

Substantive Justice for Indigenous Peoples through the Application of the Principle of Free Prior and Informed Consent (Comparison of Indonesia and Philippines)

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Abstract

In order to protect the rights of indigenous peoples in Indonesia and the Philippines, this study aims to examine the connection between substantive justice and the FPIC framework. Since Indonesia has not officially adopted Free, Prior, and Informed Consent (FPIC), there is a major difference between the two countries' legal systems in this respect. On top of that, it's a part of the Philippines' Indigenous Peoples' Rights Act (IPRA). Methods used in the study include conceptual frameworks, legal philosophy, comparative procedures, comparative approaches to policy and law, and normative (doctrinal) approaches to analysis. In spite of difficulties, the Philippines demonstrates a more thorough application of FPIC, but the results reveal that Indonesia's implementation is shallow and does not effectively protect the rights of indigenous groups. Separate bodies, such as the National Commission for the Rights and Protection of Indigenous Peoples (KNHPMA), should be established in Indonesia so that FPIC may be formally incorporated into laws, according to the paper. By fully integrating FPIC in Indonesia, we may achieve equity, inclusivity, and sustainable development based on respect for local knowledge. This might reduce agricultural disputes and improve the protection of indigenous peoples' human rights.

I. Introduction

For existence as a species, indigenous people have always depended on the ground and its contents. Among those who can find great difficulties as a consequence of regional development initiatives involving mining, farming, infrastructure, and energy are indigenous people living in the Philippines and Indonesia. The Free, Prior, and Informed Consent (FPIC) idea has become a crucial instrument in order to solve these problems and defend indigenous peoples' fundamental rights to their land and resources.

One of several international documents that support the concept of Free, Prior, and Informed Consent (FPIC), the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) asserts that Indigenous peoples have the right to decide what kind of development projects they wish carried out on their land and vote on whether or not to approve them.¹ More than simply a formality, indigenous peoples have the right to self-determination, which involves complete and meaningful engagement in decision-making processes and the demand of Free, Prior, and Informed Consent (FPIC). Still, great difficulties may follow from extensive usage.²

The 1945 Constitution of Indonesia recognizes the rights of the indigenous people of Indonesia, especially in paragraphs (2) of Article 18B and (2) of Article 28I. By means of constitutional recognition, the state honors and safeguards the rights and existence of indigenous people.³ Indigenous people are clearly engaging in agricultural activities, based on growing data. Estimating 4,509 structural agricultural conflicts between 2005 and 2022, the Agricultural Reform Consortium (KPA) affects 11.4 million hectares and nearly 2.4 million people. From 2023 to 2024 there was a notable rise. There were 241 documented agricultural disputes involving 638, 188 hectares in 2023. This war has badly affected the lives of some families that depend on the contested territory. These disputes highlight how far formal recognition falls from practical action and how underprivileged indigenous people are still.

The Philippines has done a better job than Indonesia in integrating FPIC principles into its official policies. Projects involving development in indigenous territories are required to get prior agreement from the affected indigenous people in the Philippines as a result of the Indigenous Peoples' Rights Act (IPRA) of 1997, which established FPIC.⁴ In order to ensure that the approval process is free from coercion, transparent, and respects the collective choices of the Indigenous community, the National Commission on Indigenous

¹ Christina Binder et al., *Elgar Encyclopedia of Human Rights* (Edward Elgar Publishing, 2022), https://opus.lib.uts.edu.au/bitstream/10453/165674/4/Mothers%2C%20rights%20of_final%201.pdf.

² Tara Ward, 'The Right to Free, Prior, and Informed Consent: Indigenous Peoples' Participation Rights within International Law', *Northwestern University Journal of International Human Rights* 10 (2012 2011): 54.

³ Indro Budiono et al., 'Internalization Free, Prior, and Informed Consent as Indigenous Alienation Resistance in Structural Agrarian Conflict', *Jurnal Cakrawala Hukum* 14, no. 3 (2023): 279-90, <https://doi.org/10.26905/idjch.v14i3.11486>.

⁴ Marianne Voss and Emily Greenspan, 'Free Prior and Informed Consent in the Philippines' (Oxfam America, 2013), <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620795/rr-fpic-philippines-101013-en.pdf?sequence=1>.

Peoples (NCIP) oversees the implementation of the FPIC concept.⁵

Still, applying FPIC in the Philippines presents some challenges. There is evidence that the National Commission on Indigenous Peoples (NCIP) lacks the money required to manage mining company requests. Indigenous people also experience misleading and lackadaisical consulting practices and suffer informational shortcomings during negotiations. These are merely a few of the many challenges that have developed throughout the execution of FPIC.⁶ The existence of IPRA and NCIP institutions shows the commitment of the Philippine government to defend indigenous peoples' rights by means of policies and programs.

Given their position as archipelagic countries with similar geological, social, and cultural characteristics, Indonesia and the Philippines are relevant for comparison. Both countries have set a legal system that combines civil law with a major influence from customary law. Still, there is a clear difference in how the two countries use FPIC as a means of protecting indigenous legal rights. Indonesia still uses a formal structure and has not formally designated FPIC as a nationally enforceable legal obligation.⁷ Thus, the use of FPIC usually shows ineffectiveness and results in fresh issues.

