

**“RIGHTS DEFERRED: TRACING THE GAPS IN THE
PHILIPPINES’ INDIGENOUS PEOPLES RIGHTS ACT’S
COMPLIANCE WITH GLOBAL HUMAN RIGHTS
NORMS”**

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MA in Human Rights Final Thesis

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¹ 'By-Nc-Sa.Png (403×141)' <<https://mirrors.creativecommons.org/presskit/buttons/88x31/png/by-nc-sa.png>> accessed 16 June 2025.

AUTHOR’S DECLARATION

I, the undersigned, Jayn Amor Acera, candidate for the MA degree in Human Rights, declare herewith that the present thesis titled “Rights Deferred: Tracing the Gaps in the Philippines’ Indigenous Peoples Rights Act’s Compliance with Global Human Rights Norms” is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of the work of others, and no part of the thesis infringes on any person’s or institution’s copyright.

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Vienna, 15 June 2025

Jayn Amor Acera

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ABSTRACT

Despite adopting a national legal framework through the Indigenous Peoples Rights Act (IPRA) of 1997, the Philippines, home to over 11 million indigenous peoples, continues to face persistent human rights violations and unfulfilled obligations toward its indigenous communities. Furthermore, despite ongoing advocacy from the United Nations and international labor rights organizations, the Philippines has yet to ratify ILO Convention No. 169, also known as the Indigenous and Tribal Peoples Convention. This paper examines the extent to which the Philippines has fulfilled its obligations under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which the country has ratified, in relation to the rights of Indigenous Peoples. This is through systematic analysis of vertical and horizontal adoption mechanisms and examining international, national and local legal instruments.

This paper argues that persistent human rights violations on the rights of the indigenous peoples can be attributed to government priorities and actions that do not include or consider the interests of indigenous peoples in alignment with international legal standards. The Supreme Court of the Philippines' rulings on the jurisdiction and competence of the NICP, the principal government agency to provide oversight to indigenous peoples' interests, have weakened the NICP's capacity to protect indigenous rights against private companies violating the indigenous peoples land rights, encroachment of resources within ancestral domains, and the principle of Free Prior and Informed Consent (FPIC).

This paper provides recommendations to improve the institutional inadequacies of the Philippines to fulfill its state obligation to the indigenous peoples by strengthening the NICP's efficacy, aligning government priorities and economic agenda to the interests of indigenous peoples, especially on matters that concerns their futures, and improve implementation of horizontal adoptions of indigenous people's code in the local legislative units of governance.

Key words: Indigenous peoples, land rights, self-determination, participation, education, health, ancestral domains, Philippines

List of Abbreviations and Acronyms

CADT– Certificate of Ancestral Domain Title

CALT– Certificate of Ancestral Land Title

DepEd – Department of Education

DENR – Department of Environment and Natural Resources

DILG – Department of the Interior and Local Government

DOH – Department of Health

FPIC – Free, Prior and Informed Consent

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

ILO – International Labour Organization

IP – Indigenous Peoples

IPMR – Indigenous Peoples Mandatory Representative

IPRA – Indigenous Peoples’ Rights Act

LGU – Local Government Unit

NCIP – National Commission on Indigenous Peoples

UNDHR – Universal Declaration of Human Rights

UNDRIP – United Nations Declaration on the Rights of Indigenous Peoples

UPR – Universal Periodic Review

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Introduction

Indigenous peoples in the Philippines have long faced significant human rights challenges, including limited political participation, poverty, and violence stemming from contentious ancestral land disputes². Despite the enactment of the Indigenous Peoples Rights Act (IPRA) of 1997, many indigenous communities who advocate for their rights continue to experience political repression, such as red tagging³ and extrajudicial killings⁴, allegedly perpetrated by the Philippine government and non-state actors. These ongoing oppressions and disparities have severely hindered the realization of fundamental human rights for indigenous peoples and exacerbated their political and economic marginalization⁵.

Although IPRA serves as primary national framework for the protection of indigenous rights, it is largely influenced by the principles international norms specifically the International Labor Organization (ILO) Convention 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)⁶. However, the Philippines has not ratified the International Labour Organization (ILO) Convention No. 169, which would have imposed binding legal obligations to uphold indigenous peoples' rights. While the UNDRIP is a significant international instrument, it is non-binding and lacks strong enforcement mechanisms, limiting its capacity to obligate state compliance. As a result, the Philippines' obligations under ILO Convention No.

² 'The Situation of Human Rights and Fundamental Freedoms of Indigenous People | United Nations Special Rapporteur on the Rights of Indigenous People' <<https://un.arizona.edu/search-database/situation-human-rights-and-fundamental-freedoms-indigenous-people-9>> accessed 31 January 2025.

³ 'Philippines: Officials "Red-Tagging" Indigenous Leaders, Activists | Human Rights Watch' (26 January 2023) <<https://www.hrw.org/news/2023/01/26/philippines-officials-red-tagging-indigenous-leaders-activists>> accessed 31 January 2025.

⁴ 'Philippines Warned over "Massive" Impact of Military Operations on Mindanao Indigenous Peoples' (OHCHR) <<https://www.ohchr.org/en/press-releases/2017/12/philippines-warned-over-massive-impact-military-operations-mindanao>> accessed 31 January 2025.

⁵ 'Access to Education, Health Services, Economic Opportunities Key to Improving Welfare of Indigenous Peoples in the Philippines' (World Bank) <<https://www.worldbank.org/en/news/press-release/2024/05/27/access-to-education-health-services-economic-opportunities-key-to-improving-welfare-of-indigenous-peoples-in-ph>> accessed 31 January 2025.

⁶ Sedfrey M Candelaria, 'Comparative Analysis on the ILO Indigenous and Tribal Peoples Convention No. 169, UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Indigenous Peoples' Rights Act (IPRA) of the Philippines'.

169 and UNDRIP remain non-binding, which potentially weaken legal protections provided to indigenous peoples' rights.

In contrast, the Philippines has ratified the International Covenant on Civil and Political Rights (ICCPR) and Covenant on Economic, Social and Cultural Rights (ICESCR). As a state party in these two covenants, the Philippines has the international legal obligation to uphold the rights the two covenant provides. Moreover, the Philippines has also ratified the additional protocol of the ICCPR allowing for individual complains to the UN Human Rights Committee (HRC) for violations of ICCPR provisions. However, it is worth noting that despite ratifying the ICESCR, the Philippines has not ratified its additional protocol for individual complaints. In light with this, this research finds it critical to focus on how the implementation of IPRA aligns with the country's international obligations under these two covenants.

By analyzing legal frameworks, state policy implementations, and lived experiences of indigenous peoples, this study seeks to identify gaps in state compliance and advocate for stronger, more effective mechanisms to safeguard Indigenous peoples' rights. Ultimately, this research aims to contribute to a more just and equitable society where Indigenous rights are not just acknowledged but fully realized. This paper examines the extent to which the statutory implementation of indigenous peoples' rights in the Philippines fulfills the state's obligation under the ICCPR and ICESCR. It examines how national and local mechanisms, such as the NICP's vertical coordination and the indigenous people's mandatory representation in local government units, as mandated through IPRA, align with these international obligations and commitments. The study identifies gaps between legal frameworks and the lived realities of indigenous communities, such as challenges in land rights recognitions, rights to participation, access to basic services, such as education and health. By analyzing the consequences of these implementation gaps, the research aims to propose actionable recommendation to strengthen

the protection and realization of indigenous peoples' rights in accordance with international human rights standards set by the ICCPR and ICESCR.

Methodology

This paper analyzes the legal frameworks governing the rights of indigenous peoples in the Philippines, focusing on the Indigenous Peoples' Rights Act (IPRA) of 1997 and its alignment with international human rights obligations under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). By evaluating IPRA's implementation at both national and local levels, this paper seeks to identify gaps in the protection and enforcement of indigenous rights and assess the extent to which the Philippine state fulfills its international legal obligations. The paper will explore the legal implications of these gaps, particularly in the context of land rights, and self-determination, principle of consultation, right to education, and social security and health, and will offer recommendations for improving legal protections for indigenous communities in the Philippines.

To narrow down the scope, this paper will examine five (5) indigenous peoples rights, which are as follows: (1) right to self-determination; (2) right to participation; (3) right to land; (4) right to health; and (5) right to education. These rights are especially critical in the context of the situation of indigenous peoples in the Philippines as these rights have faced persistent and historical challenges. The Indigenous peoples have faced systematic marginalization, land dispossession, and exclusion from decision-making which affects their way of life and futures. Focusing on these rights also highlights the deeply interconnected nature of indigenous rights, as well as the persistent gaps between state interests and indigenous rights.

In examining how the Philippines' implementation of these indigenous rights aligns with its obligations under the ICCPR and ICESCR, this paper will employ a doctrinal methodology that includes a systematic review of relevant statutory materials, which includes the

Implementing Rules and Regulations of the Indigenous Peoples' Rights Act (IPRA) of 1997, the Indigenous Peoples Code of the Provinces and other relevant domestic legal instruments. These documents and the national legal framework will be analyzed to determine their compliance with the rights enshrined in international human rights instruments. Additionally, the paper will extend its review to landmark cases in Philippine jurisprudence that have adjudicated issues related to the IPRA, analyzing how the courts have interpreted and applied indigenous rights. This will provide insight into the practical enforcement of IPRA and its alignment with the country's obligations under international law. Examining the Indigenous Peoples Code would provide a clearer picture of how the IPRA is adopted down to the sub-national legislations and how they impact the rights and obligations of the sub-national level of governance.

To further understand the lived realities faced by indigenous peoples, this paper will include examining reports from UN bodies, such as the Universal Periodic Reviews, as well as reputable civil society organizations and human rights groups, among others. This approach will allow for a thorough assessment of the gaps in the adoption and implementation of IPRA and address the legal and policy consequences, directly answering the research questions regarding the alignment of national laws with international obligations and the challenges indigenous communities face in practice, and how legal protections for indigenous communities can be further improved.

Lastly, this paper is anchored on the framework of human rights-based approach which examines the Philippines' obligations under the ICCPR and ICESCR. This approach sets the premise that everyone, including indigenous peoples, is entitled to the full enjoyment of human rights as provided in the two international covenants. Moreover, the principles under this approach, which are inter-dependence, indivisibility of human rights, as well as its principle of

equality and non-discrimination, empowerment, and participation and inclusion⁷, are directly relevant to the rights of indigenous peoples that this paper examines, particularly the right to self-determination, right to participation, land rights, and rights to health and education. In assessing how the Philippines fulfills its obligation under the ICCPR and ICESCR through IPRA and its related domestic policies, the human rights-based approach provides a lens on how international human rights standards are adopted by the state in its domestic legal frameworks and the extent to which these standards are applied in policies and implementation⁸. Through using this approach, the paper gathers and examines relevant facts surrounding the human rights situation of indigenous peoples in the Philippines, how this situation potentially violates the international and domestic legal standards, the extent of the state's responsibility, and how these gaps can be addressed⁹.

