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## From Alienation to Rootedness: Discrimination Against Indigenous Peoples in the Philippines through Education

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# FROM ALIENATION TO ROOTEDNESS: DISCRIMINATION AGAINST INDIGENOUS PEOPLES IN THE PHILIPPINES THROUGH EDUCATION

KATRINA ISABELA F. BLANCO \*

*You ask if we own the land. And mock us. “Where is your title?” When we query the meaning of your words you answer with taunting arrogance. “Where are the documents to prove that you own the land? Titles. Documents. Proof (of ownership). Such arrogance to speak of owning the land. When you shall be owned by it. How can you own that which will outlive you. Only the race owns the land because the race lives forever.*

— Macli’ing Dulag, a *pangat* (village elder) from the community of Bugnay in Tinglayan, Kalinga and chief defender of the Cordillera<sup>1</sup>

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1. COAL. FOR INDIGENOUS PEOPLES’ RTS. & ANCESTRAL DOMAINS, GUIDE TO R.A. 8371, INDIGENOUS PEOPLES’ RIGHTS ACT OF 1997 (IPRA), 55 (Elena J. Damaso et al. eds., 4th ed. 2004). This is a quote from Macli-ing Dulag in his protest to the construction of the Chico River Dam Project in 1970s.

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## I. INTRODUCTION

“*Ate<sup>2</sup>, mag-aral* (Sister, to study).” These were the words of Elame, a Hanunuo Mangyan and resident of Sitio Banaba, Bulalacao, Oriental Mindoro. The Mangyans are the Indigenous Peoples (IPs) native to the island of Oriental Mindoro, a province about 130 kilometers southwest of Manila, Philippines.<sup>3</sup> Elame was just five years old when I met her in Sitio Banaba. Three years ago, I found myself in the mountains of Oriental Mindoro and spent about a week living with the Hanunuo Mangyan. This was her answer to the question I had asked her that one afternoon while sitting on the grass in the middle of the mountains where Mangyan practice the *kaingin<sup>4</sup>* system of farming. I had asked her what her dream was. Initially, I was unsatisfied with her answer as

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2. ED LIM, TAGALOG IN A FLASH, 7–8, 14 (2010).

3. Florante D. Villarica, *A Glimpse of Oriental Mindoro*, ORIENTAL MINDORO, <https://ormindoro.gov.ph/about>.

4. See G.L. Calitang & R.G. Orpiano, *Kaingin Farming Practices of Hanunuo Farmers in Paclolo, Magsaysay, Occidental Mindoro, Philippines*, IOP CONF. SERIES EARTH ENV'T SCI., no. 1145 at 1 (2023) (“Their main economic activity is farming through swidden or “kaingin” system, which is an indigenous practice of cultivating small farms in the upland adopting mixed cropping and crop diversification.”).

what I really wanted to know was what she wanted to be when she grew up, that is, whether she wanted to be a teacher, doctor, lawyer, or whatever profession or vocation she had in mind.

It was only after I asked her a second time, to which she replied, “*gusto ko lang po mag-aral* (I just want to be able to study)” that it finally hit me what she meant. For Elame, like many indigenous children and children in rural communities, there are many barriers that stand between her and her education. First, her *Tatay* (father) had a stroke and was paralyzed, which meant that it was only her *Nanay* (mother) Virgie who was working to put food on their table and provide for their family’s needs. Second, Elame faced discrimination as a Mangyan on a daily basis not just in school, where she had to deal with her non-indigenous classmates and teachers, but everywhere she went, being part of a community that is on the margins of society and deprived of access to basic necessities and services. In the face of these barriers, all that Elame wanted in her life was something so simple: to study. And even that, she and *Nanay* Virgie were so afraid that they would never get there.

The story of Elame provides us with a glimpse into the lived realities of children in Indigenous Cultural Communities (ICCs) and the barriers to the realization of the right to education and the right to indigenous education. It puts into perspective the discrimination against IPs through education. While not all unequal treatments are discrimination, discrimination is always marked by unequal treatment based on a personal characteristic.<sup>5</sup> The discrimination faced by IPs in the Philippines is evidenced by how many indigenous children are prevented from accessing certain rights, such as the right to education, because of their race and ethnicity—that they are different, that is, indigenous. When we speak of racial discrimination, what comes to mind often are the #BlackLivesMatter movement or the Rohingya crisis, which in recent years have caused a racial reckoning, bringing to the public attention the racial discourse marked by the increasing violence, police brutality, and injustice against people of color.<sup>6</sup> Even

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5. See *Discrimination*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining discrimination as “the effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion, or disability”).

6. See Gary Langer, *63% Support Black Lives Matter as Recognition of*

though this is what comes to many people's minds, racial discrimination that is happening within the Philippines is directed at the Filipinos' own indigenous brothers and sisters.

This Article tackles the existing discrimination against IPs in the Philippines in law, policy, and practices. This Article is divided into three parts: first, the Article will discuss indigenous peoples in context, including a short background on IPs; second, the Article will discuss the international and domestic legal framework on IP rights; third, the Article will discuss the legal (and moral) right to education and the right to indigenous education, including the barriers to the rights and the house racial discrimination built. Finally, there will be a conclusion and recommendation for education for all and the need for genuinely inclusive education in the Philippines.

It must be said that while the Philippines is a signatory to international instruments promoting and protecting the rights of IPs and has a comprehensive law on IP rights, these laws remain at the “*de jure* level and it will take a long time before the commitment to *de facto*, transformative equality is realized [emphasis supplied].”<sup>7</sup>

## II. INDIGENOUS PEOPLES IN CONTEXT

### A. WHO ARE INDIGENOUS PEOPLES?

“There is no universal definition of indigenous and tribal peoples,

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*Discrimination Jumps: POLL*, ABC NEWS (July 21, 2020 6:00 AM), <https://abcnews.go.com/Politics/63-support-black-lives-matter-recognition-discrimination-jumps/story?id=71779435> (“Sixty-three percent of Americans support the Black Lives Matter movement and a record 69%—the most by far in 32 years of polling—say Black people and other minorities are denied equal treatment in the criminal justice system, two of several signs of deep changes in public attitudes on racial discrimination.”); see also Adina Campbell, *What is Black Lives Matter and What are the Aims?*, BBC NEWS (June 12, 2021 7:29 AM EDT), <https://www.bbc.com/news/explainers-53337780> (“Black Lives Matter is a phrase, and notably a hashtag, used to highlight racism, discrimination and inequality experienced by black people.”); Afroza Anwar, *Atrocities Against the Rohingya Community of Myanmar*, 31 INDIAN J. ASIAN AFFS. 91, 96–97 (2018) (“The Myanmar military government has superimposed socio-political inequality between Rakhines and Rohingyas, periodically accelerating Rohingya genocide.”).