Simultaneously, the Philippines has officially incorporated FPIC into national legislation, making it a prerequisite before the commencement of any project. Despite ongoing implementation challenges, the Philippines has a legislative framework and a committed supervision structure that enables indigenous peoples to engage more actively in development-related decision-making processes that impact their lives.

In alignment with the Philippines, Indonesia needs to reassess its FPIC legislation to enhance the protection of indigenous community rights. Indonesia must legally integrate the concept of Free, Prior, and Informed Consent (FPIC) into its national policy to honor the rights of indigenous peoples, avert possible societal issues, protect the environment, and foster equitable and sustainable development. This research evaluates the extent of FPIC implementation in Indonesia and the Philippines to provide specific policy suggestions that would protect indigenous populations. This research seeks to enhance Indonesia's legal framework to more effectively safeguard indigenous peoples' rights and achieve substantive justice by aligning it with international norms for more responsiveness and flexibility.

To articulate the issue, we must ascertain: (1) In what ways might indigenous groups in the Philippines and Indonesia gain advantages from the Free, Prior, and Informed Consent

⁵ Ronilda R. (Ronilda Rosario) Co, 'Free, Prior and Informed Consent (FPIC) : Does It Give Indigenous Peoples More Control over Development of Their Lands in the Philippines?' (Thesis, Massachusetts Institute of Technology, 2008), <https://dspace.mit.edu/handle/1721.1/44353>.

⁶ Armi Beatriz E. Bayot, 'Free, Prior, and Informed Consent in the Philippines: A Fourth World Critique', in *Human Rights in the Extractive Industries: Transparency, Participation, Resistance*, ed. Isabel Feichtner, Markus Krajewski, and Ricarda Roesch (Cham: Springer International Publishing, 2019), 281–309, https://doi.org/10.1007/978-3-030-11382-7_11.

⁷ Retno Kusniati, 'Free, Prior, and Informed Consent Principles as Indigenous Peoples' Right: Soft Law or Hard Law?', *Jambe Law Journal* 7, no. 1 (30 July 2024): 169–93, <https://doi.org/10.22437/home.v7i1.350>.

methodology? In what manner may the principles of Free, Prior, and Informed Consent (FPIC) be integrated into the legal frameworks of the Philippines and Indonesia to guarantee substantive justice for Indigenous peoples?

2. Research Method

Normative (doctrinal) legal research is the scientific approach that this study takes, and it examines relevant legal concepts, theories, principles, and applicable norms.⁸ Investigating how indigenous people in Indonesia and the Philippines may have their rights safeguarded using the Free, Prior, and Informed Consent (FPIC) concept and the analysis of the relationship between the two theoretical frameworks is the major goal of this paper. Comparing and contrasting the two countries' distinct legal systems with regard to indigenous peoples's rights and Free, Prior, and Informed Consent (FPIC) would help one to understand them. With reference to the acceptance and application of FPIC concepts, we examined the institutional and legal systems of Indonesia and the Philippines. While legal philosophy emphasizes the ethical and equitable basis that underpin the acceptance of Indigenous peoples' rights to their lands and natural resources, the conceptual approach analyzes the notion of substantive justice regarding their rights.

Among the main legal sources considered in this work are the 1945 Constitution of Indonesia, sectoral legislation of Indonesia, the Indigenous Peoples' Rights Act (IPRA) of the Philippines, and pertinent court rulings. One might go to academic papers, encyclopedies, and case laws addressing concerns of substantive justice, Indigenous communities, and First Peoples as examples of secondary legal resources. Additional materials include tertiary legal works like encyclopedies and dictionaries.

Important court rulings as well as national legislation and regulations like the 1945 Constitution, Indonesian sectoral norms, and the Indigenous Peoples' Rights Act (IPRA) of the Philippines form the main legal records utilized in this study. Secondary legal materials like scholarly papers, legal publications, and historical research results reveal references to FPIC, Indigenous communities, and substantive justice. tertiary legal literature—that is, publications like encyclopedies and dictionaries—is another resource.

This approach will outline how far the FPIC principle has gone in the legal systems of the Philippines and Indonesia, evaluate how well it has included Indigenous peoples, and investigate how the FPIC principle relates to substantive justice in safeguarding Indigenous peoples's rights to solve the research problem. Consequently, the findings of the research could strengthen theoretical and pragmatic tools for developing Indonesian legislative policies more friendly and accommodating to the aspirations and ambitions of indigenous people.

⁸ Muhammad Syarif et al., *METODE PENELITIAN PENELITIAN HUKUM HUKUM* (GET Press Indonesia, 2024), https://www.researchgate.net/profile/Mohamad-Hidayat-Muhtar/publication/381460823_METODE_PENELITIAN_HUKUM/links/666e76f8de777205a32ff37b/METODE-PENELITIAN-HUKUM.pdf.