Scope and Limitation

At present, there has been limited case laws relating to indigenous peoples' rights in the Philippines, a possible indication of the limited access of the indigenous peoples to legal remedies. While focus group discussions with indigenous communities would provide valuable insights into their human rights experiences, concerns over the safety and security of participants, especially in areas where activism is met with political repression, have led to the exclusion of this method. Instead, a systematic mapping of secondary data sources, such as reports from human rights organizations and UN bodies, will be utilized to ensure a thorough and balanced understanding of the indigenous rights situation. While the paper also discusses indigenous peoples' codes, due to the limited indigenous codes currently enacted in local

⁷ United Nations, *The Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies* (2003) <https://unsdg.un.org/resources/human-rights-based-approach-development-cooperation-towards-common-understanding-among-un>

⁸ European Network of National Human Rights Institutions (ENNHRI), *Applying a Human Rights-Based Approach to Poverty Reduction and Measurement: A Guide for National Human Rights Institutions* (2019) <https://ennhri.org/wp-content/uploads/2019/11/Applying-a-Human-Rights-Based-Approach-to-Poverty-Reduction-and-Measurement-A-Guide-for-NHRIs.pdf>

⁹ Scottish Human Rights Commission, *A Human Rights Based Approach* (2019) https://www.scottishhumanrights.com/media/1409/shrc_hrba_leaflet.pdf

government units and the lack of access, the paper is limited to use the indigenous peoples code of the province of Sarangani, Philippines which was made available online for the public by the Sarangani Province.

Risks and Ethical Considerations

The principle of Free, Prior, and Informed Consent (FPIC)¹⁰ is central to respecting Indigenous peoples' rights, as outlined in the Indigenous Peoples' Rights Act. To uphold this principle, it is essential that informed consent be obtained not only from the individuals participating in the study but also from the National Commission on Indigenous Peoples (NCIP) before conducting any data collection activities. This ensures that the research is ethically conducted, respects the autonomy of Indigenous communities, and safeguards their rights to make informed decisions regarding participation. Furthermore, ensuring FPIC helps mitigate any risks of exploitation, coercion, or harm, which may arise during the research process. In line with this, the researcher upholds the ethical standards of the NCIP in engaging with Indigenous Communities.

¹⁰ 'Lessons from Implementing Free Prior and Informed Consent (FPIC) in the Philippines: A Case Study for Teaching Purposes - Facilitator - Centre for Social Responsibility in Mining'
<<https://www.csrn.uq.edu.au/publications/lessons-from-implementing-free-prior-and-informed-consent-fpic-in-the-philippines-a-case-study-for-teaching-purposes-facilitator-s-guide-july-2016>>

1. Overview of the Human Rights Situation of the Indigenous Peoples in the Philippines

The latest Census of Population and Housing (CPH) in the Philippines reports that nearly 10 million indigenous peoples (IPs)¹¹ live in the country, making up around 10% of the total population. Nearly half of them reside in Mindanao, home to various indigenous groups such as the *Higaonon*, *Talaandig*, *Manobo*, *T'boli*, *B'laan*, and *Teduray*, also collectively known as Lumad.

Despite their significant presence, indigenous communities in the Philippines face persistent socio-economic challenges¹². According to the World Bank, many indigenous peoples live in geographically isolated and disadvantaged areas¹³, where government services are limited or altogether absent. These areas, often found in upland or remote rural regions, suffer from a lack of essential infrastructure, including roads, electricity, and communication networks. Access to clean and safe water remains scarce, with many indigenous communities relying on untreated water sources such as rivers and deep wells. Additionally, healthcare and education services are inadequate, as many Indigenous villages are located far from hospitals, clinics, and schools, forcing residents to travel long distances for basic medical attention or education¹⁴.

¹¹ World Bank, 'No-Data-No-Story-Indigenous-Peoples-in-the-Philippines' <<https://thedocs.worldbank.org/en/doc/baa43cc91ec55266a538e9023c528bd7-0070062024/original/No-Data-No-Story-Indigenous-Peoples-in-the-Philippines.pdf>> accessed 1 February 2025.

¹² Emmanuel A Onsay and Jomar F Rabajante, 'Do Indigenous People Get Left Behind? An Innovative Methodology for Measuring the Unmeasurable Economic Conditions and Poverty from the Poorest Region of Luzon, Philippines' [2024] Heliyon e41076.

¹³ 'Access to Education, Health Services, Economic Opportunities Key to Improving Welfare of Indigenous Peoples in the Philippines' (*World Bank*) <<https://www.worldbank.org/en/news/press-release/2024/05/27/access-to-education-health-services-economic-opportunities-key-to-improving-welfare-of-indigenous-peoples-in-ph>> accessed 1 February 2025.

¹⁴ 'The Situation of Human Rights and Fundamental Freedoms of Indigenous People | United Nations Special Rapporteur on the Rights of Indigenous People' (n 2).

A 2020 indigenous peoples survey¹⁵ further highlights these disparities, revealing that 59% of indigenous people respondents consider themselves poor, while 51% identify as food poor, meaning they struggle to afford or access adequate nutrition. These challenges are not only economic but also rooted in historical marginalization, land dispossession, and limited political representation¹⁶. The widening gap between Indigenous communities and the services provided by the government underscores the urgent need for policy reforms to improve their living conditions and uphold their rights.

The challenges faced by Indigenous Peoples in the Philippines are further exacerbated by long-standing, often violent disputes over their ancestral lands¹⁷. In recent years, these conflicts have intensified as the global demand for energy transition minerals, particularly nickel¹⁸, has surged. The Philippines has become as one of the world's top producers of nickel ore, while also remaining a key supplier of gold and copper. These mining industries are legally supported by the Mining Act of 1995 (Republic Act No. 7942), which provides the framework for mining operations in the country. Despite concerns over its environmental and social impacts, the mining industry continues to expand. In the first quarter of 2024 alone, the Philippine government issued 785 mining-related permits, signaling an aggressive push for increased mineral extraction.

The rapid expansion of mining has had serious human rights implications, particularly in Indigenous territories. According to a report by Amnesty International, mining activities in Palawan and Zambales have led to severe human rights violations, including the failure to

¹⁵ World Bank (n 11).

¹⁶ Franco JC and Borrás SM, 'Struggles Over Land Resources in the Philippines' (2007) 19(1) Peace Review 67 <https://doi.org/10.1080/10402650601181923>

¹⁷ Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), *In Defense of Land Rights: A Monitoring Report on Land Conflicts in Six Asian Countries* (ANGOC 2019)

¹⁸ 'Philippines: Nickel Mining Projects Approved despite Inadequate Consultation and Serious Risks to Communities' Health and Environment' (*Amnesty International*, 9 January 2025) <<https://www.amnesty.org/en/latest/news/2025/01/philippines-nickel-mining-projects-approved-despite-inadequate-consultation-and-serious-risks-to-communities-health-and-environment/>> accessed 3 February 2025.

uphold Free, Prior, and Informed Consent (FPIC) which is a fundamental principle of indigenous peoples' rights. This incident is not isolated to the areas in north western Philippines areas as similar violations have been reported in the southern island of Mindanao, where mining operations have long been a catalyst of displacement, environmental destruction, and Lumad killings.

Indigenous leaders, environmental activists, and human rights defenders who oppose mining projects in their ancestral lands have increasingly become targets of harassment, intimidation, and violence. Indigenous peoples' groups resisting dam projects on their ancestral lands have also been met with violent repression. One of these occurred in Panay Island in 2021, when nine indigenous peoples were killed in a police operation after being red tagged, a practice where activists are falsely accused of being insurgents, by the state authorities. Between 2012 and 2023, 64 out of 117 Indigenous human rights defender killings were allegedly carried out by the military, underscoring the deadly risks faced by those fighting for their land and rights.

1.1 The National Legal Framework: Indigenous Peoples Rights Act of 1997

The 1987 Constitution of the Philippines firmly establishes the state's obligations to indigenous peoples and recognizes their rights. It provides a legal framework for their protection and inclusion in national development policies. Article 2, Section 22 explicitly declares that "*the State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development*". This provision signifies the state's commitment to ensuring that indigenous peoples' rights are upheld while maintaining national cohesion and progress.

Further strengthening this commitment, Article 12, Section 5 affirms that part of the state's obligation is to "*protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being*". This recognition underscores

the critical role, within the Philippines' constitutional framework, of ancestral lands in indigenous peoples' survival, not only as a source of livelihood but also as a foundation for their cultural identity and traditions.

Beyond land and economic security, the Constitution also acknowledges the cultural rights of indigenous peoples. Article 15, Section 17 states that "*the State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions and institutions*". This provision reinforces the right of indigenous peoples to self-determination in cultural and social affairs, ensuring that their heritage is safeguarded and allowed to thrive within the national framework.

Even before the enactment of IPRA, which was enacted in 1997, state recognition of indigenous peoples' right to prior consent was already present in the Philippine Mining Act of 1995. Article 3, Section 16¹⁹ of the Philippine Mining Act of 1995 explicitly states that "*no ancestral land shall be opened for mining operations without the prior consent of the indigenous cultural community concerned*". This provision acknowledges the necessity of free, prior, and informed consent (FPIC) in mining industries, ensuring that Indigenous Peoples are not dispossessed of their lands without their approval.

The recognition of indigenous peoples' rights in the Philippines can be further traced back to the early 1900s, particularly in the *Cariño v. Insular Government* case²⁰. Mateo Cariño, a *Benguet* indigenous chieftain, fought for legal recognition of his ancestral land. Cariño claims that his family had resided and cultivated the land for generations, until the American-led insular government claimed it as state property due to lack of a legally recognized land title.

At the time, the Philippine courts upheld the *Regalian* Doctrine, a legal principle inherited from Spanish colonial rule that declared all untitled lands as belonging to the state. As

¹⁹ Republic Act No. 7942, The Philippine Mining Act of 1995 (Philippines) art 3, s 16

²⁰ *Carino v. Insular Government*, 212 U.S. 449, 29 S. Ct. 334 (1909)

the Philippines was under the American rule at that time subsequent to the end of Spanish rule in the Philippines in 1898, Cariño's case was elevated to the U.S. Supreme Court where Justice Oliver Wendell Holmes issued a landmark ruling. In his opinion, he stated that the purpose of American rule in the Philippines was to ensure “*justice to the natives, not to exploit their country for private gain*”²¹.

The ruling effectively overruled the *Regalian* Doctrine by recognizing that indigenous communities had long occupied and owned their lands based on their customs and traditions and these should not be owned by the state. This case became a precedent for later legal discussions on indigenous land rights and played a role in the recognition of ancestral domains in the Philippines and other jurisdiction across the globe and has been known as the *Cariño* Doctrine.

These constitutional provisions, and earlier recognition of the rights of indigenous peoples laid the groundwork for the passage of the Indigenous Peoples' Rights Act (IPRA) of 1997, which was designed to further protect indigenous peoples' rights to ancestral domains, self-governance, and cultural integrity. Although IPRA was influenced by ILO Convention No. 169, an international treaty that provides a legally binding framework for indigenous peoples' rights, the Philippines has not yet ratified this convention.