7. Women's Legal and Human Rights Bureau, Inc., *Philippine Cedaw Shadow Report 2016: Access to Justice of Marginalized Women in the Philippines*, at 3 (July 5, 2016).

but [the] International Labor Organization (ILO) Convention No. 169 (“Convention 169”) takes a practical approach to the issue and provides objective and subjective criteria for identifying the peoples concerned.”<sup>8</sup> According to the Convention 169, IPs are understood as:

(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; and

(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.<sup>9</sup>

Convention 169 allows identification based on the concept of self-ascription or self-identification,<sup>10</sup> which is an individual’s determination of one’s identity, distinct social, economic, cultural, or political system. This is the subjective criterion.<sup>11</sup> While Under the objective criterion, IPs are considered as such based on their “descent from populations, who inhabited the country or geographical region at the time of the conquest, colonization[,] or establishment of present state boundaries” or when they “retain their own social, economic, cultural[,] and political institutions.”<sup>12</sup>

The ILO notes: “Indigenous and tribal peoples are often known by

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8. Int’l Lab. Org. [ILO], *Who are the Indigenous and Tribal Peoples*, [https://www.ilo.org/global/topics/indigenous-tribal/WCMS\\_503321/lang--en/index.htm](https://www.ilo.org/global/topics/indigenous-tribal/WCMS_503321/lang--en/index.htm).

9. Int’l Lab. Org. [ILO], *Indigenous and Tribal Peoples Convention*, art. 1, § 1(a)–(b), No. 169 (June 27, 1989) [hereinafter ILO Convention No. 169].

10. *See id.*, art. 1, § 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.”).

11. *Id.* art. 1, §§ 1–2; *Subjective*, *Black’s Law Dictionary* (11th ed. 2019).

12. ILO Convention No. 169, *supra* note 9, art. 1, § 1(b) (“This Convention applies to: (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.”).

national terms such as native peoples, aboriginal peoples, first nations, adivasi, janajati, hunter-gatherers, or hill tribes. Given the diversity of peoples it aims at protecting, the Convention uses the inclusive terminology of [‘]indigenous and tribal peoples[‘] and ascribes the same set of rights to both groups.”<sup>13</sup>

From this definition, it is clear that IPs are minorities in the societies in which they live. Understanding the diversity of *all* IPs, the United Nations (U.N.) does not recognize an official definition of IPs. Rather, the U.N. has set up general parameters, or what the U.N. calls “a modern understanding” of the term ‘indigenous.’<sup>14</sup> These parameters include “self-identification as indigenous peoples at the individual level and accepted by the community as their member; historical continuity with pre-colonial and/or pre-settler societies; strong link to territories and surrounding natural resources; distinct social, economic, and political systems; form non-dominant groups of society; and resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.”<sup>15</sup> International law also largely bases its understanding of IPs on the aforementioned definition.

In the Philippines, domestic law, on the other hand, defines IPs through Republic Act (R.A.) No. 8371, otherwise known as the *Indigenous Peoples’ Rights Act of 1997* (“IPRA”).<sup>16</sup> Indigenous Cultural Communities (ICCs) or IPs:

[R]efer 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 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, became historically differentiated

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13. ILO, *Who are the Indigenous and Tribal Peoples*, *supra* note 8.

14. U.N. Permanent Forum on Indigenous Issues, *Factsheet: Who are Indigenous Peoples?*, [https://www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf) (last visited Feb. 25, 2024).

15. *Id.*

16. The Indigenous Peoples’ Rights Act of 1997, Rep. Act No. 8371, § 1 (July 28, 1997) (Phil.).

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.<sup>17</sup>

## B. INDIGENOUS PEOPLES IN THE PHILIPPINES

About 14-17 million people in the Philippines identify as IPs, and are found all over the country in seven designated ethnographic regions.<sup>18</sup> Each group is of distinct features, culture, and socio-economic base.<sup>19</sup>

Indigenous communities are spread throughout the 7,107 islands of the Philippines with an estimated 33% in Northern Luzon, specifically in the Cordillera Administrative Region (CAR), 61% in Mindanao, and the remaining in Visayas.<sup>20</sup> The largest concentration of IPs is found in Region XI or Southern Mindanao.<sup>21</sup>

Indigenous communities are also classified into two categories,

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17. The Indigenous Peoples' Rights Act of 1997 § 3 (Phil.).

18. See The Indigenous Peoples' Rights Act of 1997 § 40 (Phil.) (describing the distinct ethnographic regions that 7 Commissioners will be appointed from); see also U.N. Dev. Programme Philippines, *Fast Facts: Indigenous Peoples in the Philippines* (July 24, 2023), <https://www.undp.org/sites/g/files/zskgke326/files/migration/ph/fastFacts6---Indigenous-Peoples-in-the-Philippines-rev-1.5.pdf> ("The Philippines is a culturally diverse country with an estimated 14-17 million Indigenous Peoples (IPs) belonging to 110 ethno-linguistic groups . . ."); Mark Lloyd G. Dapar & Grecebio Jonathan D. Alejandro, *Ethnobotanical Studies on Indigenous Communities in the Philippines: Current Status, Challenges, Recommendations, and Future Perspectives*, 11 J. COMPLEMENTARY MED. RSCH. 432, 434-35 (2020) (" . . . [T]he total number of indigenous persons also varies. Recent estimates include 4.5-7.5 million people, 8-12 million people, and 6.5 million people.").

19. See U.N. Dev. Programme Philippines, *supra* note 18 (explaining that the Philippines is a culturally diverse country spread across different regions).

20. *Id.*; Dapar & Alejandro, *supra* note 18, at 435.

21. See U.N. Dev. Programme Philippines, *supra* note 18 (noting that 61% of IP's are found in Mindanao); Dapar & Alejandro, *supra* note 18, at 435 (referring to map of indigenous communities in the Philippines).



depending on whether they reside above or below mountains.<sup>22</sup> There are more than 100 different highland groups and 12 main lowland groups.<sup>23</sup> There are also 120 to 170 different languages spoken by 110 ethnolinguistic groups.<sup>24</sup>

### III. INTERNATIONAL AND DOMESTIC LEGAL FRAMEWORK ON INDIGENOUS PEOPLES' RIGHTS

The inherent rights of IPs are enshrined in several international and domestic legal instruments.<sup>25</sup> These rights are derived from their distinct culture, tradition, socio-economic structures, and long history of environmental stewardship.<sup>26</sup>

#### A. INTERNATIONAL LAW

Under international law, IP rights are guaranteed by the declarations and resolutions of the U.N.<sup>27</sup> and by regional human rights bodies<sup>28</sup>,

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22. See David E. De Vera, *Indigenous Peoples in the Philippines: A Country Case Study*, PEOPLE'S ACTION FOR INCLUSIVE DEV. (Aug. 20-26, 2007), [https://iapad.org/wp-content/uploads/2015/07/devera\\_ip\\_phl.pdf](https://iapad.org/wp-content/uploads/2015/07/devera_ip_phl.pdf) (“A vast majority of the 12 million population of Indigenous Peoples in the Philippines reside in the uplands which they claim as part of their traditional territories. Most of the remaining natural resources in the country are found within the traditional [lowlands] of the Indigenous Peoples.”).

23. *Id.*

24. Thomas N. Headland, *Thirty Endangered Languages in the Philippines 1* (Summer Institute of Linguistics, U. of N.D., Working Paper No. 1, 2003); Marvin Maximo Abreu, *Southern Alta (Kabulowan) (Philippines) Language Snapshot*, 19 LANGUAGE DOCUMENTATION & DESCRIPTION 17, 19 (2020); U.N. Dev. Programme Philippines, *supra* note 18.