3. Results and Discussion

A. Indigenous peoples' rights in the Philippines and Indonesia supported by the FPIC concept of free, prior, and informed consent

1. The Conceptual Foundations of FPIC Principles

Extraction of natural resources, massive infrastructure projects, and other forms of economic growth often put indigenous people in jeopardy and pose a threat to their very existence. By establishing the idea of Free, Prior, and Informed Consent (FPIC), these communities were safeguarded.⁹ Freedom, prior, informed consent (FPIC) is based on these four principles. Foreign enterprises are prohibited from obtaining the freedom-related agreement of indigenous peoples by the use of pressure, intimidation, manipulation, or coercion. That way, the will of the indigenous peoples may be fully and accurately considered when making decisions.

The word "prior" means that approval has to be obtained much before the project starts, not just before or at the same time. The purpose of this part is to make sure that native communities have enough time and room to think about how the operations will affect their economy, society, culture, and the environment. It is equally important to make sure that indigenous populations get accurate, thorough, and understandable information about the project's scope and potential impacts. Included in the content are the technical requirements of the project and all of its ramifications, both short- and long-term. When development projects take place on indigenous peoples' traditional lands, the consent factor guarantees that those communities will maintain full control over such projects.¹⁰

The FPIC concept is firmly established in several international legal frameworks, notably the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007. Articles 19 and 32 of the UNDRIP explicitly mandate that member states must engage in genuine consultation and cooperation with Indigenous peoples via their representative institutions to secure free, prior, and informed consent before implementing policies or initiating projects that affect Indigenous communities.¹¹ UNDRIP is the culmination of the protracted efforts of several Indigenous organizations and human rights advocates, and it is today regarded as the fundamental worldwide benchmark for the safeguarding of Indigenous peoples' rights.

Alongside UNDRIP, the International Labour Organization Convention No. 169 (ILO Convention No. 169) concerning Indigenous peoples, established in 1989, significantly contributed to the evolution of FPIC. The Convention, although not officially using the word FPIC, mandates the active involvement of indigenous peoples in decision-making

⁹ Stéphanie de Moerloose, 'Indigenous Peoples' Free, Prior and Informed Consent (FPIC) and the World Bank Safeguards: Between Norm Emergence and Concept Appropriation', *Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 53, no. 3 (2020): 223–44.

¹⁰ Gabriel Facal, Elsa Lafaye de Micheaux, and Astrid Norén-Nilsson, eds., *The Palgrave Handbook of Political Norms in Southeast Asia* (Springer Nature, 2024), <https://doi.org/10.1007/978-981-99-9655-1>.

¹¹ Claire Smith, ed., *Encyclopedia of Global Archaeology* (New York, NY: Springer New York, 2014), <https://doi.org/10.1007/978-1-4419-0465-2>.

processes concerning resource use within their territory.¹² Article 6 of the Convention stipulates that governments must conduct active and effective consultations with indigenous peoples before the initiation of initiatives affecting those communities, to achieve consensus rather than just fulfilling an administrative requirement. ILO Convention No. 169 established the first international legal framework that expressly acknowledges the need for the meaningful participation of indigenous peoples in decision-making processes affecting their lives and destinies.

From a theoretical standpoint, FPIC is intricately linked to the notion of self-determination, a principle that has been extensively examined in international legal discourse. James Anaya, an international law expert and former UN Special Rapporteur on the Rights of Indigenous Peoples, asserts that FPIC is a basic manifestation of the concept of self-determination for indigenous peoples. He views FPIC as not only a consultation vehicle, but as a fundamental component of the internal sovereignty of indigenous people in shaping development that aligns with their identity, culture, and ambitions.¹³

Consistent with Anaya's perspective, Patrick Macklem also underscored that FPIC must be seen as integral to the international acknowledgment of the internal sovereignty of indigenous peoples over their territory. Macklem underscored that FPIC embodies the global acknowledgment of the distinctive status of Indigenous peoples as subjects of international law, with the capacity to dictate the trajectory of development through their cultural values and collective aspirations.¹⁴ Consequently, the execution of FPIC encompasses not just normative safeguarding, but also the enhancement of the negotiating leverage of indigenous populations inside the decision-making processes that directly affect their life.

Moreover, ideas of substantive justice provide robust legitimacy for the implementation of FPIC. John Rawls posits in his theory of justice that equitable treatment of people and communities should be founded on principles ensuring that all parties possess an equal chance to participate in the decision-making processes that impact their lives. Within the framework of FPIC, Rawlsian justice inherently advocates for the comprehensive, meaningful, and equitable involvement of Indigenous peoples as a fundamental prerequisite for the realization of justice. Nancy Fraser believes that for meaningful justice to be achieved, the identities, traditions, and capacities of Indigenous peoples must be fully acknowledged, transcending mere economic redistribution.

¹² Iza Rumesten Rs et al., 'Protection of Human Rights Against the Environment in the Indonesian Legal System', *Journal of Law and Sustainable Development* 11, no. 10 (23 October 2023): e570–e570, <https://doi.org/10.55908/sdgs.v11i10.570>.

¹³ Sudarmo Sudarmo et al., 'Critical Study of the Implementation of the Right of Self-Determination in Protecting Indonesia's Environmental and Economic Sovereignty', in *E3S Web of Conferences*, vol. 611 (EDP Sciences, 2025), 05002, https://www.e3s-conferences.org/articles/e3sconf/abs/2025/11/e3sconf_iseep2025_05002/e3sconf_iseep2025_05002.html.