1.2 The National Commission of Indigenous Peoples (NCIP)

The signing of IPRA in 1997 provided a legal basis for the enactment of the National Commission on Indigenous Peoples (NICP). The overarching purpose of the NICP is to protect and promote the interests of the indigenous peoples in the Philippines in line with the provisions articulated in IPRA. Particularly, the NICP is mandated to: (1) serve as the primary government agency where Indigenous Peoples and their communities can seek government assistance; (2)

²¹ Mia Laine C Catalan, ‘The Regalian Doctrine: A Study of Supreme Court Decisions from 2002-2011’.

draft and implement policies and programs for the economic, social and cultural development of Indigenous Peoples and their communities; (3) serve as the advisory body to the president on matters relating to the Indigenous Peoples; (4) promulgate the rules and regulations for the implementation of IPRA; (5) issue Certificate of Ancestral Domain Title (CADT) and Certificates of Ancestral Land Title (CALT); (6) serve as a quasi-judicial body for matters involving customary law of indigenous peoples²².

While NICP has initiated its positive obligations to the rights of indigenous peoples such as providing educational assistance and scholarships²³, setting development goals for indigenous peoples²⁴, establishing the guidelines and enforcing compliance of the principle of Free Prior and Informed Consent (FPIC)²⁵, and other initiatives falling within its mandate, it has been a struggle to establish NICP's jurisdiction on matters involving non-indigenous peoples. On a case involving the *Tagbanua* indigenous peoples challenging a private fishing corporation's encroachment on ancestral domains without carrying out FPIC, the Supreme Court of the Philippines held that, although NICP has the legal mandate to act as a quasi-judicial body for indigenous peoples, it does not have a jurisdiction over disputes involving non-Indigenous Peoples. Further, the Supreme Court upheld that the jurisdiction of such cases falls within the purview of the Regional Trial Courts of the Philippines²⁶. The jurisdiction of the NICP is further curtailed by the Supreme Court ruling on the case of a family from *Ibaloi* Tribes whose Certificate of Ancestral Land Titles (CALT) issued by NICP to indigenous peoples living

²² National Commission on Indigenous Peoples, *Mandate, Vision and Mission* (NICP)

<https://ncip.gov.ph/mandate-vision-and-mission/>

²³ National Commission on Indigenous Peoples, *Administrative Order No 5, Series of 2012: NCIP Guidelines on the Merit-Based Scholarship (NCIP-MBS) and Educational Assistance (NCIP-EA)* (2012).

²⁴ Philippines, Department of Environment and Natural Resources, *Administrative Order No 2, series of 2018, Revised Guidelines on the Formulation of the Ancestral Domain Sustainable Development and Protection Plan*. ADSDPP)

²⁵ **Philippines, National Commission on Indigenous Peoples**, *Administrative Order No 3, series of 2018, Revised National Guidelines for the Mandatory Representation of Indigenous Peoples in Local Legislative Councils and Policy-making Bodies*

²⁶ **Daco v Cabajar** G.R. No. 222611, Supreme Court of the Philippines, 15 November 2021.

in their ancestral lands had been declared invalid by the Supreme Court citing that NICP does not hold jurisdiction on Baguio City, Philippines²⁷.

These cases collectively provide a picture of the NICP's strengths and weaknesses as the principal government institution to uphold the rights of indigenous peoples and how its functions and mandates can be curtailed by other government institutions in balancing state interests and indigenous peoples' rights.

²⁷ **Republic of the Philippines v National Commission on Indigenous Peoples** G.R. No. 208480, Supreme Court of the Philippines, 25 September 2019 .

2. Horizontal and Vertical Adoption of Indigenous Rights

2.1 Compliance of IPRA to ICCPR and ICESCR

2.1.1 Right to Self-determination

The right to self-determination is provided under Article 1 of both the ICCPR and ICESCR which states that “*All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development*”. Despite this provision being broadly applied to all people, it also includes indigenous people’s rights and their rights to determine their political, economic, social and cultural development. This right has been one of the cornerstones of IPRA as it provides the right of indigenous peoples to self-governance and self-determination. This provision, which is explicitly outlined under Article IV, Section 13 of IPRA states that “*the State recognizes the inherent right of ICCs/Ips to self-governance and self-determination and respects the integrity of their values, practices and institutions*”. Consequently, the “*State shall guarantee the right of the indigenous peoples to freely pursue their economic, social and cultural development*”, not only affirms the indigenous peoples’ rights to pursue economic, social, and cultural development and self-determination, but also establishes the link an indivisibility of self-determination to self-governance.

In IPRA’s Implementing Rules and Regulations which was drafted and promulgated by NICP, self-governance is defined as the use and control of indigenous peoples organizational and community leadership systems, institutions, relationships, patterns and processes for decision making and participation²⁸. These would include: the Council of Elders, *Bodong*

²⁸ National Commission on Indigenous Peoples (NCIP), 'Administrative Order No. 1, Series of 1998' (1998) <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/10/46070>

Holders, *Dap-Ay, Ator*, Council of *Mangkata Dong*, or any other bodies of similar nature²⁹. This articulation of self-governance serves as a legal recognition of indigenous tribal bodies and their respective customary law, with the condition that the realization of these customary laws remains within the bounds of constitutional laws of the state.

Particularly in IPRA and its Implementing Rules and Regulations, self-determination is further articulated: as the (1) use of customary justice and conflict resolution systems in article 15; (2) full participation in decision-making and maintenance of governance structures in article 16; (3) strengthening and interfacing indigenous and national governance in IPRA Implementing Rules and Regulations Rule IV; and (4) decisive community control over projects affecting their domains stated in the FPIC mechanism of IPRA and its Implementing Rules and Regulations.

From this articulation, the law recognizes the indivisibility of the rights to self-determination, participation and the FPIC. With this recognition in mind, the NICP issued a national guideline for the mandatory representation of indigenous peoples (IPMR) in the local legislative system³⁰ which ensures the right of indigenous peoples to self-determination, participation and FPIC are cascaded and upheld down to the local level of governance. At present, these IPMRs, such as that in Bukidnon Province, leads in the legal inclusion of indigenous peoples in provincial programming and budget appropriations.

The state's recognition of customary laws, which are deeply intertwined with the indigenous political structures of the indigenous peoples, aligns with the provision of ICCPR and ICESCR on the right to self-determination, which is manifested through recognizing that

²⁹ **Philippines, National Commission on Indigenous Peoples**, *Administrative Order No 1, Series of 1998, Rules and Regulations Implementing Republic Act No 8371, "The Indigenous Peoples' Rights Act of 1997"* (9 June 1998) <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/10/46070>.

³⁰ **Philippines, National Commission on Indigenous Peoples**, *Administrative Order No 3, Series of 2018, Revised National Guidelines for the Mandatory Representation of Indigenous Peoples in Local Legislative Councils and Policy-making Bodies* (6 February 2018) <https://ncip.gov.ph/wp-content/uploads/2020/09/ncip-ao-no-3-s-2018-ipmr.pdf>.

practicing their own customary laws allow indigenous peoples to freely determine their political, social and cultural development.

2.1.2 Right to Participation

Aside from Article 1 of the ICCPR and ICESCR which recognize the right of all peoples, including indigenous peoples, to freely determine their political status and pursue their economic, social and cultural development, which serves as the foundation of indigenous peoples' participation in governance and decision making that affects their communities, Article 27 of the ICCPR also recognizes the rights of minorities, including indigenous peoples, to enjoy their culture, practice their religion, and use their religion. Participation in cultural life is a key element in this provision. Moreover, Article 15 of the ICESCR explicitly recognizes the right to participate in cultural life. This provision of the ICESCR has also been interpreted to include indigenous peoples' involvement in decisions related to their traditional lands, territories, and resources³¹. The key element emphasized in this article is the principle of free, prior and informed consent (FPIC).

Section 16 of IPRA articulates the state obligation to the rights of the Indigenous Peoples in participating on decisions that involves their communities and futures. Section 16 of the IPRA also serves as the legal anchor of the National Guidelines for the NICP's Administrative Order No. 1 of 1998, otherwise known as the Mandatory Representation of Indigenous Peoples in Local Legislative Councils and Policy-making Bodies³², which requires local government units to have a mandatory representation of indigenous peoples mandatory representatives (IPMR) in policy-making and local legislative councils. Indigenous Peoples Mandatory Representatives are mandated to participate in local legislative councils and should represent

³¹ **UN Committee on Economic, Social and Cultural Rights**, *General Comment No 26: Land and Economic, Social and Cultural Rights*, UN Doc E/C.12/GC/26 (22 December 2022) <https://www.ohchr.org/en/documents/general-comments-and-recommendations/ec12gc26-general-comment-no-26-2022-land-and>

³² National Commission on Indigenous Peoples (NCIP), 'Administrative Order No. 1, Series of 1998' (1998) <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/11/50162>

the collective interest of the indigenous peoples within their jurisdiction. At present, these indigenous peoples' mandatory representatives have been leading to advocate and legislate indigenous peoples' codes, a localized legal instrument structured to incorporate and implement legal protections articulated in IPRA and its Implementing Rules and Regulations for Indigenous Peoples and their communities while tailoring to the specific cultural and contextual needs within their respective provinces and towns.

However, despite these legal and institutional milestones, indigenous people's mandatory representatives face several challenges, including political isolation and marginalization³³. One of the common issues these representatives face are local chief executives, such as mayors and governors, who have different political interests and learnings. This highly political situations ultimately affect the passing of legislations and appropriation of budgets for indigenous people's initiatives. Such cases have significantly hampered the effectivity of the indigenous peoples' mandatory representative to legislate and create initiatives. In the case of Bukidnon, Philippines, which is one of the provinces to have the highest populations of indigenous peoples and has one of the largest ancestral domains, the indigenous peoples code drafted by the indigenous peoples' mandatory representative which contains the budget appropriations, that is 5% of the whole provincial budget, was vetoed by the governor due to differences in political interests and priorities. This rejection has affected the proposed budget for the indigenous peoples' programs on education, health, livelihoods, and other areas where clear and expanding disparities affecting indigenous peoples remains persistent. These political barriers reveal the persisting imbalances in power that significantly weakens the current implementation and oversight of NICP in ensuring the objectives of creating mandatory indigenous peoples' representations in local government units are achieved.

³³ Villanueva PM, Ramos VB, Villaroman LV and Villanueva AA, 'Indigenous Peoples Mandatory Representation in the Local Legislative Councils: Status, Challenges and Trajectories' (2017) 4 *Open Access Library Journal* e4168 <https://doi.org/10.4236/oalib.1104168>

2.1.3 Land rights

Under Article 27 of the ICCPR, the cultural rights of minorities, including that of the indigenous peoples, are explicitly protected. The United Nations Human Rights Committee (HRC) has further interpreted this provision to encompass traditional practices such as hunting, fishing and residing in legally recognized ancestral territories³⁴. This interpretation has recognized how indigenous land rights are fundamentally intertwined with the indigenous peoples' way of life and survival. Similarly, Article 11 of the ICESCR guarantees the right to an adequate standard of living, this would include access to food, water, and housing. Moreover, Article 15 of the ICESCR provides for the protection of the right to take part in cultural right which includes the spiritual and cultural life of indigenous peoples and their communities. As affirmed in international instruments such as the UNDRIP, and ILO Convention 169, indigenous peoples' rights to food, water, shelter, and cultural and spiritual practices are indivisible from their rights to land, which serve as the foundation for the enjoyment of these interconnected rights.

