

**Comparative analysis on ILO Convention No. 169,  
UN Declaration on the Rights of Indigenous Peoples  
(UNDRIP), and the Indigenous Peoples' Rights Act (IPRA)  
of the Philippines**

by

Sedfrey M. Candelaria

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## Foreword



### **List of abbreviations**

CADTs	—	Certificate of Ancestral Domain Titles
CARL	—	Comprehensive Agrarian Reform Law
CERD	—	Convention on the Elimination of All Forms of Racial Discrimination
CHED	—	Commission on Higher Education
CRC	—	Convention on the Rights of the Child
DECS	—	Department of Education, Culture and Sports
DOLE	—	Department of Labor and Employment
GOs	—	Government Offices
ICCs	—	Indigenous Cultural Communities
ILO	—	International Labour Organization
IPs	—	Indigenous Peoples
IPRA	—	Indigenous Peoples' Rights Act
IRR	—	Implementing Rules and Regulations
NCIP	—	National Commission on Indigenous Peoples
NGOs	—	Non-governmental Organizations
RHOs		Regional Hearing Offices
UNDRIP	—	UN Declaration on the Rights of Indigenous Peoples





# **Comparative analysis on ILO Convention No. 169, UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Indigenous Peoples' Rights Act (IPRA) of the Philippines**

by

Sedfrey M. Candelaria<sup>1</sup>

## **Executive Summary**

In recognition, promotion and protection of the rights of Indigenous Cultural Communities and Indigenous Peoples (ICCs/IPs), the Philippines has enacted the Indigenous Peoples' Rights Act of 1997 (IPRA). This law substantially incorporates and contains the minimum standards and principles of the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention No. 169 (ILO Convention No. 169), which was adopted in 1989 and the United Nations Declaration on the Rights of Indigenous Peoples of 2007 (UNDRIP). The ILO Convention No. 169, which revises and supersedes the 1957 ILO Indigenous and Tribal Populations Convention No. 107 (ILO Convention No. 107), is the only international legal instrument solely for the protection of ICCs/IPs that is open for ratification by States. The Philippines, however, until now has not ratified ILO Convention No. 169.

A comparative analysis of ILO Convention No. 169, UNDRIP, and IPRA shows that the latter instrument has drawn heavily from the standards set in ILO Convention No. 169, while UNDRIP, being the latest of the instruments, further articulates, with emphasis on the roles of the United Nations and international cooperation, the rights of the IPs as enshrined in the two earlier instruments. The three legal instruments (ILO Convention No. 169, IPRA, and UNDRIP) have much in common and therefore should be considered as complementary and mutually reinforcing. For instance, they are all grounded in a same rationale that is to address extreme marginalisation of IPs that has its root causes into historical injustices and discriminations. The three instruments deal with a wide range of similar rights and themes, including description of IPs; concept of land and right of ownership over it; right to natural resources; right against displacement and unauthorised intrusion; government responsibility and special measures; human rights; consultation, participation and free and informed consent; development; cultural integrity and customary laws; recruitment and conditions of employment; education and means of communication; vocational training, handicrafts and rural industries; social security and health; and administration.

All three instruments affirm the human rights and fundamental freedoms of ICCs/IPs on the basis of equality and non-discrimination. They all prohibit the use of force and coercion against the IPs and the exaction of compulsory personal services. Moreover, ICCs/IPs whose rights are abused should be able to seek redress through legal proceedings as emphasized in the three instruments.

On lands, all three instruments recognize the collective and individual aspect of the right of ownership and possession of the IPs over the lands they traditionally occupy or have had access to.

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Since these lands form an integral part of their lives and culture and thus essential for their survival, the government is mandated to undertake measures to protect their rights of ownership and possession over these lands. IPRA provides for a process of delineation or identification of the IPs' ancestral land and ancestral domains for the purpose of issuance of titles of ownership of IPs over these lands.

However, each instrument has its specificities and particular provisions that either others do not cover or deal with differently.

The **UNDRIP** enjoys strong moral weight that it derives from the overwhelming support by countries and IPs organisations worldwide. It, for instance, deals more explicitly and strongly with the issues of militarization of IPs' lands, protection of traditional knowledge and the right to self-determination. However, the UNDRIP is not a legally binding instrument and it does not have a supervisory mechanism to monitor its implementation.

As domestic instrument, **IPRA** is more detailed than the other two instruments, because it not only states the rights but also creates and organises the institutions, such as the National Commission on Indigenous Peoples (NCIP), the primary government agency that is in charge of the implementation. IPRA gives special emphasis on indigenous women, children, and youth. It also states that particular attention should be paid to the rights and special needs of the elderly and differently-abled IPs. IPRA also provides for IP rights during armed conflict, as well as penalties for violation of provisions related thereto. Under both ILO Convention No. 169 and IPRA, the government must implement their provisions, with the participation of the IPs, and coordinate all efforts of these peoples. Like the UNDRIP, IPRA emphasizes the mechanisms for redress of grievances in the event of violation of IP rights.

**ILO Convention No. 169** contains or emphasizes in a particular way certain rights of IPs. For instance, its provision on cross-border contacts and communications has no equivalent in IPRA. With regard to vocational training, ILO Convention No.169 is more specific and elaborate in the type of measures and programmes. It provides that any special training programmes shall be based on the economic environment, social, and cultural conditions, and practical needs of the peoples concerned. Since the goal is for the IPs to gradually assume responsibility over the training programme, they must be consulted and have participation from its formulation to implementation and evaluation.

ILO Convention No.169 could be seen as both a legal and technical instrument because it does not simply state rights, as most human rights instruments do, but goes beyond by providing technical guidance on how to implement those rights, and which measures, precautions, or safeguards to take in order to ensure full enjoyment of those rights by the IPs.

Furthermore, ILO Convention No.169 comes with ILO's supervisory mechanisms, technical assistance programmes, and tripartite constituents (government, employers, and workers) that would facilitate the monitoring of the implementation of IPRA. ILO Convention No. 169 would also increase international visibility of Philippines' domestic legal and institutional framework on IPs. Through the process of social dialogue and reporting, or through the established complaints procedures, the government and ICCs/IPs will have sufficient access to international experts' guidance and assistance.

Given these advantages and benefits, it would be for the best interest of the ICCs/IPs if the Philippine government moves to ratify ILO Convention No. 169. The ILO Convention No. 169 would complement IPRA, thus further strengthening the promotion and protection of IP rights by addressing in greater depth and emphasis the areas which the IPRA might have thinly covered. Ratification of ILO Convention No. 169 would serve to guide development policy and assistance. Thus, while most of the provisions of ILO Convention No.169 are already articulated in IPRA, ratification of ILO Convention No.169 will reinforce these rights and their fulfilment.

## INTRODUCTION

The ILO Indigenous and Tribal Peoples Convention (ILO Convention No. 169) was adopted in 1989, in amendment to the Indigenous and Tribal Populations Convention, 1957 (ILO Convention No. 107), whose integrationist approach became obsolete and detrimental to the objective of fostering IP rights.

ILO Convention No. 169 recognises IPs' distinct identity, culture, customs, way of life and traditions and their right to control their own development, within the nation-states where they live – and the responsibilities of governments to protect these rights. The Convention aims at redressing discriminations against IPs, which result in not having a say or participation in decision making. It covers a comprehensive range of issues affecting these peoples, such as rights to land and natural resources, health, education, vocational training, conditions of employment, and development. ILO Convention No. 169 is based on the fundamental principles of consultation and participation of IPs on any matter which will affect them, such as legislative and administrative measures, government projects, mining activities, etc.

As of date, ILO Convention No. 169 has been ratified by 22 countries, located in Latin America, Asia, and Africa. There are emerging good practices in implementing ILO Convention No. 169. Over the last years, the ILO Convention No. 169 has been stretching its influence beyond the ratifying countries, to become a global reference instrument cited in several peace accords, countless decisions by human rights bodies, UN bodies, development and safeguard policies, national legislative frameworks, and research/advocacy documents by various stakeholders. Ratification in the Philippines is still under consideration.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted, following a more than 20 years of negotiations involving States, governments, and IPs in September 2007 by a majority of 144 states in favour, four votes against and 11 abstentions. However, the only four countries that voted against it have now all reversed their positions. The UNDRIP represents thus a global consensus on the standards of IPs and it carries a heavy international legal and moral weight. Although non-binding, the UNDRIP is considered as a key and most complete international legal instrument on the rights of IPs. Philippines is among those countries who readily adopted UNDRIP. In 2008, the Philippines hosted the Asia Workshop for the Promotion of UNDRIP, which was participated in by 61 representatives from 11 countries all over Asia. The purpose of the activity was to learn about how the international mechanisms work in relation to the UNDRIP and to come up with realistic strategies on how to promote its implementation<sup>2</sup>.

The Philippines enacted Republic Act 8371 or the Indigenous Peoples' Rights Act (IPRA) in 1997. A landmark piece of national legislation, IPRA enshrines a wide range of IPs' rights, as proclaimed in most international instruments, but also includes more specific provisions that are relevant and applicable to the ICCs/IPs in the Philippine context. The National Commission on Indigenous Peoples (NCIP) is established as the institution responsible for its implementation.

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<sup>2</sup>Source: <http://www.tebtebba.org/index.php/all-resources/category/20-un-declaration-on-the-rights-of-indigenous-peoples> (last accessed 07 September 2011).

A comparative analysis of ILO Convention No. 169, UNDRIP, and IPRA shows that the latter instrument has drawn heavily from the standards set in ILO Convention No. 169, while UNDRIP, being the latest of the instruments, further articulates, with emphasis on the roles of the United Nations and international cooperation, the rights of the IPs as enshrined in the two earlier instruments. The three legal instruments (ILO Convention No.169, IPRA, and UNDRIP) have much in common and therefore should be considered as complementary and mutually reinforcing. For instance, they are all grounded in a same rationale that is to address extreme marginalisation of IPs that has its root causes into historical injustices and discriminations. The three instruments deal with a wide range of similar rights and themes, including description of IPs; concept of land and right of ownership over it; right to natural resources; right against displacement and unauthorised intrusion; government responsibility and special measures; human rights; consultation, participation and free and informed consent; development; cultural integrity and customary laws; recruitment and conditions of employment; education and means of communication; vocational training, handicrafts, and rural industries; social security and health; and administration.

All three instruments affirm the human rights and fundamental freedoms of ICCs/IPs on the basis of equality and non-discrimination. They all prohibit the use of force and coercion against the IPs and the exaction of compulsory personal services. Moreover, ICCs/IPs whose rights are abused should be able to seek redress through legal proceedings as emphasized in the three instruments.

On lands, all three instruments recognize the collective and individual aspect of the right of ownership and possession of the IPs over the lands they traditionally occupy or have had access to. Since these lands form an integral part of their lives and culture and thus essential for their survival, the government is mandated to undertake measures to protect their rights of ownership and possession over these lands. IPRA provides for a process of delineation or identification of the IPs' ancestral land and ancestral domains for the purpose of issuance of titles of ownership of IPs over these lands.

However, each instrument has its specificities and particular provisions that either others do not cover or deal with differently. This survey and comparative analysis of the provisions of ILO Convention No. 169 and UNDRIP in relation to IPRA could provide policy-makers and advocates for the promotion and protection of the rights of IPs in the Philippines with a working framework by which compliance and monitoring of IPRA will be better appreciated. It is also a useful tool for advocacy in encouraging the Philippine Government to finally ratify ILO Convention No. 169.

The supervisory mechanisms imbedded on the ILO Convention No. 169 would enhance the implementation, monitoring and supervision of ICCs/IPs rights contained in IPRA and UNDRIP. This will afford the ICCs/IPs additional means and venue to assert and protect their universally recognized rights. Consequently, the ratification of ILO Convention No. 169 would enable the Philippines to share with the world its best practices and efforts in protecting its IPs through the regular reports that it would submit to ILO. Also, this close coordination with ILO would allow the ILO technical cooperation programme on IPs to intensify its activities and assistance in the Philippines.

## 1. OVERVIEW OF THE THREE INSTRUMENTS

The **Indigenous and Tribal Peoples Convention (ILO Convention No. 169)** is an international treaty, adopted by the ILO in 1989. The Convention represents a consensus reached by ILO constituents on the rights of IPs within the nation-states where they live – and the responsibilities and obligation of governments to protect these rights. It is based on respect for the cultures and ways of life of IPs and recognizes their right to land and natural resources and to define their own priorities for development. The Convention aims at overcoming discriminatory practices in which IPs have had little or no part in the decision-making process that affects their lives. Therefore, the fundamental principles of consultation and participation constitute the cornerstone of the Convention. Further, the Convention covers a wide range of issues pertaining to IPs, including employment and vocational training, education, health, and social security, customary law, traditional institutions, languages, religious beliefs, and cross-border cooperation.

So far, it has been ratified by 22 States located in Latin America, Asia, Africa, and Europe, which cover an estimated population of more than 50 million IPs. Over the last years, the ILO Convention No. 169 has been stretching its influence beyond the ratifying countries, to become a global reference instrument cited in: several peace accords, countless decisions by human rights bodies, development and safeguard policies, national legislative frameworks, and research/advocacy documents by various stakeholders.

The **UN Declaration on the Rights of Indigenous Peoples (UNDRIP)** was adopted by the UN General Assembly in 2007 after more than 20 years of negotiations between IPs and States. UNDRIP is thus, the most recent and fullest expression of IPs' aspirations. Supported by more than 140 countries, the only four countries that voted against it have all now reversed their positions. As a Declaration, the UNDRIP does not have the binding force of a treaty, but it does have legal and practical implications. It was adopted by the UN General Assembly and thus reflects the collective views of the United Nations, which must be taken into account by all members in good faith. Moreover, it is widely recognized that the UNDRIP does not establish any new rights but is an articulation of existing rights to the context of IPs. This underlines that the UNDRIP reflects existing obligations of States under treaty law.

The provisions of UNDRIP and ILO Convention No. 169 are compatible and mutually supplementary, though UNDRIP addresses additional subjects that were not included in the Convention, such as the militarization of indigenous lands and the protection of traditional knowledge. Further, UNDRIP expressly affirms IPs' right to self-determination.

The **Indigenous Peoples Rights Act of 1997 (IPRA)** was enacted on 29 October 1997 as one of the social reform agenda of the Philippine government. It aimed to correct the historical injustice which placed the IPs at a disadvantage in comparison to the rest of society. It does not only contain a comprehensive list of rights of the IPs but it also establishes the lead agency for its implementation and the mechanism for the enforcement of these rights. IPRA recognises the rights of the IPs to their ancestral land and domains and provides the identification, delineation and certification processes of these ancestral land and domains. It also touches on the more general topic of human rights and social justice and particularly provides for the rights of the IPs to self-governance and empowerment.

IPRA is a product of decade long consultation and collaboration among the ICCs/IPs, civil society groups, and the government. Its enactment was a huge leap for the IPs and their advocates. Review of this legislation would show close semblance with UNDRIP and ILO provisions confirming the fact that IPRA had been inspired and had drawn heavily from these instruments.

## 2. COMPARATIVE ANALYSIS

### 2.1 Detailed analysis

This section provides a comparative analysis of the provisions of ILO Convention No. 169, UNDRIP, and IPRA. For each section or theme, the study provides commonality and differences between the three instruments by making reference to relevant provisions of each instrument.