¹⁴ Andrew Erueti, 'THE POLITICS OF INTERNATIONAL INDIGENOUS RIGHTS', *University of Toronto Law Journal* 67, no. 4 (October 2017): 569–95, <https://doi.org/10.3138/utlj.67.5>.

According to Amartya Sen's capabilities theory, justice is about more than simply upholding rights; it's also about establishing real circumstances wherein people or groups could flourish. Sen. XXXX claims that far than restricting Indigenous people's potential, FPIC actually helps them flourish and become more competent. FPIC therefore enables Indigenous people to actively participate in shaping their own development instead of only receiving it.

This collection of concepts and points of view demonstrates that FPIC is more than just lip service; it is a fundamental principle acknowledging and safeguarding of indigenous peoples' inherent dignity and claim to their homelands, natural resources, and future. While preserving culture and the environment, development must follow the Free, Prior, and Informed Consent (FPIC) values to be fair, open, and inclusive. Analyzing the national legal frameworks of the Philippines and Indonesia as well as the potential and difficulties resulting from their actual application depends on a thorough awareness of FPIC. We then and only then may evaluate its value.

2. National Legal Framework on FPIC Indonesia and the Philippines

A legal framework for safeguarding indigenous peoples' rights is Free, Prior, and Informed Consent (FPIC); yet, the legal frameworks of Indonesia and the Philippines are somewhat different. As long as indigenous people can fit in contemporary society and maintain the ideals of the Unitary State of the Republic of Indonesia (NKRI), the Indonesian government acknowledges and protects their customary rights. Article 18B paragraph (2), of the 1945 Constitution, states thus. Mostly derived from this provision of the constitution, legal safeguards for Indigenous peoples' land management, customary grounds, and natural resources follow.

Alongside Article 18B, the 1945 Constitution provides constitutional protection for indigenous peoples in Article 28I paragraph (3), which asserts that cultural identity and the rights of traditional groups are to be protected by contemporary progress and civilization. This norm explicitly illustrates a constitutional dedication to preserving the culture, traditions, and collective rights of indigenous tribes in Indonesia. Nonetheless, the execution of such constitutional recognition often encounters significant hurdles.¹⁵ A primary issue is the absence of a formal rule that thoroughly incorporates the FPIC concept into Indonesia's positive legal framework. The FPIC concept has yet to be expressly codified in a specific national legislation, despite its growing urgency in reality due to the rise in agricultural disputes involving indigenous populations.

Conversely, sectoral regulations governing natural resource management, including the Forestry Law, the Mineral and Coal Mining Law (Minerba), and environmental regulations promulgated by the Ministry of Environment and Forestry (MoEF), have not explicitly incorporated the FPIC principle as a compulsory requirement for companies or

¹⁵ Zamroni Abdussamad et al., 'Constitutional Balance: Synchronizing Energy and Environmental Policies with Socio-Economic Mandates', *E3S Web of Conferences* 506 (2024): 06006, <https://doi.org/10.1051/e3sconf/202450606006>.

governments before initiating projects in Indigenous peoples' territories. The Forestry Law and the Mineral Law prioritize the administrative dimension of licensing above the substantive safeguarding of indigenous peoples' rights in the decision-making process.¹⁶ This has resulted in practices within the field frequently restricted to insufficient formal consultations, rather than adhering to the principles of free, prior, and informed consent as intended by FPIC.

The situation in Indonesia is complicated by numerous overlapping sectoral policies that undermine the position of indigenous peoples against companies and local governments. The Job Creation Law, enacted via Law Number 11 of 2020 and subsequently amended by Perpu Number 2 of 2022, which became Law Number 6 of 2023, continues to attract criticism for its potential to undermine the rights of indigenous peoples.¹⁷ The simplification of licensing procedures in this law may undermine the FPIC principle, as there are concerns that the consultation and approval of Indigenous peoples will be increasingly marginalized in the licensing process for large-scale projects.

The Philippines has advanced by explicitly incorporating the FPIC principle into its national policies via the Indigenous Peoples' Rights Act (IPRA) of 1997. The IPRA represents a significant advancement in safeguarding the rights of Indigenous peoples in the Philippines, mandating that any development project proposed in Indigenous territories must secure free, prior, and informed consent from the impacted Indigenous communities.¹⁸ IPRA directly incorporates the principles of FPIC as outlined in international instruments, including UNDRIP.

The implementation of FPIC principles in IPRA is supported institutionally by the National Commission on Indigenous Peoples (NCIP). The institution plays a pivotal role in the proper and effective implementation of FPIC procedures.¹⁹ NCIP is tasked with organizing and supervising all phases of the FPIC process, encompassing the initial consultation, the delivery of clear and comprehensive information, and concluding with the decision-making stage by Indigenous peoples. Furthermore, projects that do not adhere to the FPIC requirements may be lawfully recommended, accepted, or rejected by the NCIP.²⁰ As part of the Indigenous peoples' participation framework, the NCIP oversees a comprehensive and methodical consultation process. After determining which

¹⁶ Mohamad Hidayat Muhtar et al., 'Addressing the Paradox: Why Environmental Constitutionalism Is More than Just Rights?', *E3S Web of Conferences* 506 (2024): 06004, <https://doi.org/10.1051/e3sconf/202450606004>.

