



# Promising Practices

## On the human rights-based approach in German development cooperation Consult – Consent – Cooperate: Integrating indigenous practices in biodiversity conservation in the Agusan Marsh, Mindanao, Philippines

### Background

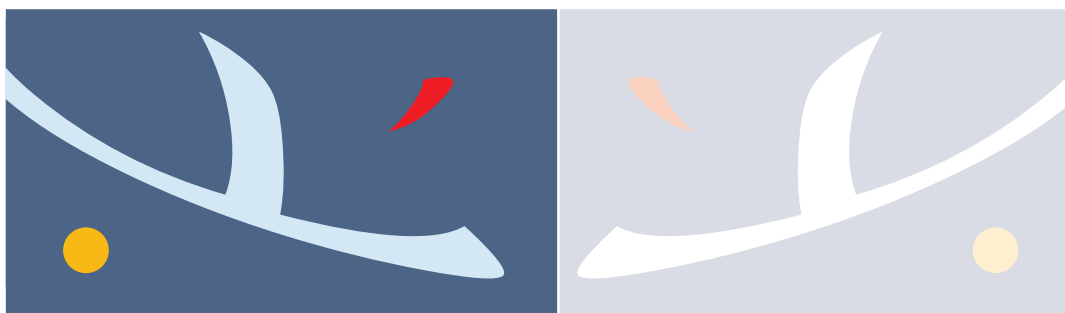
The Agusan Marsh Wildlife Sanctuary located in eastern Mindanao, the Philippines, is a natural wetland and a protected biodiversity area. It is certified by the Ramsar Convention as one of the most important wetlands in the Philippines and internationally. Beside its ecological importance, the Agusan Marsh, locally known as Danao, is the home of the approximately 18,000 Manobo indigenous people, who make up 70 per cent of the Marsh's population. Most Manobo depend on fishing and small-scale farming as a source of subsistence. As their livelihoods are based on natural resources, they are exposed to environmental change. The conservation of the area's biodiversity is therefore a prerequisite for ensuring resource availability for future generations. However, strong biodiversity protection regulations can also deprive indigenous peoples of their rights to access the resources they depend on and of participating in the development of their ancestral domains, as is defined by the domestic Indigenous Peoples Rights Act (IPRA).

In the management of the protected area, indigenous knowledge systems and practices, particularly those concerning conservation, had not been sufficiently recognized. Therefore, in 2011, the Philippine and German Governments agreed on working together on 'Indigenous Practices for the Conservation of Biodiversity' (IP4Biodiv). This cooperation takes place under the framework of the Conflict Sensitive Resource and Asset Management Program (COSERAM), implemented by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) for the German Federal Ministry

for Economic Cooperation and Development (BMZ) together with three Philippine government agencies: the National Commission on Indigenous Peoples (NCIP), the Department of Environment and Natural Resources (DENR) and the National Economic and Development Authority (NEDA). The objective is to promote biodiversity conservation of the Agusan Marsh by applying indigenous practices and to contribute to the strategic approach of protected area management in the Philippines. The cooperating partners chose to conduct community-based action research to document the indigenous practices for biodiversity conservation. Indigenous researchers, selected by their elders, formed a central part of the research teams to ensure that the documentation followed customary laws and their own oral traditions on knowledge sharing, thus empowering existing indigenous structures and local researchers.

### Towards a human rights-based approach

Free, prior and informed consent (FPIC), as embedded in the Indigenous Peoples Rights Acts (IPRA) of the Philippines, is in line with the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP). It ensures the participation of indigenous peoples in decision-making when programmes, projects and activities affect ancestral domains. FPIC is also applicable to non-extractive/small-scale activities and foreign funded projects. As a result, the IP4Biodiv Project itself, including the implementation of the community-based action research, required the consent of the Manobo of the Agusan Marsh.



## Human Rights Framework

The Philippines is a state party to eight of the nine core United Nations (UN) human rights instruments. The Philippines is not a state party to International Labour Organisation (ILO) Indigenous and Tribal Peoples Convention No. 169. However, it has adopted the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which provides a universal framework for the rights of indigenous peoples.

The UNDRIP calls on states to consult and cooperate with the indigenous peoples concerned in good faith in order to obtain their free, prior and informed consent (FPIC) before adopting and implementing legislative or administrative measures that may affect them. FPIC is emerging as an international human rights standard. It is derived from the collective rights of indigenous peoples to self-determination and to their lands and natural resources. Most recently, the Food and Agricultural Organisation (FAO) Voluntary Guidelines on the Responsible Governance of Tenure, in reference to the UNDRIP, have embraced the principle of FPIC and call on states to meet their obligations and voluntary commitments regarding the rights of indigenous peoples, including, as appropriate, from the ILO-Convention 169, the Convention on Biological Diversity and the UNDRIP.