#### 2.1.1 *Rationale or purposes*

##### ***Key findings***

All three instruments were adopted to correct historical social injustices, particular discriminations and life on margin of societies of IPs. They all aim to make IPs enjoy all rights and freedoms on the same footing with the rest of the populations, while maintaining their culture and way of life.

Specificities by each instrument include:

- The ILO Convention No. 169 makes reference to the considered obsolete assimilationist approach by ILO Convention No. 107. Particular exploitative working conditions of indigenous workers triggered the interest and led to a number of ILO standards, such as the 1929 Convention on Forced Labour.
- The UNDRIP makes reference to treaties, agreements and other constructive arrangements between States and IPs; and militarization of indigenous lands; situation of IPs that varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration.
- IPRA constitutes a constitutional policy on indigenous cultural communities (ICCs). The 1987 Constitution expresses as State principle and policy the recognition and promotion of the rights of ICCs within the framework of national unity and development<sup>3</sup>. Section 2(a) of IPRA is a reiteration. Responsive to the strong expression of the ICCs/IPs for cultural integrity, IPRA in its Internal Rules and Regulations (IRR) lays down a number of operating principles, including: reference to consensus and peace-building, resolving conflicts or disputes affecting or pertaining to IPs, any determination or decision thereon shall be reached through dialogue and consensus as far as practicable; subsidiarity, solidarity, and transparency are some other key concepts IPRA aims at achieving with regard to IPs' rights.

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<sup>3</sup>1987 Philippine Constitution, Article II, § 22.

*Matrix of corresponding provisions*

<b>ILO 169</b>	<p><b>The preamble of ILO</b> – Recognizing the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages, and religions, within the framework of the States in which they live, and</p> <p>Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs, and perspectives have often been eroded, and</p> <p>Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international cooperation and understanding, and</p>
<b>UNDRIP</b>	<p>Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,</p> <p>Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,</p> <p>Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,</p> <p>Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic, and social structures and from their cultures, spiritual traditions, histories, and philosophies, especially their rights to their lands, territories, and resources,</p> <p>Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,</p> <p>Convinced that control by indigenous peoples over developments affecting them and their lands, territories, and resources will enable them to maintain and strengthen their institutions, cultures, and traditions, and to promote their development in accordance with their aspirations and needs,</p> <p>Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic, and social progress and development, understanding, and friendly relations among nations and peoples of the world,</p> <p>Considering that the rights affirmed in treaties, agreements, and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility, and character,</p> <p>Considering also that treaties, agreements, and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,</p>

	<p>Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination, and good faith,</p> <p>Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,</p> <p>Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,</p> <p>Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,</p> <p>Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,</p> <p>Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,</p>
<b>IPRA</b>	<p><b>Chapter 1, Section 2. Declaration of State Policies</b> – The State shall recognize and promote all the rights of Indigenous Cultural Communities/ Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:</p> <p>x x x</p> <p>(c) The State shall recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national laws and policies;</p> <p>x x x</p> <p>(e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity,</p> <p>x x x</p> <p>(f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.</p> <p>Towards this end, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, their rights to their ancestral domains.</p>



### 2.1.2 Right-holders

#### *Key findings*

All the three instruments recognize the right of indigenous communities to identify themselves as such (right to self-identification).

ILO Convention No. 169 does not define who are indigenous and tribal peoples however, the Convention gives a description of the tribal and indigenous peoples to which it applies to:

<b>Tribal peoples</b>	<b>Indigenous peoples</b>
<ul style="list-style-type: none"><li>• traditional lifestyle</li><li>• way of life different from other segments of the national population</li><li>• own social organization and traditional customs and laws</li></ul>	<ul style="list-style-type: none"><li>• traditional lifestyle</li><li>• way of life different from other segments of the national population</li><li>• own social organization and traditional customs and laws</li><li>• living in historical continuity in a certain area or before conquest or colonization</li></ul>

The UNDRIP does not even explain or describe the IPs. *Travaux preparatoires* of both the ILO Convention No. 169 and the UNDRIP reveal that both instruments have no intention of giving a formal definition of IPs because of difficulties to have words capable of capturing the diversity and specificities of IPs. Understandably, the UNDRIP's preamble indicates "that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration".

IPRA upholds the principle of self-identification but incorporates the two elements of being native-born and indigenous identity with several additions, to wit, indigenous cultural community or indigenous peoples are those:

- groups of people or homogenous societies identified by self-ascription and ascription by others;
- who have continuously lived as organized community on communally bounded and defined territory;
- who have, under claims of ownership since time immemorial, occupied, possessed, and utilized such territories, sharing common bonds of language, customs, traditions, and other distinctive cultural traits; or
- who have, through resistance to political, social, and cultural inroads of colonization, non-indigenous religions, and cultures, become historically differentiated from the majority of Filipinos.

To identify who are indigenous, IPRA allows for self-ascription and ascription by others. Self-ascription is equivalent to the subjective criteria of self-identification under ILO Convention No. 169.

The UNDRIP similarly provides that IPs have the collective and individual right to identify themselves and to be recognized as such. IPRA deviates from these international instruments by providing that the ascription may likewise be made by others. Another deviation by IPRA is its inclusion as IPs those who are historically differentiated from the majority of Filipinos. IPRA also incorporates descent as one of several criteria to being an ICC/IP, but does not consider the fact of having descended from a population of a given geographical region.

***Matrix of corresponding provisions***

<b>ILO 169</b>	<p><b>Article 1</b></p> <p>1. This Convention applies to:</p> <p>(a) tribal peoples in independent countries whose social, cultural, and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;</p> <p>(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural, and political institutions.</p> <p>2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.</p> <p>3. The use of the term <i>peoples</i> in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.</p>
<b>UNDRIP</b>	<p><b>Preamble No. 2</b></p> <p>Affirming that indigenous peoples are equal to all peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such. <i>Bearing in mind</i> that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law.</p>
<b>IPRA</b>	<p><b>Chapter II, Section 3 (h) Indigenous Cultural Communities/Indigenous Peoples</b> – Refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed customs, tradition, and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and culture, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions, and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural, and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains;</p>

### 2.1.3 Duty-bearers

#### *Key findings*

All three instruments are unanimous on the government's responsibility to promote, protect and respect the rights of IPs. The responsibility includes protection against third party's actions.

**ILO Convention No. 169** provides that States which ratified it have the duty to ensure its implementation, with the participation of the ICCs/IPs through coordinated and systematic action. To achieve this, governments can create specific agency or agencies focused solely on tribal and indigenous peoples and the issues concerning them.

The **UNDRIP** is more enumerative of governments and States' responsibility in various domains. Despite its non-binding character, it lists down rights corresponding with actions and norms of conduct for the States and their governments to follow.

The provisions on state responsibility to protect and promote the rights of tribal and indigenous peoples under ILO Convention No. 169 are effectively incorporated in **IPRA**. The overarching objective of IPRA is for the State to fulfil its obligations to the ICCs/IPs and be responsive to their special circumstances.

The government agency or agencies, which should be provided with the necessary resources, will coordinate and oversee all efforts affecting tribal and indigenous peoples. In the Philippines, the primary government agency is NCIP.

It is noteworthy that IPRA derived in great detail the rights subject of state obligations in UNDRIP. Specific discussions on these rights are found in later sections of this study.

#### *Matrix of corresponding provisions*

<b>ILO 169</b>	<p><b>There are numerous provisions on Government's responsibilities, including:</b></p> <p><b>Article 2</b></p> <p>1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.</p> <p>2. Such action shall include measures for:</p> <p>(a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;</p> <p>(b) promoting the full realization of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;</p> <p>(c) Assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.</p>
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	<p><b>Article 7</b> x x x</p> <p>3. Governments shall ensure that, whenever appropriate, studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural, and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.</p> <p>4. Governments shall take measures, in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.</p> <p><b>Article 33</b></p> <p>1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfillment of the functions assigned to them.</p>
<b>UNDRIP</b>	<p><b>The following are some of the illustrative examples of Government's responsibilities listed by the UNDRIP:</b></p> <p><b>Article 8</b></p> <p>1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.</p> <p>2. States shall provide effective mechanisms for prevention of, and redress for:</p> <p>(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;</p> <p>(b) Any action which has the aim or effect of dispossessing them of their lands, territories, or resources;</p> <p>(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;</p> <p>(d) Any form of forced assimilation or integration;</p> <p>(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.</p> <p><b>Article 11</b></p> <p>1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect, and develop the past, present, and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual, and performing arts and literature.</p> <p>2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious, and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions, and customs.</p>

	<p><b>Article 12</b></p> <p>1. Indigenous peoples have the right to manifest, practice, develop, and teach their spiritual and religious traditions, customs, and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.</p> <p>2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.</p> <p><b>Article 13</b></p> <p>1. Indigenous peoples have the right to revitalize, use, develop, and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems, and literatures, and to designate and retain their own names for communities, places, and persons.</p> <p>2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal, and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.</p>
<b>IPRA</b>	<p><b>Chapter 1, Section 2. Declaration of State Policies</b> – The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:</p> <p>x x x</p> <p>(e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population.</p>

#### 2.1.4 Principle of equality

##### **Key findings**

The three legal instruments (ILO Convention No. 169, UNDRIP, and IPRA) are grounded in fundamental human rights and freedoms from discrimination for IPs, as guaranteed for all other human beings. None of them provides for special or new rights for IPs. On the contrary, they all provide for an enjoyment of all rights and freedoms by IPs on the same footing as their fellow national.

Discrimination refers to unfair treatment or denial of normal privileges to persons because of their race, age, sex, nationality, or religion<sup>4</sup>. The Convention on the Elimination of All Forms of Racial Discrimination (CERD) defines discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political,

<sup>4</sup> Black’s Law Dictionary, at 467.

economic, social, cultural, or any other field of public life<sup>5</sup>.” It categorically proscribes discrimination based on race.

**ILO Convention No. 169** asserts explicitly that in many parts of the world IPs are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded. The obligation includes also non-discrimination within indigenous communities against certain social groups such as women.

The prohibition against discrimination of indigenous peoples is also found in **UNDRIP**. UNDRIP has many specific provisions directing States to adopt measures to eliminate discrimination. These measures should facilitate correction of text books and educational materials in order to provide “a fair, accurate, and informative portrayal” of the indigenous society and cultures<sup>6</sup>. The concept of collective right of IPs in UNDRIP, as distinguished from individual right, is significant in view of the discussion during the drafting of UNDRIP wherein contentious issues were raised concerning limitations on individual human right as distinguished from collective right.

**IPRA** elaborates on the various international human rights instruments that the Philippines had signed or acceded to. For the purpose of application by local courts of human rights principles, IPRA expands the sources specifically for non-discrimination issues. It is noteworthy that indigenous women are given preferential treatment especially in light of the constitutional affirmation of the fundamental equality with men and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which was adopted by the United Nations General Assembly in 1979 to which the Philippines is a party. CEDAW defines “discrimination against women” as any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field<sup>7</sup>.

In the various Supreme Court decisions invoking human rights instruments, the trend has been to use the doctrines of incorporation and transformation interchangeably to apply human rights principles to specific cases. In this regard, ILO Convention No. 169, in so far as it already contains customary law rules on human rights as applied to indigenous peoples, could also be invoked as a source of human rights principles notwithstanding the current state of non-ratification by the Philippine Government of ILO 169. IPRA directs the State to take effective measures, arrived at in consultation with the ICCs/IPs, to eliminate cultural prejudice and promote tolerance and understanding<sup>8</sup>.

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<sup>5</sup>Convention on the Elimination of All Forms of Racial Discrimination (CERD), Part I, Art. 1.

<sup>6</sup>*Id.*, Part VI, Art. 31.

<sup>7</sup>Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Art. 1.

<sup>8</sup>Republic Act No. 8371 (IPRA), Ch. VI, § 31.

*Matrix of corresponding provisions*

<b>ILO 169</b>	<p><b>Relevant articles includes:</b></p> <p><b>Article 3</b>  1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.</p> <p>2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.</p> <p><b>Article 11</b>  The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.</p>
<b>UNDRIP<sup>9</sup></b>	<p><b>Relevant articles includes:</b></p> <p><b>Article 1</b>  Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights, and international human rights law.</p> <p><b>Article 2</b>  Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.</p> <p><b>Article 8</b>  x x x  2. States shall provide effective mechanisms for prevention of, and redress for:  x x x  (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.</p>
<b>IPRA<sup>10</sup></b>	<p><b>Section 2. Declaration of State Policies</b> – The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:</p> <p>x x x  d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinctions or discriminations;</p> <p>e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population and  x x x</p>

<sup>9</sup>See also UNDRIP, Arts. 9, 14, 15, and 46.

<sup>10</sup>See also IPRA, Ch. V, § 21, 22, 23, 24, 25, 26, 27, and 28; and Ch. VI, § 31.

### 2.1.5 *Special measures to close socio economic gaps*

#### ***Key findings***

In all the three instruments (ILO Convention No. 169, UNDRIP, and IPRA), special measures are required as a means to promote equality. Special measures are to be put in place in order to bring the living conditions of indigenous and tribal peoples to the same level as the rest of the national population. In other words, they aim at closing socio-economic gaps.

**ILO Convention No. 169** emphasizes the consultation and participation of IPs for the design and implementation of such special measures, as a way to progressively give IPs control over their well-being.

The **UNDRIP** in particular gives due emphasis to the most vulnerable members of IPs, their women, children, elderly, and persons with disabilities. The Philippine Constitution also recognizes special measures of protection to vulnerable sectors, including the IPs as provided in Article 13 on Social Justice and Human Rights. Implementation mechanisms under special measures have resulted to increased privileges or benefits. The UNDRIP is unequivocal with respect to IPs' right to special measures for immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health, and social security<sup>11</sup>.

**IPRA** adopts the provisions on special measures under ILO Convention No. 169 for the effective protection of the persons, institutions, property, labour, cultures, and environment of the tribal and indigenous peoples concerned, with special emphasis on recruitment and conditions of employment. In addition, IPRA also provides for special measures to control, develop, and protect indigenous knowledge systems and practices.

In IPRA, there is emphasis on the basic services as objects of special measures apart from work-related and indigenous knowledge systems support measures. The measures safeguarding the environment are also found in IPRA in relation to indigenous knowledge systems and practices.

The concept of special measures may be justified in constitutional law practice under the Article 3, Section 1 of the Constitution (equal protection clause). Treatment of IPs in a manner which may differ from the rest of the population is a form of valid classification of a class of people. Four criteria have been applied for a valid classification, namely: (a) there must be a substantial distinction which makes real differences; (b) the distinction must be germane to the purpose of the law; (c) it must apply to present and future conditions; and (d) it must apply equally to all members of the same class.

IPRA to a certain degree may be deemed as a domestic enforcing law of the CERD to which the Philippines is bound. CERD enjoins the Philippines to take special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms<sup>12</sup>.

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<sup>11</sup>UNDRIP, Art. 21.

<sup>12</sup>CERD, Art. 2 (2).