¹⁷ Dolot Alhasni Bakung et al., 'Criticizing Potential Deviations in the Role of Environmental Impact Analysis after the Enactment of the Job Creation Law', *E3S Web of Conferences* 506 (2024): 06005, <https://doi.org/10.1051/e3sconf/202450606005>.

¹⁸ Cathal Doyle, 'The Philippines Indigenous Peoples Rights Act and ILO Convention 169 on Tribal and Indigenous Peoples: Exploring Synergies for Rights Realisation', *The International Journal of Human Rights* 24, no. 2-3 (7 February 2020): 170-90, <https://doi.org/10.1080/13642987.2019.1679120>.

¹⁹ Tessa Minter et al., 'Whose Consent? Hunter-Gatherers and Extractive Industries in the Northeastern Philippines', *Society & Natural Resources* 25, no. 12 (1 December 2012): 1241-57, <https://doi.org/10.1080/08941920.2012.676160>.

²⁰ National Commission on Indigenous Peoples, 'National Commission on Indigenous Peoples. (2012). Administrative Order No. 3, Series of 2012: Guidelines on the Implementation of Free, Prior, and Informed Consent (FPIC) and Related Processes' (National Commission on Indigenous Peoples, 2012), <https://ncip.gov.ph/wp-content/uploads/2020/09/ncip-ao-no-3-s-2012-fpic.pdf>.

indigenous communities would be most impacted, the next step is to outline the initiatives in detail and then disseminate this information to the people in their native languages. Gathering the collective consent or disapproval of Indigenous peoples requires three stages: first, socialization; second, thorough and organized talks; and lastly, assemblies. At each step, indigenous populations are given sufficient time to think about how the project will impact their life and make informed choices. Throughout the whole consultation process, NCIP employs stringent monitoring to guarantee that it is high-quality and free of manipulation.²¹

Indigenous peoples are able to freely express their views and concerns since the consultation process is open and free from coercion or intimidation. Pre- and post-FPIC monitoring is carried out to guarantee that the project respects the Indigenous peoples' agreement. There are still a number of practical issues with FPIC in the Philippines, even if the legislation are better developed than in Indonesia. According to recent studies, there are cases when FPIC proceedings in the Philippines are impacted by corporate pressure, information manipulation, and an opaque consultation process. A major obstacle to field implementation of NCIP has been its institutional ability to deal with economic and political demands from multinational corporations.²² Regarding the substantive protection of indigenous peoples' rights under the FPIC concept, the Philippines has a stronger institutional and normative basis than Indonesia.

Different approaches to Free, Prior, and Informed Consent (FPIC) have significant ramifications for the substantive protection of indigenous peoples' rights, as shown by a comparative review of the legal frameworks in Indonesia and the Philippines. The Philippines has taken the option of officially adopting the FPIC concept into its national laws; Indonesia, which is rich in customary law, might think about doing the same. In order to ensure the equitable and inclusive recognition of the constitutional rights of Indigenous peoples, this is an essential first step in reducing the increasing socioeconomic disparity and agricultural disputes. Indigenous peoples in Indonesia will have their rights better protected and their involvement in sustainable development initiatives increased if FPIC principles are included into state policy. In order to achieve real justice for indigenous peoples via FPIC, it is essential to compare Indonesia with the Philippines. The intellectual worth of this comparison is substantial.

3. FPIC Implementation Case Study

Free, Prior, and Informed Consent (FPIC) is a concept that, as many examples in Indonesia show, has significant challenges when applied to large-scale undertakings inside customary territory. An excellent illustration of this is the Marafenfen Indigenous People of the Aru Islands, Maluku. The Indonesian Navy has been controlling 689 hectares of customary land since 1991 without the local community's legal approval, with authority

²¹ Florlyn M. Pama, 'Effectivity of National Commission on Indigenous Peoples (NCIP) Policies and Programs Implemented in Relation to RA 8731 as Perceived by the Indigenous Peoples in Boracay and Its Implications' (PhD Thesis, 2019), <http://repository.cpu.edu.ph/handle/20.500.12852/677>.

²² Angus MacInnes, Marcus Colchester, and Andrew Whitmore, 'Free, Prior and Informed Consent: How to Rectify the Devastating Consequences of Harmful Mining for Indigenous Peoples', *Perspectives in Ecology and Conservation* 15, no. 3 (1 July 2017): 152–60, <https://doi.org/10.1016/j.pecon.2017.05.007>.

from the Governor of Maluku and the National Land Agency (BPN). To get the village chief and indigenous Marafenfen people to sign the permission, the military had to resort to force. The Dobo District Court received a civil action filed by members of the community on March 31, 2021, against the TNI Navy, alleging illegal conduct. The case is recorded under case number 7/Pdt.G/2021/PN. Dobo. Citing formal evidence that failed to take into account the community's customary law, the court rejected the case on November 17, 2021.²³