25. *Infra* notes 27–31, 40–43 and accompanying text.

26. *Infra* notes 37–38 and accompanying text.

27. See G.A. Res. 61/295 (Sept. 13, 2007) [hereinafter UNDRIP].

28. African Charter on Human and Peoples' Rights, *concluded on* June 27, 1981, 1520 U.N.T.S. 217.

international human rights treaties<sup>29</sup>, and ILO conventions<sup>30</sup>. The most comprehensive document on IP rights is the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP), which enumerates their collective rights and freedoms.<sup>31</sup> IP rights are, by definition, collective rights because they are vested in indigenous individuals who organize themselves as peoples. The rights and freedoms under the UNDRIP include the right to self-determination, political rights, rights to lands, territories and resources, and equality and non-discrimination.<sup>32</sup>

As a mere declaration, the UNDRIP is not formally binding among states and other relevant stakeholders. However, the inherent rights and freedoms under the UNDRIP are also provided by International Human Rights Laws (IHRL) and ILO Conventions, which make them binding and enforceable as part of customary international law. For instance, while not as comprehensive as the UNDRIP, Convention 169 covers the rights to development, customary laws, lands, territories and resources, as well as socio-economic rights to employment, education, and health.<sup>33</sup> Under IHRL, the principle of non-discrimination is also given primordial importance, as well as the

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29. See International Covenant on Civil and Political Rights, *adopted on* Dec. 19, 1966, 999 U.N.T.S. 171, 173 [hereinafter ICCPR] (referring to the right of “all people” to freely determine their political status and freely pursue their economic, social, and cultural development); International Covenant on Economic, Social, and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3, 5 [hereinafter ICESCR] (guaranteeing that the rights will be exercised without discrimination based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or status); International Convention on the Elimination of All Forms of Racial Discrimination, *adopted on* Dec. 21, 1965, 660 U.N.T.S. 195, 214 [hereinafter ICERD] (reaffirming that discrimination is an obstacle to peaceful relations and can disturb peace and security among peoples living side by side within one State).

30. See ILO Convention No. 169, *supra* note 9 (recognizing the aspirations of indigenous peoples to exercise control over their own institutions and ways of life, and maintain and develop their identities, languages, and religions); Int’l Lab. Org. [ILO], *Indigenous and Tribal Populations Convention*, No. 107 (June 2, 1959) [hereinafter ILO Convention No. 107] (adopting international standards that will assure the protection of indigenous and tribal populations, their progressive integration, and the improvement of their living and working conditions).

31. See generally UNDRIP, *supra* note 28 at 3–4 (recognizing the urgent need to respect and promote rights of indigenous peoples affirmed in treaties, agreements, and other arrangements with States).

32. UNDRIP, *supra* note 27, arts. 1–4, 10.

33. ILO Convention No. 169, *supra* note 9, arts. 1, 8, 13–19, 20–31.

enforcement of State obligations and effective remedies.<sup>34</sup> IHRL also embodies political, social, economic, and cultural rights that may be asserted by IPs either individually or collectively.<sup>35</sup>

In sum, in the study of IPs and the rights guaranteed to them, Convention 169 is significant in that “it replaces an earlier Convention (107) (“Convention 107”) . . . which viewed indigenous people as a temporary obstacle to modernization.”<sup>36</sup> Instead, Convention 169 “reflects a far more positive view of indigenous cultures and is anti-assimilationist in its intent.”<sup>37</sup> This is echoed in Stephan May and Shiela Aikman’s *Indigenous Education: Addressing Current Issues and Developments*, citing Patrick Thornberry’s analysis that:

In reading the earlier Convention, it is impossible to avoid the feeling that [indigenous] peoples were regarded as a relic of the past to be ‘developed’ or ‘integrated’ out of existence. The Convention of 1989, on the other hand, is a radical document that recognizes the presence of indigenous peoples, their historicity, and cultural indelibility. It evinces respect for their societies, their characteristic modes of existence and holistic social constructs, and is characterized by the affirmation of collective as well as individual rights [emphasis added].<sup>38</sup>

This distinction between Convention 107 and Convention 169 illustrates the status that has gradually come to be afforded to IPs over the years to the present day.<sup>39</sup> This reflects the evolution not only of

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34. See ICERD, *supra* note 29, arts. 1–8, 11–13 (condemning racial discrimination, establishing an enforcement mechanism including the Committee on the Elimination of Racial Discrimination, and requiring the assurance of effective remedies through national tribunals).

35. See ICCPR, *supra* note 29 at 173 (affirming that the ideal of free human beings can only be achieved where everyone enjoys civil and political rights, as well as economic, social, and cultural rights).

36. See Stephen May & Sheila Aikman, *Indigenous Education: Addressing Current Issues and Developments*, 39 COMP. EDUC. 139, 140 (2003) (noting that Convention 169 states that indigenous peoples retain some of their own social, economic, cultural, and political institutions whereas Convention 107 contrasts indigenous institutions to the modern institutions of the nations to which they belong).

37. *Id.* (emphasizing that Convention 169 is more concerned with protection rather than assimilation).

38. *Id.* (citing Patrick Thornberry, *Indigenous Peoples and Human Rights*, at 18 (2002)).

39. *Id.* (illustrating that indigenous groups are peoples with the associated rights

the concept of IPs in international law but also their growing recognition as right-holders. The culmination of these developments thus far has been the UNDRIP.

## B. IN PHILIPPINE LAW

The Philippines has comprehensive laws that promote and protect IP rights. The 1987 Philippine Constitution protects the human rights of all Filipinos.<sup>40</sup> Among the salient constitutional provisions on IPs is Article II, Section 22 of the Constitution, providing that: “[t]he State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.”<sup>41</sup> Article XII, Section 5 under the same Constitution also guarantees that: “[t]he State [ . . . ] shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being . . .”<sup>42</sup> Furthermore, the Constitution declares that: “[t]he State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.”<sup>43</sup>

These constitutional anchors have been given effect through the passage of R.A. No. 8371 or IPRA. As a landmark social legislation, it is said that:

This law is the product of many years of legislative study and deliberations backed by several more experiential knowledge and scholarly work. It has undergone the crucible of wide ranging debate and even armed struggle . . . It took courage to have this law passed in the midst of opposition from many influential groups whose interests would be diminished by returning ancestral land rights to the indigenous communities.<sup>44</sup>

At the heart of IPRA is affording the IPs the rights that are theirs in

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of self-determination under international law).

40. Const. (1987), art. II, § 11 (Phil.).

41. *Id.* art. II, § 22.

42. *Id.* art. XII, § 5.

43. *Id.* art. XIV, § 17.