*Matrix of corresponding provisions*

ILO 169	<p><b>Article 4</b></p> <p>1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures, and environment of the peoples concerned.</p> <p>2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.</p> <p>3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.</p> <p><b>Article 20</b></p> <p>1. Government shall, within the framework of national laws and regulations, and in cooperation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.</p>
UNDRIP	<p><b>Article 21</b></p> <p>1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health, and social security.</p> <p>2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children, and persons with disabilities.</p>
IPRA	<p><b>Chapter V, Section 25. Basic Services</b> – The ICCs/IPs have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health, and social security. Particular attention shall be paid to the rights and special needs of indigenous women, elderly, youth, children, and differently-abled persons. Accordingly, the State shall guarantee the right of ICCs/IPs to government's basic services which shall include, but not limited to water and electrical facilities, education, health, and infrastructure.</p> <p><b>Chapter V, Section 23. Freedom from Discrimination and Right to Equal Opportunity and Treatment</b></p> <p>x x x</p> <p>Towards this end, the State shall within the framework of national laws and regulations, and in cooperation with the ICCs/IPs concerned, adopt special measures to ensure the effective protection with regard to the recruitment and conditions of employment of persons belonging to these communities, to the extent that they are not effectively protected by the laws applicable to workers in general.</p> <p>x x x</p> <p><b>Chapter VI, Section 34. Right to Indigenous Knowledge Systems and Practices and to Develop own Sciences and Technologies</b> – ICCs/IPs are entitled to the recognition of the full ownership and control and protection of their cultural and intellectual rights. They shall have the right to special measures to control, develop, and protect their sciences,</p>

	technologies, and cultural manifestations, including human and other genetic resources, seeds, including derivatives of these resources, traditional medicines, and health practices, vital medicinal plants, animals, and minerals, indigenous knowledge systems and practices, knowledge of the properties of fauna and flora, oral traditions, literature, designs and visual, and performing arts.
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### 2.1.6 Consultation<sup>13</sup>

#### **Key findings**

Effective consultation, together with participation, is one of the most important principles in the promotion and protection of rights of IPs. These principles are aimed at gradually giving back to IPs control over their well being and a say in decisions that affect them. The minimum requirement is that IPs must be consulted before a policy, plan of action or programme which will affect them is adopted or implemented. Consultation is a process that leads to “free and prior informed consent”. In the three instruments (ILO Convention No. 169, UNDRIP, and IPRA), the principle of consultation is found throughout almost the entire text.

Under the **ILO Convention No. 169**, the State’s obligation to consult IPs must be undertaken “in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures”. ILO Convention No. 169 does not endorse a right to veto. Consultation under ILO Convention No. 169 does not mean that if there is no agreement, nothing will be done. In other words, ILO Convention No. 169 does not provide IPs with a veto right, as obtaining the agreement or consent is the purpose of engaging in the consultation process, not an independent requirement. On the other hand, a simple information meeting, where IPs could be heard without influencing decision-making, cannot be considered as complying with the provisions of the Convention. The right to consultation thus implies a qualitative process of good faith negotiations and dialogues, through which agreement and consent can be achieved. Here again, it is appropriate to underline the interconnectedness of broad and specific consultations.

ILO’s Committee of Experts and its other supervisory mechanisms have generated a unique rich jurisprudence on the right to consultation that is nowadays widely used as reference point on the issue.

<sup>13</sup> Below is a summary of instances when consultation is essential under the three instruments:

<b>ILO 169</b>	<ol style="list-style-type: none"> <li>1. Governments shall consult the IPs when considering legislative or administrative measures which may directly affect them (Art. 6 (1) (a)).</li> <li>2. Necessary relocation as an exceptional measure shall take place only with the free and informed consent of IPs (Art. 16 (2)).</li> </ol>
<b>UNDRIP</b>	<ol style="list-style-type: none"> <li>1. States shall consult IPs in taking measures to eliminate discrimination (Art. 15 (2)).</li> <li>2. States shall consult IPs in taking measures to protect IP children from economic exploitation or hazardous work (Art. 17 (2)).</li> <li>3. Unless IPs requested or freely agreed, no military activities shall take place in their lands (Art. 30 (1)).</li> <li>4. States shall consult IPs before using their lands or territories for military activities (Art. 30 (2)).</li> <li>5. States shall consult IPs in taking measures to implement the right of IPs for cross-border contacts (Art. 36 (1)).</li> </ol> <p>States shall consult IPs in taking measures, such as legislation, to enforce the UNDRIP (Art. 38).</p>
<b>IPRA</b>	States shall consult the IPs in taking effective measures to eliminate discrimination.

The **UNDRIP** provides for the same right to consultation in a similar way as ILO Convention No. 169. It states that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.” As indicated by the UN Special Rapporteur on Indigenous Peoples’ Rights, “This provision of the Declaration should not be regarded as according indigenous peoples a general “veto power” over decisions that may affect them, but rather as establishing consent as the objective of consultations with indigenous peoples<sup>14</sup>”. In the case of Article 30, paragraphs 1 and 2 of UNDRIP, some states that did not vote or those who abstained have pointed to the right of ICCs/IPs to veto even in matters of military activities over their lands, or territories<sup>15</sup>. Others who voted against UNDRIP have cited the establishment of a complete veto power by indigenous and tribal peoples over legislative and administrative action,<sup>16</sup> citing Articles 19 and 32.

This requirement is formally instituted in the concept of “free and prior informed consent” under **IPRA**. The phrase *informed consent* is basically “a person’s agreement to allow something to happen that is based on full disclosure of facts needed to make the decision intelligently<sup>17</sup>”. Full disclosure would ensure that the consent given by the IPs is made with full understanding. Free and prior informed consent must be obtained in following situations:

- (a) in instances that require relocation, except when it is a case of eminent domain<sup>18</sup>; (b) in taking any cultural, intellectual, religious, and spiritual property of the indigenous peoples<sup>19</sup>; (c) in obtaining materials of cultural values to the ICCs/IPs<sup>20</sup>; (d) in accessing the biological and genetic resources and indigenous knowledge of the ICCs/IPs<sup>21</sup>; (e) in securing the certification from the NCIP that the area affected does not overlap with any ancestral domain<sup>22</sup>; and (f) in the transfer by the ICCs/IPs of their responsibility to maintain, manage, conserve, and develop critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, and forest cover within the ancestral domain<sup>23</sup>.

The NCIP, the main agency in charge of implementing IPRA, is mandated to convene the consultative body which shall consist of the traditional leaders, elders and representatives from the women and youth sectors of the different ICCs/IPs from time to time. It will conduct grassroots consensus building process, and/or will serve as multi-level mechanism of people’s participation in the implementation of the provisions of IPRA and the objectives of the NCIP<sup>24</sup>.

Under IPRA, the *free and prior informed consent* of ICCs/IPs is needed before the implementation of any action or measure which may affect the ICCs/IPs.

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<sup>14</sup>Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedom of indigenous people, Twelfth session, A/HRC/12/34, 15 July 2009, para. 46.

<sup>15</sup>U.N.G.A. 61<sup>st</sup> Session, 170<sup>th</sup> Plenary Meeting, 13 September 2007, A/GI/PV. 107, explanation of Colombia abstention at pp. 17-18.

<sup>16</sup>*Id.*, Explanation of Canada vote, p. 13. Explanation of New Zealand vote, p.14.

<sup>17</sup>Black’s Law Dictionary, *supra* note 3, at 778.

<sup>18</sup>IPRA, Ch. III, § 7 (c).

<sup>19</sup>*Id.* Ch. VI, § 32.

<sup>20</sup>*Id.* Ch. VI, § 33 (a).

<sup>21</sup>*Id.* Ch. VI, § 35.

<sup>22</sup>*Id.* Ch. VIII, § 59.

<sup>23</sup>*Id.* Ch. VIII, § 58.

<sup>24</sup>*Id.* Rule VII, Part VIII, § 1.

The UNDRIP provision on military activities in indigenous lands or territories finds resonance in IPRA under Section 22 related to the armed conflicts in the Philippines. IPs' right to peace is in fact subject of current peace negotiations between the Philippine government and various armed groups. Mechanisms have been adopted to provide IPs caught in the middle of armed conflict access to the negotiating table and ensure immediate protection to member of indigenous communities in conflict-torn areas.

***Matrix of corresponding provisions***

<b>ILO 169</b>	<p><b>The principle of consultation is found in numerous articles of Convention No.169, including:</b></p> <p><b>Article 6</b>  1. In applying the provisions of this Convention, governments shall:  (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;</p> <p>x x x</p> <p>2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.</p> <p><b>Article 16</b>  x x x</p> <p>2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.</p> <p>x x x</p>
<b>UNDRIP<sup>25</sup></b>	<p><b>The principle of consultation is found in numerous articles of the UNDRIP including:</b></p> <p><b>Article 15</b>  x x x</p> <p>2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding, and good relations among indigenous peoples and all other segments of society.</p> <p><b>Article 17</b>  1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.</p> <p>2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or</p>

<sup>25</sup>See also UNDRIP, Arts. 36 and 38.

	<p>social development, taking into account their special vulnerability and the importance of education for their empowerment.</p> <p>3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.</p> <p><b>Article 30</b></p> <p>1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.</p> <p>2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.</p>
IPRA <sup>26</sup>	<p><b>The principle of consultation is found in numerous articles of IPRA, including:</b></p> <p><b>Chapter V, Sec. 22. Rights during Armed Conflict</b> – ICCs/IPs have the right to special protection and security in periods of armed conflict. The State shall observe international standards, in particular, the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not recruit members of the ICCs/IPs against their will into armed forces, and in particular, for the use against other ICCs/IPs; not recruit children of ICCs/IPs into the armed forces under any circumstance; nor force indigenous individuals to abandon their lands, territories and means of subsistence, or relocate them in special centers for military purposes under any discriminatory condition.</p> <p><b>Chapter VI, Section 31. Recognition of Cultural Diversity</b> – The State shall endeavour to have the dignity and diversity of the cultures, traditions, histories and aspirations of the ICCs/IPs appropriately reflected in all forms of education, public information and cultural-educational exchange. Consequently, the State shall take effective measures, in consultation with ICCs/IPs concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among ICCs/IPs and all segments of society. Furthermore, the Government shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity.</p> <p><b>Chapter II, Section 3(g) Free and Prior Informed Consent</b> – As used in this Act shall mean the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.</p>

### *Free, prior, and informed consent*

Under IPRA, “free and prior informed consent” means the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices. The consent must be free from any external manipulation, interference, and coercion. Moreover, the consent must be obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.

<sup>26</sup>See also IPRA, Ch. II, §7(c), Ch. VI, §32, 33(a) and 35; Ch. VII, §46(a); and Ch. VIII, §58.

The three instruments provide the instances and situations when the free, prior and informed consent of the IPs must be obtained. Below is the summary of provisions discussing these instances and situations:

<b>ILO 169</b>	Relocation of IPs shall take place only with their free and informed consent (Art. 16 (2)).
<b>UNDRIP<sup>27</sup></b>	<p>1. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return (Art. 10).</p> <p>2. The cultural, intellectual, religious and spiritual property of IPs cannot be taken without their free, prior, and informed consent (Art. 11 (2)).</p> <p>3. States shall consult and obtain the free, prior and informed consent of IPs before adopting and implementing legislative or administrative measures that may affect them (Art. 19).</p>
<b>IPRA<sup>28</sup></b>	<p>1. In instances that require relocation, except when it is a case of eminent domain (Ch. III, Sec. 7 (c)).</p> <p>2. In taking any cultural, intellectual, religious, and spiritual property of the indigenous peoples (Ch. VI, Sec. 32).</p> <p>3. In obtaining materials of cultural values to the ICCs/IPs (Ch. VI, Sec. 33 (a)).</p>

#### 2.1.7 Participation

##### *Key findings*

Participation is another fundamental principle that all three instruments (ILO Convention No. 169, UNDRIP, and IPRA) enshrine. As corollary to the right of the tribal and indigenous peoples to decide their own priorities for the process of development, they should be able to participate at all levels of the process itself – from beginning to end.

- IPs have the right to be involved in a project, policy or programme at every step along the way;
- Participation must also be allowed during the design of a policy, programme, or project all the way to its implementation and evaluation;
- They participate at all levels of decision-making – local, national, and regional. This means in politically elected bodies, as well as national and local administrations;
- Participation is done through indigenous and tribal peoples' own traditional or representative bodies and not through structures imposed from outside the community, unless the people have accepted them.

As twin principle of consultation, participation ensures that IPs, while maintaining their cultural integrity, partake not only in issues affecting them, but also in the general development of their communities and respective States. This principle emphasizes that indigenous peoples are co-equal members of any society and therefore they have a role in its development.

<sup>27</sup> See also UNDRIP, Arts. 28(1), 29(2) and 32(2).

<sup>28</sup> See also IPRA, Ch. I, §2(e and f); Ch. III, §7(b); Ch. III, §9(b); Ch. IV, §16 and 17; Ch. V, §26; Ch. VI, §31 and 35, Ch. VIII, §52, 58, and 59.

The UNDRIP recognizes the autonomy of IPs in so far as they may choose to participate fully in the various aspects of the life of the State while principally maintaining their own institutions as provided in Article 5. In Article 18, the right of representation using their indigenous mode of decision-making is highlighted.

The years of IPs rights advocacy have been marked by shifts in policies involving them. Foremost is the paradigm of their development which shifted from one of assimilation and integration into the Filipino mainstream to that of permitting them to develop and progress within the framework of their indigenous culture, traditions and institutions. IPRA is replete with provisions that show Government's recognition of this right. IPRA does not merely confine the right of ICCs/IPs to participate in matters involving ancestral domains and lands but at all levels of decision-making in matters which may affect their rights, lives and destinies. While ICCs/IPs remain subject to the power of the State to pursue programmes and policies, their implementation should undergo prior consultation with the ICCs/IPs.

As a political concept and tool, participation is also guaranteed principally by the Constitution in favour of IPs. IPs are in Congress through the party-list system of representation. Their constitutional right to preserve and develop their cultures, traditions and institutions shall be considered in the formulation national plans and policies under Article 14, Section 17 of the Constitution. Furthermore, IPRA is an implementation of Article 13, Section 16 of the Constitution which recognizes the right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making. Adequate consultation mechanisms are mandated to give effect to this duty of the State. IPRA also refers to the concept of free and prior informed consent in another portion of the law.

Under the IRR of IPRA, the NCIP is tasked to take special measures to guarantee the right of ICCs/IPs to pursue their economic, social and cultural development at their own choice and pace and to ensure that economic opportunities created by the government are extended to them based on freedom of initiative and self-reliance<sup>29</sup>.

IPRA elaborates with great detail the element of participation through the recognition of indigenous political structures; in the development of lands and natural resources; with expanded role for women; in educational and cooperative undertakings; in delineation of ancestral domains; and, the settlement of disputes.

#### *Matrix of corresponding provisions*

<b>ILO 169</b>	<p><b>Article 6.1</b></p> <p>In applying the provisions of this Convention, Governments shall:</p> <p>x x x</p> <p>(a) Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;</p> <p>(b) Establish means for the full development of these peoples' own institutions and initiatives and in appropriate cases provide the resources necessary for this purpose.</p>
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<sup>29</sup>IPRA IRR, Rule IV, Part I, § 7.