A conflict arose in Toruakat, Bolaang Mongondow, North Sulawesi, between Indigenous Peoples and the mining company PT. Bulawan Daya Lestari (BDL), resulting in the tragic death of an Indigenous community member during a clash. In 2021, the Alliance of Indigenous Peoples of the Archipelago (AMAN) and the Association of Indigenous Defenders of Indigenous Peoples of the Archipelago (PPMAN) documented 13 instances of customary territory appropriation, affecting an area of 251,000 hectares and impacting 103,717 individuals. The incident in Toruakat underscores the inadequacies in the implementation of Free, Prior, and Informed Consent (FPIC) and the potential for conflict escalation resulting in violence. Agrarian conflicts are prevalent in the plantation sector. West Kalimantan Province documented 11 instances of conflict in plantation regions and 2 instances in forested areas.²⁴ Conflicts frequently arise when large plantation companies operate without the complete consent of local indigenous communities, leading to extended tensions and land disputes.

In South Halmahera, North Maluku, PT. Trimegah Bangun Persada (TBP) is involved in nickel mining. A bribery case involving an infrastructure project on Obi Island, which falls under the company's authority, has led the Corruption Eradication Commission (KPK) to question Steve Thomas, the firm's Director of External Relations.²⁵ This case highlights the issue of illicit procedures in the licencing process, which may lead to the violation of indigenous peoples' rights and the principles of FPIC.

On the other side, FPIC has helped certain indigenous communities in protecting their land. A 2018 economic value assessment by AMAN found that, without outside investment, Indigenous peoples' yearly earnings might go beyond the area minimum wage.²⁶ Instead of giving power to an outside company without their approval, the

²³ Aliansi Masyarakat Adat Nusantara, 'Catatan Akhir Tahun AMAN 2021: Menolak Lupa, Merawat Ingatan, Melawan Lenyap', Tangguh Di Tengah Krisis (Jakarta: Aliansi Masyarakat Adat Nusantara, 2021), [https://aman.or.id/files/organization-document/57108Catatan%20Akhir%20Tahun%20AMAN,%202021%20Fix%20\(1\).pdf](https://aman.or.id/files/organization-document/57108Catatan%20Akhir%20Tahun%20AMAN,%202021%20Fix%20(1).pdf).

²⁴ Konsorsium Pembaruan Agraria, 'Catatan Akhir Tahun 2022: Bara Konflik Agraria PTPN Tak Tersentuh, Kriminalisasi Petani Meningkat', PTPN Tak Tersentuh, Kriminalisasi Rakyat Meningkat (Konsorsium Pembaruan Agraria, 2023), <https://www.kpa.or.id/image/2023/10/catahu-2022-bara-konflik-agraria-ptpn-tak-tersentuh-kriminalisasi-petani-meningkat.pdf>.

²⁵ Transparency International Indonesia, 'Industri Keruk Nikel: Korupsi Struktural Dan Dampak Multi Dimensinya Studi Kasus Di Halmahera Timur Dan Tengah' (Transparency International Indonesia, 2024), <https://ti.or.id/wp-content/uploads/2024/05/Industri-Keruk-Nikel-Korupsi-Struktural-dan-Dampak.pdf>.

²⁶ AMAN AMAN, 'Mengarungi Badai Investasi: Catatan Akhir Tahun 2019 Aliansi Masyarakat Adat Nusantara (AMAN)', 2018, <https://aman.or.id/news/read/82>.

community could benefit more by managing its customary area on its own.

All of the above shows how important it is to have FPIC (Free, Prior, and Informed Consent) before building anything big on indigenous land. Without effective enforcement of FPIC, conflicts, human rights abuses, and negative repercussions on indigenous populations would persist. Governments, companies, and other interested parties must firmly commit to and carry out Free, Prior, and Informed Consent (FPIC) procedures when dealing with indigenous communities.

B. The Application of the Principle of Free, Prior, and Informed Consent (FPIC) in the Legal Systems of Indonesia and the Philippines, and How It Relates to the Realization of Substantive Justice for Indigenous Peoples

Indigenous communities' autonomy is acknowledged under the Free, Prior, and Informed Consent (FPIC) concept. This concept tries to shield indigenous people from the regular marginalization they experience from development programs. FPIC is an instance of actual justice in action, not just a formality. Apart from their legal rights, achieving substantive justice calls for Indigenous people to have complete authority over their native areas and resources. FPIC makes ensuring indigenous peoples are included in the decision-making process so development is in accordance with their needs and goals.

Many provisions of the Indonesian constitution, notably 28I paragraph (3) and 18B paragraph (2), provide indigenous people their legal protection right. Still, there are no legally binding laws or rules that especially combine the FPIC idea. This results in a disparity between what is legally recognized and what is really followed. FPIC is not presently defined as a required legal requirement in Indonesia because of the general view that it is an alien concept.²⁷ The growing agricultural conflicts are a result of the general treatment of indigenous peoples' authorization as a mere formality in development projects. Indigenous people are especially vulnerable in this situation as it compromises their access to customary lands—places essential to their way of existence.

