry and its sustained focus on establishing improved legal and physical infrastructure to keep the mining industry robust. However, advocates of indigenous peoples' rights and some indigenous peoples themselves waged a strong campaign against mining, which they claim is a serious threat to the environment as well as to the rights and well-being of the IPs. In 2004, for instance, reports say that the remaining forest cover of the country is only less than 15 per cent of its land area (Corpuz and Alcantara 2004, 58). This accounts for only 4.6 million hectares, with only 700,000 hectares remaining as virgin forests (Corpuz and Alcantara, 2004, 58). This phenomenon of deforestation is said to be progressing aggressively on account of unregulated logging and other extractive industries, especially mining. Reports further state that there are over 20 million Filipinos affected by the loss in forest cover, about a third of whom are indigenous peoples (Corpuz and Alcantara 2004, 58). This is astounding considering that the NCIP estimated the population of the IPs at only about 11.8 million or 15 percent of the total population. This means that more or less half of the entire IP population is directly affected by diminishing forest cover. In addition, it is also widely believed that the country's mineral reserves are mostly located within the ancestral domains of the IPs, which have remained resource-rich and relatively intact.



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**TABLE 1: Mining Industry Statistics, 2007-2010**

	2007	2008	2009	2010
<b>Gross Production Value In Mining (MGB)</b>				
Large Scale Metallic Mining	P 49.2 B	P 29.7 B	P 42.8 B	P 69.1 B
Small Scale Gold Mining	32.2 B	33.9 B	36.8 B	42.9 B
Non-metallic Mining	20.8 B	23.5 B	26.5 B	33.3 B
<b>TOTAL</b>	<b>P 102.2 B</b>	<b>P 87.1 B</b>	<b>P 106.1 B</b>	<b>P 145.3 B</b>
Total Mining Investment Data from the Revitalization Program under EO 270 (MGB)				
	<b>\$ 708.4 M</b>	<b>\$604.2 M</b>	<b>\$ 719.5 M</b>	<b>\$ 955.8 M</b>
<b>Gross Value Added in Mining at Current Prices (NSCB):</b>				
Mining Contribution to GDP	<b>0.9%</b>	<b>0.7%</b>	<b>0.8%</b>	<b>1.0%</b>
<b>Total Exports of Minerals &amp; Mineral Products (BSP)</b>				
Mining Contribution to Total Exports	<b>5.3%</b>	<b>5.2%</b>	<b>3.9%</b>	<b>3.8%</b>
<b>Total Exports of Non-Met. Mineral Manufactures (BSP)</b>				
Mining Contribution to Total Exports	<b>0.4%</b>	<b>0.4%</b>	<b>0.4%</b>	<b>0.3%</b>
<b>Employment in Mining and Quarrying (DOLE)</b>				
Mining Contribution to Total Employment	<b>0.4%</b>	<b>0.5%</b>	<b>0.5%</b>	<b>0.5%</b>
<b>Taxes, Fees and Royalties From Mining</b>				
Fees, Charges & Royalties Collected by DENR-MGB/LGUs	P 774.0 M 942.1 M	P 557.4 M 660.3 M	P 396.2 M 718.8 M	P 800.6 M 1,299.7 M
Excise Tax Collected by BIR	8,371.7 M	5,949.5 M	10,272.5 M	10,201.9 M
Taxes and Fees Collected by LGUs	359.8 M	522.2 M	992.8 M	1,071.2 M
<b>TOTAL</b>	<b>P10,447.6 M</b>	<b>P7,689.4 M</b>	<b>P12,380.3 M</b>	<b>P13,373.4 M</b>

Source: Mines and Geosciences Bureau, Mining Industry Statistics (16 April 2012)

### **FPIC and the Mining Industry**

The principle of Free and Prior Informed Consent or FPIC is considered one of the integral elements of IP's right to self-determination. In fact, FPIC is a critical part of the four bundles of rights enjoyed by the IPs that are guaranteed by the IPRA. As defined in the IPRA, Free and Prior Informed Consent means:

the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community (Section 3:g, IPRA).