	<p><b>Article 7.1</b> The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social, and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.</p>
<b>UNDRIP</b>	<p><b>Article 5</b> Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions, while retaining their right to participate full, if they so choose, in the political, economic, social, and cultural life of the State.</p> <p><b>Article 18</b> Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision making institutions.</p> <p><b>Article 41</b> The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.</p>
<b>IPRA<sup>30</sup></b>	<p><b>Chapter 1, Section 2. Declaration of State Policies</b> – The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:</p> <p>x x x</p> <p>(e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; and</p> <p>(f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.</p> <p><b>Chapter II, Section 3. Definition of Terms:</b> (i) Indigenous Political Structure – Refers to organizational and cultural leadership systems, institutions, relationships, patterns and processed for decision-making and participation, identified by ICCs/IPs such as, but not limited to, Council of Elders, Council of Timuays, Bodong Holder, or any other tribunal or body of similar nature;</p>

<sup>30</sup>See also IPRA, Ch. III, §9; Ch. IV, §13, 16 and 17; Ch. V, §26; Ch. VI, §31; Ch. VII, §46; Ch. VIII, §52; and Ch. IX, §66.



	<p><b>Chapter III, Section 7. Rights to Ancestral Domains</b> – The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:</p> <p>x x x</p> <p>(b) Right to Develop Lands and Natural Resources – Subject to Section 56 hereof, right to develop, control, and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government, or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they sustain as a result of the project; and the right to effective measures by the government to prevent any interfere with, alienation and encroachment upon these rights;</p>
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Below are few examples of when **participation** is essential under the three instruments:

<b>ILO 169</b>	<ol style="list-style-type: none"> <li>1. Governments shall establish means to enable IPs to participate in decision-making in elective, administrative and other institutions responsible for policies concerning them (Art. 6 (1) (a)).</li> <li>2. IPs shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly (Art. 7 (1)).</li> </ol>
<b>UNDRIP</b>	<ol style="list-style-type: none"> <li>1. IPs have the right to participate fully in the political, economic, social and cultural life of the State (Art. 5).</li> <li>2. IPs have the right to participate in decision-making in matters affecting their rights (Art. 18).</li> <li>3. Means shall be established to ensure participation of IPs in issues affecting them (Art. 41).</li> </ol>
<b>IPRA<sup>31</sup></b>	<ol style="list-style-type: none"> <li>1. States shall take measures, with the participation of IPs, to protect their rights and cultural integrity (Ch. I, Sec. 2 (e)).</li> <li>2. States shall ensure the participation of IPs in the direction of education, health and other services (Ch. I, Sec. 2 (f)).</li> <li>3. IPs have the right to participate in the development of their lands and natural resources (Ch. III, Sec. 7 (b)).</li> </ol>

<sup>31</sup> See also IPRA, Ch. III, §9 (b); Ch. IV, §16 and 17; Ch. V, §26; Ch. VI, §31; and Ch. VIII, §52.

### 2.1.8 *Right to self-determination*

#### ***Key findings***

The right of IPs to self-determination is meant to enhance control over their destinies. Actually the principles of consultation and participation are derived from the right to self-determination “by virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural”. The external right to self-determination implies, among others, the right to secede; whereas internal right to self-determination refers to self-governance, autonomy, self-determined development programmes, etc. within a sovereign State.

All three instruments (ILO Convention No.169, UNDRIP, and IPRA) affirm the right of IPs to their development as a distinct people and as a member of society and of their respective States. The States must consider the development of IPs in the formulation and implementation of national development plans.

In the pursuit of national development, it is instructive to consider the capacity of indigenous and tribal peoples to be fully capable of undertaking productive economic activities within their lands or territories. Empowering indigenous communities through technical assistance could pave the way toward aligning themselves with national developmental goals.

**ILO Convention No. 169** does not use the term “self-determination”. Instead it uses “self-identification” and “self-reliance and development”. ILO Convention No.169 first expresses that the government has the duty to develop measures to protect IP rights in general. It mandates that States shall establish means for the full development of tribal peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose<sup>32</sup>.

The **UNDRIP** uses the term ‘self-determination’ in articles 3 and 4 but these two should be read in conjunction with article 46 which states that “nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States”.

**IPRA** enshrines the principle of self-determination and in the spirit of self-reliance indigenous communities must be given every opportunity to take the lead in their own development processes<sup>33</sup>. To achieve this, development assistance to ICCs/IPs should be institutionally and culturally strengthening not damaging, supportive not exploitative, and facilitative not manipulative<sup>34</sup>. Consequently, development programmes should enhance their capacities to build more effective governance<sup>35</sup>. The NCIP is charged to formulate and implement policies, plans, programmes, and projects for economic, social, political, and cultural development of the ICCs/IPs and to monitor the implementation thereof<sup>36</sup>.

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<sup>32</sup>ILO Convention No. 169, Art. 6.

<sup>33</sup>Werner Blenk, *ILO Partnership with Indigenous Peoples*, 47 Ateneo L.J. 556, 559 (2000).

<sup>34</sup>*Id.*

<sup>35</sup>Terence Jones, *The United Nations Development Programme and the Indigenous Peoples*, 47 Ateneo L.J. 562, 563 (2000).

<sup>36</sup>*Id.* IPRA IRR, Rule VII, Part IV, §1(b).

The right to development of ICCs/IPs is integrated within their right to self-governance and empowerment<sup>37</sup>. This right has two aspects. The first is their right to decide for themselves if they wish to continue living in their traditional manner or to embrace the Filipino mainstream culture. The second is their right to determine or control the pace of their development.

Both ILO Convention No. 169 and IPRA recognize the spiritual bonds of tribal and indigenous peoples to their lands, thus, an important part of development is the preservation and protection of the environment of the territories they inhabit.

The right to development of ICCs/IPs is incorporated within their right to self-governance and empowerment. Simply put, the right to development is the right of all people to change their culture or “lifestyle.” This right has two aspects. The first is the right to choose. The ICCs/IPs were granted the right to decide for themselves if they wish to continue to live in their traditional manner or to adopt the modern norms. The second aspect is that the ICCs/IPs have the right to determine or control the pace of their development.

***Matrix of corresponding provisions***

<b>ILO 169</b>	<p><b>Articles on self governance, development and management includes:</b></p> <p><b>Article 7.1</b> The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions, and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social, and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.</p> <p><b>Article 23</b> Handicrafts, rural, and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping, and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.</p>
<b>UNDRIP<sup>38</sup></b>	<p><b>Articles on the right to self-determination includes:</b></p> <p><b>Article 3</b> Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.</p> <p><b>Article 4</b> Indigenous peoples, in exercising their right to self-determination have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.</p>

<sup>37</sup>IPRA, Chapter IV.

<sup>38</sup>UNDRIP, Arts. 23 and 32.

	<p><b>Article 20</b></p> <p>1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.</p> <p>2. Indigenous peoples deprived of their means of subsistence and developments are entitled to just and fair redress.</p>
IPRA <sup>39</sup>	<p><b>Chapter IV, Section 17. Right to Determine and Decide Priorities for Development –</b> The ICCs/IPs shall have the right to determine and decide their own priorities for development affecting their lives, beliefs, institutions, spiritual well-being, and the lands they own, occupy, or use. They shall participate in the formulation, implementation, and evaluation of policies, plans, and programmes for national, regional, and local development which may directly affect them.</p> <p><b>Chapter IV, Section 13. Self-Governance –</b> 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 ICCs/IPs to freely pursue their economic, social, and cultural development.</p> <p><b>Chapter IV, Section 20. Means for Development/Empowerment of ICCs/IPs –</b> The Government shall establish the means for the full development / empowerment of the ICCs/IPs own institutions and initiatives and, where necessary, provide the resources needed therefor.</p>

### 2.1.9 Cultural integrity and protection from intrusion

#### *Key findings*

The three instruments (ILO Convention No.169, UNDRIP, and IPRA) provide for the protection, respect, and promotion of IPs' cultural identity, considered as base for sustainable development within their communities. IPs' cultures, way of life and traditions are to be restored with dignity and free from stereotypes that considered or continue to consider them as backward. The provisions on cultural identity aim to revive IPs' self-esteem and pride of being indigenous or speaking an indigenous language.

**ILO Convention No. 169** states that the state shall promote the full realisation of the social, economic, and cultural rights of these peoples with respect to their social and cultural identity<sup>40</sup>. It has no categorical statement on whether resolution of disputes involving indigenous and tribal peoples in accordance with their justice system may be given effect through the state judicial process. Article 9.2 merely mandates that the customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts. This leaves room for alternative forms of punishment. Besides, ILO Convention No. 169 intends incorporation of customary law into the national legal system without damaging the established legal system<sup>41</sup>.

<sup>39</sup>See also Ch. VI, §36; Ch. VII, §44(b, c and h); and Ch. VII, §46(b).

<sup>40</sup>ILO Convention No. 169, Art. 2.2.

<sup>41</sup>ILO Conference, 76<sup>th</sup> Session 1989, Partial Revision, Report IV (2A), as cited in Patrick Thornberry, Indigenous Peoples and Human Rights, Manchester University Press U.K., 2002, p. 360.

Article 34 of **UNDRIP** similarly sets the same standards for juridical systems or customs of IPs. Art. 40 of **UNDRIP** mandates States to give due consideration to indigenous peoples' customary law and international human standards whenever resolving conflicts between IPs and States or other parties.

Among the three, only **UNDRIP** mentions "genocide" and affirms the protection of IPs against it. All three affirm the right of IPs to the preservation of their own cultural identity while at the same time recognizing their right to participate in the affairs of their respective States.

The 1987 Constitution mandates the State to recognize, respect and protect the rights of indigenous cultural communities to preserve and develop their own culture, traditions and institutions. The state must consider these rights in the formulation of national plans and policies<sup>42</sup>. This Constitutional provision, however, is not self-executory. Thus, the ICCs/IPs must rely on legislation for its implementation such as **IPRA**. Section 29 of **IPRA** is a reiteration of Section 17, Article XIV of the Constitution. It basically mandates that the State shall respect, recognize and protect the rights of the ICCs/IPs to their culture, traditions and institutions and that these rights must be considered in the formation and application of national plans and policies. This provision aims to correct historical injustices suffered by the ICCs/IPs on account of their minority and distinct cultural practices and traditions.

It is evident that **IPRA** incorporates the twin standards of ILO Convention No. 169 in the use of indigenous penal and justice systems. Compatibility with the national legal system and internationally recognized human rights are effective conditions for applicability of customary laws. This implies that the Philippine Constitution, Revised Penal Code, and other special penal laws are still applicable to cases arising within indigenous communities in general. The principle of subsidiarity in the resolution of disputes using customary laws is respected by **IPRA**.

**Protection against intrusion** on IPs' lands and territories is among the mechanisms of protection of IPs' cultural integrity.

**ILO Convention No. 169** is explicit on the issue by stating that "adequate penalties shall be established by law for unauthorised intrusion upon, or use" of indigenous resources or lands.

Aside from the intrusions of migrants, **UNDRIP** prohibits military exercises in the areas occupied by IPs, unless public interest requires otherwise or as requested or agreed to by the IPs themselves.

**IPRA** regulates entry of migrant into the domains. Under **IPRA**, unlawful intrusion means entry of migrants without permission of the IP community occupying the land. It also includes implementation of any project without complying with the certification precondition under Section 59 of **IPRA**.

The armed conflicts in the Philippines often cut-across indigenous lands or territories in various parts of the country. Participation of IPs in the peace consultative process is crucial in order to articulate specific violations of their rights by contending armed forces or groups.

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<sup>42</sup>1987 Philippine Constitution, Art. XIV, § 17.

Human rights and humanitarian law standards have been incorporated in IPRA to reinforce protection to indigenous communities caught in the middle of the armed conflicts.

*Matrix of corresponding provisions*

<b>ILO 169<sup>43</sup></b>	<p><b>Several articles provides for cultural integrity including:</b></p> <p><b>Article 8.1</b> In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.</p> <p><b>Article 8.2</b> These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.</p> <p><b>Article 8.3</b> The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.</p>
<b>UNDRIP<sup>44</sup></b>	<p><b>Several article of the UNDRIP provides for cultural integrity:</b></p> <p><b>Article 5</b> Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social, and cultural life of the State.</p> <p><b>Article 7</b> 1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.  2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.</p> <p><b>Article 8</b> 1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.  2. States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;  (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;  (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;</p>

<sup>43</sup> See also ILO Convention No. 9, Arts. 2.2, 4.1, 9.1, 9.2, 10.1, 10.2, and 12.

<sup>44</sup> See also UNDRIP, Arts. 11, 14, 16, 31, 34, and 40.

	<p>(d) Any form of forced assimilation or integration;</p> <p>(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.</p>
IPRA <sup>45</sup>	<p><b>Chapter VI, Section 29. Protection of Indigenous Culture, Traditions, and Institutions</b> – The state shall respect, recognize, and protect the right of the ICCs/IPs to preserve and protect their culture, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.</p> <p><b>Chapter IV, Section 15. Justice System, Conflict Resolution Institutions and Peace Building Processes</b> – The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.</p> <p><b>Chapter III, Section 7. Rights to Ancestral Domains</b> – The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:</p> <p>x x x</p> <p>(h) Right to Resolve Conflict – Right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary.</p>

***Matrix of corresponding provisions against intrusion***

ILO 169	<p><b>Article 17.3</b> Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession, or use of land belonging to them.</p> <p><b>Article 18</b> Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.</p>
UNDRIP	<p><b>Article 30</b> 1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.</p> <p>2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.</p>
IPRA	<p><b>Chapter III, Section 7. Rights to Ancestral Domains</b> – The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:</p>

<sup>45</sup>See also IPRA, Ch. IV, §32; Ch. VII, §39; and Ch. VIII, §63.

	<p>x x x</p> <p>(e) Right to Regulate Entry of Migrants – Right to regulate the entry of migrant settlers and organizations into the domains;</p> <p><b>Chapter III, Section 10. Unauthorized and Unlawful Intrusion</b> – Unauthorized and unlawful intrusion upon, or use of any portion of the ancestral domain, or any violation of the rights herein before enumerated, shall be punishable under this law. Furthermore, the Government shall take measures to prevent non-ICCs/IPs from taking advantage of the ICCs/IPs customs or lack of understanding of laws to secure ownership, possession of land belonging to said ICCs/IPs.</p> <p><b>Chapter V, Section 22. Rights during Armed Conflict</b> – ICCs/IPs have the right to special protection and security in periods of armed conflict. The State shall observe international standards, in particular, the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not recruit members of the ICCs/IPs against their will into armed forces, and in particular, for the use against other ICCs/IPs; not recruit children of ICCs/IPs into the armed forces under any circumstance; nor force indigenous individuals to abandon their lands, territories and means of subsistence, or relocate them in special centers for military purposes under any discriminatory condition.</p>
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#### 2.1.10 Land rights

##### *Key findings*

Land is of indispensable importance to indigenous peoples as it gives them a cultural identity as well as spiritual and social well-being. Stripping them of their land and/or their rights thereto amounts to depriving them of their way of life and lock them into poverty. The provisions are comprehensive enough to take into consideration the nomadic nature of most IPs.

All three instruments recognize that traditional occupation of indigenous and tribal lands is sufficient basis for state recognition of title over these lands. They all recognize the right of ownership of the tribal and indigenous peoples over the lands either traditionally occupied or used by the community or by its individual members.