The 1997 Indigenous Peoples' Rights Act (IPRA) raised standards for FPIC implementation in the Philippines by demanding indigenous peoples' agreement before starting projects in their territory. Establishing FPIC as a required condition, IPRA provides the National Commission on Indigenous Peoples (NCIP) with a clear path forward. This committee has to make sure the FPIC process is transparent, honest, free from outside influences. Thanks to these laws and groups, indigenous people in the Philippines now clearly have legal claim to FPIC. Real substantive justice is defending indigenous peoples' freedom to make autonomous decisions about the development of their territory.

Regarding environmental sustainability and preservation of human rights, the link between FPIC and real justice for Indigenous people is obvious. Major issues that follow from the loss of land and resources as well as the disintegration of indigenous peoples' traditional identities include the absence of FPIC. When used sensibly, FPIC protects the

²⁷ MacInnes, Colchester, and Whitmore, 'Free, Prior and Informed Consent'.

cultural traditions of indigenous people and the sanctity of their homelands.²⁸ FPIC works to eliminate obstacles to environmental justice, defend human rights, and improve the social and economic situation of indigenous people thereby attaining environmental justice.

Many serious violations of human rights follow from inadequate application of FPIC in Indonesia. Without their FPIC (Free, Prior, and Informed Consent), the TNI stole territory from the indigenous Marafenfen people in the Aru Islands. As this case demonstrates, Indigenous people are susceptible to exploitation, intimidation, and rights violations without strong and explicit Free, Prior, and Informed Consent (FPIC) criteria. Indigenous people in the Philippines have a better legal framework including IPRA and NCIP, which lets them hold offenders of FPIC responsible despite ongoing implementation problems.

One of the best illustrations of how John Rawls, Amartya Sen, and Nancy Fraser's theories of justice are used to attain substantive justice is via FPIC. True justice, according to Rawls, may be attained when everyone has a fair opportunity to participate in issues that directly affect them. By allowing Indigenous people a voice in the sort of development that may take place on their ancestral grounds, FPIC meets Rawls's definition of substantive justice. Fraser underlined the significance of appreciating individual identities and cultures using distributive justice. FPIC handles this acknowledgement component as a concept by first hearing the views of indigenous people.

Amartya Sen argues that substantive justice extends beyond only guaranteeing people's legal rights to include giving their communities and individuals actual chances for development. Indigenous people may better run their affairs, make choices, and monitor their resources and economic possibilities by using Free, Prior, and Informed Consent (FPIC). Indigenous people's safety is guaranteed by a mechanism designed to enable their complete social and economic integration as well. FPIC is a crucial tool if indigenous people are to experience the benefits of development and participate in it.

Indonesia should give national policy top importance and draw from the Philippines' great knowledge in this field by integrating FPIC concepts into it. This regulation requires free, prior, informed consent (FPIC), which means that development projects on Indigenous people's territory have to get. It is advisable to take into account the establishment of specialized institutions like to the NCIP in the Philippines to ensure that the FPIC system is used in Indonesia in an effective, open, and non-coercive manner. FPIC is more than simply a formality; it is an actual legal guarantee meant to defend indigenous peoples' rights. Indonesia has to quickly enact laws mandating FPIC for all development projects on customary lands to ensure that Indigenous peoples there get actual justice. Officially referred to as the "Law on the Protection of the Rights of Indigenous Peoples Based on Free, Prior and Informed Consent (FPIC)," this piece of legislation To defend their rights, land, and way of life, the rules provide that indigenous tribes must give their explicit, strong permission before any project or activity may start. This legislation needs

²⁸ Hartanti Budiono, 'Panduan Pelaksanaan Free Prior Informed Consent (FPIC) Dalam Program UN-REDD Di Sulawesi Tengah' (Bidang FPIC dan Pemberdayaan, 2021), <https://adoc.pub/panduan-pelaksanaan-free-prior-informed-consent-fpic-dalam-p.html>.

to completely control the major prerequisites for the use of the FPIC concepts.

The law has to guarantee that there is no physical or psychological pressure, intimidation, manipulation, or coercion throughout the consultation and approval process if the "Free" categorization is to be legitimate. During discussions, indigenous people should be legally safeguarded by the government and businesses, therefore guaranteeing physical and psychological safety. Indigenous people require the government to provide avenues for recording issues and shielding them from damage so they may live in a world free of oppression and have access to objective legal advice.

Furthermore, the legislation should explicitly state—the "Prior" indicator—that talks have to take place far before development permits are given to public or private entities. This control guarantees the need of a thorough assessment of the implementation schedule of the FPIC consulting. Before a project starts, six months' notice is needed so the Indigenous people may review pertinent data, engage internal debates, and make wise judgments.

Thirdly, project participants must provide Indigenous people with full, accurate, accessible, and intelligible information in their original languages so as to comply with the "Informed" indicator. Apart from the technical features of the project, the content should include the hazards and benefits as well as the short- and long-term effects on the environment, society, culture, and economy. Indigenous communities should have simple access to community events as well as print, visual, and digital formats tailored to particular places in order to spread knowledge.