In the UN HRC' and CESCR General Comments, the Committees established that, for Indigenous Peoples, land is the foundation of their Economic, Social and Cultural Rights. Furthermore, the HRC, in its General Comment No. 26 on land and economic, social rights, recognized that indigenous peoples are impacted by increased competition of access and control over land, and how this is further exacerbated by weak, mismanaged, corrupt and non-existent institutional frameworks for the governance of land tenure³⁵.

³⁴ UN Human Rights Committee, 'General Comment No. 23: Article 27 (Rights of Minorities)', CCPR/C/21/Rev.1/Add.5 (8 April 1994)

³⁵ **UN Committee on Economic, Social and Cultural Rights**, *General Comment No 26: Land and Economic, Social and Cultural Rights*, UN Doc E/C.12/GC/26 (22 December 2022) <https://www.ohchr.org/en/documents/general-comments-and-recommendations/ec12gc26-general-comment-no-26-2022-land-and>.

In the latest Indigenous World Report³⁶ published by the International Work Group for Indigenous Affairs (IWGIA), 43-46% of the Philippine's total land area is indigenous land, and 75% of the Philippines remaining forest cover are within ancestral domains. These ancestral domains have been historically and persistently threatened by illegal entry and encroachment, with extractive mining and logging companies seen as the most destructive activities putting indigenous peoples, their land, and spiritual and cultural life at risk³⁷. These risks to the indigenous peoples seem to not hold a lot of weight for the current economic agenda of the Philippines as the government pushes forward on mega projects for renewable energy, which is highly contested by indigenous peoples and environment defenders. Moreover, the present economic agenda of Philippine government aims to expand its participation in the extractive supply chain of electric vehicle product market through supplying nickel ores and other mined minerals³⁸.

IPRA defines ancestral domains as areas which generally belong to indigenous peoples and their communities which encompasses lands, in-land waters, coastal areas, and natural claims of ownership, occupied or possessed by indigenous communities, either by themselves or through their ancestors, whether communally or individually, since time immemorial³⁹. With the IPRA as the legal anchor, NICP subsequently released and oversaw the Omnibus Rules on the Delineation and Recognition of Ancestral Domains and Lands⁴⁰, which provides for the regulatory framework to standardize the procedures in legally recognizing indigenous lands

³⁶ Dwayne Mamo (ed), *The Indigenous World 2025* (IWGIA 2025)

<https://iwgia.org/en/resources/publications/5773-the-indigenous-world-2025.html>

³⁷ PARIS21, *Metagora: The Final Report* (OECD 2007) https://paris21.org/sites/default/files/Metagora-final_EN.pdf

³⁸ Marcos Jr., Ferdinand R. "Keynote Speech of President Ferdinand R. Marcos Jr. for the ASEAN Business and Investment Summit (ABIS) 2024." Presidential Communications Office, 9 October 2024, <https://pco.gov.ph/presidentialspeech/keynote-speech-of-president-ferdinand-r-marcos-jr-for-the-aseanbusiness-and-investment-summit-abis-2024/>

³⁹ Republic Act No. 8371, 'The Indigenous Peoples' Rights Act of 1997' (29 October 1997) <https://ncip.gov.ph/wp-content/uploads/2020/03/IPRA-LAW.pdf>

⁴⁰ National Commission on Indigenous Peoples, *Administrative Order No. 4, Series of 2012: Revised Omnibus Rules on Delineation and Recognition of Ancestral Domains and Lands* (NCIP 2012) <https://ncip.gov.ph/wp-content/uploads/2020/09/ncip-ao-no-4-s-2012-revised-omnibus.pdf>

through issuance of Certificate of Ancestral Domain Title (CADT) and Certificate of Ancestral Land Title (CALT). The issuance of these indigenous land certificates is guided by the principles of self-delineation which allows for the indigenous communities to lead the identification and mapping of ancestral lands, the principle of private ownership which classifies ancestral lands as private lands under native title, and which carries more safeguards from encroachment, as compared to public lands.

IPRA further underscored that the indigenous ownership of ancestral land does remain intact despite interruptions caused by external factors such as wars, force majeure or displacement by force, deceit, stealth of because of government projects or voluntary dealings that entered by the government and private individuals or corporations. This specific provision has been constantly legally challenged as many indigenous peoples are forced into displacement by government-backed private companies who operate expansive and extractive logging and mining activities⁴¹ within these ancestral domains. Some of these operations have been determined to be illegal, such as the case of Surigao del Norte, Philippines⁴². Often, because of the interdependency nature of indigenous peoples' rights, this illegal encroachment of ancestral lands comes with other indigenous rights violations such as none compliance to the FPIC guidelines⁴³, leaving deep and lasting damages to indigenous peoples, their lands, livelihoods and way of life⁴⁴.

⁴¹ **Zacarian Sarao**, 'Illegal mining allegedly perpetrated by Chinese in Surigao City leaves deep, painful scars' (INQUIRER.net, 29 January 2025) <https://newsinfo.inquirer.net/2029369/illegal-mining-in-surigao-city-leaves-deep-painful-scars>

⁴² **Faith Argosino**, 'Surigao City residents oppose large-scale illegal mining' (INQUIRER.net, 10 December 2024) <https://newsinfo.inquirer.net/2014273/surigao-city-residents-oppose-large-scale-illegal-mining>.

⁴³ National Commission on Indigenous Peoples (NCIP), 'Administrative Order No. 1, Series of 2006: The Free and Prior Informed Consent (FPIC) Guidelines of 2006' (28 July 2006) <https://ncip.gov.ph/wp-content/uploads/2020/09/ncip-ao-no-1-s-2006-fpic-guidelines.pdf>

⁴⁴ Amnesty International, 'Philippines: Nickel mining projects approved despite inadequate consultation and serious risks to communities' health and environment' (13 January 2025) <https://www.amnesty.org/en/latest/news/2025/01/philippines-nickel-mining-projects-approved-despite-inadequate-consultation-and-serious-risks-to-communities-health-and-environment/>

As previously mentioned, despite the legal mechanisms established by NICP to provide legally recognized native land titles, such as Certificate of Ancestral Domain Title (CADT), in areas where conflict of interests between the government and the rights of the indigenous peoples exists, the Supreme Court upheld its decisions of invalidating previously issued native land titles. This precedent has not only curtailed the mandate of NICP, but it also brings to light the vulnerabilities of indigenous peoples when their rights conflict with that of the government and private actors.

2.1.4 Right to Health

Article 6 of the ICCPR outlines the obligations of the States to ensure conditions that sustain life. This provision is further expanded in HRC's General Comment No. 36 which provides that states should take appropriate measures to "*address the general conditions in society that may give rise to direct threats to life... such as hunger and malnutrition and homelessness, prevalence of life-threatening disease, environmental pollution*"⁴⁵, among others which include access to healthcare and threats to health and safety. In ICESCR, Article 12 recognizes the right of everyone to the highest attainable standards of physical and mental health. State obligations include: (a) reduction of infant mortality and improvement of child health; (b) improvement of environmental and industrial hygiene; (c) prevention, treatment, and control of diseases; and (d) equal access to medical services in cases of sickness. Furthermore, Article 19 of ICESCR affirms the right to social security including access to social insurance that covers healthcare for those who are sick, disabled and of old age.

⁴⁵ **UN Human Rights Committee**, *General comment No 36, Article 6 (Right to Life)*, UN Doc CCPR/C/GC/36 (adopted 30 October 2018, entered into force 3 September 2019) https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf

The UN's General Comment No. 14 on the Right to Health has set out the core elements of the right to health through the AAAQ Framework, which are as follows⁴⁶:

- (a) Availability: functioning public health and health care facilities, goods, services and programs should be sufficient.
- (b) Accessibility: health facilities, goods, services and programs must physically and economically accessible without discrimination.
- (c) Acceptability: health facilities, goods, services and programs must be culturally sensitive and ethical.
- (d) Quality: health facilities, goods, services and programs must be of good quality and medically appropriate.

For IPRA, while it emphasizes equitable benefits from resource use, under Article IV, Section 25, it also recognizes the rights of indigenous peoples to basic services, which includes the right to health. In the Implementing Rules and Regulations of IPRA, the NICP is responsible in ensuring that indigenous peoples and their communities have equitable access to health through horizontal partnerships with other government agencies such as the Department of Health. However, the UN reports that health disparities among the indigenous peoples and their communities have caused lower life expectancy, with high mortality rate of live births, such as the case of the *Manobo* tribes in Southern Philippines. Moreover, these health disparities also increased the disease burden of communicable diseases⁴⁷. These disparities are caused by structural barriers such as limited, if not lack of, access to health care facilities due to geographic

⁴⁶ UN Committee on Economic, Social and Cultural Rights, 'General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12 of the Covenant)' (11 August 2000) E/C.12/2000/4 <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/Health/GC14.pdf>

⁴⁷ Asia Indigenous Peoples Pact (AIPP), *Situation of the Right to Health of Indigenous Peoples in Asia* (OHCHR, 2016) <https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Health/AIPP.pdf>.

isolation and poverty, and cultural insensitivity of the current health systems that results to mistrust among indigenous peoples.

The UN further noted that conflict related injuries are a factor in describing indigenous health. Both the Philippines and Myanmar are significantly affected by conflict related injuries, which pose a serious concern for indigenous peoples. Additionally, indigenous peoples in the Philippines are less equipped to cope with disaster-related health challenges, such as those brought on by the recent devastating typhoons in the Philippines⁴⁸.

Through the framework set out by the UN in its General Comment No. 14 on the rights to health, it sheds light on the state's significant shortcomings in the realization of indigenous peoples' rights to health. Indigenous peoples experience limited access to health care services, which is exacerbated by a significantly higher poverty incidence. For example, the government has identified Sarangani province as having to require a particularly higher need for medical services at home, reflecting a broader lack of access to healthcare facilities⁴⁹. UNESCO has also reported that indigenous peoples were at greater risk during the COVID-19, largely due to the lack of key preventive measures such as sanitation facilities, clean drinking water, and other socio-economic barriers that restricts them access to basic social services⁵⁰.

The Sarangani Province in the Southern part of the Philippines, which has 46% of its people belonging to indigenous tribes, has 32 barangays within its jurisdiction to be classified under Geographically Isolated and Disadvantaged Area (GIDA). Despite the limited mechanism of the NICP to ensure indigenous peoples' right to health through vertical

⁴⁸ **United Nations Department of Economic and Social Affairs**, *State of the World's Indigenous Peoples: Indigenous Peoples' Access to Health Services* (UN 2015) https://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/SOWIP_Health.pdf.

⁴⁹ Philippine Council for Health Research and Development (PCHRD), 'Elderly in indigenous people communities need medical service at home, study affirms' (Philippine Council for Health Research and Development, 27 February 2024) https://www.pchrd.dost.gov.ph/news_and_updates/elderly-in-indigenous-people-communities-need-medical-service-at-home-study-affirms/

⁵⁰ Minnie Degawan, 'Indigenous peoples: Vulnerable, yet resilient' (UNESCO, 6 August 2021) <https://www.unesco.org/en/articles/indigenous-peoples-vulnerable-yet-resilient-0>

coordination with relevant government agencies, the Sarangani Indigenous Peoples Code which is adopted by the Province of Sarangani in 2019, has included the indigenous peoples ‘right to health in Article IV, Section 1 (f), providing that *“full access to health care services, education, science and technology, arts, culture, and sports to foster patriotism and nationalism, accelerate social progress, and promote total human freedom and development”*. The success of the indigenous peoples’ mandatory representative and indigenous rights advocates in Sarangani Province to pass the Indigenous Peoples’ Code has been critical in ensuring that local government units are compelled to appropriate funds is critical in promoting and protecting the indigenous peoples ‘right to health. The enactment of the Indigenous Peoples Code in Sarangani Province is critical as many indigenous peoples in the province live in far flung areas where community clinics are inaccessible and seeking medical assistance from physicians and healthcare professionals have been limited due to poverty⁵¹.