In effect, the FPIC instrument ensures the indigenous peoples' active role in determining their own future by providing them the right to accept or reject projects, programs and activities within their ancestral domain. As a policy instrument, it also gives a signal to all that "IPs have rights and interests that will be protected in the development process (Cariño 2005, 25)."

However, with the state's strong support for mining during the time of President Gloria Macapagal-Arroyo and the huge economic income from the mining sector, some indigenous peoples found themselves in a delicate situation of either assisting or resisting mining in their respective communities. On one hand, the financial gains from mining promised by the companies have become a compelling temptation for some IPs. The choice then to support mining has been seen by some as a practical response to address poverty and unemployment that plague most IP communities in the country. However, this choice may come with a heavy price considering the extent and depth of the potential social and environmental harm that mining could bring about. On the other hand, those who chose to withhold support for mining or to actively oppose it somehow found themselves deprived of good economic opportunities and/or struggling not only against giant mining companies but also against a powerful state supportive of it.

This seems to be the difference that mining makes in the lives of the indigenous peoples in the Philippines. The industry clearly brings to the fore the power dynamics between the state and the IPs. More importantly, it also illuminates the tension that

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builds up within the state itself and within the IP communities as well when resource utilization and allocation is concerned.

To illustrate, one major concern regarding the implementation of the FPIC Guidelines of 2006 is the noticeable increase in FPIC applications for mining and mining exploration projects. The NCIP reports that of the 312 FPIC Compliance Certificates issued for the period 2004 to 2010, some 166 or 53 percent concern mining operation or exploration projects, the majority of which were issued after the FPIC Guidelines were revised in 2006. The summary of compliance certificates and certificates of consent issued by the NCIP from 2004 to 2010 is found in Table 2,

**TABLE 2.** Summary of Issued Certificate of Consent (CC) by Nature of the Project (2004-2010)

REGION	MINING OPERATION/ EXPLORATION PROJECTS	HYDRO POWER PLANT/ GEO THERMAL PROJECTS/ DAM	INDUSTRIAL SAND & GRAVEL/ QUARRY	FORESTRY RELATED PROJECT/ AGRO INDUSTRIAL PROJECT	RESEARCH/ PROCESSING PLANT/ LIVELIHOOD PROJECT/ WATER SYSTEM/ TOURIST DESTINATION	TRANSMISSION LINE PROJECT/ BASE TELEVISION RELAY/ SPECIAL LAND USE/ OTHERS	EXERCISE OF PRIORITY RIGHT TO NATURAL RESOURCES/ COMMUNITY INITIATED/ SOLICITED PROJECTS	TOTAL
CAR	10	17	0	4	0	3	4	38
I	6	2	3	1	1	2	1	16
II	5	1	0	3	0	0	0	9
III	15	1	0	13	2	4	1	36
IV	28	2	0	5	3	1	1	40
V	7	2	0	2	0	0	0	11
VI/VII	4	1	0	1	0	1	0	7
IX	7	1	0	1	0	1	1	11
X	9	3	0	14	0	3	2	31
XI	18	4	0	6	0	4	2	34
XII	19	0	0	4	0	2	2	27
XIII	38	2	0	5	0	2	5	52
<b>TOTAL</b>	<b>166</b>	<b>36</b>	<b>3</b>	<b>59</b>	<b>6</b>	<b>23</b>	<b>19</b>	<b>312</b>
<b>PERCENTAGE</b>	<b>53%</b>	<b>12%</b>	<b>1%</b>	<b>19%</b>	<b>2%</b>	<b>7%</b>	<b>6%</b>	<b>100%</b>

Source: Ancestral Domains Office, NCIP

disaggregated by region and the nature of project applied for. While this phenomenon alarmed indigenous peoples, scholars, and NGO workers who have repeatedly called for the review of the FPIC Guidelines of 2006 given the alleged violations committed by mining applicants, the state continuously promoted mining and even guaranteed faster and easier FPIC application.

