

Heritage as a Process

This module introduces you to the arguments for the two basic rights of the indigenous people - self-determination and free, prior and informed consent (FPIC). To appreciate these two rights, you are encouraged to watch the documentary film, *"Making Monkey Business:" Building Company/Community Dialogue in the Philippines*.

Learning Outcomes

1. use relevant scenes from the film to illustrate the meaning of "cultural heritage as a process"
2. explain why land is the foundation for the tangible and intangible cultural heritage of the IPs.

Key Concepts to Understand

land as respect and recognition for culture land as opportunity land as security

Excerpt: Young, S. (2020). **Indigenous Peoples, Consent and Rights: Troubling Subjects**. NY: Routledge.

Self-determination in UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples). As Engle has argued, the 1993 Draft Declaration Article 3 recognized self-determination as continuing the processes of formal decolonization, rather than a liberalized, democratic human rights understanding. ... Article 4 declares that the exercise of Indigenous Peoples' (IPs) self-determination is a 'right to autonomy or self-government in matters relating to their internal or local affairs, as well as ways and means for financing their autonomous functions'. It restricts self-determination to internal self-governing and funding as they see fit. Article 46 contains a territorial integrity clause, which has traditionally legitimated internal colonialism by preventing secessionist movements or claims to 'external' sovereignty ...

These additions to UNDRIP reframe self-determination as a democratizing concept, a 'continuing right of all peoples', who may self-govern, internally develop and decolonize themselves. It could mean that self-determination 'is met whenever the government is elected in free and fair elections by universal suffrage and in a secret ballot'. ...

FPIC in UNDRIP. ..., UNDRIP recognizes Free, Prior, and Informed Consent (FPIC) but the intention, according to Chávez, was not to recognize a veto. ... Articles 10, 11(2), 29(2) and 28(1) use the obligatory legal word 'shall', as in 'Indigenous peoples shall not be forcibly removed from their lands' without their FPIC, or states 'shall provide redress' for 'property taken' without their FPIC. More permissive language is in articles 19 and 32(2). They declare that '[s]tates shall consult and cooperate in good faith ... in order to obtain their [FPIC]'. Each article employs an obligatory legal term, 'shall', but as an **obligation to consult and cooperate in order to obtain FPIC**, rather than an obligation to obtain FPIC. ..., ... FPIC as part of a state's 'duty to consult', ...

The foundations of Indigenous peoples' FPIC. ..., Francisco de Vitoria's and Bartolomé de las Casas's acknowledgments of native sovereignty are the international legal bases for Indigenous peoples' FPIC. ..., when European and Indigenous peoples began interacting they exhibited 'equal weight [and] something akin to a genuine rights-based conception of consent emerges'. Those early moments of equality existed only briefly, because non-equal interpretation, enforcement, and implementation were imposed through what Doyle calls a 'rights constraining colonial legal doctrine'. In the rights-constraining colonial era, Europeans took advantage of inequalities 'in power, manifested through the use of force, coercion, and legal subterfuge', to unilaterally define 'consent'. Because the 'consent' requirement had been

unilaterally determined by states, the relationship between Indigenous peoples and states had been 'one based on power and dominance' as opposed 'to one premised on equality and consent'. Doyle then contrasts the rights-constraining colonial era with the contemporary human rights-granting era. It is crucial, under Doyle's account, that 'indigenous peoples' claims to ancestral territories [are] within a rights-based perspective', as a 'rights-based framework grounds indigenous peoples' self-government and land rights in a nondiscriminatory approach' within their own systems. As such, proper recognition of Indigenous rights 'draws on indigenous perspectives on law and justice and is premised on indigenous control over its realization'.

Doyle ... argues that a proper understanding of FPIC as a natural right stems from Indigenous peoples' own rights to self-determination and sovereignty. Hence, proper implementation of FPIC requires the content and processes of consent to be determined by Indigenous peoples, so that they can define it and implement it in ways that manifest their natural self-determination. Doyle argues that Indigenous peoples are sovereign peoples with a right of self-determination, which is natural law ...

Indigenous peoples' FPIC reaches a tipping point. Another issue with FPIC's status is that neither the laws of Indigenous peoples nor the multiple sources that recognize FPIC are, under the international law traditional sources doctrine, traditional and accepted sources of public international law. As described above, the problem with UNDRIP and other international human rights instruments is that they do not legally obligate states to obtain Indigenous peoples' FPIC. Doyle solves this problem by pointing to FPIC's 'tipping point'.

According to Doyle, 'we appear to be witnessing the crystallization of the norm of FPIC at the international level ...'. Doyle explains that Indigenous peoples reasserted their natural rights in international law, the rights were dispersed throughout that order, and states will be required to recognize those rights. Under this theory, FPIC's momentum began when it was adopted in ILO Convention No. 169. Between Convention No. 169 and UNDRIP, the UN treaty bodies, ..., Special Rapporteurs, and regional human rights bodies began articulating FPIC to protect Indigenous peoples and their territories, livelihoods, and rights. When the General Assembly endorsed UNDRIP, it affirmed that 'indigenous peoples are vested with a right to self-determination' and connected it to FPIC through the Declaration's content and conceptual framing. Recognition of the requirement for FPIC also extends beyond the human rights legal framework and is exhibited by its uptake by multilateral development banks, international finance institutions, industry actors, NGOs, voluntary initiatives, and Indigenous peoples' organizations. Because UN Member States have overwhelmingly approved UNDRIP and a diverse range of institutions and actors have adopted FPIC, ..., there is a 'jurisprudential trend towards affirming a requirement for FPIC in order to constrain state power to infringe on indigenous peoples' enjoyment of their rights in the context of resource extraction projects impacting on their well-being or territories'. Thus, ..., the numerous recognitions of FPIC are intertwined and evolving to provide Indigenous peoples with the ability to define for themselves what self-determination, sovereignty, and development mean to them. ...

Doyle writes:

For indigenous peoples to be free to exercise their right to self-determination a 'philosophical space' within which they can continue to construct their own perspectives and worldviews is essential. The requirement for FPIC can facilitate the preservation or creation of these philosophical spaces ... If this is realized, indigenous peoples will have the freedom to imagine their own futures, secure in the knowledge that they will have the physical spaces and the control over them necessary to translate these visions into reality.

Click the given site to watch the documentary film, *"Making Monkey Business:" Building Company/Community Dialogue in the Philippines*

<https://www.youtube.com/watch?v=RBhJ-FdrCu4>

The following should guide you in appreciating the film:

1. identify the grievances of the communities affected by the Ambuklao and Binga Dams
2. tangible cultural heritage that was lost and impact of the loss on the community's food security and sovereignty
3. indigenous perception of land
4. initial challenges to the collaborative negotiation and how these were overcome
5. factors of successful collaborative negotiation
6. land as respect and recognition for culture, opportunity, and security
7. win-win resolution of the issues

Reflection

Heritage as a process and democracy

Aspirations and concerns of indigenous people that are similar to the aspirations and concerns of the Filipino people in general

Lessons learned that you can apply to your personal life and future career