44. See Pamulaan Center for Indigenous Peoples' Education, *Kalindogan 2007: National Indigenous Youth Peace Congress*, ISSUU, at 81 (Oct. 16–19, 2008), <https://issuu.com/assisi-foundation/docs/kalindogan-2007-proceedings> (discussing the enactment of the IPRA).

the first place. While the constitutional provisions merely serve as a guiding principle, the IP rights and freedoms are implemented through IPRA, which includes free, prior, and informed consent (FPIC) and the four bundle of rights, notably: ancestral domain rights, empowerment, self-governance, and social justice provisions.<sup>45</sup>

The IPRA recognizes the right of ownership of IPs over their lands individually and/or collectively.<sup>46</sup> Land, together with all the resources found therein, is of indispensable importance to IPs because their identity, culture, traditions, as well as socioeconomic structures and well-being are inextricably linked to it.<sup>47</sup> The right to land, territory, and resources includes all the aspects of ownership – the rights to possess, manage, conserve, develop, sell, dispose, or destroy.<sup>48</sup> It is important to note that the IPRA recognizes the spiritual bonds of IPs to their land. Thus, an important aspect of development should be the preservation and protection of the environment within the indigenous peoples' territories.<sup>49</sup> The IPRA also establishes the National

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45. The Indigenous Peoples' Rights Act of 1997 §§ 3(g), 13, 21–28 (Phil.).

46. See UNDRIP, *supra* note 27, arts. 26–27 (granting indigenous peoples the right to the lands, territories, and resources which they have traditionally owned, occupied, used, or acquired, and requiring an adequate adjudication process of those rights); ILO Convention No. 169, *supra* note 9, arts. 13–19 (stating that governments shall respect the special relationship with the lands or territories and in particular the collective aspects of this relationship); The Indigenous Peoples' Rights Act of 1997 §§ 4–6 (Phil.) (providing that ancestral lands/domains include not only the physical environment but the spiritual and cultural bonds to the areas which the indigenous peoples possess, occupy, and use, and to which they have claims of ownership).

47. See United Nations Permanent Forum on Indigenous Issues, Indigenous Peoples' Collective Rights to Lands, Territories, and Resources, <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/04/Indigenous-Peoples-Collective-Rights-to-Lands-Territories-Resources.pdf> (emphasizing that indigenous peoples' deep connection to their lands are basic to their identity and existence itself).

48. See UNDRIP, *supra* note 27, arts. 26–27 (guaranteeing that indigenous people have a right to own, use or develop, and control the lands); ILO Convention No. 169, *supra* note 9, arts. 13–19 (recognizing the rights of ownership and possession of peoples concerned over the lands which they traditionally occupy including the rights to the national resources pertaining to their lands); The Indigenous Peoples' Rights Act of 1997 §§ 4–6 (Phil.) (upholding the indigenous concept of ownership which generally holds that ancestral domains are indigenous peoples' community property and cannot be disposed or destroyed).

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

Commission on Indigenous People (NCIP) as the primary government agency mandated to promote the interest and well-being of IPs.<sup>50</sup>

In relation to the bundle of rights recognized under IPRA, the right to self-determination serves as the fundamental right on which the IP rights and freedoms derive their meaning. The right to self-determination refers to “the right of a people to determine its own destiny.”<sup>51</sup> Pursuant to this right, the IPs have the right to freely choose their political status and establish their own economic, social, and cultural development.<sup>52</sup> The importance of the right to self-determination lies in the right of choice as it belongs to the people and not to States or Governments. The right to choose in relation to self-determination involves the right to choose the development schemes they desire. Under the IPRA, the right to development is an aspect of their right to self-governance and empowerment, which includes deciding for themselves their priorities and means for development.<sup>53</sup>

Part and parcel, the argument for self-determination is the focus of IPs on issues of language and education. This argument is grounded on “the clear desire of indigenous peoples for greater linguistic and education control,” which is “a product of colonial histories of cultural proscription,” particularly through education.<sup>54</sup>

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*the Philippines*, at 29 (Jun. 29, 2012), [https://www.ilo.org/manila/publications/WCMS\\_171406/lang--en/index.htm](https://www.ilo.org/manila/publications/WCMS_171406/lang--en/index.htm) (discussing that the right to development includes both the right to decide if indigenous peoples wish to continue to live in their traditional manner or adopt the modern norms, and the right to determine or control the pace of their development).

50. See The Indigenous Peoples’ Rights Act of 1997 §§ 3(k), 39 (Phil.) (stating that the NCIP is responsible for the formulation and implementation of policies, plans, and programs to recognize, protect, and promote the rights of indigenous peoples with regard to their beliefs, customs, traditions, and institutions).

51. Unrepresented Nations and Peoples Organization, *Self-determination*, UNPO (Sept. 21, 2017), <https://unpo.org/article/4957>.

52. *Id.* (explaining that self-determination allows a people to choose its own political status and determine its own form of economic, cultural, and social development).

53. See The Indigenous Peoples’ Rights Act of 1997 §§ 13, 17, 20 (Phil.) (providing that indigenous peoples have the right to determine and decide their own priorities for development affecting their lives).

54. See May & Aikman, *supra* note 36, at 141 (noting that the history of proscription resulted in the loss of indigenous languages over time but also a failure for indigenous students within education).

#### IV. THE LEGAL (AND MORAL) RIGHT TO EDUCATION

“In a rapidly changing world, the success of nations, communities, and individuals may be linked, more than ever before, to how they adapt to change, learn and share knowledge.”<sup>55</sup> Education is one of the ways by which societies adapt to change. Education is both a means and an end to development. Education is seen as a tool that a State can use to ensure that its citizens are motivated to work towards society’s common goals. On an individual level, education is seen as a meal ticket, a viable mode for social mobility. The education system allows for the development of every person. This gives each individual the opportunity to reach his or her full potential. Through education, individuals learn the skills needed to play their roles in society effectively and efficiently.

For ICCs or IPs in particular, “education has now come to be seen as a key arena in which [IPs] can reclaim and revalue their languages and cultures, and in doing so, improve the educational success of indigenous students.”<sup>56</sup> When we talk about the legal (and moral) right to education, the concept is understood as two-fold: first, the right to education as a human right; and second, the right to indigenous education.

##### A. RIGHT TO EDUCATION AS A HUMAN RIGHT

Education is a fundamental human right to everyone, whether one is non-indigenous or indigenous, mainstream or non-mainstream, and *unat*<sup>57</sup> or *kulot*<sup>58</sup>. Education takes on the status of a human right

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55. *The Well-being of Nations: The Role of Human and Social Capital*, OECD ILLIBRARY, [https://www.oecd-ilibrary.org/education/the-well-being-of-nations\\_9789264189515-en](https://www.oecd-ilibrary.org/education/the-well-being-of-nations_9789264189515-en) (click “More” to see full description).

56. See May & Aikman, *supra* note 36, at 141 (noting the emergence of numerous community-based education initiatives where indigenous community control, languages and cultures are the focus).

57. See Ballila et al., *Indigenous Aeta Magbukún Self-Identity, Sociopolitical Structures, and Self-Determination at the Local Level in the Philippines*, J. ANTHROPOLOGY 2 (2013) (defining “unat” as a Tagalog word used to refer to straight hair and explaining that IPs often use “unat” to refer to Tagalogs or non-indigenous Filipinos).