It bears noting here that this upward trend in FPIC applications related to mining evidently corresponds with the pronouncement made by the administration of President Gloria Macapagal-Arroyo promoting mining as “the salvation of the country’s faltering economy.” Corollary to this, the Supreme Court in 2004 also reversed its own ruling on the unconstitutionality of certain provisions of the Mining Act of 1991 after a fiscal crisis was declared and the National Economic and Development Authority (NEDA) pegged the estimated worth of the country’s untapped mineral wealth at \$ 840 B (Ciencia 2010). The revision of the FPIC Guidelines of 2002, which made way for a “shortened” FPIC process, was also a response to the state’s directive declared in EO 270 to “provide support mechanisms for a sustained mineral exploration program.”

The state, however, is said to promote and support only responsible mining. From its point of view, increased mining applications should therefore be regarded as a welcome development since the government has made sure, through its regulatory policies, that any mining conducted in the country will be “responsible.” This means that mining that operates within the framework of environmental protection, sustainable use of resources, equitable benefit-sharing arrangement, and protection of rights of the indigenous peoples and communities (EO 270). While there was no apparent mention of the principle of FPIC in EO 270, it does include a process of “continuous and meaningful consultation with the industry and all other stakeholders shall be instituted, to integrate concerns on minerals in resource management policy and planning (Sec. 2(la)).”

The “oversight” was immediately addressed with the issuance of Executive Order 270-A (EO 270-A) on 20 April 2004 amending EO 270. EO 270-A declares that “there is a need to expressly stipulate the concerns referring to the protection of rights of the indigenous peoples and communities.” As such, Section 2 (g) of EO 270 stipulating the protection of ecological integrity of mining areas was amended

to incorporate the clause that “[t]he rights of affected communities, including the rights of the Indigenous Cultural Communities, especially the Free and Prior Informed Consent requirement, shall be protected (EO 270-A, Sec. 1).” For some observers, the amendment seemed like a mere “afterthought” suggestive of the state’s lack of serious and sustained consideration of IP rights when making its policy agenda.

The mining sector through the Chamber of Mines of the Philippines (COMP), for its part, provided a clarification about what it claims to be a “misconception”—that all mining applications will eventually be granted, and that mining will be conducted in 40 percent of the 30 million-hectare total land area of the Philippines (or 12 to 14 million hectares). The COMP (Philippine Mining Footprint, n.d.) emphasizes that existing mining operations in the Philippines only cover 0.2 percent of the country’s landmass, which is very much within the standard footprint of countries where mining is a major industry. The United States and Africa, COMP further asserts, have a less than one percent mining footprint, while Australia has 0.06 percent. COMP further argues that the success ratio for mining may only be one mine out of 4,000 prospects. This means that even if the Philippines is plagued with mining applications, not all of them—maybe not even any one of them—will result in actual mining operation. Thus, for COMP, the alarm set off against mining perpetuated mostly by NGOs is highly unfounded. COMP even asserts that its mining footprint is negligible and that it “has practically no significant impact on biodiversity, ecotourism, fishery and agriculture” (Philippine Mining Footprint, n.d.).

COMP also maintains the state’s assertion that only responsible mining is conducted in the Philippines. In fact, COMP emphasizes that the data shows “that responsible mining is happening now,” contrary to the claim of industry outsiders that “responsible mining can only happen in the future” (We Have Responsible Mining Now!, COMP, n.d). COMP further contends that because of responsible mining, “more schools are being built, more children are going to school, more scholars are graduating from courses of their choice, more communities have access to health care and sanitation facilities, more roads are built, more rural folks now have water and electricity and are living in better houses” (We Have Responsible Mining Now!, COMP, n.d).