2.1.5 Right to Education

Article 18 section 4 of ICCPR provides for the protection of the freedom for parents to choose the educational institution and curriculum that is in alignment with their belief and convictions. ICESCR provides for more detailed provision on right to education in Article 13 part 2 which states the following rights: (a) free and compulsory primary education for all; (b) accessible secondary education, including technical and vocational training, which is to be progressively made free; (c) equally accessible higher education; and (d) promotion of fundamental education for those who have not completed primary education. Part 2 of Article 13 of ICESCR further provides that states shall respect the liberty of parents and legal guardians

⁵¹ Philippine Council for Health Research and Development (PCHRD), 'Elderly in indigenous people communities need medical service at home, study affirms' (27 November 2013) https://www.pchrd.dost.gov.ph/news_and_updates/elderly-in-indigenous-people-communities-need-medical-service-at-home-study-affirms/

to choose for their children's schools and ensure the moral and religious education of their children are in conformity with their own convictions, similar to Article 18 section 4 ICCPR.

In its General Comment 13, the UN ICESCR asserted that the right to education is an empowerment right and constitutes as a primary means through which marginalized groups, in this case the indigenous peoples, can lift themselves out of poverty and fully participate in their respective communities. The UN further underscored that education plays a critical role in empowering women and safeguarding children from exploitive and hazardous labor, and sexual abuse⁵². This assertion situates the right to education as a fundamental prerequisite for the realization of the indigenous peoples' rights to participation and self-determination. The indivisible link between the right to education and rights to participation and self-determination is further affirmed in Article 6 section 2 of the Universal Declaration of Human Rights (UDHR), which provides: *''education shall be directed to the development of the human personality, strengthening fundamental human rights, and promotion and understanding nations, racial and religious groups''*⁵³. ICESCR's General Comment 13 further outlines that the State party should ensure the following essential features of the right to health:

(a) availability- sufficient educational institutions, in terms of quantity as well as required development functions necessary, must be available.

(b) accessibility- without discrimination, education must be physically and economically accessible to all, especially for the vulnerable groups such as indigenous peoples.

(c) acceptability- the form and content of education must be relevant, culturally appropriate, and of sufficient quality.

⁵² UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 13: The Right to Education (Art. 13 of the Covenant)' (8 December 1999) UN Doc E/C.12/1999/10 <https://www.ohchr.org/en/resources/educators/human-rights-education-training/d-general-comment-no-13-right-education-article-13-1999>

⁵³ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

(d) adoptability- education must be flexible to adapt to the needs of the changing societies and communities and must be responsive to varying and diverse social and cultural settings.

Comparing to non-indigenous populations, indigenous peoples are less likely to advance beyond primary school, complete secondary education, or pursue higher education. This highlights the significant disparities in education affecting indigenous peoples in the Philippines⁵⁴. These disparities are rooted from the country's colonial history, as well as the historical and ongoing economic and systematic barriers that indigenous populations face.

Historically, the establishment of formal education during the Spanish and American colonial rule, systematically marginalized indigenous peoples. Educational policies were designed for indigenous peoples to assimilate to the dominant cultures without giving sufficient regard to their languages, knowledge systems and identities⁵⁵. This historical marginalization continued to put indigenous peoples at disadvantage in attaining higher education and perpetuating cycles of limited educational attainment and economic marginalization⁵⁶. Presently, indigenous students still face language barriers as mode of instructions in schools are delivered in Filipino, the dominant and national language of the Philippines, as well as in English. This language barrier affects the learning outcomes for indigenous students as they have scored lower performance in literacy and writing as compared to non-indigenous students⁵⁷.

⁵⁴ World Bank, 'Access to Education, Health Services, Economic Opportunities Key to Improving Welfare of Indigenous Peoples in the Philippines' (27 May 2024) <https://www.worldbank.org/en/news/press-release/2024/05/27/access-to-education-health-services-economic-opportunities-key-to-improving-welfare-of-indigenous-peoples-in-ph>

⁵⁵ Julius P Eduardo and Arnel G Gabriel, 'Indigenous Peoples and the Right to Education: The Dumagat Experience in the Provinces of Nueva Ecija and Aurora, in the Philippines' (2021) 11(2) *SAGE Open* <https://doi.org/10.1177/21582440211009491>

⁵⁶ Digna Adonis and Jen Couch, "'The Trails to Get There': Experiences of Attaining Higher Education for Igorot Indigenous Peoples in the Philippines' (2017) 57(2) *Australian Journal of Adult Learning* 197 <https://files.eric.ed.gov/fulltext/EJ1148625.pdf>

⁵⁷ Jona Jean C Dela Cruz and Daryll Jim Angel, 'Analysis of the Writing Performance and Difficulties of Indigenous Junior High School Students for the School Year 2024–2025' (2025) 9(5) *American Journal of*

The UN's General Comment 23 recognized that education serves as a primary means through which vulnerable groups, such as indigenous peoples, can alleviate themselves out of poverty. However, economic constraints further exacerbate the challenges faced by indigenous peoples in accessing education, ultimately limiting their achievement of higher education and pursuing higher economic opportunities. In a World Bank report, indigenous individuals who achieved only primary education are most likely be employed in agriculture or engage in self-employment⁵⁸. These sectors are typically marked by low wages, with agriculture recording an average daily income of only 270 Philippine Peso (4.26 euros)⁵⁹ only. This low wage creates makes it challenging for indigenous peoples to receive higher education and perpetuates a vicious cycle of poverty and educational disparity.

The geographical isolation of indigenous communities situated in remote areas restricts the availability of nearby educational institutions. Many indigenous students travel long distances to access basic and even secondary education which has also been link to students' poor academic performance⁶⁰. This physical inaccessibility of schools is further compounded by a lack of instructional planning model that is sensitive and inclusive to indigenous peoples and their knowledge systems⁶¹. Additionally, sending indigenous students to schools located farther away entails additional expenses such as transportation, boarding, and other related

Humanities and Social Sciences Research 196 <https://www.ajhssr.com/wp-content/uploads/2025/05/U25905196201.pdf>

⁵⁸ World Bank, 'Access to Education, Health Services, Economic Opportunities Key to Improving Welfare of Indigenous Peoples in the Philippines' (Press Release, 27 May 2024) <https://www.worldbank.org/en/news/press-release/2024/05/27/access-to-education-health-services-economic-opportunities-key-to-improving-welfare-of-indigenous-peoples-in-ph>

⁵⁹ Philippine Statistics Authority, '(ONS-Cleared) FO 7 Employment and Wages' (21 December 2021) https://psa.gov.ph/system/files/main-publication/%28ons-cleared%29_FO%207_Employment%20and%20Wages%20ao%20ONS-21122021_ONSF-signed.pdf

⁶⁰ Emerson D Peteros and others, 'Effects of School Proximity on Students' Performance in Mathematics' (2022) 10 *Open Journal of Social Sciences* 365 <https://www.scirp.org/journal/paperinformation?paperid=114887>

⁶¹ Sharon Joy D. Nacario and Jona Jean C. Dela Cruz, 'Learning Challenges of Indigenous Learners in the New Normal: A Phenomenological Study' (2023) ERIC ED630445 <https://files.eric.ed.gov/fulltext/ED630445.pdf>

cost⁶². This significantly adds burden and economic pressure for indigenous students in pursuing higher education and ultimately jobs in higher paying industries.

In response to these challenges, the Department of Education, anchoring on the provision of section 30 of IPRA, which states that States should provide all levels of education to indigenous peoples, and recognize the indigenous peoples right to control their education systems and education, enacted the Indigenous Peoples Education Framework with the following features, as identified by the DepEd to be important for indigenous learners: (a) rooted and contextualized in the ancestral domain; (b) responsive to the collective aspirations of communities for self-determination, and the recognition, promotion of their rights; (c) inclusive of the communities' worldview, history, spirituality, indigenous peoples knowledge and practices (IKSPs) and language; and (d) affirms the primary role of community IKSP holders and bearers in the teaching-learning process⁶³.

With this framework, the Department of Education implemented the Indigenous Peoples Education (IPed) Program through DepEd Order No. 62, s. 11, which aims to fulfill the right of indigenous peoples while responding to their respective cultural contexts, identities, and knowledge systems. Through IPed, activities such as curriculum contextualization through consultation with indigenous leaders, capacity building of teachers and school heads in implementing IPed Program and integrating it to their respective school implementing plans, with overarching goal to support indigenous peoples' integration to the mainstream economy⁶⁴. In October 2021, the Department of Education marked its ten (10) years of implementing the IPed Program by serving more than 2.5 million learners from more than 42,000 schools across

⁶² Sophie Gilliat-Ray, 'Geographies of Social Exclusion: Education Access in the Philippines' (2013) 35(2) *Children's Geographies* 187 <https://www.jstor.org/stable/23525091>

⁶³ Department of Education (Philippines), 'Indigenous Peoples Participation Framework (IPPF)' (2020) https://www.deped.gov.ph/wp-content/uploads/2020/10/Att-3_Draft-IPPF-for-Disclosure_CLEAN.pdf

⁶⁴ Department of Education (Philippines), *Implementing Guidelines on the Allocation and Utilization of the Indigenous Peoples Education (IPed) Program Support Fund for Fiscal Year (FY) 2016*, DepEd Order No. 22, s. 2016 (19 April 2016) https://www.deped.gov.ph/wp-content/uploads/2016/04/DO_s2016_22.pdf

the country. The Department aims to continue its initiative of contextualizing lesson plans, use of the local language as mode of instruction, involving tribal elders as teachers and mentors, hiring more teachers, and establishing IPEd high schools⁶⁵.

Katarina Tomaševski, the UN special rapporteur mandated on the UN's General Comment 13 on ICESCR, further elaborated *acceptability* to include the language of instruction, enforcement of minimum standards (quality, safety, environmental health), freedom from censorship, and recognition of children as subjects of rights. With these elaborations, it is apparent that the IPEd Program's initiatives in contextualizing lesson plans, using local languages as mode of instruction, and capacitating teachers and school heads for more culture sensitive methods of teaching contributes to ensuring the acceptability of education to indigenous learners. Tomaševski added that, *adaptability* means schools must adapt to the student to minimize or eliminate marginalization and, in cases where students cannot be taken to school, school should be taken to where the students are⁶⁶. IPEd's program includes recognizing ancestral lands to be places of learning and education for indigenous students to bring education to indigenous communities who are far from schools. This recognition further strengthens the link of the indigenous peoples' socio-economic development to their ancestral lands. However, given the current issues of land dispossessions that indigenous peoples face, the implementation of ancestral lands as a place of learning and education for indigenous students, is yet to be seen.