FPIC is an important procedural right, which ensures that indigenous peoples are consulted and agree to projects and measures that affect their lands. It secures access to their lands and the enjoyment of other substantive human rights such as, e.g., the rights to water and health.

The concept of indigenous peoples is less established in the Asian region than in Latin America. In a regional comparison, however, the Philippines have a strong national institutional and legal framework for safeguarding indigenous peoples' rights. In particular, the Indigenous Peoples Rights Act (IPRA) of 1997 is a landmark law for the recognition, protection and promotion of indigenous peoples' rights including FPIC. These rights are further specified in the Guidelines on FPIC issued in 2012 by the National Commission on Indigenous Peoples (NCIP) established by the IPRA. The Philippines' own codification of the right to indigenous participation in local decision-making processes is quintessential, considering that international guidelines need to be adapted to the national context. The IPRA has been lauded for its commitment to respect indigenous peoples' cultural integrity, right to their lands and right to self-directed development of these lands. However, the law needs to be implemented more systematically.

The National Commission on Indigenous Peoples (NCIP) is the governmental institution responsible for the protection of the rights of indigenous peoples in the Philippines, thus, in terms of human rights obligations, the main duty-bearer. NCIP only issued FPIC Guidelines in 2012, and these leave broad space for interpretation, often rendering implementation a challenge. Additionally, the Commission had little previous experience in applying participation guidelines. Nevertheless, the cooperating project partners took up the challenges, inspired by the call of the former NCIP Chair, who is from the Ibaloi people, to respect the FPIC process:

*'Please make us [the indigenous peoples] your partners in the development and in the implementation of the project so that we can bring in our meaningful participation not only for our benefit but for the rest of those involved. There may be bumps along the road but be patient with us. We believe that we can work it through and make a meaningful output of this cooperation, which could be the basis, in the future, of what development cooperation should be.'*

– Zenaida Brigida H. Pawid.

It was already during the development of the IP4Biodiv project in 2011 that an appraisal mission consulted the indigenous communities, in their capacity as rights holders, on their needs and aspirations in the context of biodiversity conservation. The results of this mission shaped a project concept that addresses the realities on the ground and establishes the imperative of working not only towards strengthening the indigenous peoples' right to self-determination over their ancestral domains, but also of ensuring these rights throughout the project implementation.

Early in 2013, during the inception phase of the project, the project conducted a series of discussions with the NCIP and indigenous leaders in order to establish a joint understanding of the FPIC process. There were divergent interpretations of the process and the minimum requirements of the law (i.e. the IPRA) as well as different views on the practical implications in terms of necessary time and resources. The cooperating partners agreed on first testing the procedures enshrined in the IPRA while also pursuing alternative participation mechanisms, allowing the Manobo to lead the process and decision-making according to their culture and tradition. Tools such as storytelling and community mapping were introduced so that data on the Manobo culture could be obtained while encouraging indigenous ownership of the process. Various community consultations and discussions with indigenous leaders on the project itself followed. Finally, in late 2013, after more than six months, the representatives of the IP4Biodiv cooperating partners and the Manobo officially signed the Memorandum of Agreement and the consent was sealed through a ritual.

## Achievements and impact

The cooperating partners have concluded that it was the first time a development cooperation project in the Philippines had fully implemented the FPIC policy under the IPRA, thus reaping benefits for both the project partners and indigenous peoples in Mindanao.

**Empowerment of rights holders through dialogue:** The FPIC process empowered the Manobo to engage with the government in a manner that respected and drew on their culture and tradition. In addition, the process provided a platform for the Manobo to negotiate the terms of, and include their aspirations into, the project. The fact that their leaders were formally acknowledged as signatories to the Memorandum of Agreement placed them at the same level as the regional officers of the government agencies.

**Making duty bearers more accountable through indigenous empowerment:** The Manobo's increased exercise of their rights as an indigenous people had a rippling effect on other (government-led) processes that indigenous peoples are involved in. The Manobo are now starting to hold the government to account more often with respect to its mandate. As a consequence, the government has been becoming more inclusive, using bottom-up planning approaches and thus reducing the barriers of distrust on the part of the indigenous communities.