The assertion that responsible mining is happening in the country is backed by the proliferation of FPIC applications. The mining industry's aggressive pursuit of indigenous peoples' consent to allow mining and exploration in their lands is said to prove its intention to partner with the IPs in achieving economic development. The Philippine government, for instance, boasts of the high record of FPIC/CP issued as one of its primary indicators of the successful promotion of the IPs' right to self-governance and empowerment. In fact, the Philippine Report to the Convention on the Elimination of All Forms of Racial Discrimination (CERD) further contends that

[i]n mining areas where FPIC had been granted by the IP communities and where NCIP bestowed its Certificate of Precondition, there were no reported violations of the rights of the IPs/ICCs signifying that the FPIC process is a meaningful, effective and successful mechanism for IP rights protection and empowerment (CERD Report, 2008:29).

The state is thus further emboldened to promote mining, given the “meaningful, effective and successful” implementation of the FPIC process. With this, the IPs are said to have exercised self-governance and pursued economic development at the same time through the instrument of FPIC. However, the reality of responsible mining, in terms of the nature, scope and scale of its operation, has yet to be fully established. While the state and even entities that are supportive of mining claim that what the country has is responsible mining, its actual conduct and the specific places in which it is indeed conducted have remained largely unfamiliar to many.

What is unfortunate is that while IPs continue to clamor for a moratorium on large-scale mining and the repeal of the Mining Act of 1995 as reflected in their 2010 IP Policy Agenda, the state persists in promoting mining and directs its agencies—including the NCIP—to do the same. In this light, newspaper reports and “informal” complaints from NGOs and IPs about how mining companies are able to manufacture or engineer consent in collusion with NCIP personnel have been documented. This alleged behavior of the NCIP does not come as a surprise since as a state agency, it is expected to “toe the line.” So when the agency reported that from 2004 to 2010 it had issued some 166 permits for mining operation or

exploration projects, and facilitated more FPIC applications for projects of the same nature, it became natural to assume that it was merely following the strong directive of the national government to do so.

### **FPIC and Resource Extraction in the Cordillera Region**

The Cordillera Administrative Region (CAR) is composed of the provinces of Abra, Apayao, Benguet, Ifugao, Kalinga and Mountain Province and the City of Baguio. The region is home to about 33 percent of the estimated 12 million indigenous peoples in the country. One fifth or about 18.4 percent of CAR's total land area is also considered ancestral domains of various indigenous peoples in the region (NSCB 2010). In fact from 2002 to 2010, the NCIP issued 20 Certificate of Ancestral Domain Titles (CADTs) covering a cumulative area of 336,660.06 hectares which benefitted the IP groups of Ayangan, Bago, Ibaloi, Isneg, I'wak, Kankana-ey, Kalanguya, Tuwali and Tingguian, among others (NSCB 2010). These IP ancestral domains also boast of rich mineral resources and other important forest products that can yield huge amounts of income for the entire region. The DENR (2012), for instance, declared that the most prolific copper and gold producers in the Philippines are found in the Baguio and Mankayan districts, province of Benguet in CAR. Thus, the region has naturally attracted the attention of investors, primarily mining companies, which filed and continue to file mining applications covering the IPs' ancestral domains.

It can be recalled that based on the NCIP records presented earlier, only 10 Certificates of Consent were issued for mining operation or exploration in CAR from 2004-2010, although the number of actual mining and mining exploration applications that were coursed through FPIC in the region cannot be ascertained due to lack of records. Apparently, only those FPIC processes that resulted in consent or project acceptance were recorded and tallied by NCIP. However, there have been many reported cases of IP dissatisfaction with and complaints about the FPIC process in relation to mining conducted within their ancestral domains covering the period 2006 to 2010, whether they resulted in actual consent or not. Some of the experiences of IP communities that went through such FPIC process were reported in the *Baguio Midland Courier* and the *Northern Dispatch Weekly*. Both of these

newspapers circulate within the CAR. *Midland*, a weekly newspaper, was established in 1947. It is published by the Hamada Publishing Corporation and has received many awards from the Philippine Press Institute, including the “Best Edited Weekly Newspaper” award. It has also received the “Most Outstanding Provincial Newspaper” award from the Rotary Club of Manila. *Midland* itself claims to be the “exponent of the wonderland of the Cordilleras and the riches of Ilocandia.” *Nordis*, on the other hand, claims to be “a people’s newspaper for Northern Philippines.” It is supposedly published weekly but due to its nature as a “community newspaper” with no commercial sponsors and guaranteed paid subscriptions, its publication is sometimes delayed. The paper is published by Northern Media and Information Network, Inc. chaired by Kathleen T. Okubo and, like *Midland*, is a member of the Philippine Press Institute.