⁶⁵ Department of Education (Philippines), 'DepEd Marks 1st Decade of Indigenous Peoples Education Program (IPEd) with 2.5M Learners Served' (8 October 2021)

<https://www.deped.gov.ph/2021/10/08/deped-marks-1st-decade-of-indigenous-peoples-education-program-iped-with-2-5m-learners-served/>

⁶⁶ Katarina Tomaševski, *Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable* (Right to Education Primers No. 3, Raoul Wallenberg Institute of Human Rights and Humanitarian Law 2001) https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf

2.2 Adoption of Indigenous Rights to Local Legislation Bodies

As previously mentioned, the IPRA mandates that indigenous peoples must have a mandatory representation in the local legislative councils (*sanggunian*). This would include all levels of local governance from provincial, city, municipal and barangay level. This ensures that the right to participation is guaranteed to the indigenous communities, at the same time, they are given legislative and political representation in matters that affect their way of life and futures which would ultimately fulfill their right to self-determination.

At present, there are 4,294 indigenous peoples' mandatory representatives (IPMRs) across the different parts of the Philippines⁶⁷. Many of these representatives are serving at the barangay level with 3,852 IPMRs. In terms of proportion relative to the total number of local government units nationwide⁶⁸, the highest representations of IPMR are at the provincial level, accounting 39%, followed by the municipal level at 25%, the city level at 20%, and the barangay level with the least representation at 9%.

Several factors contribute to this distribution. Not all barangays, municipalities and cities have significant number of indigenous peoples and communities to require an indigenous people's representative. However, the provincial level, which is the highest tier of local administrative governance in the Philippines, covers a wider area and thus includes more indigenous communities, making the representation at this level more prevalent.

Despite the representation of indigenous peoples on the provincial legislative councils across the Philippines, the Department of Local and Interior Government reports that IPMRs still faces significant pushbacks and marginalization in the legislative councils⁶⁹. Despite the

⁶⁷ Open Government Partnership, 'Indigenous Representation in Local Legislative Councils (PH0065)' (2019) <https://www.opengovpartnership.org/members/philippines/commitments/PH0065/>

⁶⁸ Department of the Interior and Local Government (DILG), 'Regional and Provincial Summary: Number of Provinces, Cities, Municipalities, and Barangays as of 30 September 2020' (30 September 2020) <https://www.dilg.gov.ph/facts-and-figures/Regional-and-Provincial-Summary-Number-of-Provinces-Cities-Municipalities-and-Barangays-as-of-30-September-2020/32>

⁶⁹ Department of the Interior and Local Government, 'DILG directs 67 non-compliant LGUs to comply with IPRA law, ensure mandatory seat for IPs in sanggunian' (15 January 2024) <https://www.dilg.gov.ph/news/DILG->

legal mandates stipulated in IPRA, some local government councils refuse to recognize the IPMRs, citing lack of funding as one of the reasons. With this, the Department of Interior and local government has required 67 non-compliant local government units in the Philippines to comply to NICP's order for an IPMR in local government units. This pushback from the local government against mandatory representatives may intensify further as the decentralization and devolution of government functions have led to increased boundaries conflict and competition over resources, including ancestral lands⁷⁰.

[directs-67-non-compliant-LGUs-to-comply-with-IPRA-law-ensure-mandatory-seat-for-IPs-in-sanggunian/NC-2022-1052](#)

⁷⁰ June Prill-Brett, 'Contested Domains: The Indigenous Peoples Rights Act (IPRA) and Legal Pluralism in the Northern Philippines' (2007) 55 *Journal of Legal Pluralism and Unofficial Law* 11–36 <https://commission-on-legal-pluralism.com/system/commission-on-legal-pluralism/volumes/55/prillbrett-art.pdf>

3. Legal Tensions and Adapting to the Mandanas Ruling (Devolution)

3.1 The Legal Tensions in Implementing Land Rights under IPRA

Isagani Cruz vs DENR challenged the constitutionality of the IPRA. Cruz, a constitutionalist, claims that IPRA violated the Regalian Doctrine provided in Section 2, Article 12 of the 1987 Philippine Constitution which asserts the state ownership over all lands on all the public domain, minerals and natural resources. Specifically, Cruz challenged the constitutionality of Sections 3 (a), 3(b), 5, 6, 7(a), 7(b) of IPRA, which empowers the NICP to grant Certificates of Ancestral Domain Title (CADT). He argued that these provisions unconstitutionally transfer the ownership of public lands and resources to indigenous peoples which negates state authority over public lands under the Regalian doctrine⁷¹.

The Supreme Court's decision resulted in a 7-7 split decision, with half of the justices voting to strike down IPRA's provisions and half upholding them. At that time, the fifteenth justice seat was still vacated from the retirement of Justice Purisima. Under Section 7, Rule 56 of the Rules of Procedure, the deadlock led to the petition's dismissal, leaving IPRA intact without a substantive ruling on its merits. In a separate opinion of Justice Panganiban, he asserted that IPRA, specifically provisions which grants legal ownership to indigenous people through CADT and CALT, is unconstitutional because it *“defeats, dilutes or lessens the authority of the state to oversee the exploration, development, and utilization of natural resources”*. Justice Panganiban added that, the *Cariño* doctrine, which was upheld by Justice Holmes in 1909, which overruled the Spanish's Regalian Doctrine, was already superseded upon the drafting of the first Philippine constitution in 1935, which embodied again the Regalian doctrine. On the other hand, Justice Puno, in his separate opinion, expressed a different take as he asserted that indigenous lands are not public lands, as they are private lands which were continuously owned by indigenous communities since time immemorial. Justice Puno's

⁷¹ *Isagani Cruz and Cesar Europa v Secretary of Environment and Natural Resources*, G.R. No. 135385, Supreme Court of the Philippines, 6 December 2000

opinion on indigenous lands to be recognized as private properties was also supported by other advocacy groups in the Philippines and prominent indigenous rights advocates such as former Philippine senator Juan Flavio. Justice Puno added that identifying indigenous lands as public lands will nullify the whole of IPRA, as this is the core principle of the Act. Moreover, Justice Puno asserted that IPRA was enacted to address historical land dispossessions of indigenous peoples⁷².

Justice Panganiban's views on land rights for indigenous peoples as provided in IPRA can be seen as limiting and contravening provision to state authority. However, it is important to note that indigenous communities continue to face constant threats from state-backed activities such as exhaustive mining activities, logging, construction of mega-projects, and red-tagging and extra-judicial killings related to land disputes. Reports from human rights organizations and government agencies also highlights the significant disadvantage that indigenous peoples face in accessing basic rights, as well as socio-economic opportunities. With this, it is the state's obligation to ensure that indigenous peoples' rights, as provided within international human rights frameworks such as the ICCPR and ICESCR, are fulfilled, respected, and protected. Justice Puno's opinion upholds the social justice principle of equity, which, as the former Philippine President Ramon Magsaysay once said, *''those who have less in life, should have more in law''*.

Both the separate opinions of Justice Panganiban and Justice Puno are not binding as only the majority opinion, which none in this case given the split decision of the Supreme Court, constitutes a binding precedent. Nonetheless, separate opinions may be cited as persuasive authority in future cases and legal arguments. These separate opinions also highlight the still

⁷² Isagani Cruz and Cesar Europa v Secretary of Environment and Natural Resources G.R. No. 135385, Separate Opinion of Justice Panganiban (SC, 6 December 2000) <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/36882>

rigid interpretation and enforcement of indigenous rights in the Philippines' judicial sphere. As the current situation demonstrates how indigenous lands and the disputes arising from it put indigenous peoples in increasingly vulnerable and precarious situations by state and non-state actors, the judiciary must play a critical role in checking the potential overreach of state authority. Ensuring that the rights of marginalized groups, including indigenous peoples, as guaranteed in ICCPR and ICESCR, should be a core objective of the judiciary as part of the constitutional system of checks and balances.

These legal tensions are not only being demonstrated between the IPRA and the 1987 Philippine Constitution, but also within the IPRA itself. Section 78 of the IPRA declares that Baguio City, which is home to many indigenous peoples of Northern Philippines, shall remain *“to be governed by its own Charter and all lands proclaimed as part of its own townsite reservation...”*⁷³. This provision has been upheld by the Supreme Court in the case of the Republic of the Philippines v National Commission on Indigenous Peoples⁷⁴, effectively nullifying the ancestral land titles issued by the NICP in Baguio City by invoking section 78 provision of IPRA.

The Supreme Court emphasized in one of its landmark rulings that the IPRA provisions regarding land rights do not supersede prior proclamations that have already granted property rights, such as those granted to the government in the case of Baguio City⁷⁵. This means that, since Baguio City was conferred as a townsite by the Philippine government, that is a public land, it cannot be anymore claimed as a private property, even by indigenous peoples who may have sufficient proof continued residence as indigenous peoples. This recent interpretation stands in contrast to the opinion of the then Justice Puno in Cruz v. DENR, where he asserted

⁷³ Republic Act No. 8371 (Indigenous Peoples' Rights Act of 1997) (Philippines) <https://ncip.gov.ph/wp-content/uploads/2020/03/IPRA-LAW.pdf>

⁷⁴ Republic of the Philippines v National Commission on Indigenous Peoples, G.R. No. 209449, 30 July 2024, Supreme Court of the Philippines https://lawphil.net/judjuris/juri2024/jul2024/gr_209449_2024.html

⁷⁵ G.R. No. 208480, Supreme Court of the Philippines, 16 May 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65663>

that the IPRA is designed to address historical injustices committed against the indigenous peoples, particularly during the Spanish and American colonial period, when large areas of Baguio City were converted into government property, such as the case of Camp John Hay.

Furthermore, the Supreme Court's interpretation of Section 78 may enable the continued denial of ancestral land rights to the *Ibaloi* tribe despite their long-standing historical occupancy in Baguio City. This ruling does not align and potentially undermines the purpose of IPRA, as affirmed by then Justice Puno, that is to correct such historical injustices such as land dispossessions during colonial periods.

3.2 Decentralization and Devolution of Governance and What It Means to Indigenous Rights

Following the Supreme Court Ruling in the Mandanas-Garcia case⁷⁶, the Philippines in 2021 implemented the Executive Order No. 138 which effectively devolves a broad range of services, functions and facilities from the national government to the local government units. Several basic services such as health services immediately took effect to be devolved to the local government units, from the previous national agency which was the Department of Health. Devolved health services include: (1) operation and maintenance of hospitals; (2) health centers units; (3) implementation of programs for primary health care; (4) maternal and child health; (5) disease control and nutrition, among others⁷⁷. The devolution of government function provides more power to the local government units through increased fiscal and policy autonomy.

⁷⁶ Republic of the Philippines, through the Office of the Solicitor General, Office of the Senior Citizens Affairs (OSCA), Department of Social Welfare and Development (DSWD) v Pryce Corporation, Inc, G.R. No. 207246, 10 February 2021 (Supreme Court of the Philippines)

<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64325>

⁷⁷ Maria Christina A. Parcon-Santos and others, 'Access to healthcare and financial risk protection for older adults in the Philippines: Progress towards universal health coverage' (2024) 9 *The Lancet Regional Health – Western Pacific* 100260

This devolution and localization of government function means that greater importance should be placed on a strong indigenous peoples' mandatory representation in the local government units. While this shift offers potential for more localized and contextualized responses to issues affecting the indigenous peoples' right to health, the effectiveness of health services largely depends on the political and governance decisions and agenda of the local government units' chief executives.