**Fulfilling participation rights:** The cooperation found an innovative way of applying FPIC and took the process beyond simple community consultation for the purpose of obtaining the community's consent to the proposed project. Instead, the process involved participatory methods, such as storytelling, that are based on the Manobo's culture. The cooperating partners were thus able to develop a good relationship with the Manobo by working with them as equal partners.

**Improved cooperation through cultural understanding:** Furthermore, the continuous dialogue between the Manobo and national and local government agencies enabled the cooperating partners to gain more understanding of the culture of the Manobo, as well as its intricacies and dynamics in practice. Hence, emerging issues that threatened to affect the project implementation could be dealt with in a timely manner.

**Improved biodiversity conservation:** The partnership established through the FPIC process also had an initial impact on biodiversity conservation. Previously, many attempts to seize illegal fishing had been made, but very little had been achieved. The continuous dialogue, in which these issues are now openly discussed, has led to collective solutions. Today, people voluntarily surrender their illegal electrofishing gear (so far almost 500 sets) as an expression of their commitment to achieving conservation in a participatory and peaceful way.

## Challenges

**No prior experiences in applying FPIC:** The lack of experience in implementing FPIC in the Philippines posed a challenge and an opportunity at the same time. On the one hand, a continuous dialogue between the government agencies and the communities was necessary in order to create a common understanding and basis for consent. This required all stakeholders' openness and understanding of the key concepts and principles behind indigenous laws and rights, which had to be established first. On the other hand, piloting the implementation of the FPIC Guidelines left space for interpretation and improvement of the process.

**Spirit of the law versus its practical implementation:** As anticipated, the process was confronted with bumps on the road. Philippine government institutions did not have a lot of experience in applying participatory processes.



*Ritual sealing the partnership between the project and Manobo Communities.*



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*Official signing of  
 Memorandum of  
 Agreement between  
 IP4Biodiv Partners and  
 IP leaders*

Especially NCIP, a very young agency mandated to implement a strong social legislation (the IPRA), struggles with its organisational set-up as well as with performing as a duty bearer.

Additionally, NCIP is confronted with the challenge of implementing the full extent of the law, often creating more bureaucracy, and simultaneously fulfilling its mandate of empowering indigenous peoples in exercising their rights. That these two aspects do not always coincide has been recognized by one of the framers of the Philippine constitution and champions of the IPRA who said 'FPIC is an ethically empowering mechanism for indigenous peoples to exercise their rights. NCIP, in the exercise of its mandate, should facilitate, not control, its implementation.' This quote demonstrates that, for indigenous rights and empowerment to be realised fully, the FPIC process requires careful and responsible discharge of government functions.

Barriers for rights holders to claim participation rights: Even though indigenous peoples are generally aware of their rights, they lack the knowledge on how to exercise and claim these. Specifically, concerning the right to participate in decisions that affect their ancestral domains, the Manobo of the Agusan Marsh were not yet acquainted with the new FPIC Guidelines. Furthermore, the fact that most Manobo live in remote areas posed a logistical challenge to meaningful participation. The process therefore entailed a lot of time and additional costs.

## Lessons learnt

A comprehensive legal framework, implementing regulations and a competent organisation do not replace in-depth training and information at all levels. The understanding of indigenous rights was not deeply embedded in the minds of most stakeholders.

Basic trainings on indigenous rights, the IPRA and the FPIC Guidelines were therefore necessary.

Strengthening the Manobo in exercising their right to govern their ancestral domains can partially make up for the organisational and structural weaknesses of the government agencies, specifically NCIP.

The joint design of a process for FPIC that is adapted to the particular situation of the Manobo and building a partnership with the community were a precondition for the success of the project. These elements can provide net benefit to any development programme related to indigenous peoples by sustaining its respective goals.

The FPIC process requires sufficient time and resources to achieve the desired effects. This should be considered by development agencies involved especially in formulating objectives, activities and indicators. The project schedule has to be adapted to the particular circumstances (e.g. areas difficult to access) and the cultural characteristics of indigenous peoples. Language is an aspect of particular importance. The legal and human rights framework is mostly written in languages inaccessible to the indigenous community and sometimes also to government representatives. Cooperating partners need to ensure that relevant legal texts are accessible in local and indigenous languages.

The FPIC process set the stage for the participatory research on indigenous biodiversity conservation practices. It has proven to be an adequate tool for this. An additional benefit is that the indigenous researchers and experts now make up a future pool for recruiting rangers, staff for biodiversity monitoring teams, multipliers and ambassadors of indigenous culture and biodiversity.

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