From these two newspapers, a total of 83 articles on FPIC and related topics such as mining, extractive industries and IP rights were examined. Forty-one of these articles came from *Midland* while 42 were from *Nordis*. From these written texts, the indigenous peoples of the Cordillera have narrated their own stories about the FPIC process, and expressed their views regarding how the instrument has been implemented by the state through the NCIP in coordination with other agencies such as the Department of Environment and Natural Resources (DENR), Environment Management Bureau (EMB) and Mines and Geosciences Bureau (MGB). In these texts, the stories of the Benguet municipalities of Bakun, Bokod, Itogon, Kibungan, Mankayan and Tuba, along with those of the provinces of Kalinga, Apayao and Abra in relation to FPIC for extractive activities, primarily mining, were exposed. These IP communities all lamented how the FPIC process conducted in their respective areas was “illegal,” “invalid,” “manipulated,” “orchestrated,” “violated,” “questionable,” “railroaded,” “fast tracked,” “tainted,” “fraudulent,” and “irregular.” These descriptions of the FPIC process in the abovementioned communities were further qualified by accounts of the IPs about how the mining companies were able to push through with their projects “without genuine FPIC.”

In Kibungan, Benguet, for instance, De Gama Minerals, Inc. had to withdraw its men and equipment in the face of strong community opposition due to the company’s non-acquisition of FPIC (*Baguio Midland Courier*, 13 June 2010). In



Abra, Kalinga and Apayao, on the other hand, the FPIC process was allegedly manipulated by the NCIP to allow large mining companies to enter into the ancestral domains of the IPs without their consent (*Northern Dispatch Weekly*, 16 December 2007). In Benguet, the common experiences of the IPs relate to the use of deception by the company, instigating conflict and division within the community and outright violation of FPIC procedures such as non-completion of field-based investigation, non-consultation of all affected parties, and non-disclosure of all pertinent information related to the proposal. The FPIC process conducted in Camp 3, Tuba, Benguet as regards Philex Mining Corporation's expansion, for instance, was criticized because it was allegedly "railroaded" (*Northern Dispatch Weekly*, 4 September 2007). Based on reports, Philex failed to secure the FPIC of all the affected communities. Furthermore, Philex apparently changed the venue of the consultation from an open area to the covered Tribal Hall, to the dismay of some IPs, "because of the intended multi-media presentations to be made by the company which obviously cannot be made in an open area ("Open letter of Philex Mining Corporation," *Nordis*, 2007)."

Overall, it is worth indicating that in the Cordillera, there was no case of a mining-related FPIC from 2006 to 2010 reported in either *Midland* or *Nordis*, which apparently resulted in acceptance that was deemed "successful" or "legitimate" by the indigenous peoples themselves. In fact, from the perspective of the indigenous communities that underwent such process, the instrument of FPIC was used by either the state, through the NCIP, DENR and MGB, or the mining companies to force the IPs to give up their right to their ancestral lands. This prompted Santos Mero, Secretary General of Cordillera Peoples' Alliance, to allege that these government agencies "gang-up on indigenous peoples and the IPs cannot expect these agencies to protect their rights because these agencies are geared towards the Arroyo administration's aggressive mining policy (*Northern Dispatch Weekly*, 14 October 2007)."

However, it must also be noted that in the case of Bakun, the NCIP insisted that an FPIC was successfully conducted, prompting the agency to actually issue the Compliance Certificate to Royalco after an "overwhelming decision" in favor of the company was reached during the community assembly held in 13 January 2008.