IPRA derives extensively from UNDRIP. Both ILO Convention No. 169 and IPRA recognize that land is an integral and essential aspect of the lives and cultural integrity of tribal and indigenous peoples. All three instruments embody the individual and collective aspects of the concept of land and its ownership. Under ILO Convention No. 169, the concept of land encompasses the total environment of the areas which either the whole community or individual members occupy and use. The territories include not just the land itself, but also the people, their dwellings, air, water, animals, plants, forests, trees, minerals, and mountains. Moreover, indigenous peoples have occupied said territories long before any central government was established.

UNDRIP treats in greater detail the aspect of land rights, including the concept of restitution in cases of deprivation of indigenous territories without their consent.

IPRA is very exhaustive in its treatment of the concept of land for IPs. It is remarkable that IPRA incorporates native title as the operative concept as enunciated in the decision of the



U.S. Supreme Court in *Cariño v. Insular Government* (1909). In this case, the plaintiff was an Igorot from Benguet who had filed, under the Philippine Commission's Act No. 496 of 1902, an application for, and was granted, the registration of a parcel of land in the same area. It is noted that "for more than 50 years before the treaty of Paris, April 11, 1899, as far back as the findings go, the plaintiff and his ancestors had held the land as owners"<sup>46</sup>. The government appealed the decision claiming that Spain had assumed and had title to all the land in the Philippines. The Court upheld the validity of customary law as mode of obtaining title, known as a native title, and ratiocinated, "It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, *the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land*".

Both UNDRIP and IPRA recognize the right of ICCs/IPs to maintain, develop and strengthen their distinctive spiritual and material relationship with the lands, territories, waters, and coastal seas and other resources which they have traditionally owned, occupied, or used, and to uphold their responsibilities to future generations in this regard.

Under ILO Convention No. 169, tribal and indigenous peoples have the right to pass lands on from one generation to another, according to the customs of their own community. The validity of transmission of land rights outside the indigenous community is recognized by ILO Convention No. 169. IPRA elaborates on this in relation to civil law concepts on sale or modes of acquiring ownership by non-IPs. The indigenous concept of ownership of ancestral domain and land under IPRA differs from the civil law concept of ownership. Moreover, the right of ownership of ancestral lands is different from that of ancestral domain. Ancestral lands can be transferred under the circumstances in Section 8(a) of IPRA. Ancestral domains, on the other hand, cannot be transferred because its ownership excludes the right to sell, dispose, or destroy.

The distinction made in ILO Convention No. 169 between lands traditionally occupied and those to which IPs used or had access to is carried over into IPRA. Furthermore, the mode of transfer among IPs in relation to property rights is also affirmed in IPRA. Finally, IPRA goes to the extent of providing a remedy in the event of transfers tainted with vitiated consent or unconscionable price.

Although Certificate of Ancestral Domain Titles (CADTs) are likewise required to be registered with the register of deeds, these are not transferable except if cancelled by the NCIP in accordance with IPRA. Ancestral domains are not alienable. It is a community property which cannot be sold, disposed of, or destroyed as it belongs to all generations of the ICCs concerned.

The law requires that CADTs be registered presumably for the purpose of giving notice to third persons that such area is within an ancestral domain. There is no penalty imposed by the law for failure to register the said CADTs. Such failure does not extinguish the rights of the ICCs/IPs to their ancestral domain unlike the protection of the innocent purchaser for value under the Torrens system. However, vested rights and those already existing *prior* to IPRA are protected.

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<sup>46</sup> *Carino v. Insular*, 41 Phil. 935, 212 U.S. 449 (1909).

There is also a safeguard clause for the protection of vested rights under Section 56 of IPRA. This is in recognition of the existing land tenure instruments and property regimes protected by other laws in favor of innocent occupants or claimants. It is clear that IPRA has concrete legal categorization of the land rights of IPs.

Among others, governments shall take necessary measures to:

- Identity IPs' lands.
- Guarantee procedures for the transmission of lands among members of indigenous communities in accordance with their customs.
- Ensure national agrarian programmes shall secure to IPs treatment equivalent to that accorded to other sectors of the population.
- Make sure that there are procedures and mechanisms in place to resolve any land disputes.

*Matrix of corresponding provisions*

<b>ILO 169<sup>47</sup></b>	<p><b>Article 13</b></p> <p>1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.</p> <p>2. The use of the term lands in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.</p> <p><b>Article 14</b></p> <p>1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.</p> <p>2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.</p> <p>3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.</p> <p><b>Article 19</b></p> <p>National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:</p> <p>(a) The provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;</p>
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<sup>47</sup> See also ILO Convention No. 169, Arts. 17.1, 17.2, and 17.3.

	(b) The provision of the means required to promote the development of the lands which these peoples already possess.
<b>UNDRIP</b>	<p><b>Article 26</b></p> <p>1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.</p> <p>2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.</p> <p>3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions, and land tenure systems of the indigenous peoples concerned.</p> <p><b>Article 27</b></p> <p>States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open, and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories, and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.</p> <p><b>Article 32</b></p> <p>1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.</p> <p>2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization, or exploitation of mineral, water, or other resources.</p> <p>3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural, or spiritual impact.</p>
<b>IPRA<sup>48</sup></b>	<p><b>Chapter III, Section 4. Concept of Ancestral Lands/Domains</b> – Ancestral lands/domains shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the area which the ICCs/IPs possess, occupy and use and to which they have claims of ownership.</p> <p><b>Chapter III, Section 5. Indigenous Concept of Ownership</b> – Indigenous concept of ownership sustains the view that ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICCs/IPs' private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights.</p>

<sup>48</sup>See also IPRA, Ch. I, § 2(b); Ch. II, § 3(a, b, c, d, e, l, j, o, and p); Ch. III, § 7(a), 8, 12, and 51; and Ch. VIII, § 56.

Chapter III, Section 6. Composition of Ancestral Lands/Domains – Ancestral lands and domains shall consist of all areas generally belonging to ICCs/IPs as referred under Section 3, items (a) and (b) of this Act.
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### 2.1.11 Natural resources

#### *Key findings*

All instruments recognize the right of tribal and indigenous peoples to the natural resources of their lands, as well the use, management and conservation thereof. However, **ILO Convention No. 169** is the only instrument that has a specific provision on how to guarantee IPs' rights when the State retains ownership of natural resources pertaining to their lands<sup>49</sup>. ILO Convention No. 169 would therefore be particularly relevant in the Philippines setting, where the issue of natural resources owned by the State has become particularly contentious.

**IPRA** applies a principle of “balancing of interests” when it comes to the development of natural resources. Article 12, Section 2 of the Constitution makes a distinction between small-scale and large-scale utilization of natural resources. Small-scale mining is limited to Filipino citizens while large-scale exploration, development and utilization of minerals, petroleum, and other mineral oils may be entered into by the President with foreign-owned corporations through either technical or financial assistance according to the general terms and conditions provided by law. The free and prior informed consent rule still applies within this context.

Echoing the IPs' right to develop, manage, and control natural resources under ILO Convention No. 169 and UNDRIP, IPRA provides that IPs shall have the priority rights in the utilization of natural resources and not absolute ownership thereof. Priority rights does not mean exclusive rights but merely the right of preference or first consideration in the award of privileges provided by existing laws and regulations, with due regard to the needs and welfare of IPs living in the area. Priority rights pertain to harvesting, extraction, development, or exploitation of any natural resources within their domains. The decision of IPs with regard to the use of resources within their territories shall at all times prevail.

The utilization of natural resources is always subject to compliance by the IPs with existing laws, such as Republic Act No. 7076 (Small-Scale Mining Act of 1991) and Republic Act No. 7942 (Philippine Mining Act) since it is maintained by State's authorities that it is the State which owns these resources. It also bears stressing that the grant of priority rights does not preclude the State from undertaking activities, or entering into co-production, joint venture or production-sharing agreements with private entities, to utilize the natural resources which may be located within the ancestral domains.

Neither does the grant of priority rights to the IPs exclude non-IPs from undertaking the same activities within the ancestral domains upon authority granted by the proper governmental agency. To do so would unduly limit the ownership rights of the State over the natural resources.

<sup>49</sup>ILO Convention No. 169, Art. 15 (2) – “In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities”.

All three instruments further recognize the possibility that the exploration and exploitation of natural resources within the ancestral domains may disrupt the natural environment as well as the traditional activities of the ICCs/IPs therein. Hence, the need for the prior informed consent of the ICCs/IPs before any search for, or utilization of, the natural resources within their ancestral domains is undertaken.

The Philippine Mining Act of 1995 (Republic Act No. 7942), aims to enhance the national growth through “rational” exploration, development, utilization, and conservation of the mining resources in the Philippines. This Act does take into account the IPs.

A mining agreement is subject to the rights of the IPs to their lands. In addition, the law prohibits the opening of the ancestral land to mining operations without prior consent of the IPs. In case consent is obtained, the law provides that royalty payments must be paid, but the amount is subject to the agreement of the contractor and the IPs. The royalty shall be kept in trust for the “socio-economic well-being” of the IPs.

Again, it should be noted that Republic Act No. 7942 was enacted prior to IPRA. The protection granted under Republic Act No. 7942 foreshadowed some of those found under IPRA but nevertheless is insufficient. For example, only ancestral lands are protected and with respect to its definition, the occupation must be actual. Another is the strict definition as to who are deemed IPs thereby negating the right to self-ascription. Finally, the consent of the IPs may be obtained without following their customary laws and practices.

Ancestral domains as defined in IPRA include both forest and agricultural lands. The classification of the land is not affected by the fact that it is within the ancestral domain. Therefore, forest lands, which are inalienable, remain as such even if included within the ancestral domain.

#### *Matrix of corresponding provisions*

ILO 169	<p><b>Article 15.1</b> The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management, and conservation of these resources.</p> <p><b>Article 15.2</b> In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.</p> <p><b>Article 7.4</b> Governments shall take measures, in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.</p>
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UNDRIP <sup>50</sup>	<p><b>Article 25</b> Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas, and other resources and to uphold their responsibilities to future generations in this regard.</p> <p><b>Article 26</b> 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.  2. Indigenous peoples have the right to own, use, develop and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.  3. States shall give legal recognition and protection to these lands, territories, and resources. Such recognition shall be conducted with due respect to the customs, traditions, and land tenure systems of the indigenous peoples concerned.</p> <p><b>Article 27</b> States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open, and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs, and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories, and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.</p> <p><b>Article 28</b> 1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair, and equitable compensation, for the lands, territories, and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used, or damaged without their free, prior, and informed consent.  2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories, and resources equal in quality, size, and legal status or of monetary compensation or other appropriate redress.</p>
IPRA	<p><b>Chapter III, Section 7. Rights to Ancestral Domains</b> – The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include: x x x (b) Right to Develop Lands and Natural Resources – Subject to Section 56 hereof, right to develop, control, and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection, and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent</p>

<sup>50</sup> See also UNDRIP, Arts. 29, 31, and 32.

	<p>participation in the formulation and implementation of any project, government, or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights;</p> <p>x x x</p>
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### 2.1.12 Displacement

#### *Key findings*

Most IPs are highly dependent upon land and natural resources and have developed sophisticated livelihood practices to sustain their economy and the environment. The relationship of IPs to their territories sustains the material and spiritual foundations of their cultural identities. Thus, removing them from their lands or disturbing them in their possession thereof threatens their very existence as a people and as a community.

All three instruments recognize the right of IPs to natural resources. ILO Convention No. 169, as a general principle, stipulates that indigenous peoples have the right to the natural resources pertaining to their lands, including the right to participate in the use, management and conservation of these resources. The exception to the general principle occurs in cases where the State retains the ownership over mineral, sub-surface or other resources. In such situations, the Convention establishes a series of safeguards to ensure that IPs are adequately consulted and that they participate in the benefits and receive fair compensation for any damage incurred.

IPRA incorporates these standards and mandates State duty to provide lands of quality and legal status at least equal to that of the land previously occupied by IPs.

It is relevant to emphasize that IPRA adds the condition that the inherent constitutional power of the State to expropriate (eminent domain) shall remain as a basis to derogate from the right to stay of IPs.

A common problem of ICCs/IPs internationally as well as locally is displacement. Whenever dominant neighbours, peoples, and governments have expanded or developed their territories and lands, the cultures, livelihood, and the existence of ICCs/IPs are being endangered. This unlawful intrusion and encroachment take many forms. In the Philippines, settlements and government projects have caused widespread displacement among the ICCs/IPs. Many portions of the ICCs/IPs domains have been distributed to lowlanders or non-ICCs/IPs under the Comprehensive Agrarian Reform Law (CARL). Although the objective of government under the law is laudable, nevertheless the ultimate effect is displacement.

No ICCs/IPs shall be displaced or relocated for the purpose enumerated under Section 58 of IPRA without the written consent of the specific persons authorized to give consent. Under Section 7(c) of IPRA, ICCs/IPs have a right to stay in their territories and not to be removed therefrom. The specific persons authorized to give consent to their relocation are the ICCs/IPs themselves or, as implied by Section 58 of IPRA, those allowed or authorized by their customary laws. The ICCs/IPs may also be removed from such areas through eminent domain.

### *Matrix of corresponding provisions*

<b>ILO 169</b>	<p><b>Article 16.1</b> Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.</p> <p><b>Article 16.2</b> Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.</p> <p><b>Article 16.3</b> Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.</p> <p><b>Article 16.4</b> When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.</p> <p><b>Article 16.5</b> Persons thus relocated shall be fully compensated for any resulting loss or injury.</p>
<b>UNDRIP</b>	<p><b>Article 10</b> Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.</p> <p><b>Article 28</b> 1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.  2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.</p>
<b>IPRA</b>	<p><b>Chapter III, Section 7. Rights to Ancestral Domains</b> – The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include: x x x (c) Right to Stay in the Territories – The right to stay in the territory and not be removed therefrom. No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free</p>



	<p>and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, ICCs/IPs shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury;</p> <p>(d) Right in Case of Displacement – In case displacement occurs as a result of natural catastrophes, the State shall endeavour to resettle the displaced ICCs/IPs in suitable areas where they can have temporary life support system: Provided, That the displaced ICCs/IPs shall have the right to return to their abandoned lands until such time that the normalcy and safety of such lands shall be determined: Provided, further, That should their ancestral domain cease to exist and normalcy and safety of the previous settlements are not possible, displaced ICCs/IPs shall enjoy security of tenure over lands to which they have been resettled: Provided, furthermore, That basic services and livelihood shall be provided to them to ensure that their needs are adequately addressed:</p> <p>x x x</p>
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### 2.1.13 Recruitment and conditions of employment

#### ***Key findings***

IPs continue to constitute disproportionate large numbers of those affected by child labour, forced labour, and other work-related discriminations or violations for rights. They face barriers and disadvantages in the labour market, as their knowledge and skills are not valued and they have limited access to education and vocational training. Their marginalization and poverty make them vulnerable to exploitative practices such as bonded labour, trafficking and hazardous work.

All three instruments (ILO Convention No.169, UNDRIP, and IPRA) provide for a wide range of special measures aiming at closing the socio economic gaps faced by IPs in the employment market. The protection required should extend to root and institutional causes that prevent IPs from accessing work as well as vocational trainings and generating employment from their traditional occupations.

ILO Convention No.169 mentions specifically the requirement to establish specialised labour inspections for indigenous workers. UNDRIP mentions specifically the protection of indigenous children from hazardous working conditions.