58. See *id.* (defining “kulot” as a Tagalog word used to refer to curly hair and explaining that IPs often use “kulot” to refer to themselves).

because it is integral to and enhances human dignity. As defined by General Comment No. 13 of the U.N. Committee on Economic, Social and Cultural Rights:

*Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence [emphasis added].*<sup>59</sup>

Various international human rights instruments recognize and promote the right to education. The Universal Declaration of Human Rights (UDHR) states that “[e]veryone has the right to education.”<sup>60</sup> In addition, “[e]ducation shall be free, at least in the elementary and fundamental stages.”<sup>61</sup> Further, “[t]echnical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merits.”<sup>62</sup> The UDHR also declares that “education shall be directed to the full development of the human personality and to the strengthening of the respect for human rights and fundamental freedoms.”<sup>63</sup>

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) provides for the recognition of the universal right of education without discrimination of any kind.<sup>64</sup> The ICESCR devotes

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59. Committee on Economic, Social, and Cultural Rights, CESCR General Comment No. 13: The Right to Education (Art. 13), ¶ 1, UN Doc. E/C.12/1999/10 (Dec. 8, 1999) [hereinafter General Comment No. 13].

60. G.A. Res. 217 A (III), Universal Declaration on Human Rights, art. 26 (Dec. 10, 1948) [hereinafter UDHR].

61. *Id.*

62. *Id.*

63. *Id.*

64. ICESCR, *supra* note 29, art. 13.



two articles to the right to education, articles 13 and 14.<sup>65</sup> Under Article 13, the right to education pertains to the following circumstances:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.<sup>66</sup>

On the other hand, Article 14 specifically stipulates the obligation of States such that:

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.<sup>67</sup>

Likewise, the Convention on the Rights of the Child (CRC) expressly recognizes “education as a legal right for every child on the basis of equal opportunity.”<sup>68</sup> Article 28 of the CRC includes “the

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65. See General Comment No. 13, *supra* note 59, ¶ 2 (highlighting the articles in the ICESCR that discuss the right to education).

66. ICESCR, *supra* note 29, art. 13.

67. *Id.* art. 14.

68. *Right to Education Handbook*, UNESCO 53 (2019) <https://doi.org/10.54>

obligation of the state to take measures regarding school attendance and discipline.”<sup>69</sup> Further, it “encourages international cooperation in matters related to education, in particular, the elimination of ignorance and illiteracy and access to scientific and technical knowledge.”<sup>70</sup>

## B. RIGHT TO INDIGENOUS EDUCATION

Aside from the UDHR, ICESCR, and CRC, which promote and protect the right to education, the right to education for IPs and indigenous education is protected by a number of international human rights instruments, including Convention No. 169 and the UNDRIP.<sup>71</sup>

The right to indigenous education is grounded in Article 14 of the UNDRIP, which states that “indigenous peoples have the right to establish and control their educational systems and institutions providing education in their languages, in a manner appropriate to their cultural methods of teaching and learning.”<sup>72</sup> As distinguished from the right to education, the right to indigenous education is generally founded on the right to self-determination of IPs and ICCs such that they not only have a right to quality and accessible education, but one that is genuinely inclusive and culturally appropriate, that is, in line with their indigenous traditions and cultures.

When we speak of the right to indigenous education, it is understood that there is an obligation of states to first and foremost respect, facilitate, and protect the IPs and ICCs’ right to share knowledge with future generations through traditional ways of teaching and learning.<sup>73</sup>

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69. *United Nations Instruments*, RIGHT TO EDUCATION, <https://www.right-to-education.org/page/united-nations-instruments> (click drop down labelled “Convention on the Rights of the Child” (Articles 28, 29)).

70. *See id.*

71. *See generally* ILO Convention No. 169, *supra* note 9, arts. 26–27, 31 (discussing rights focusing on education); *see also* UNDRIP, *supra* note 27, art. 14 (noting the rights indigenous people should have regarding education).

72. UNDRIP, *supra* note 27, art. 14.

73. *See* Gina Cosentino, *Indigenous Peoples Have a Right to Quality Education. But So Far, We’ve Failed Them*, WORLD ECONOMIC FORUM (Aug. 6, 2016), <https://www.weforum.org/agenda/2016/08/indigenous-people-have-a-right-to-quality-education-but-so-far-we-ve-failed-them/> (explaining that although there is a legal and moral right to education, education policies and systems have been used to discriminate against indigenous peoples).

However, this right to indigenous education extends likewise “to support and partner with indigenous perspectives, cultures, and languages into mainstream education systems and institutions.”<sup>74</sup> This has far-reaching consequences. As applied to the Filipino context, for example, on the part of mainstream society and the non-indigenous, the integration of indigenous history and culture into the curriculum will not only inculcate the sense of “Filipino-ness” in the context of the plural society we form part of but will remove our biases and better educate Filipinos on IPs—not on the basis of difference but as equals. On the part of the indigenous peoples, the right to indigenous education will guarantee not just the educational success of their children but the survival of their culture.

### C. BARRIERS TO THE REALIZATION OF THE RIGHT TO EDUCATION OF INDIGENOUS PEOPLES AND RIGHT TO INDIGENOUS EDUCATION

#### *1. The Philippine Experience*

The right to education of IPs and the right to indigenous education is provided for in the 1987 Philippine Constitution. Under Article XIV, Section 1 of the 1987 Constitution, “[t]he State shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all”.<sup>75</sup> The Constitution expressly states that “[t]he State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development”.<sup>76</sup> To give effect to the right to indigenous education, the IPRA states that “[t]he 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.”<sup>77</sup>

Despite enacting legislation and policies for the promotion and protection of these rights, however, many indigenous students continue to be deprived of access to quality, inclusive, and culturally appropriate education. In the Philippines, the primary barrier to the

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74. *See id.*

75. Phil. Const., art. XIV, § 1.

76. *Id.* art. II, § 22.

77. The Indigenous Peoples’ Rights Act of 1997, Rep. Act No. 8371, § 28 (July 28, 1997) (Phil.).

realization of the right of education of IPs and the right to indigenous education is the social, economic, and political exclusion and marginalization faced by the indigenous communities.<sup>78</sup> The problem of lack of access to quality, inclusive, and culturally appropriate education stems from and is a manifestation of, this social, economic, and political exclusion and marginalization. It forms a sort of chicken and egg problem, where one of them leads to the other but also vice versa. It is precisely the fact that the IPs are marginalized that creates a situation wherein education becomes a privilege rather than a right that is meant to be enjoyed by and for *all*. It must be said that poverty and education are intrinsically tied. For many families below the poverty threshold, there is a difficulty on the part of the parents to send their children to school not only in terms of supporting their children's education but as they opt instead to have their children help work on their farms.<sup>79</sup> Indigenous children and children in rural communities face further challenges losing to education and poverty, having little opportunities to better their lives.<sup>80</sup> In effect, their economic hardships force them to work on the farms, which compromises their development.<sup>81</sup> Among the children who manage to attend school, their presence inside the classroom does not equate to learning, as they often go to school on empty stomachs and without basic school supplies and materials.<sup>82</sup> In sum, the realities faced by indigenous children and children in rural communities expose them to the risk of exploitation and abuse, trapping them in the vicious cycle of structural

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78. See *United Nations Inter-Agency Support Group on Indigenous Issues, Education and Indigenous Peoples: Priorities for Inclusive Education*, UNITED NATIONS 5 (Jun. 2014), [https://www.un.org/en/ga/69/meetings/indigenous/pdf/IASG%20Thematic%20Paper\\_Participation%20-%20rev1.pdf](https://www.un.org/en/ga/69/meetings/indigenous/pdf/IASG%20Thematic%20Paper_Participation%20-%20rev1.pdf) (noting that the barriers to education that negatively impact indigenous peoples have not been adequately tackled).