The Head of the FPIC Team, Atty. Severino Manuel Lumiqued, stated that “[it] was in the best interest of all parties concerned, especially the residents of Barangay Gambang who will be hosting the mining exploration” (“Bakun folks okay MOA for mining exploration,” *Midland* 2008). He even maintained that “there is no compelling reason to suspend FPIC... it is unfair for both IPs and Royalco” (“Bakun folks approve mining exploration,” *Midland* 2008). However, this NCIP assertion was met with criticism from some IPs in Bakun who claim that NCIP is complicit in Royalco’s blatant disregard of their right to FPIC. Given this and other similar incidents, there is a growing concern among the IPs of the Cordillera about NCIP’s obvious bias in favor of the mining companies, which prompts the agency to act like a mere FPIC-issuing machinery for corporate interests (Allad-iw, *Nordis*, 2007).

Another case of FPIC that resulted in consent was that of Barangay Ampucao in Itogon, Benguet. The details of the community’s FPIC were contained in the Field-Based Investigation Report and FPIC Process Report submitted by Atty. Lumiqued who headed the undertaking. Based on these reports, the community decided to accept the exploration project proposed by Cordillera Tiger Gold Resources Inc. (henceforth Tiger Gold). This decision was relayed to the company during the Decision Meeting held at the Baguio Country Club on 19 May 2008. The representatives of the community and Tiger Gold then went on to discuss and finalize the contents of their Memorandum of Agreement (MOA), which was signed on 3 March 2009 at the Diwas Residence in Pasiday, Ampucao, Itogon, Benguet. The MOA along with the FPIC certificate were signed by the representatives of Ampucao, the mining company and the NCIP. In effect, Cordillera Tiger Gold Resources Inc. acquired the right to access and use the indigenous peoples’ land for mineral exploration for two to eight years. Tiger Gold was one of the FPIC applicants that were granted a Certification Precondition (CP) or Compliance Certificate (CC) by the NCIP. Unfortunately, although the NCIP official documentation of the FPIC process in Ampucao paints a picture of success, the MOA signed by the community with Tiger Gold did not actually materialize. Apparently, Tiger Gold disappeared without even providing the initial benefits that it promised to give the community upon the signing of the MOA. Two years after the FPIC process was concluded and the MOA was signed, the IPs of Ampucao have yet to hear from Tiger Gold. This

has prompted some community members who participated in the FPIC process or who witnessed such undertaking to become dismayed with the company's lack of commitment to their community.

Aside from IP's general discontent with the procedures set and implemented by the state in securing their consent, the discursive practice on FPIC in the Cordillera also highlights what seems to be an overwhelming sentiment against extractive projects, particularly mining, in the region. Reported cases of mining-related FPIC processes in the Cordillera have usually involved a story of resistance against it, as illustrated in the cases of Bakun against Royalco and Tuba against Philex Mines; or outright rejection, such as in the cases of Itogon against Anvil Mines and Kalinga against all commercial mining. Even the provincial board of Benguet joined its constituents in calling for a ban against mining in Mt. Sto. Tomas reservation (*Baguio Midland Courier*, 9 April 2006).

Such opposition to mining was also articulated by Ifugao Representative Teddy Baguilat, Jr. who called for a moratorium on large scale mining all over the Philippines after his own fact-finding investigation team learned of the many FPIC violations in the Cordillera. Rep. Baguilat asserted that "FPIC does not really serve its purpose," which is to protect the ancestral domains of the IPs especially against aggressive and irresponsible mining companies. He also argued that the NCIP should take a stand against mining and other destructive activities. Rep. Baguilat "revealed that the agency, in fact, does not have a good reputation among international funding agencies who are interested in IP projects" (*Northern Dispatch Weekly*, 3 October 2010). Furthermore, the Benguet Mining Alert Network (BMAAN) was established in August 2008 "to protect the province from corporate interest exploitation and environmental destruction due to mining" (*Northern Dispatch Weekly*, 30 August 2009).