IPRA extends to ICCs/IPs the same employment rights, opportunities, basic services, educational and other rights and privileges available to every member of society. It further accords the ICCs/IPs the right to be free from any form of discrimination, with respect to recruitment and conditions of employment and penalizes any discriminatory acts against IPs in terms of employment. Under the IRRs, ICCs/IPs are free and equal to all other individuals in their dignity as human beings and shall be free from any kind of adverse discrimination *for reason of their indigenous origin and identity*.<sup>51</sup> The NCIP, being the designated implementing

<sup>51</sup> IRR, Rule V, § 1.

agency, is tasked to ensure that every member of the ICCs/IPs is accorded full respect as valuable citizens of the Philippines.<sup>52</sup>

Particularly, the NCIP is mandated, in close coordination with the Department of Labor and Employment (DOLE) and such other related agencies, to adopt special measures to ensure the effective and legal protection of members of ICCs/IPs with regard to the following:

- Recruitment and employment conditions applicable to workers in general;
- Establishment of an IP Desk at DOLE;
- Protection of IPs' right to affirmative action with regard to their employment in government and private undertakings by setting up mechanisms for the recruitment and hiring of IPs in proportion to their population in their areas of operation; and
- Periodic monitoring of IPs employment with government offices (GOs), non-governmental organizations (NGOs), and private companies<sup>53</sup>.

Moreover, the NCIP shall develop a Jobs and Employment Programme for the appropriate training and placement of IPs, whether professionals, skilled, or unskilled<sup>54</sup>. The programme shall assess and determine the number of unemployed and underemployed IPs and establish training and placement procedure to assist IPs to meet job/employment demands<sup>55</sup>.

As enumerated in the IRR of IPRA, the right of members of ICCs/IP communities to employment includes the right to:

- Be free from any form of discrimination, with respect to recruitment and conditions of employment;
- Enjoy equal opportunities for admission to employment, both skilled and unskilled;
- Just and legal remuneration of work for equal value;
- Medical and social assistance, occupational safety, social security and any other occupationally related benefits, including housing;
- Freedom of association and freedom for all lawful trade union activities including the right to conclude collective bargaining agreements with employers;
- Be informed of their rights and privileges under existing labour laws and to avail of equal protection of these rights;
- Enjoy a wholesome and healthy working environment free from any form of life hazards and dangers and other conditions hazardous to their health, in particular through exposure to pesticides and other toxic substances;
- Be free from any coercive recruitment system, including bonded labour and other forms of debt servitude; and
- Equal opportunities and just treatment in employment for men and women, including protection against sexual harassment<sup>56</sup>.

Under IPRA, ICCs/IPs have the right to be free from any form of discrimination, with respect to recruitment and conditions of employment. This is to ensure that they enjoy equal opportunities for admission to employment, medical and social assistance, safety as well as

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<sup>52</sup>*Id.*

<sup>53</sup>IPRA IRR, Rule V, § 4 (b).

<sup>54</sup>*Id.*

<sup>55</sup>*Id.*

<sup>56</sup>IPRA IRR, Rule V, § 4(a).

other occupationally-related benefits. They must be informed of their rights under existing labour legislation and of means available to them for redress. Section 24 of IPRA declares it unlawful for any person to discriminate against any ICC/IP with respect to the terms and conditions of employment on account of their *descent* or to deny an ICC/IP employee any right or benefit arising from IPRA or to discharge him to prevent him from enjoying such benefits.

The Philippine, being one of the signatories to CERD, is enjoined to enforce the following rights:

- The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
- The right to form and join trade unions;
- The right to housing;
- The right to public health, medical care, social security, and social services;
- The right to education and training; and
- The right to equal participation in cultural activities<sup>57</sup>.

Under Philippine law, R.A. No. 7610<sup>58</sup>, as amended by R.A. No. 7658<sup>59</sup>, addresses various forms of child abuse, including exploitative labour or employment.

#### *Matrix of corresponding provisions*

<b>ILO 169</b>	<p><b>Article 20.1</b> Governments shall, within the framework of national laws and regulations, and in cooperation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.</p> <p><b>Article 20.2</b> Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:</p> <p>(a) Admission to employment, including skilled employment, as well as measures for promotion and advancement;</p> <p>(b) Equal remuneration for work of equal value;</p> <p>(c) Medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;</p> <p>(d) The right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.</p>
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<sup>57</sup> CERD, Art. 5(e).

<sup>58</sup> Otherwise known as the "Special Protection of Children Against Abuse, Exploitation, and Discrimination Act."

<sup>59</sup> Otherwise known as the "Act Prohibiting the Employment of Children 15 Years of Age in Public and Private Undertakings, Amending for this Purpose Section 12, Article VII of R.A. 7610".

	<p><b>Article 20.3</b></p> <p>The measures taken shall include measures to ensure:</p> <p>(a) That workers belonging to the peoples concerned, <u>including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors</u>, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;</p> <p>(b) That workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;</p> <p>(c) That workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;</p> <p>(d) That workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.</p> <p><b>Article 20.4</b></p> <p>Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.</p>
UNDRIP	<p><b>Article 17</b></p> <p>1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.</p> <p>2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.</p> <p>3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.</p> <p><b>Article 21</b></p> <p>1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.</p> <p>2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children, and persons with disabilities.</p>
IPRA	<p><b>Chapter V, Section 23</b></p> <p>It shall be the right of the ICCs/IPs to be free from any form of discrimination, with respect to recruitment and conditions of employment, such that they may enjoy equal opportunities as other occupationally-related benefits, informed of their rights under</p>

	<p>existing labour legislation and of means available to them for redress, not subject to any coercive recruitment systems, including bonded labour and other forms of debt servitude; and equal treatment in employment for men and women, including the protection from sexual harassment.</p> <p>Towards this end, the State shall within the framework of national laws and regulations, and in cooperation with the ICCs/IPs concerned, adopt special measures to ensure the effective protection with regard to the recruitment and conditions of employment of persons belonging to these communities, to the extent that they are not effectively protected by the laws applicable to workers in general.</p> <p>ICCs/IPs shall have the right to association and freedom for all trade union activities and the right to conclude collective bargaining agreements with employers' conditions. They shall likewise have the right not to be subject to working conditions hazardous to their health, particularly through exposure to pesticides and other toxic substances.</p> <p><b>Sec. 24. Unlawful Acts Pertaining to Employment</b> – It shall be unlawful for any person:</p> <p>(a) To discriminate against any ICC/IP with respect to the terms and conditions of employment on account of their descent. Equal remuneration shall be paid to ICC/IP and non-ICC/IP for work of equal value; and</p> <p>(b) To deny any ICC/IP employee any right or benefit herein provided for or to discharge them for the purpose of preventing them from enjoying any of the rights or benefits provided under this Act.</p>
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#### 2.1.14 *Vocational training, handicrafts, and rural industries*

##### ***Key findings***

All three instruments recognize and protect the right of indigenous peoples to vocational training, handicrafts, and rural industries.

ILO Convention No.169 provides that any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Since the goal is for the IPs to gradually assume responsibility over the training programme, they must be consulted and have participation in its formulation to implementation and evaluation. The traditional economies and activities of IPs, such as handicrafts, rural, and community-based industries, as well as hunting, fishing, trapping, and gathering, are essential to their culture and development. Thus, the government shall promote and strengthen these activities with the participation of the people concerned.

The UNDRIP is more explicit with respect to indigenous peoples' right to basic services. It provides that indigenous people have the right to special measures for immediate effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health, and social security.

This provision of UNDRIP is exactly the same as that of Section 25 of IPRA. It exactly restates the text of the UNDRIP which states that particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and disabled persons. Furthermore, the UNDRIP recognizes the right of IPs to determine and develop all health, housing, and other economic and social programmes affecting them and, as far as possible, to

administer such programmes through their own institutions. They also have the right to access, without any discrimination, to all medical institutions, health services, and medical care.

In all three instruments, the State or the government is under obligation to provide for vocational trainings for IPs.

*Matrix of corresponding provisions*

<b>ILO 169<sup>60</sup></b>	<p><b>Article 21</b> Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.</p> <p><b>Article 22.1</b> Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.</p> <p><b>Article 22.2</b> Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.</p>
<b>UNDRIP</b>	<p><b>Article 21</b> 1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health, and social security.</p> <p>2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children, and persons with disabilities.</p>
<b>IPRA</b>	<p><b>Chapter V, Section 25. Basic Services</b> – The ICC/IP have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health, and social security. Particular attention shall be paid to the rights and special needs of indigenous women, elderly, youth, children, and differently-abled persons. Accordingly, the State shall guarantee the right of ICCs/IPs to government's basic services which shall include, but not limited to water and electrical facilities, education, health, and infrastructure.</p> <p><b>Chapter V, Section 26. Women</b> – ICC/IP women shall enjoy equal rights and opportunities with men, as regards the social, economic, political, and cultural spheres of life. The participation of indigenous women in the decision-making process in all levels, as well as in the development of society, shall be given due respect and recognition.</p> <p>The State shall provide full access to education, maternal, and child care, health and nutrition, and housing services to indigenous women. Vocational, technical, professional</p>

<sup>60</sup> See also ILO Convention No. 169, Arts. 22.3, 23.1, and 23.2.

	<p>and other forms of training shall be provided to enable these women to fully participate in all aspects of social life. As far as possible, the State shall ensure that indigenous women have access to all services in their own languages.</p> <p><b>Chapter VII, Section 46. Offices within the NCIP</b> – The NCIP shall have the following offices which shall be responsible for the implementation of the policies herein after provided: xxx</p> <p>(c) Office of Education, Culture, and Health – The Office on Culture, Education, and Health shall be responsible for the effective implementation of the education, cultural, and related rights as provided in this Act. It shall assist, promote, and support community schools, both formal and non-formal, for the benefit of the local indigenous community, especially in areas where existing educational facilities are not accessible to members of the indigenous group. It shall administer all scholarship programmes and other educational rights intended for ICC/IP beneficiaries in coordination with the Department of Education, Culture and Sports (DECS) and the Commission on Higher Education (CHED). It shall undertake, within the limits of available appropriation, a special programme which includes language and vocational training, public health and family assistance programme, and related subjects.</p>
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#### *2.1.15 Social security and health*

##### ***Key findings***

ILO Convention No. 169 and UNDRIP are substantially reiterated in IPRA. IPRA gives special emphasis to women. As regards basic services, these would include, but not limited to, water and electrical facilities, education, health, and infrastructure. IPRA reflects the government mandate under ILO Convention No. 169 to ensure that IPs has equal access to adequate health services and social security benefits without discrimination. Health services shall also be community-based, taking into consideration the IPs' traditional preventive care, healing practices and medicines, as well as their economic, geographic, social, and cultural conditions. IPs must also actively participate in these health programmes and towards this end, they should also be given opportunity to gain training in the health profession.

Rule V, Section 5 of the IRR of IPRA directs the NCIP to formulate and implement a Five-Year Master Plan in the equitable delivery of basic services to all ICCs/IPs all over the Philippines. To this end, the NCIP shall work towards the establishment of IP Desks with various agencies for the delivery of basic services covering employment, vocational training and retraining, housing, sanitation, health, water, education, infrastructure, electrical facilities, and social security.

UNDRIP gives a general approach to the health aspect of IPs. It recognizes the right of IPs to determine and develop all health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions. They also have the right of access, without any discrimination, to all medical institutions, health services and medical care. ILO Convention No. 169 has more concrete provisions, such as mandating that health services be community-based and that preference be given to the training of community health workers.

*Matrix of corresponding provisions*

ILO 169 <sup>61</sup>	<p><b>Article 24</b> Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.</p> <p><b>Article 25.1</b> Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.</p> <p><b>Article 25.2</b> Health services shall, to the extent possible, be community-based. These services shall be planned and administered in cooperation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices, and medicines.</p>
UNDRIP <sup>62</sup>	<p><b>Article 21</b> 1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health, and social security.</p> <p>2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.</p> <p><b>Article 23</b> Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.</p> <p><b>Article 24</b> 1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.</p> <p>2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.</p>
IPRA	<p><b>Chapter 1, Section 2. Declaration of State Policies</b> – The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:</p>

<sup>61</sup> See also ILO Convention No. 169, Arts. 25.3 and 25.4.

<sup>62</sup> See also UNDRIP, Art. 29.



x x x

(f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities. x x x

**Chapter V, Section 25. Basic Services** – The ICC/IP have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health, and social security. Particular attention shall be paid to the rights and special needs of indigenous women, elderly, youth, children, and differently-abled persons. Accordingly, the State shall guarantee the right of ICCs/IPs to government's basic services which shall include, but not limited to water and electrical facilities, education, health, and infrastructure.

**Chapter V, Section 26. Women** – ICC/IP women shall enjoy equal rights and opportunities with men, as regards the social, economic, political and cultural spheres of life. The participation of indigenous women in the decision-making process in all levels, as well as in the development of society, shall be given due respect and recognition. The State shall provide full access to education, maternal and child care, health, and nutrition, and housing services to indigenous women. Vocational, technical, professional and other forms of training shall be provided to enable these women to fully participate in all aspects of social life. As far as possible, the State shall ensure that indigenous women have access to all services in their own languages.

**Chapter VI, Section 34. Right to Indigenous Knowledge Systems and Practices and to Develop own Sciences and Technologies** – ICCs/IPs are entitled to the recognition of the full ownership and control and protection of their cultural and intellectual rights. They shall have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, including derivatives of these resources, traditional medicines, and health practices, vital medicinal plants, animals, and minerals, indigenous knowledge systems and practices, knowledge of the properties of fauna and flora, oral traditions, literature, designs, and visual and performing arts.

**Chapter VII, Section 46. Offices within the NCIP** – The NCIP shall have the following offices which shall be responsible for the implementation of the policies herein after provided:

x x x

(c) **Office of Education, Culture and Health** – The Office on Culture, Education, and Health shall be responsible for the effective implementation of the education, cultural, and related rights as provided in this Act. It shall assist, promote and support community schools, both formal and non-formal, for the benefit of the local indigenous community, especially in areas where existing educational facilities are not accessible to members of the indigenous group. It shall administer all scholarship programmes and other educational rights intended for ICC/IP beneficiaries in coordination with DECS and CHED. It shall undertake, within the limits of available appropriation, a special programme which includes language and vocational training, public health and family assistance programme and related subjects. It shall also identify ICCs/IPs with potential training in the health profession and encourage and assist them to enrol in schools of medicine, nursing, physical therapy, and other allied courses pertaining to the health profession.

### 2.1.16 *Education and means of communication*

#### ***Key findings***

All the three instruments are unanimous on education as key to addressing marginalisation suffered by IPs.

**ILO Convention No. 169** dedicates six articles in total (almost 15 per cent of its content) to the issue of education of the IPs. These can be divided into three sections, namely; those which (a) aim to ensure equal opportunity to ICCs/IPs to acquire education in the existing formal system; (b) provide for the right of ICCs/IPs to establish their own educational system; and (c) provide for the protection and application of indigenous language in the educational system.

Emphasis is given to indigenous language as ILO Convention No. 169 strengthens and provides that the indigenous children be taught to read and write in their own language. If the same is not practicable, ILO Convention No. 169 provides that an alternative should be established, through consultation with the ICCs/IPs<sup>63</sup>. In addition, special measures are required to be taken to preserve and promote the indigenous languages<sup>64</sup>.