79. See *generally Issue Paper on Child Labour and Education Exclusion Among Indigenous Children*, INT'L LAB. ORG. 9–11, 31, 36 (Sept. 25, 2023), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipecc/documents/publication/wcms\\_894321.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_894321.pdf) (addressing the challenges of education exclusion among indigenous children).

80. See *id.* at 9–11 (explaining that child labor hinders indigenous children's ability to get an education).

81. See *id.* and accompanying note.

82. See *id.* at 31, 36 (discussing the effect poverty has on indigenous children in relation to education and child labor).

violence and poverty.

This barrier is even more concrete when taking into consideration the literal geographical dispersion and isolation of communities, where they are literally on the margins of society-kilometers and hours away from the town center.<sup>83</sup> This translates to a lack of infrastructure, lack of resources and learning materials, and lack of teachers.<sup>84</sup> Indigenous children also travel long distances often on foot and under difficult environmental conditions.<sup>85</sup> Among the other barriers to the education of indigenous students, is the discrimination against IPs by non-IPs inside the classroom from low quality and culturally inappropriate education, causing indigenous students to have difficulty coping with their classes and thus marking them as problem students.<sup>86</sup>

## 2. *The House Racial Discrimination Built*

When looking at the barriers to the realization of the right of IPs to education and the right to indigenous education, they all relate to and point to racial discrimination. At its core, racial discrimination is “not about objective characteristics but about relationships of domination and subordination, about hatred of the ‘Other’ in defense of the ‘Self’, perpetrated and legitimated through the images of the ‘Other’ as inferior, abhorrent, even sub-human.”<sup>87</sup> It is “based on the polarization of opposites: ‘we’ and ‘they’; ‘white’ and ‘black’; and ‘self’ and ‘other.’”<sup>88</sup> The concept of racial discrimination is marked by “the underlying power relationship, a relationship where power is premised

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83. See *id.* at 26 (noting that access to schools for indigenous people is often limited both physically and economically).

84. See *id.* and accompanying note.

85. See *For Every Child in Bangsamoro, an Education*, UNICEF PHILIPPINES (Oct. 28, 2019), <https://www.unicef.org/philippines/stories/every-child-bangsamoro-education> (providing specific instances where children in the Philippines have to travel long distances to school).

86. See *Indigenous Peoples Education: From Alienation to Rootedness*, THE EPISCOPAL COMM'N ON INDIGENOUS PEOPLES, 116, <https://www.hurights.or.jp/archives/pdf/asia-s-ed/v11/13Indigenous%20Peoples%20Education%20-%20Philippines.pdf> (discussing the indigenous experience of schooling).

87. SANDRA FREDMAN, *DISCRIMINATION LAW* 51 (Oxford University Press, 2nd ed. 2011).

88. *Id.*

entirely on arbitrary assumptions of superiority.”<sup>89</sup>

Racial discrimination has multiple components, which create different ways in which it can affect education. When we speak of racial discrimination, we see it as “a dynamic societal system that is shaped by and reshapes other social institutions.”<sup>90</sup> The societal system itself is shaped by the social context and various additional social forces. In the case of discrimination against IPs, colonialism has made it so IPs were, for decades, and, to this day, are Othered. They were and are seen as second-class citizens, inferiors, and as non-right-holders.

Borrowing from the framework of David Williams et. al’s *Understanding How Discrimination Can Affect Health*, there are three major pathways by which racial discrimination operates in linking inequities in society, and manifests in various sectors, such as health (or, education): (1) cultural racism; (2) institutional or systemic racism; and (3) individual discrimination.<sup>91</sup>

The first pathway through which racial discrimination operates is through individual discrimination.<sup>92</sup> This is manifested in the stereotypes and prejudices against IPs—how they are often seen as *madumi* (dirty), *walang alam* (dumb), *mahirap* (poor), *tamad* (lazy), and *namumulubi* (beggars). It is precisely because these stereotypes and prejudices against IPs exist at the individual level that the inferiority of IPs is legitimized in theory and practice.

The idea that the indigenous are uncivilized has been ingrained in our belief systems and norms into the larger culture leading to attitudes that devalue, dehumanize, and subordinate IP populations.<sup>93</sup> This is the second pathway of cultural racism and creates an environment within which the system of racial discrimination can flourish.<sup>94</sup> It

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89. *Id.* at 52.

90. David Williams et al., *Understanding How Discrimination Can Affect Health*, 54 HEALTH SERV. RES. 1374, 1375 (2019).

91. *Id.*

92. *See id.* (listing individual-level discrimination as one of the pathways of racism that can affect health).

93. *See Williams et al., supra* note 90 (explaining how embedding the inferiority of blacks and other nonwhites through stereotypes and prejudice facilitates cultural racism).

94. *See id.* (stating that cultural racism creates the ideal environment for the

“initiates and sustains racial prejudice and negative stereotypes” that can lessen support for policies and facilitate “explicit and implicit biases that restrict access to resources,” including education.<sup>95</sup>

The final pathway is structural or institutional racism. This can be attributed to “the collective failure of an organization to provide for an appropriate or professional service to people because of their color, culture, or ethnic origin. It can be seen or detected in process, attitudes, and behaviors which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness, and racial stereotyping which disadvantage minority ethnic people.”<sup>96</sup> This system of racial discrimination “develops and sustains policies and structures that empower the dominant group to differently allocate desirable societal opportunities and resources to racial groups regarded as inferior.”<sup>97</sup> What this means is that discrimination persists and exists because of the failure of the structures and institutions to recognize and address its existence, that is, that there is direct or indirect discrimination.<sup>98</sup>

In the discrimination of IPs through education, this is seen in how “the curricula in indigenous schools are designed to develop conformity with national ideals, without taking into consideration the cultural and linguistic specificities of indigenous peoples.”<sup>99</sup> Discrimination in education is “primarily reflected in the tendency to use schools as a preferred means of assimilating IPs into the cultural model of the majority or dominant society.”<sup>100</sup> Schools use curricula

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system of racism to flourish).

95. *See id.* (discussing how stereotypes advanced by cultural racism can lessen support for egalitarian policies and consequently restrict access to desirable resources).

96. *See* HOME DEPARTMENT, THE STEPHEN LAWRENCE INQUIRY, 1999, Cm. 4262-I, ¶ 6.34 (UK) (stating that institutional racism “can be seen or detected in processes, attitudes and behavior which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.”).

97. *See* Williams et al., *supra* note 90.

98. *See generally id.* (discussing how institutional racism develops and sustains policies and structures that empower the dominant group to differentially allocate desirable societal opportunities and resources to racial groups regarded as inferior, thus perpetuating direct or indirect discrimination).

99. *See* Rodolfo Stavenhagen, *Building Intercultural Citizenship through Education: A Human Rights Approach*, 43 EUR. J. EDUC., 161, 167 (2008).