It is also important to note that the right to health is not just limited to healthcare services but includes underlying determinants of health such as safe drinking water and adequate sanitation and safe food and adequate nutrition⁷⁸, basic services that are also devolved to the local government unit. These underlying health determinants, particularly stunting and being underweight, has been more prevalent among indigenous children and adolescents compared to children not belonging to indigenous communities⁷⁹.

This implies that, not only should indigenous people mandatory representatives be instituted to more than 26% of provincial governance, but also for the NICP and the DILG to should ensure that, despite a differing political agenda, indigenous rights and initiatives aiming to bridging health disparities by improving health services availability, accessibility, acceptability and quality of health services, are guaranteed by the local government units. These rights can be guaranteed through enacting indigenous peoples codes which provides for a local legal anchor for budget appropriations to programs and initiatives necessary to realize health outcomes and address issues affecting underlying health determinants of indigenous peoples. Efforts to pass local indigenous peoples codes continue to move slow, such as case of the

⁷⁸ Office of the United Nations High Commissioner for Human Rights (OHCHR), 'The Right to Health' (Factsheet No 31, 2008) <https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf>

⁷⁹ Charmaine A Duante, Rovea Ernazelle G Austria, Apple Joy D Ducay, Cecilia Cristina S Acuin and Mario V Capanzana, 'Nutrition and Health Status of Indigenous Peoples (IPs) in the Philippines: Results of the 2013 National Nutrition Survey and 2015 Updating Survey' (2022) 151 Philippine Journal of Science 513–531 https://philjournalsci.dost.gov.ph/images/pdf/pjs_pdf/vol151no1/nutrition_and_health_status_of_indigenous_people_in_the_Philippines.pdf

Bangsamoro Autonomous Region and the province of Bukidnon. At present, indigenous peoples' codes for these regions have been proposed to the local government unit by their respective indigenous peoples' mandatory representatives through local legislative process and are yet to be enacted⁸⁰.

⁸⁰ Philippine Information Agency, 'BARMM lawmakers file Indigenous Peoples code' (Press Release, 27 February 2024) <https://mirror.pia.gov.ph/press-releases/2024/02/27/barmm-lawmakers-file-indigenous-peoples-code>

Conclusion

Despite the Philippines having enacted the indigenous Peoples Rights Act (IPRA) of 1997, which serves as a comprehensive national legal framework for indigenous rights in the Philippines, the state continues to fall short in fully realizing the rights of indigenous peoples as provided in the ICCPR and ICESCR. These gaps are specifically highlighted in the limited access of indigenous peoples to basic services such as education and health care, and the increasing economic disparities that indigenous peoples face. Land dispossession remains unaddressed, while land disputes would often lead to red-tagging and extra-judicial killings. Cases rampant encroachment of indigenous lands for expansive mining activities which violates the FPIC principle that protects indigenous peoples' right to participate and self-determination calls for stronger institutionalization of IPRA across different parts and levels of governance.

Moreover, the legal tension in the provisions of IPRA should be addressed. The Supreme Court ruling on the *Isagani Cruz vs DENR* revealed that the current 1987 Constitution, according to the separate opinion of Justice Panganiban, may have already superseded the *Cariño* doctrine which established and laid the foundation of indigenous peoples' rights in the Philippines in 1909. This finding raises important issues as, while the *Cariño* doctrine was seen as a positive progress in addressing historical and colonial injustices, according to Justice Panganiban, the Philippines' rejection of American rule in the Philippines in 1935 upon the drafting of the first Philippine constitution, not only rejects the progress made on the indigenous rights in the *Cariño* doctrine, but again recognizes the Regalian doctrine used by the Spanish Crown in colonizing the Philippines and caused the historical and colonial injustices of the indigenous peoples.

Judicial decisions have not ruled in favor to indigenous peoples such as Supreme Court rulings on Section 78 of the IPRA have enforced potential violations on the non-discrimination rights of indigenous peoples in Baguio City and went against the purpose of IPRA which is to

correct historical injustices of land dispossession during the colonial periods in the Philippines. Furthermore, the Supreme Court, effectively curtailing the jurisdiction of NICP in exercising its mandate to serve as quasi-judicial body to hear complaints from indigenous peoples on encroachments potentially committed by private groups and individuals, limits the NICP's power to safeguard indigenous people's rights, specifically against external actors that provides the most threat to indigenous peoples and their rights.

A strong institutionalization for indigenous rights also includes strengthening the mandate and independence of the NICP in protecting and being a primary oversight of indigenous peoples and their rights. The NICP's power has been delimited by the following two factors: (a) judicial decisions by the Supreme Court which curtailed NICP's jurisdiction to act as quasi-judicial body for indigenous land disputes that involves private actors; (b) the devolution of governance functions from national level to local government units; (c) and being under the Office of the President. This limitation should be addressed by strengthening NICP's mandate as a quasi-judicial body for indigenous disputes. Since the devolution of government functions, NICP should have a stronger presence on the provincial, city and municipal levels of governance through a comprehensive and more institutionalized mandatory representation of indigenous peoples. These two mandates are provided in the IPRA but are currently limited. The NICP being under the Office of the President makes its mandates vulnerable to be undermined by conflicting priorities of the President. To strengthen the NICP and its mandates, it is critical to ensure its independence from the Office of the President, such as the independence conferred the human rights commission.

The devolution of governance functions, including those of the Department of Health, to local government units under the local Government Code of 1991 has significantly affected

the NICP's oversight and vertical coordination with other national agencies⁸¹. This shift has decentralized the decision-making functions to the local government units which allows them to have more autonomy in setting agenda, implementing programs and budget appropriations. With this shift, the presence of indigenous peoples' mandatory representatives within the local government units plays a more crucial role in advancing and safeguarding indigenous peoples' rights. With identified challenges faced by indigenous peoples' representatives such as not being recognized by their local government units, push backs from local executive chiefs, among others, it is important for NICP and DILG to ensure that local government units carry their mandate as stipulated in IPRA, to recognize their respective indigenous mandatory representatives.

Moreover, given the dynamic political landscape at the local level, it is essential to enact indigenous peoples' codes to ensure the sustainability of programs and budget appropriation dedicated to addressing the issues and needs of indigenous communities. The implementation of indigenous peoples' codes not only addresses the disconnect between national laws and the lived realities of indigenous peoples in their respective communities, but it also establishes a localized indigenous rights framework in the local legislative units that will guarantee the sustainability of indigenous rights programs, and budget appropriations through provincial, city and municipal ordinances. This localized legal framework serves as an anchor for the realization and protection of indigenous rights, which further strengthens the position of indigenous peoples' mandatory representatives in ensuring that their rights are upheld regardless of shifts in political priorities.

⁸¹ Janet S Cuenca, 'Health Devolution in the Philippines: Lessons and Insights' (Discussion Paper Series No 2018-36, Philippine Institute for Development Studies, December 2018)
<https://pidswebs.pids.gov.ph/CDN/PUBLICATIONS/pidsdps1836.pdf>

Bibliography

‘Access to Education, Health Services, Economic Opportunities Key to Improving Welfare of Indigenous Peoples in the Philippines’ (World Bank)

<https://www.worldbank.org/en/news/press-release/2024/05/27/access-to-education-health-services-economic-opportunities-key-to-improving-welfare-of-indigenous-peoples-in-ph> accessed 31 January 2025.

Adonis, Digna and Couch, Jen, “‘The Trails to Get There’’: Experiences of Attaining Higher Education for Igorot Indigenous Peoples in the Philippines’ (2017) 57(2)

Australian Journal of Adult Learning 197

<https://files.eric.ed.gov/fulltext/EJ1148625.pdf>

Amnesty International, ‘Philippines: Nickel mining projects approved despite inadequate consultation and serious risks to communities’ health and environment’ (13 January 2025)

Asia Indigenous Peoples Pact (AIPP), *Situation of the Right to Health of Indigenous Peoples in Asia* (OHCHR, 2016)

<https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Health/AIPP.pdf>

Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), *In Defense of Land Rights: A Monitoring Report on Land Conflicts in Six Asian Countries* (ANGOC 2019)

Candelaria, Sedfrey M., ‘Comparative Analysis on the ILO Indigenous and Tribal Peoples Convention No. 169, UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Indigenous Peoples’ Rights Act (IPRA) of the Philippines’

Carino v. Insular Government, 212 U.S. 449, 29 S. Ct. 334 (1909)

Catalan, Mia Laine C., ‘The Regalian Doctrine: A Study of Supreme Court Decisions from 2002-2011’

Cuenca, Janet S., ‘Health Devolution in the Philippines: Lessons and Insights’ (Discussion Paper Series No 2018-36, Philippine Institute for Development Studies, December 2018)

<https://pidswebs.pids.gov.ph/CDN/PUBLICATIONS/pidsdps1836.pdf>

Cruz, Isagani and Europa, Cesar v Secretary of Environment and Natural Resources and Others, G.R. No. 135385, Supreme Court of the Philippines, 6 December 2000.

Available at: https://lawphil.net/judjuris/juri2000/dec2000/gr_135385_2000.html

Daco v. Cabajar, G.R. No. 222611, Supreme Court of the Philippines, 15 November 2021

Dela Cruz, Jona Jean C. and Angel, Daryll Jim, 'Analysis of the Writing Performance and Difficulties of Indigenous Junior High School Students for the School Year 2024–2025' (2025) 9(5) *American Journal of Humanities and Social Sciences Research* 196 <https://www.ajhssr.com/wp-content/uploads/2025/05/U25905196201.pdf>

Department of Education (Philippines), 'DepEd Marks 1st Decade of Indigenous Peoples Education Program (IPEd) with 2.5M Learners Served' (8 October 2021) <https://www.deped.gov.ph/2021/10/08/deped-marks-1st-decade-of-indigenous-peoples-education-program-iped-with-2-5m-learners-served/>

Department of Education (Philippines), 'Indigenous Peoples Participation Framework (IPPF)' (2020) https://www.deped.gov.ph/wp-content/uploads/2020/10/Att-3_Draft-IPPF-for-Disclosure_CLEAN.pdf

Department of Education (Philippines), Implementing Guidelines on the Allocation and Utilization of the Indigenous Peoples Education (IPEd) Program Support Fund for Fiscal Year (FY) 2016, DepEd Order No. 22, s. 2016 (19 April 2016) https://www.deped.gov.ph/wp-content/uploads/2016/04/DO_s2016_22.pdf

Department of the Interior and Local Government (DILG), 'DILG directs 67 non-compliant LGUs to comply with IPRA law, ensure mandatory seat for IPs in sanggunian' (15 January 2024) <https://www.dilg.gov.ph/news/DILG-directs-67-non-compliant-LGUs-to-comply-with-IPRA-law-ensure-mandatory-seat-for-IPs-in-sanggunian/NC-2022-1052>

Department of the Interior and Local Government (DILG), 'Regional and Provincial Summary: Number of Provinces, Cities, Municipalities, and Barangays as of 30 September 2020' (30 September 2020) <https://www.dilg.gov.ph/facts-and-figures/Regional-and-Provincial-Summary-Number-of-Provinces-Cities-Municipalities-and-Barangays-as-of-30-September-2020/32>