As used above, the word "consent" refers to "express written consent" noted in an official document having legal effect. After official approval, the project area boundaries, permitted payment or benefit distribution, and the requirement of further monitoring to assure conformity to the license granted must be included. Indigenous community leaders have to actively participate in the legal system if approvals represent the collective preferences of Indigenous people. Internal decision-making processes should draw on local customary law, faithfully converted into their original languages to ensure "Informed" status compliance. The content must include technical issues, environmental, social, cultural, and economic impacts—both short- and long-term—as well as technical details of the project. Indigenous people must have simple access to a range of media for disseminating knowledge, including regionally appropriate print, visual, and digital formats as well as community gatherings and other information sources.

In order to ensure the constant and efficient enforcement of this legislation, Indonesia must create a specialized organization with its own regulations, similar to the NCIP in the Philippines. There has been talk of changing the name of this organization to the "National Commission for the Rights and Protection of Indigenous Peoples (KNHPMA)." This committee is responsible for the real and significant implementation of FPIC principles, not only for conforming to administrative procedures.

The organizational structure of the KNHPMA must maintain running autonomously and answer only to the President or the House of Representatives of the Republic of Indonesia if it is to ensure strong authority and independence. The commission consists mostly of consultation and approval, education and training, public information, evaluation and monitoring, legal advocacy and protection. Should proof of FPIC standard breaches come up, the KNHPMA should be granted executive authority to temporarily revoke project licenses. With this, the encouragement of institutional integrity would be much simpler.

Every stage of the FPIC consultation process is under control and monitored by the Consultation and Approvals Division to guarantee legal compliance. This section is in charge of furnishing unbiased mediators to assist development stakeholders and indigenous tribes in their communication.

Indigenous tribes may consult the Legal Advocacy and Protection Division in the face of outside meddling, false information, or threats. The division has the obligation of starting a fair and transparent legal process to address any allegation of FPIC infringement.

Once authorized, the Monitoring and Evaluation Division needs to supervise the field implementation of the project. Apart from regular assessments to guarantee that business enterprises comply with the FPIC approval, this section has the power to recommend judicial actions and apply administrative penalties to the relevant authorities should a violation occur.

The Public Information Division disseminates relevant information, including the outcomes of consultations, approvals, and project monitorings, thereby increasing the transparency of the FPIC process. Many individuals, including academics, human rights activists, NGOs, and the general public, depend on unrestricted access to the information services of the division.

The Education and Training Division aims to enlighten and educate indigenous communities, local governments, and other interested parties on the significance of FPIC and how to correctly use it. Apart from the required institutional support and sufficient money from the state budget, KNHPMA has to be able to draw financial assistance from reliable, non-governmental organizations (NGRs) and other outside sources. The institution has to guarantee proper performance of its responsibilities while preserving its autonomy throughout the course of the FPIC implementation. Examples of Indonesia's great political will in this sense include the FPIC Act and the KNHPMA, an agency committed to safeguarding Indigenous peoples' rights. With this, Indigenous people may more readily experience true justice.

Key to this strategy is shielding indigenous people from violence or marginalization while nevertheless ensuring they participate in national development on their ancestral territory. Should things go according to plan, it might provide a model for how FPIC is carried out in Indonesia and how indigenous peoples' rights are safeguarded on a regional and worldwide level. Federal authorities and other interested parties on the importance of FPIC and correct application methods. KNHPMA requires not just the

support of reliable international or civil society groups but also the required institutional authority and significant state budget funding. Throughout the FPIC implementation process, it is essential to retain institutional autonomy while guaranteeing suitable job performance. Indonesia has shown strong political resolve to defend the rights of Indigenous people by drafting the FPIC Act and the KNHPMA. For Indigenous people, this implies a more direct road to actual justice.

There is obvious and major link between substantive justice and FPIC. Apart from their legal protection, indigenous people depend on FPIC as an instrument for actual justice. The uniform and clear application of this concept throughout the legal system of the nation marks a great advance in safeguarding Indigenous peoples' rights. Drawing on the playbook of the Philippines, which has helped to resolve agricultural conflicts, Indonesia can encourage fair, sustainable development respecting indigenous peoples' knowledge and rights. This study presents a unique viewpoint claiming that, as in the Philippines, Indigenous people in Indonesia require a meaningful application of Free, Prior, and Informed Consent (FPIC) under Indonesian national law, not just a nominal one, to attain justice.

4. Conclusion

This study claims that whilst in Indonesia the FPIC concept is not as well-established or enforced, indigenous peoples in the Philippines are better protected by legislation such as the Indigenous Peoples's Rights Act (IPRA) and the National Commission on Indigenous Peoples (NCIP). While confronting numerous implementation challenges, the indigenous people of the Philippines have showed increasing capacity to defend their rights; in contrast, the indigenous people of Indonesia have suffered a surge in agricultural conflicts and marginalization. This paper contends that independent entities such as KNHPMA and the National Commission for the Rights and Protection of Indigenous Peoples should be established to guarantee that this legislation is followed and that some laws in Indonesia should clearly include Free, Prior, and Informed Consent (FPIC). Building on the theoretical foundations and pragmatic suggestions of this study, further investigation should investigate the link between FPIC and other facets of social, economic, environmental, and ecological justice for Indigenous people in Indonesia and beyond.

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