100. *See id.*

that “are generally designed for urban children and thus have little relevance to indigenous environments.”<sup>101</sup> Further, the education systems, policies, and curricula are rarely developed with IPs and ICCs’ participation or consent, and as a result, have mostly failed indigenous children and stripped them of vital life opportunities and cultural security.<sup>102</sup> Finally, it “also served to accelerate the transformation and ultimate disappearance of indigenous cultures, and over time, many indigenous languages have continued to vanish.”<sup>103</sup>

This point was belabored in Rodolfo Stavenhagen’s *Building Intercultural Citizenship through Education*, where he emphasized that:

The formal education system provided by the State or religious or private groups has been a two-edged sword for indigenous peoples. On the one hand, it has often enabled indigenous children to acquire knowledge and skills that will allow them to move ahead in life and connect with the broader world. On the other, especially when pedagogical programmes, curricula and teaching methods come from other cultural contexts that are removed from indigenous societies, formal education has also been used as a tool for forcibly changing and, in some cases, destroying indigenous cultures.<sup>104</sup>

Towards this end, for the indigenous, education is seen as something that levels that playing field, which points to the unequal power relations between IPs and non-IPs, mainstream and non-mainstream, and *kulot* and *unat*. Education has put IPs as both the “Others” and “just like the others” – that they are included in the mainstream just as much as they are excluded. How? IPs are included in the mainstream in the sense that what they are learning is what the mainstream students are learning. This points to the idea that they were excluded before and while they might be part of us now, they were once them, and this excludes them all the more. We see discrimination in this way: how the inclusion of indigenous students through integrating them into mainstream education only emphasizes their

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101. *See id.*

102. *See id.* at 168 (stating that the lack of inclusion of indigenous people in the planning, programming, and implementation of the existing curriculum has led to inappropriate and disrespectful portrayal of indigenous cultures).

103. *See id.* at 167.

104. *See id.* at 165.



exclusion, and to an extent, the exclusion of the indigenous.<sup>105</sup>

## V. EDUCATION FOR ALL: THE NEED FOR A GENUINELY INCLUSIVE EDUCATION IN THE PHILIPPINES

The advent of the social legislation in the Philippines that addresses the discrimination of the indigenous and protects and promotes their rights in the form of IPRA brought with it the recognition that “it is not sufficient to require individuals to conform to the dominant norm” rather “the norm should be adapted to facilitate the equal participation [of the IPs and ICCs].”<sup>106</sup> Thus, when the IPRA was passed in 1997, it included a duty of reasonable accommodation.<sup>107</sup> The duty applies in situations where IPs or ICCs are put at a substantial disadvantage in comparison to non-indigenous Filipinos by a provision, criterion, or practice, among others.<sup>108</sup> Where relevant, there is a need to take reasonable steps to avoid disadvantage or discrimination; such failure to comply with the duty constitutes discrimination.<sup>109</sup> In education in particular, the IPRA underscored the need for a genuinely inclusive and culturally-appropriate education for IPs and ICCs.<sup>110</sup> The State, in this case the Philippine government, was and is in a position to address this pressing need owing to the State’s “high responsibility for

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105. See Williams et al., *supra* note 90, at 1376 (analyzing how cultural racism, institutional racism, and individual discrimination exacerbate one another).

106. Indigenous peoples (IPs) and Indigenous Cultural Communities (ICCs) should not have to conform to the dominant norm. Cf. FREDMAN, *supra* note 87, at 214 (stating that the basis of disability legislation in the UK recognizes that it is not sufficient to require individuals to conform to the dominant norm).

107. The IPRA included a duty of reasonable accommodation to meet the needs of the indigenous community. Cf. *id.* (stating that the Disability Discriminatory Act of 1995 in the UK included a duty of reasonable adjustment).

108. Cf. *id.* (stating that the duty to reasonably adjust applies to situations in which a disabled person is put at a substantial disadvantage with non-disabled persons).

109. Cf. *id.* (stating that it is discrimination when an employer, service provider, or other relevant body does not take the reasonable steps to avoid a disadvantage or does not provide any auxiliary aid).

110. See The Indigenous Peoples’ Rights Act of 1997 § 28 (Phil.) (stating that “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.”).

education of its citizens.”<sup>111</sup> This is in line with the doctrine of *parens patriae* and the State’s interest in education and the general welfare of the people.<sup>112</sup>

The IPRA was a positive step forward toward the end of substantive equality. The problem, however, lies in that the duty of reasonable accommodation has not translated to addressing the barriers to the right to education of the IPs and the right to indigenous education, and, to an extent, the racial discrimination faced by IPs and ICCs.<sup>113</sup> Among the factors that contributed to the failure of the IPRA to bridge the gap in the education system is the failure to consider and realize equality not just as of preferential treatment, but as something rooted in dignity. In one of the leading equality cases to be decided upon, the South African Constitutional Court declared:

At the heart of the prohibition of unfair discrimination lies a recognition that the purpose of our new constitutional and democratic order is the establishment of a society in which all human beings will be afforded equal dignity and respect regardless of their membership of particular groups.<sup>114</sup>

The proactive model of equality as dignity necessitates undertaking structural changes and the transformation of institutions. Undoing racial discrimination means redoubling efforts in mitigating its impacts and ultimately, dismantling the societal structures that support racism, ethnocentrism, anti-immigrant sentiments, and incivility and reimagining an alternative pathway to development for *all*. Against discrimination of IPs through education, this means restructuring the

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111. See *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972) (acknowledging that the State has a high responsibility for imposing reasonable regulations for the control and duration of basic education).

112. See Rajan Bal, *The Perils of Parens Patriae*, GEO. J. ON POVERTY L. & POL’Y, <https://www.law.georgetown.edu/poverty-journal/blog/the-perils-of-parens-patriae> (stating that the doctrine of *parens patriae*, which translates to parent of the country, allows the government to intervene in the family unit to protect children whose welfare may be at risk).

113. See Precious G. Supan & Camille Rose Carl R. Mendoza, *Racism in the Academe: An Ethnographic Research Among Aeta (Indigenous) Students of a State University in the Philippines*, 16 QUALITATIVE RSCH. PRACS. & CHALLENGES 1, 3 (2023) (discussing that despite policies protecting indigenous human rights, indigenous students continue to face racial discrimination, leaving them impoverished and inferior).

114. See FREDMAN, *supra* note 87, at 227.

very underpinnings of the Philippine educational system by treating the IPs with the dignity and respect they deserve individually and collectively, as well as by performing positive duties to promote equality through mapping the architecture of anti-discrimination in law, policy, and practice. Treating the IPs with the dignity and respect they deserve means prioritizing not just their right to education, but also their right to indigenous education. Concretely, two key points must be endeavored: (1) teaching must be in the mother tongue of students; and (2) education must be placed in the context of indigenous communities' own traditions and culture.<sup>115</sup>

#### A. INDIGENOUS EDUCATION IN THE PHILIPPINES: GAPS AND PROSPECTS

The concept of indigenous education is still relatively new in the Philippines. However, in the last 10 years, there have been efforts to push for inclusive and enabling educational policies. The Philippines strengthened its language education by implementing the Mother Tongue-Based Multilingual Education (MTB-MLE) program.<sup>116</sup> In 2015, the Department of Education (DepEd) implemented the use of the Indigenous Peoples Education Curriculum Framework in schools, recognizing the right of the IPs and ICCs to culturally rooted and responsive basic education.<sup>117</sup>

Today, the Philippines is still unable to cater to the needs of the IPs and ICCs. The lack of equity in education remains one of the most pressing issues that Philippine education faces. While DepEd has

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115. See Stavenhagen, *supra* note 99, at 168 (addressing that States who have adopted educational policies to meet the needs of indigenous peoples have started teaching in the children's mother tongue and have placed the education in the context of the local communities' own culture).