Under ILO Convention No. 169, member States are obliged to undertake measures to educate their own nationals to eradicate prejudices against ICCs/IPs. These measures are specifically aimed at correcting text books and educational materials to provide “a fair, accurate, and informative portrayal” of the indigenous society and cultures. IPRA echoes this provision and in addition directs the State to take effective measures, arrived at in consultation with the ICCs/IPs, to eliminate cultural prejudice and promote tolerance and understanding. These effective measures may be in the form of laws penalizing discrimination or information dissemination through media promoting tolerance. In addition, these educational programmes and services provided by the State must incorporate indigenous histories, knowledge and technologies, value systems, and “further social, economic, and cultural aspirations”.

However, the right granted to ICCs/IPs under Section 33 of IPRA is not limited to the right to establish their own educational systems but includes the right to provide education in these systems in: (a) their own language; and (b) in the manner appropriate to their culture.

The requisite that the educational system be provided using indigenous language is likewise found in several international instruments.

With respect to education, indigenous children or youth have the right to all levels and forms of education. Equal access to various cultural opportunities must be provided to ICCs/IPs through the educational system, public, or private cultural entities, scholarships, grant, and other incentives. However, ICCs/IPs have a right to establish and control their educational systems and institutions through education in their own language and in a manner appropriate to their cultural methods of teaching and learning.

The ILO Convention No. 169 is specific in the measures needed to be taken in the education aspect of IPs. It provides for the development of education programmes specific to

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<sup>63</sup> ILO Convention No. 169, Art. 28 (1).

<sup>64</sup> *Id.*, Art. 28 (3).

the IPs concerned, as well as the correction of textbooks to remove the wrong portrayal and stereotypes against IPs.

The **UNDRIP** likewise provides that the IPs, specifically indigenous children, shall have equal opportunity to acquire education in all levels and forms. Indigenous children who are living outside their communities have the right to be provided access to education in their own culture and language. The IPs are likewise guaranteed the “right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning<sup>65</sup>”.

**IPRA** is equally extensive on the right to education. It provides that the State shall provide “equal access to various cultural opportunities to the ICCs/IPs through the educational system, public, or private cultural entities, scholarships, grants, and other incentives without prejudice to their right to establish and control their educational systems and institutions by providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning<sup>66</sup>”. IPRA recognizes the right of the indigenous peoples to establish, control, and maintain their own educational and learning systems. This is in harmony with the Convention on the Rights of the Child (CRC) which provides that the education of the child shall be directed to, among others, the development of respect for the child's parents, his or her own cultural identity, language, and values.

Under R.A. No. 7610<sup>67</sup>, DECS shall develop and institute an alternative system of education for children of indigenous cultural communities which is culture-specific. DECS shall also accredit and support non-formal but functional indigenous educational programmes conducted by NGOs in these communities<sup>68</sup>.

The IRR of IPRA mandates the NCIP, in consultation with ICCs/IPs, to work in collaboration with the DECS, the CHED and with private and public schools at all levels towards the development of appropriate programmes and projects related to the following:

- The curricula and appropriate teaching materials and resources;
- The equitable distribution, selection, and implementation of scholarship programmes;
- Appropriate career development;
- Training of teachers for IP communities;
- Construction of school buildings in IP communities;
- Inclusion of IPs resistance to colonization in the academic curricula, in the context of IPs assertion and defence of their freedom, independence, and territorial integrity and culture; and,
- Establish schools for living traditions and cultural heritage<sup>69</sup>.

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<sup>65</sup>UNDRIP, Art. 14.

<sup>66</sup>IPRA, § 30.

<sup>67</sup>Otherwise known as the “Special Protection of Children Against Abuse, Exploitation, and Discrimination Act.”

<sup>68</sup>*Id.*, § 18.

<sup>69</sup>IRR, Rule V, § 8.

*Matrix of corresponding provisions*

ILO 169 <sup>70</sup>	<p><b>There are numerous provisions on education, including:</b></p> <p><b>Article 26</b> Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.</p> <p><b>Article 27.1</b> Education programmes and services for the peoples concerned shall be developed and implemented in cooperation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations. They shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.</p> <p><b>Article 27.2</b> The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.</p>
UNDRIP	<p><b>Article 14</b> 1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.  2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.  3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.</p> <p><b>Article 15</b> 1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.  2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding, and good relations among indigenous peoples and all other segments of society.</p> <p><b>Article 17</b> x x x 2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or</p>

<sup>70</sup> See also ILO Convention No. 169, Arts. 27.3, 28, 29 30.1, 30.2, and 31.

**UNDRIP** does not have a built-in supervisory mechanism to monitor how it is implemented by states. Under **IPRA**, NCIP is both an implementing agency and a supervisory mechanism.

**ILO Convention No. 169** is implemented by ratifying countries and supervised by a wide range of supervisory mechanisms, including a team of independent world experts. As mentioned further, this constitutes one of the value added that a ratification of ILO Convention No.169 would bring into the Philippines domestic legal arsenal on IPs.

**IPRA** indicates that the NCIP is the primary government agency responsible for the formulation and implementation of policies, plans and programmes to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domain as well as their rights thereto. The general mandate of the NCIP is that it shall protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs and traditions and institutions.

The NCIP is tasked to formulate and implement policies, plans, programmes, and projects for economic, social, political, and cultural development of the ICCs/IPs and to monitor the implementation thereof. It may review and assess the conditions of ICCs/IPs including existing laws and policies pertinent thereto and to propose relevant laws and policies to address their role in national development.

The NCIP may request and engage the services and support of experts from other agencies of the government or employ private experts and consultants as may be required in the pursuit of its objectives subject to existing laws, rules and regulations.

The NCIP is the agency that is to issue certificates of ancestral land/domain titles. The NCIP is the agency that is in charge of issuing the appropriate certification as a pre-condition to the grant or renewal of permit, concession, license, lease, production-sharing agreement, or any other similar authority for the disposition, utilization, management and appropriation by any private individual, corporate entity or any government agency, corporation or subdivision thereof on any part or portion of the ancestral domain, taking into consideration the free and prior informed consent of the ICCs/ IPs concerned.

Subject to existing laws, it has the power to enter into contracts, agreements, or arrangement, with government or private agencies or entities as may be necessary to attain the objectives of the Act. Subject to the approval of the President, the NCIP can also obtain loans from government lending institutions and other lending institutions to finance its programmes.

The NCIP can negotiate for funds and to accept grants, donations, gifts and/or properties in whatever form and from whatever source, local and international, subject to the approval of the President of the Philippines, for the benefit of ICCs/IPs and administer the same in accordance with the terms thereof; or in the absence of any condition, in such manner consistent with the interest of ICCs/IPs as well as existing laws.

The NCIP serves as the primary agency through which ICCs/IPs can seek government assistance and as the medium through which such assistance may be extended. The NCIP continuously gives its attention to addressing the current situation of IPs and to proposing several programmes of action focused on ancestral domains and lands titling, the development

	<p>social development, taking into account their special vulnerability and the importance of education for their empowerment.</p> <p>x x x</p>
IPRA <sup>71</sup>	<p><b>Chapter 1, Section 2. Declaration of State Policies</b> – The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:</p> <p>x x x</p> <p>(f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.</p> <p>x x x</p> <p><b>Chapter V, Section 26. Women</b> – ICC/IP women shall enjoy equal rights and opportunities with men, as regards the social, economic, political, and cultural spheres of life. The participation of indigenous women in the decision-making process in all levels, as well as in the development of society, shall be given due respect and recognition.</p> <p>The State shall provide full access to education, maternal and child care, health and nutrition, and housing services to indigenous women. Vocational, technical, professional, and other forms of training shall be provided to enable these women to fully participate in all aspects of social life. As far as possible, the State shall ensure that indigenous women have access to all services in their own languages.</p> <p><b>Chapter V, Section 28. Integrated System of Education</b> – The State shall, through the NCIP, provide a complete, adequate and integrated system of education, relevant to the needs of the children and young people of ICCs/IPs.</p> <p><b>Chapter VI, Section 30. Educational Systems</b> – The State shall provide equal access to various cultural opportunities to the ICCs/IPs through the educational system, public or cultural entities, scholarships, grants and other incentives without prejudice to their right to establish and control their educational systems and institutions by providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning. Indigenous children/youth shall have the right to all levels and forms of education of the State.</p>

#### 2.1.17 *Monitoring, implementation, supervision mechanisms/institutions*

##### ***Key findings***

Any international human rights instrument requires agencies/institutions responsible for its implementation and supervisory mechanisms to monitor and track progress in terms of rights' enjoyment by its target groups or individuals. In most cases, the institutions/agencies in charge of implementation are different from those with supervision mandate in order to avoid a conflict of interests.

<sup>71</sup>See also IPRA, Ch. V, § 21 and 25; and Ch. VI, § 31 and 46.

of the natural and cultural heritage of the IPs, the delivery of basic services to their communities, and the enforcement and protection of their rights.

The NCIP can convene periodic conventions or assemblies of ICCs/IPs to review, assess, as well as propose policies or plans. In fact, it could gather ICCs/IPs, together with various agencies, academicians, government agencies and non-governmental organizations to discuss the plight of these communities. It accommodates proposals and comments on case studies done by different entities in order to derive information, insights and other learning experiences which might be useful in policy formulation and programme planning and development.

It is empowered to advise the President on all matters relating to the ICCs/IPs and to submit within 60 days after the close of each calendar year, a report of its operations and achievements.

As part of its policy review, formulation and implementation powers, the NCIP can submit to the Legislature/Congress appropriate legislative proposals intended to carry out the policies under the Act. The NCIP is tasked to prepare and submit the appropriate annual budget to the Office of the President.

The power to promulgate necessary rules and regulations for the implementation of IPRA is a necessary power of the NCIP as an administrative body. This is a delegated power involving no discretion as to what the law shall be, but merely to fix the details in the execution or enforcement of a policy set out in the law. In 1998, the NCIP issued the IRR of IPRA. Subsequently in 2003, it issued Administrative Circular No. 1 which provides for the Rules of Procedure before the Commission.

The NCIP can exercise such other powers and functions as may be directed by the President of the Republic of the Philippines on matters relating to ICCs/IPs. ILO Convention No. 169 and UNDRIP standards in regard to governmental authority and mechanism for the advancement and protection of indigenous peoples' rights are reflected in IPRA.

The NCIP exercises quasi-legislative power vested upon it by Congress. It is mandated to carry out and enforce the Implementing Rules and Regulations (IRR) of IPRA. To do this, NCIP has a legal department which focuses on cases and controversies arising from the implementation of IPRA.

According to the Rules of Procedure of NCIP, each region has a Regional Hearing Offices (RHOs), which would settle disputes and entertain complaints from IPs residing in their respective areas. The NCIP, through its RHO, shall exercise jurisdiction over all claims and disputes involving rights of ICCs/IPs.

Any party against whom a judgment is rendered by the RHO may appeal the decision, award or final order to the Commissioners *en banc* of NCIP. This system of appeal could be problematic on instances when the complaints involved personnel and/or officers of NCIP in carrying out their duties in implementing IPRA. The absence of other mechanisms and readily accessible venue to the IPs for redress of their grievances may hold back the full realization of their rights under the law.

***Matrix of corresponding provisions***

<b>ILO 169</b>	<p><b>Article 2.1</b> Government shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.</p> <p><b>Article 33.1</b> The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.</p>
<b>UNDRIP</b>	<p><b>Article 8</b> x x x 2. States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;  (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;  (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;  (d) Any form of forced assimilation or integration;  (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.</p> <p><b>Article 40</b> Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.</p>
<b>IPRA</b>	<p><b>Chapter II, Section 3. Definition of Terms</b> x x x (k) National Commission on Indigenous Peoples (NCIP) – Refers to the office created under this Act, which shall be under the Office of the President, and which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programmes to recognize, protect and promote the rights of ICCs/IPs;</p> <p><b>Chapter VII, Section 38. National Commission on Indigenous Cultural Communities/Indigenous Peoples (NCIP)</b> – To carry out the policies herein set forth, there shall be created the National Commission on Indigenous Cultural Communities/IPs which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as their rights thereto.</p>



	<p><b>Chapter VII, Section 39. Mandate</b> – The NCIP shall protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions.</p> <p><b>Chapter VII, Section 44. Powers and Functions</b> – To accomplish its mandate, the NCIP shall have the following powers, jurisdiction and function:</p> <p>(a) To serve as the primary government agency through which ICCs/IPs can seek government assistance and as the medium, thorough which such assistance may be extended;</p> <p>(b) To review and assess the conditions of ICCs/IPs including existing laws and policies pertinent thereto and to propose relevant laws and policies to address their role in national development;</p> <p>(c) To formulate and implement policies, plans, programmes and projects for the economic, social and cultural development of the ICCs/IPs and to monitor the implementation thereof;</p> <p>x x x</p> <p>(h) To coordinate development programmes and projects for the advancement of the ICCs/IPs and to oversee the proper implementation thereof;</p> <p>(i) To convene periodic conventions or assemblies of IPs to review, assess as well as propose policies or plans;</p> <p>x x x</p> <p>(k) To submit to Congress appropriate legislative proposals intended to carry out the policies under this Act;</p> <p>x x x</p> <p>(q) To represent the Philippine ICCs/IPs in all international conferences and conventions dealing with indigenous peoples and other related concerns.</p>
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## 2.2 Added value of ratifying ILO Convention No. 169

### 2.2.1 *Access to ILO supervisory mechanism, tripartite dialogue, and technical cooperation assistance*

ILO supervisory processes are unique in their focus on continuous dialogue with governments and the possibility of offering ILO technical assistance to resolve the problems encountered. All supervisory comments contribute to a deeper understanding of the implications of ILO Convention No. 169 in specific contexts and do not use a “name and shaming approach”.

Ratifying States commit themselves to submit regular reports on implementation to the ILO, at least every five years. These reports are to be shared with workers’ and employers’ organizations at the national level. The ILO also encourages States in preparing the reports, to consult indigenous and tribal peoples in the country, through their traditional institutions. In addition, workers’ and employers’ organizations can submit information and comments on the application of the Convention, bringing progress, challenges or violations to the attention of the ILO supervisory bodies. The tripartite constituent of the ILO is unique in its nature and way of

operating. Workers and employers are social partners that would do all they can they to help governments solve social problems through a process of continuous dialogue.

The Committee of Expert makes two types of comments. Observations to reports are generally published but direct requests consist generally of technical questions or request of further information from Governments on a confidential basis with the view to providing solutions.

General surveys are equally relevant mechanisms to enable the ILO to identify obstacles that prevent countries from implementing an instrument and assess what could be done to resolve such problem. Burden-sharing among ILO tripartite constituents provides wider opportunity to facilitate assistance to needy members in the latter's efforts to promote indigenous and tribal peoples' rights.

Furthermore, the ILO has a comprehensive technical assistance programme to promote and apply the Convention: the Programme to Promote ILO Convention No. 169 (PRO 169). PRO169 is a unique global programme that provides support to ILO tripartite constituents and to indigenous and tribal peoples in more than 25 countries across Asia, Latin America, and Asia. ILO technical cooperation programmes are intended to assist governments to prevent or overcome difficulties in implementing ratified conventions. Actions taken may can include assistance in drafting new legislation, capacity development, training, or technical advice.