Dwayne Mamo (ed), *The Indigenous World 2025* (IWGIA 2025) <https://iwgia.org/en/resources/publications/5773-the-indigenous-world-2025.html>

Duante, Charmaine A., Austria, Rovea Ernazelle G., Ducay, Apple Joy D., Acuin, Cecilia Cristina S., and Capanzana, Mario V., 'Nutrition and Health Status of Indigenous Peoples (IPs) in the Philippines: Results of the 2013 National Nutrition Survey and 2015 Updating Survey' (2022) 151 *Philippine Journal of Science* 513–531

Emerson D. Peteros and others, 'Effects of School Proximity on Students' Performance in Mathematics' (2022) 10 *Open Journal of Social Sciences* 365

ENNHRI (European Network of National Human Rights Institutions), *Applying a Human Rights-Based Approach to Poverty Reduction and Measurement: A Guide for National Human Rights Institutions* (2019) <https://ennhri.org/wp-content/uploads/2019/11/Applying-a-Human-Rights-Based-Approach-to-Poverty-Reduction-and-Measurement-A-Guide-for-NHRIs.pdf>

Faith Argosino, 'Surigao City residents oppose large-scale illegal mining' (*INQUIRER.net*, 10 December 2024) <https://newsinfo.inquirer.net/2014273/surigao-city-residents-oppose-large-scale-illegal-mining>

Franco JC and Borrás SM, 'Struggles Over Land Resources in the Philippines' (2007) 19(1) *Peace Review* 67 <https://doi.org/10.1080/10402650601181923>

G.R. No. 208480, Supreme Court of the Philippines, 16 May 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65663>

Gilliat-Ray, Sophie, 'Geographies of Social Exclusion: Education Access in the Philippines' (2013) 35(2) *Children's Geographies* 187 <https://www.jstor.org/stable/23525091>

June Prill-Brett, 'Contested Domains: The Indigenous Peoples Rights Act (IPRA) and Legal Pluralism in the Northern Philippines' (2007) 55 *Journal of Legal Pluralism and Unofficial Law* 11–36 <https://commission-on-legal-pluralism.com/system/commission-on-legal-pluralism/volumes/55/prillbrett-art.pdf>

'Lessons from Implementing Free Prior and Informed Consent (FPIC) in the Philippines: A Case Study for Teaching Purposes - Facilitator - Centre for Social Responsibility in Mining' <https://www.csr.mq.edu.au/publications/lessons-from-implementing-free-prior-and-informed-consent-fpic-in-the-philippines-a-case-study-for-teaching-purposes-facilitator-s-guide-july-2016>

Marcos Jr., Ferdinand R. "Keynote Speech of President Ferdinand R. Marcos Jr. for the ASEAN Business and Investment Summit (ABIS) 2024." *Presidential Communications Office*, 9 October 2024, <https://pco.gov.ph/presidentialspeech/keynote-speech-of-president-ferdinand-r-marcos-jr-for-the-aseanbusiness-and-investment-summit-abis-2024/>

Minnie Degawan, 'Indigenous peoples: Vulnerable, yet resilient' (*UNESCO*, 6 August 2021) <https://www.unesco.org/en/articles/indigenous-peoples-vulnerable-yet-resilient-0>

National Commission on Indigenous Peoples (NCIP), 'Administrative Order No. 1, Series of 1998' (1998) <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/10/46070>

National Commission on Indigenous Peoples (NCIP), 'Administrative Order No. 1, Series of 1998' (1998) <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/11/50162>

National Commission on Indigenous Peoples (NCIP), 'Administrative Order No. 1, Series of 2006: The Free and Prior Informed Consent (FPIC) Guidelines of 2006' (28 July 2006) <https://ncip.gov.ph/wp-content/uploads/2020/09/ncip-ao-no-1-s-2006-fpic-guidelines.pdf>

National Commission on Indigenous Peoples, Administrative Order No. 3, Series of 2018, Revised National Guidelines for the Mandatory Representation of Indigenous

Peoples in Local Legislative Councils and Policy-making Bodies (6 February 2018)
<https://ncip.gov.ph/wp-content/uploads/2020/09/ncip-ao-no-3-s-2018-ipmr.pdf>

National Commission on Indigenous Peoples, Administrative Order No. 4, Series of 2012: Revised Omnibus Rules on Delineation and Recognition of Ancestral Domains and Lands (NCIP 2012) <https://ncip.gov.ph/wp-content/uploads/2020/09/ncip-ao-no-4-s-2012-revised-omnibus.pdf>

National Commission on Indigenous Peoples, Administrative Order No. 5, Series of 2012: NCIP Guidelines on the Merit-Based Scholarship (NCIP-MBS) and Educational Assistance (NCIP-EA) (2012)

National Commission on Indigenous Peoples, Mandate, Vision and Mission (NCIP)
<https://ncip.gov.ph/mandate-vision-and-mission/>

Office of the United Nations High Commissioner for Human Rights (OHCHR), 'The Right to Health' (*Factsheet No. 31*, 2008)
<https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf>

Onsay, Emmanuel A. and Rabajante, Jomar F., 'Do Indigenous People Get Left Behind? An Innovative Methodology for Measuring the Unmeasurable Economic Conditions and Poverty from the Poorest Region of Luzon, Philippines' [2024] *Heliyon* e41076

Open Government Partnership, 'Indigenous Representation in Local Legislative Councils (PH0065)' (2019)
<https://www.opengovpartnership.org/members/philippines/commitments/PH0065/>

PARIS21, *Metagora: The Final Report* (OECD 2007)
https://paris21.org/sites/default/files/Metagora-final_EN.pdf

Parcon-Santos, Maria Christina A. et al., 'Access to healthcare and financial risk protection for older adults in the Philippines: Progress towards universal health coverage' (2024) 9 *The Lancet Regional Health – Western Pacific* 100260

Philippine Council for Health Research and Development (PCHRD), 'Elderly in indigenous people communities need medical service at home, study affirms' (27 November 2013) https://www.pchrd.dost.gov.ph/news_and_updates/elderly-in-indigenous-people-communities-need-medical-service-at-home-study-affirms/

Philippine Information Agency, 'BARMM lawmakers file Indigenous Peoples code' (Press Release, 27 February 2024) <https://mirror.pia.gov.ph/press-releases/2024/02/27/barmm-lawmakers-file-indigenous-peoples-code>

Philippine Statistics Authority, '(ONS-Cleared) FO 7 Employment and Wages' (21 December 2021) https://psa.gov.ph/system/files/main-publication/%28ons-cleared%29_FO%207_Employment%20and%20Wages%20ao%20ONS-21122021_ONSF-signed.pdf

Philippines, Department of Environment and Natural Resources, Administrative Order No. 2, series of 2018, Revised Guidelines on the Formulation of the Ancestral Domain Sustainable Development and Protection Plan (ADSDPP)

Philippines, National Commission on Indigenous Peoples, Administrative Order No. 1, Series of 1998, Rules and Regulations Implementing Republic Act No. 8371, "The Indigenous Peoples' Rights Act of 1997" (9 June 1998)
<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/10/46070>

Philippines, National Commission on Indigenous Peoples, Administrative Order No. 3, series of 2018, Revised National Guidelines for the Mandatory Representation of Indigenous Peoples in Local Legislative Councils and Policy-making Bodies

Republic Act No. 7942, The Philippine Mining Act of 1995 (Philippines) art. 3, s. 16

Republic Act No. 8371 (Indigenous Peoples' Rights Act of 1997) (Philippines)
<https://ncip.gov.ph/wp-content/uploads/2020/03/IPRA-LAW.pdf>

Republic of the Philippines v National Commission on Indigenous Peoples, G.R. No. 208480, Supreme Court of the Philippines, 25 September 2019

Republic of the Philippines v National Commission on Indigenous Peoples, G.R. No. 209449, 30 July 2024, Supreme Court of the Philippines
https://lawphil.net/judjuris/juri2024/jul2024/gr_209449_2024.html

Republic of the Philippines, through the Office of the Solicitor General, Office of the Senior Citizens Affairs (OSCA), Department of Social Welfare and Development (DSWD) v Pryce Corporation, Inc, G.R. No. 207246, 10 February 2021 (Supreme Court of the Philippines)
<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64325>

Sarao, Zacarian, 'Illegal mining allegedly perpetrated by Chinese in Surigao City leaves deep, painful scars' (*INQUIRER.net*, 29 January 2025)
<https://newsinfo.inquirer.net/2029369/illegal-mining-in-surigao-city-leaves-deep-painful-scars>

Scottish Human Rights Commission, *A Human Rights Based Approach* (2019)
https://www.scottishhumanrights.com/media/1409/shrc_hrba_leaflet.pdf

Sedfrey M. Candelaria, 'Comparative Analysis on the ILO Indigenous and Tribal Peoples Convention No. 169...' [repeated, already listed under "Candelaria"]

Sharon Joy D. Nacario and Jona Jean C. Dela Cruz, 'Learning Challenges of Indigenous Learners in the New Normal: A Phenomenological Study' (2023) ERIC ED630445 <https://files.eric.ed.gov/fulltext/ED630445.pdf>

Tomaševski, Katarina, *Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable* (Right to Education Primers No. 3, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, 2001)

https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf

UN Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)* (8 December 1999) UN Doc E/C.12/1999/10 <https://www.ohchr.org/en/resources/educators/human-rights-education-training/d-general-comment-no-13-right-education-article-13-1999>

UN Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)* (11 August 2000) E/C.12/2000/4 <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/Health/GC14.pdf>

UN Committee on Economic, Social and Cultural Rights, *General Comment No. 26: Land and Economic, Social and Cultural Rights* UN Doc E/C.12/GC/26 (22 December 2022) <https://www.ohchr.org/en/documents/general-comments-and-recommendations/ec12gc26-general-comment-no-26-2022-land-and>

UN Human Rights Committee, *General Comment No. 23: Article 27 (Rights of Minorities)*, CCPR/C/21/Rev.1/Add.5 (8 April 1994)

United Nations, *The Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies* (2003) <https://unsdg.un.org/resources/human-rights-based-approach-development-cooperation-towards-common-understanding-among-un>

United Nations Department of Economic and Social Affairs, *State of the World's Indigenous Peoples: Indigenous Peoples' Access to Health Services* (UN 2015) https://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/SOWIP_Health.pdf

Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

Villanueva PM, Ramos VB, Villaroman LV and Villanueva AA, 'Indigenous Peoples Mandatory Representation in the Local Legislative Councils: Status, Challenges and Trajectories' (2017) 4 *Open Access Library Journal* e4168 <https://doi.org/10.4236/oalib.1104168>

World Bank, 'Access to Education, Health Services, Economic Opportunities Key to Improving Welfare of Indigenous Peoples in the Philippines' (27 May 2024) <https://www.worldbank.org/en/news/press-release/2024/05/27/access-to-education-health-services-economic-opportunities-key-to-improving-welfare-of-indigenous-peoples-in-ph>

World Bank, 'No-Data-No-Story-Indigenous-Peoples-in-the-Philippines' <https://thedocs.worldbank.org/en/doc/baa43cc91ec55266a538e9023c528bd7->

[0070062024/original/No-Data-No-Story-Indigenous-Peoples-in-the-Philippines.pdf](#)
accessed 1 February 2025