116. See Ashley Manabat, *DepEd Implements Mother Tongue-Based Learning to Make Lessons More Interactive, Easier for Pupils*, BUSINESSMIRROR (Oct. 16, 2016), <https://businessmirror.com.ph/2016/10/16/deped-implements-mother-tongue-based-learning-to-make-lessons-more-interactive-easier-for-pupils> (stating that the MTB-MLE program mandates the use of the children's mother tongue as a medium of instruction for them to grasp concepts more easily).

117. See Marco Ocampo-Tan & Frances Roberto, *IP Inclusion in Nationalized Spaces of Learning*, THE GUIDON (Dec. 21, 2019), <https://theguidon.com/1112/main/2019/12/ip-inclusion-in-nationalized-spaces-of-learning> (stating that the Philippines adopted the Indigenous Peoples Education Curriculum Framework in 2015).

come up with the Indigenous Peoples Education Curriculum Framework, it has not been distributed and effectively implemented.<sup>118</sup> Moreover, there is a real need to include the indigenous communities in the process of implementation so that the curriculum itself and the materials would not be learning for learning's sake or to force the IPs and ICCs to learn, but rather so it becomes a liberating education. This would not just include them without taking into consideration their culture and practices, but really integrate and empower the indigenous.

Aside from the slow and ineffective rollout of indigenous education, another important issue is the recent closure of Lumad schools<sup>119</sup>. The Lumad schools refer to makeshift, mobile schools, set up by volunteer schools and other organizations as a way for lumad students, who are often displaced and persecuted in the crossfires of armed conflict and development aggression, to continue their education in places of peace and sanctuary.<sup>120</sup> Furthermore, the Lumad schools are:

[w]ithin the context of the right to education, [ . . . ] a social and historical necessity. For a long time, the Lumad have experienced difficulties in enrolling or entering “mainstream” public or private schools. For one, there are few such schools in the places where the Lumad live, so that the Lumad have had to travel long distances and incur additional travel and living expenses to keep their children in school. Many Lumad students have suffered from discrimination in mainstream schools not only from their teachers or fellow students, but from a curriculum that does not reflect their unique cultural and historical contexts. Many times, Lumad students have lagged behind other students because, having Lumad languages as their mother tongues, they have had difficulty with the language of instruction used in mainstream schools. Lumad schools were built to answer the needs,

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118. *See id.* (discussing that establishing an integrated learning curriculum is easier said than done, implying the difficulty of effectively implementing it).

119. The word “Lumad” is a Visayan term which means “born of the earth.” The Lumad are the largest indigenous group in the Philippines. Majority of them are in Mindanao (61%), while 33% are concentrated in the Cordillera Administrative Region (CAR). Other indigenous groups are located in the Visayas region. *See DepEd Formally Shuts Down 55 Lumad Schools in Davao*, RAPPLER (Oct. 8, 2019), <https://www.rappler.com/nation/242052-deped-shuts-down-lumad-schools-davao-region> (reporting that the Department of Education has ordered the closure of all 55 Lumad schools operated by the Salugpongan Ta'Tanu Igkanogon Community Learning Center, Incorporated (STTICLCI)).

120. *See id.*

reflect the values, and embody the vision of the Lumad.<sup>121</sup>

In October 2020, DepEd “ordered the closure of all 55 Lumad schools operated by the Salugpongan Ta’Tanu Igkanogon Community Learning Center, Incorporated (STTICLCI)” based on “non-compliance with the curriculum standards set by DepEd and that teachers of the school were not licensed teachers, among others.”<sup>122</sup> Further, according to DepEd, the Lumad schools not only failed to comply with the curriculum standards of DepEd but were also allegedly teaching “left-leaning ideologies” and spreading anti-government propaganda.<sup>123</sup> To note, “[t]he Salugpongan schools were not the only Lumad schools closed by the government. According to the children’s rights group Save Our Schools Network, between July 2016 and December 2019, 162 Lumad schools were closed by the government, affecting over 4,792 students.”<sup>124</sup>

The plight of the Lumad and the attack on Lumad schools presents an interesting case of balancing two interests: on one hand, the right of the State, as *parens patriae*, to step in and in the exercise of its police power, regulate and have some control over education; and on the other, the right of IPs—in this case, the Lumad—to indigenous education. It bears stressing that the reason why Lumad schools exist in the first place is because of the context and circumstances that a Lumad faces.<sup>125</sup> Lumad schools offer not only an alternative form of education but for many Lumad children, it is the *only* education that they have access to.<sup>126</sup> This goes back to the problem of social, economic, and political exclusion and marginalization, wherein rather than bring the Lumads from the margins to the center, they are

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121. *See id.*

122. *See DepEd Formally Shuts Down 55 Lumad Schools*, *supra* note 119.

123. *See* Matthew Reysio-Cruz, *DepEd Shuts Down 55 ‘Lumad’ Schools*, PHILIPPINE DAILY INQUIRER (Jul. 15, 2019), <https://newsinfo.inquirer.net/1141670/deped-shuts-down-55-lumad-schools>.

124. *See id.*

125. *See id.* (explaining that the Lumad schools existed because the Lumad have experienced difficulties in enrolling or entering “mainstream” public or private schools as there are limited number of schools where the Lumad tended to live and they have suffered discrimination from fellow students and teachers).

126. *See generally id.* (stating that the pressing need for the Lumad schools arose out of the social and historical treatment of the Lumad that left them with very little educational choices).

marginalized all the more.

Racial discrimination, in its multiple forms and layers, is alive and well. For this reason, it is not enough just to open the gates of opportunity. Everyone, irrespective of social group and background, must have the ability to walk through those gates. When we speak of education for *all* and any attempts at addressing the discrimination of IPs and ICCs then, doing so entails a step back in order to understand the historical injustices to the IPs and ICCs and to consider their social context as well as a step forward to tackle the issue at its core, that is, the systemic exclusion and marginalization.

When we then speak of the plight of the IPs and ICCs, the fact is that they will continue until we recognize that the point is not to bring from the margins to the center the marginalized, but to decenter ourselves. We need to acknowledge and understand the current manifestations of racism not just in the different aspects of society but in our daily lives, conversations, and personal biases. More than the failure to respond to the needs of the IPs and ICCs, such as the lack of access to services, i.e., education, society has failed to listen. Perhaps what indigenous need is not someone who will listen to and look at them with discrimination, but rather with the understanding of that the point is to see and treat each other as equals in all aspects: as human beings with dignity and inherent rights. After all, it is only in questioning the very premises of inclusion that we can forge a path away from discrimination and inequality to create a tomorrow where no indigenous person or community is left behind.

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