Aside from IPs' strong opposition to mining that is being promoted by the national government, the FPIC discourse in the Cordillera is also heavily shaped by state laws such as the IPRA and its IRR and the FPIC Guidelines of 2006. The discourse on FPIC in the Cordillera is therefore characterized by its typical reference to these laws in terms of how the IPs define the meaning, process and outcome of the FPIC concept. It is noticeable, for instance, that IPs in Cordillera always invoke the IPRA as the legal basis of their right to FPIC. The appeal of these IPs, as

captured in the newspaper articles, is therefore the full implementation of and utmost respect for the IPRA. In this light, the IPs in Cordillera thereby adopt the meaning of FPIC as stipulated in the IPRA which is, in a nutshell, “the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices.” However, since this consensus is based on IPs’ customary law and practice, there is no single definition of the concept given that customary law and practice are location-specific and, in some IP communities, can even be time-specific. The resounding call of the IPs is therefore for the state and other agencies to respect their customary law, first and foremost, as the foundation and guiding principle of the entire FPIC process.

The FPIC process that IPs mention, on the other hand, is in reference to the set of procedures laid out in the FPIC Guidelines of 2006, which they expect the NCIP and other state agencies to follow in detail. The alleged violations of the FPIC principle, therefore, were made against what are already stipulated in the Guidelines, which prescribe how the FPIC is to be conducted, who should conduct it, and how much time the entire process would require, among others. However, there are also IPs in the Cordillera who contest these procedural prescriptions of the FPIC Guidelines for not being reflective of the true spirit of the FPIC principle. Tebtebba’s Executive Director Vicky Tauli-Corpuz, an IP rights advocate and former Head of the UN Permanent Forum on Indigenous Issues, argues that “institutionalization” of the FPIC principle can lead to manipulation especially by state agencies. She further posits that FPIC, as operationalized in the Guidelines, has been reduced to a mere “bureaucratic requirement” or a technical hurdle that the state must simply overcome, instead of being regarded as a fundamental IP right. She also asserts that the Guidelines are only supposed “to guide and not prescribe.” She challenges the government to recast the current Guidelines to make them more reflective of indigenous customs.

Finally, in terms of outcome, the IPs in the Cordillera consider the FPIC principle as one of the key instruments to achieve self-determination. The desirable outcome of its practice, for the IPs, is therefore their utmost exercise of self-governance and their empowerment as well. What this means, however, can only be illuminated by looking at particular cases of FPIC and how the IPs have actually construed what,

for them, are the indicators of a successful FPIC outcome. Without this thoughtful consideration of community experiences in relation to the FPIC process and its outcome, our understanding of FPIC can neither be fully complete nor accurate, even if the revised Guidelines provide the most comprehensive definition of free and prior informed consent.

### **Conclusion**

The principle and practice of FPIC exposes the nature of state-IP relations in the Philippines. Based on the various texts examined for this research, the state was able to appropriate for itself the right to design, formulate and implement the rules governing the conduct of FPIC without substantial inputs from the IPs themselves. The state was also able to determine national economic priorities without consulting the IPs. This reflects the paternalist nature of the state. With their right to FPIC, IPs are supposed to be treated as state partners in development. Yet this is hardly the case. Clearly then, while FPIC as currently practiced allows for state-IP interaction, this interaction is still much directed and dominated by the state and is therefore much in favor of its own interests. Critical discourse analysis facilitates a keener awareness of this condition as well as an exposition of the power structures inherent in the FPIC process as implemented by the state in IP communities. Critical discourse analysis also brings to the surface the “suppressed” discourses of the so-called marginalized and powerless in order to allow them to contend with the dominant discourses of the mainstream and powerful.

In the context of FPIC, it is quite apparent that the state, including its agencies such as the NCIP, EMB, DENR and MGB, has acted as the primary agent in the formulation, implementation and even interpretation of the FPIC principle. The state has formulated the laws governing the conduct of FPIC such as the IPRA, its IRR, the different versions of the FPIC Guidelines and other related executive orders and plans that incorporate the application of the FPIC concept. It has also implemented such laws through its various agencies and positioned itself at the forefront of FPIC interpretation. The official reports it has published, along with other official pronouncements it has made in the newspapers and other public fora,

provide a sense of FPIC success measured by its “flawless” procedural conduct and its effectiveness in promoting IP self-governance and empowerment.