It is therefore right to argue that a ratification of ILO Convention No.169 would facilitate the implementation, monitoring and supervision of both UNDRIP and IPRA by bringing in all the supervisory mechanisms, methods, approach and uniqueness of ILO *modus operandi* as described above.

#### *2.2.2 Give international visibility to the Philippines' domestic efforts on IPs*

A ratification of ILO Convention No.169 by the Philippines would give international visibility to efforts and initiatives taken by the Philippines government on IPs' issues. The Philippines is listed among the countries with important domestic legislations on IPs. Regularly country reporting under ILO Convention No.169 would enable the Philippines to share with the world its commendable domestic efforts on IPs' issues and thus give international visibility to its domestic efforts

#### *2.2.3 The ratification of ILO Convention No.169 would also:*

- a. Enable the ILO technical cooperation programme on IPs to scale up its activities and assistance in the Philippines; and
- b. Enhance good governance, ease social tensions, and contribute to conflict prevention regarding particularly exploitation of natural resources. ILO Convention No. 169 has contributed to conflict resolution in numerous countries, such as Guatemala and Nepal. In numerous countries, this instrument has helped to establish a conducive environment for sustainable exploitation of natural resources, by bringing in safeguards, tools, and dialogue mechanism that are used to prevent conflicts and ease social tensions. As more and more investors seek for sustainable activities, there is no long term prospect in conflict-stricken exploitation of natural resources.

### 3. CONCLUSIONS AND RECOMMENDATIONS

The IPRA meets the standards set by ILO Convention No. 169 and UNDRIP and substantially incorporates the text of these international instruments. In addition, IPRA contains provisions not found in ILO Convention No. 169 and UNDRIP. These specific provisions address the particular situation of ICCs/IPs in the Philippines. There are, on the other hand, some provisions of ILO Convention No. 169 and UNDRIP which are not found in or are not sufficiently addressed by IPRA.

The ILO Convention No. 169 will strengthen the promotion and protection of IP rights by addressing in greater depth and emphasis the areas which the IPRA does not sufficiently cover.

ILO supervisory processes are unique in their focus on continuous dialogue with governments and the possibility of offering ILO technical assistance to resolve the problems encountered. All supervisory comments contribute to a deeper understanding of the implications of ILO Convention No. 169 in specific contexts and do not use a “name and shaming approach”.

Furthermore, the ILO has a comprehensive technical assistance programme to promote and apply the Convention: the Programme to Promote ILO Convention No. 169 (PRO 169). PRO 169 is a unique global programme that provides support to ILO tripartite constituents and to indigenous and tribal peoples in more than 25 countries across Asia, Latin America, and Africa. ILO technical cooperation programmes are intended to assist Governments to prevent or overcome difficulties in implementing ratified conventions. Actions taken may include assistance in drafting new legislation, capacity development, training, or technical advice.

A ratification of ILO Convention No. 169 by the Philippines would give international visibility to efforts and initiatives taken by the Philippines government on IPs' issues. The Philippines is listed among the countries with important domestic legislations on IPs. Regularly country reporting under ILO Convention No. 169 would enable the Philippines to share with the world its commendable domestic efforts on IPs' issues and thus give international visibility to its domestic efforts.

Thus, it is strongly recommended that the Philippine government should ratify ILO Convention No. 169 in order to complement and supplement IPRA.

The topics covered by ILO Convention No. 169 that are also embodied in IPRA are the following: description of IPs; concept of land and right of ownership over it; right to natural resources; right against displacement and unauthorised intrusion; government responsibility and special measures; human rights; consultation and participation; development; cultural Integrity and customary laws; recruitment and conditions of employment; education and means of communication; vocational training, handicrafts, and rural industries; social security and health; and administration.

The ILO Convention No. 169 provision on cross-border contacts and communications has no equivalent in IPRA. On the other hand, IPRA gives special emphasis on indigenous women and children and youth. It also states that particular attention should be paid to the rights and special needs of the elderly and differently-abled indigenous persons. IPRA also

provides for IP rights during armed conflict, as well as penalties for violation of its certain provisions.

At the international level, ILO Convention No. 169 has influenced policies on IPs of many countries, as well as those of international financial institutions, United Nations specialised agencies and UN programmes. The World Bank, the Asian Development Bank and the European Commission have all developed, or are in the process of developing, policy guidelines specifically concerning indigenous peoples. ILO Convention No. 169 has also served as a background instrument informing the deliberations of a number of United Nations treaty bodies, for instance, in considering country reports of compliance of obligations under other international treaties.

The Philippines, as well as some other countries which have not yet ratified ILO Convention No. 169, has nevertheless adopted its guiding principles. A piece of landmark legislation for the promotion and protection of the rights of ICCs/IPs, IPRA substantially contains almost all of the provisions of ILO Convention No. 169, including UNDRIP and meets its standards. The Philippines, however, should ratify ILO Convention No. 169 in order to provide for the ICCs/IPs an additional forum, at the international level, where resort can be made in cases of violation of their rights. The ratification will also strengthen the government's commitment to its duty of respect, promotion and protection of the rights of ICCs/IPs. It is also important to emphasize the supervisory role ILO would have over state commitments under ILO Convention No. 169.

Widespread ratification of ILO Convention No. 169 will make it harder for governments all over the world to ignore tribal peoples' rights. This means that the protection of tribal populations is a subject of international concern. Ratification of ILO Convention No. 169 would serve to guide development policy and assistance and to recognize its positive contribution to international standards for the realization of universal human rights.

## Annexes



**Annex 1**  
**Indigenous and Tribal Peoples Convention, 1989**  
**(ILO Convention No. 169)**

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

Recognising the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and

Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded, and

Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international cooperation and understanding, and

Noting that the following provisions have been framed with the cooperation of the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organisation, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this cooperation in promoting and securing the application of these provisions, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and Having determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957;

Adopts this twenty-seventh day of June of the year one thousand nine hundred and eighty-nine the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989;

## **PART I. GENERAL POLICY**

### **Article 1**

1. This Convention applies to:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term *peoples* in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

### **Article 2**

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

(a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

(b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

(c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

### **Article 3**

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.

2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.



#### **Article 4**

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.
2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.
3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

#### **Article 5**

In applying the provisions of this Convention:

- (a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;
- (b) the integrity of the values, practices and institutions of these peoples shall be respected;
- (c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and cooperation of the peoples affected.

#### **Article 6**

1. In applying the provisions of this Convention, governments shall:
  - (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
  - (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
  - (c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.
2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

#### **Article 7**

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and cooperation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

### **Article 8**

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

### **Article 9**

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

### **Article 10**

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

## **Article 11**

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

## **Article 12**

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

## **PART II. LAND**

### **Article 13**

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.
2. The use of the term *lands* in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

### **Article 14**

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

### **Article 15**

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.
2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain

procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

#### **Article 16**

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.
2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.
3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.
4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.
5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

#### **Article 17**

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.
2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.
3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

#### **Article 18**

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

## **Article 19**

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

- (a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;
- (b) the provision of the means required to promote the development of the lands which these peoples already possess.

## **PART III. RECRUITMENT AND CONDITIONS OF EMPLOYMENT**

### **Article 20**

1. Governments shall, within the framework of national laws and regulations, and in cooperation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

- (a) admission to employment, including skilled employment, as well as measures for promotion and advancement;
- (b) equal remuneration for work of equal value;
- (c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;
- (d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall include measures to ensure:

- (a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;
- (b) that workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;
- (c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;
- (d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

#### **PART IV. VOCATIONAL TRAINING, HANDICRAFTS, AND RURAL INDUSTRIES**

##### **Article 21**

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

##### **Article 22**

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in cooperation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

##### **Article 23**

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

#### **PART V. SOCIAL SECURITY AND HEALTH**

##### **Article 24**

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

## **Article 25**

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.
2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in cooperation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.
3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.
4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

## **PART VI. EDUCATION AND MEANS OF COMMUNICATION**

### **Article 26**

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

### **Article 27**

1. Education programmes and services for the peoples concerned shall be developed and implemented in cooperation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.
2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.
3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

### **Article 28**

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall

undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

#### **Article 29**

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

#### **Article 30**

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

#### **Article 31**

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

### **PART VII. CONTACTS AND COOPERATION ACROSS BORDERS**

#### **Article 32**

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and cooperation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

### **PART VIII. ADMINISTRATION**

#### **Article 33**

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes



affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.

2. These programmes shall include:

(a) the planning, co-ordination, execution and evaluation, in cooperation with the peoples concerned, of the measures provided for in this Convention;

(b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in cooperation with the peoples concerned.

## **PART IX. GENERAL PROVISIONS**

### **Article 34**

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

### **Article 35**

The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

## **PART X. FINAL PROVISIONS**

### **Article 36**

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

### **Article 37**

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

### **Article 38**

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

### **Article 39**

1. A Member which has ratified this Convention may denounce it after the expiration of 10 years from the date on which the Convention first comes into force, by an act communicated

to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

#### **Article 40**

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

#### **Article 41**

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

#### **Article 42**

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

#### **Article 43**

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides-

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

#### **Article 44**

The English and French versions of the text of this Convention are equally authoritative.

**Annex 2**  
**United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**  
**(Adopted by General Assembly Resolution 61/295 on 13 September 2007)**

*The General Assembly,*

*Guided* by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

*Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

*Affirming also* that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

*Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

*Reaffirming* that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

*Concerned* that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

*Recognizing* the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

*Recognizing also* the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

*Welcoming* the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

*Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

*Recognizing* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

*Emphasizing* the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

*Recognizing* in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education, and well-being of their children, consistent with the rights of the child,

*Considering* that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

*Considering also* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

*Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

*Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

*Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

*Recognizing* and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

*Recognizing* that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

*Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

#### **Article 1**

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

#### **Article 2**

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

#### **Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

#### **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

#### **Article 6**

Every indigenous individual has the right to a nationality.

#### **Article 7**

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

#### **Article 8**

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:  
(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

#### **Article 9**

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

#### **Article 10**

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

#### **Article 11**

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

## **Article 12**

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

## **Article 13**

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

## **Article 14**

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

## **Article 15**

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

## **Article 16**

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

#### **Article 17**

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

#### **Article 18**

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

#### **Article 19**

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

#### **Article 20**

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

#### **Article 21**

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be



paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

#### **Article 22**

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

#### **Article 23**

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

#### **Article 24**

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

#### **Article 25**

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

#### **Article 26**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

## **Article 27**

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

## **Article 28**

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

## **Article 29**

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

## **Article 30**

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

## **Article 31**

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic

resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

### **Article 32**

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

### **Article 33**

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

### **Article 35**

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

### **Article 36**

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

#### **Article 37**

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

#### **Article 38**

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

#### **Article 39**

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

#### **Article 40**

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

#### **Article 41**

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

#### **Article 42**

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

### **Article 43**

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

### **Article 44**

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

### **Article 45**

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

### **Article 46**

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance, and good faith.



### Annex 3

#### Provisions common only to two instruments or those unique only to one instrument

##### A. Provisions found only in ILO 169 and UNDRIP

###### **ILO 169, Article 32**

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and cooperation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual, and environmental fields.

###### **UNDRIP, Article 36**

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic, and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 32 of ILO Convention No. 169 and Article 36 of UNDRIP, have no equivalent provision in IPRA. These particular provisions contemplate a situation where the tribal and indigenous peoples, who share the same cultural identity, have become separated by national boundaries and now live in different countries. Thus, ILO Convention No. 169 mandates governments to ensure the free communication and movement of these people. This may be done by entering into bilateral and international agreements. UNDRIP likewise emphasizes the right of the IPs to maintain and develop contacts, relations and cooperation with other IPs across borders.

##### B. Provisions found only in IPRA and UNDRIP

###### **IPRA, Chapter V, Section 22. Rights during Armed Conflict**

ICCs/IPs have the right to special protection and security in periods of armed conflict. The State shall observe international standards, in particular, the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not recruit members of the ICCs/IPs against their will into armed forces, and in particular, for the use against other ICCs/IPs; not recruit children of ICCs/IPs into the armed forces under any circumstance; nor force indigenous individuals to abandon their lands, territories and means of subsistence, or relocate them in special centers for military purposes under any discriminatory condition.

###### **UNDRIP, Article 30**

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned. x x x

IPRA also provides for the right of ICCs/IPs to special protection and security in periods of armed conflict. During circumstances of emergency and armed conflict, the government shall observe international standards, particularly the Fourth Geneva Convention of 1949, for the protection of civilian population. ICCs/IPs shall not be recruited against their will into the armed forces, and in particular, against other ICCs/IPs. Children of ICCs/IPs shall not be recruited into the armed forces under any circumstance. ICCs/IPs cannot be also forced to abandon their lands, territories and means of subsistence, nor relocate them in special centers for military purposes under discriminatory conditions.

UNDRIP on the other hand takes it a step further when it declared that military activities shall not take place in the lands or territories of IPs except when such activities are justified by a relevant public interest or the IPs themselves agreed with it.

In consultation with the ICCs/IPs who are victims of armed conflict, the NCIP, in collaboration with national and international specialized agencies, shall implement an integrated emergency programme for the victim families' and communities' relief and rehabilitation. Such integrated programme shall take special attention on the impact of armed conflict activities to the indigenous children's psycho-social functioning and development.

Since the Philippines is a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), IPRA has stronger provisions for protection and promotion of rights of indigenous women against discrimination. The Philippines has also ratified the Convention on the Rights of the Child (CRC). Under Section 27, Chapter V of IPRA, the Philippines shall recognize the vital role of the children and youth of ICCs/IPs in nation building and shall promote and protect their physical, moral, spiritual, intellectual and social well-being. It shall support all government programmes intended for the development and rearing of the children and youth of ICCs/IPs for civic efficiency and establish such mechanisms as may be necessary for the protection of the rights of the indigenous children and youth.

IPRA also provides for penalties for violations of its provisions, such as, but not limited to the following:

- Unauthorized and/or unlawful intrusion upon any ancestral lands or domains (Section 10, Chapter III).
- Employment of any form of force or coercion against ICCs/IPs (Section 21, Chapter V).
- Unlawful Acts Pertaining to Employment. It shall be unlawful for any person:
  - (a) To discriminate against any ICC/IP with respect to the terms and conditions of employment on account of their descent. Equal remuneration shall be paid to ICC/IP and non-ICC/IP for work of equal value; and
  - (b) To deny any ICC/IP employee any right or benefit herein provided for or to discharge them for the purpose of preventing them from enjoying any of the rights or benefits provided under this Act. (Section 24, Chapter V).
- Violation of the Rights to Religious, Cultural Sites and Ceremonies. It shall be unlawful to:
  - (a) Explore, excavate, or make diggings on archeological sites of the ICCs/IPs for the purpose of obtaining materials of cultural values without the free and prior informed consent of the community concerned; and
  - (b) Deface, remove, or otherwise destroy artifacts which are of great importance to the ICCs/IPs for the preservation of their cultural heritage. (Section 33, Chapter VI).



**C. Provisions found only in UNDRIP**

**UNDRIP, Article 37**

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements, and other constructive arrangements.

**UNDRIP, Article 39**

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

**UNDRIP, Article 41**

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

**UNDRIP, Article 42**

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

**UNDRIP, Article 45**

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

**UNDRIP, Article 46**

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance, and good faith.