The IPs, on the other hand, have been generally regarded by the state as beneficiaries or “end-users” of the FPIC principle. They belong to the marginalized sectors who are the subjects of state-sponsored laws on FPIC designed to incorporate them into national consciousness and mainstream politics. There has also been strong articulation by the IPs themselves of being treated by some state agents and mining proponents as potential obstacles to national development because of their refusal to consent to mining in their communities. Along with this, the IPs—especially those in the Cordillera—have been adamant in expressing their dismay, even “disgust,” over the state’s blatant disregard for IP rights, and worse, its actions in making the indigenous peoples “victims” of the exercise of their own right to FPIC.

With IPs’ social identity construed as “marginalized” and “victims of state aggression” comes the evident inattention to their legitimate articulations of demands. IPs—especially those in the CAR—have long been complaining against the flawed or defective implementation of the FPIC process, yet there exists no single official report of such complaint regarding FPIC at the NCIP Central Office. It was only recently that the call to review and revise the FPIC Guidelines of 2006 was heeded, with the congressional committee headed by Rep. Teddy Baguilat initiating the process. With the formation of a multi-sectoral Technical Working Group that assessed FPIC’s implementation over the past years and crafted the new and better FPIC Guidelines, the IPs’ concerns were finally validated and addressed by the state agents. The new FPIC Guidelines enacted in 2012 brought promise that a much improved understanding and operationalization of FPIC can now be put in place.

However, despite such effort by the state to rectify the flaws in the formulation and implementation of the FPIC Guidelines of 2006, there are still concerns among the IPs, NGOs and scholars about the broader social practice that shapes the FPIC discourse. This social practice is characterized by the state’s recognition of IP rights on the one hand, and its paternalist tendency to define for the IPs how these rights are to be exercised on the other. Furthermore, this social practice is defined by the strong state support for mining, which many IPs—specifically in the Cordillera—

consider a primary violator of FPIC and a powerful threat to their right to ancestral domain. While the state, through the NCIP, DENR and MGB, assert that responsible mining is the only kind of mining conducted in the country—which presupposes that the industry respects all IP rights and promotes sustainable development—the IPs are far from being convinced that such is the case. In this light, the strong political and economic pull toward large-scale mining, which the state initiates and the IPs generally resist, still becomes a defining aspect of the FPIC dispute.

What is positive about this condition is that IPs are now positioned to negotiate and deal directly with the state through the principle of FPIC. The IPs' enhanced legal capacity to resist or even question state-sponsored plans and policies through their right to FPIC is reflective of what might be considered breaking away from their social mark as the “marginalized” or as “victims” of society. With the enactment of state laws recognizing IPs' rights, IPs now have in their possession a powerful tool to exercise self-determination, along with the ability to contribute to the production of new structures of power and systems of knowledge in society. The IPs have shown this as they consciously participate not only in the consumption of FPIC laws crafted by the state, but in the production, reproduction and even modification of their substantive elements. For instance, with state laws permissive of IPs' exercise of self-determination, indigenous communities in the Cordillera are given a greater degree of latitude to define the use, content and process of consensus-building and their customary law as well.

Through the FPIC, some IPs have also discovered a newfound strength to assert themselves and fight against more powerful counterparts such as state agents and mining companies. Specifically, various forms of IP resistance have been documented, such as in their signing petitions against mining, building coalition networks to fight mining, physically barricading their ancestral domain to prevent mining personnel and equipment from entering their lands, protest rallying, and bringing their complaints to local leaders for appropriate action. These forms of resistance are reflective of a growing consciousness among the IPs, especially in the Cordillera, that FPIC violations and misuse must be met with concrete acts of defiance and must be immediately rectified.

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#### **INTERVIEW**

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- LGU Official. Personal Interview conducted on 27 October 2011 at the Barangay Hall of Ampucao, Itogon, Benguet.