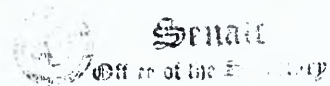
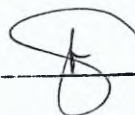


NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



22 JUL -7 P4 :17

SENATE
S. No. 173

RECEIVED BY: 

Introduced by SENATOR FRANCIS "TOL" N. TOLENTINO

AN ACT
PROTECTING TRADITIONAL KNOWLEDGE, TRADITIONAL CULTURAL
EXPRESSION, AND GENETIC RESOURCES, FURTHER AMENDING FOR THE
PURPOSE REPUBLIC ACT NO. 8293, OTHERWISE KNOWN AS THE
"INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES"

Explanatory Note

Intellectual properties, such as patents, trademarks, and copyrights, have long been protected by the Intellectual Property Code of the Philippines. However, the traditional knowledge of the indigenous cultural communities/indigenous peoples (ICC/IPs) remained vulnerable to misuse, misappropriation, and abuse.

In 2000, the World Intellectual Property Organization established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, and agreed to develop an international legal instrument that would give traditional knowledge, genetic resources, and traditional cultural expressions (folklore) effective protection. Unfortunately, such international legal instrument has remained at the negotiations phase.

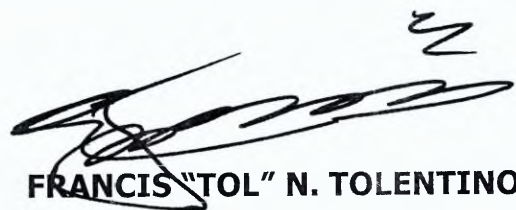
The Philippines has been proactive and passed a *sui generis* legislation in relation to traditional knowledge. An attempt to protect traditional knowledge of the ICC/IPs was imbedded in Republic Act No. 8371, otherwise known as the "Indigenous Peoples Rights Act of 1997." The said law recognizes the ownership of

the ICC/IPs over their traditional knowledge and genetic resources and requires the free and prior informed consent of the said communities prior to utilization. However, the procedure on the utilization of traditional knowledge and genetic resources of the ICC/IP was never finalized.

Moreover, under the Implementing Rules and Regulations (IRR) of Republic Act No. 10055, otherwise known as the "Philippine Technology Transfer Act of 2009," the Department of Science and Technology (DOST) and the Intellectual Property Office (IPO) regulate traditional knowledge and genetic resources. The said IRR requires a disclosure when the subject matter of the application is directly based on any biodiversity, genetic resources or materials, traditional knowledge, and indigenous knowledge, systems and practices. However, the constitutionality of the said IRR can be questioned because it goes beyond the provisions of the law.

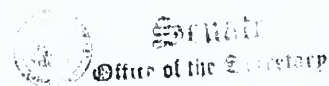
This bill seeks to formalize the inclusion of traditional knowledge, genetic resources, and traditional cultural expressions under the protection of the Intellectual Property Code of the Philippines and under the jurisdiction of the Intellectual Property Office in order to fully protect the intellectual property rights of the ICC/IPs.

Considering the foregoing, the immediate enactment of this bill is respectfully requested.



FRANCIS "TOL" N. TOLENTINO

NINETEENTH CONGRESS OF THE)
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1 AN ACT

2 PROTECTING TRADITIONAL KNOWLEDGE, TRADITIONAL CULTURAL
3 EXPRESSION, AND GENETIC RESOURCES, FURTHER AMENDING FOR THE
4 PURPOSE REPUBLIC ACT NO. 8293, OTHERWISE KNOWN AS THE
5 "INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES"

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

6 **Section 1.** This Act shall be known as the "Protection of Traditional
7 Knowledge, Traditional Cultural Expressions, and Genetic Resources Act."

8 **Section 2.** Section 20 of Republic Act No. 8293, otherwise known as the
9 "Intellectual Property Code of the Philippines," is hereby amended to read as
10 follows:

11 "SECTION 20. Definition of Terms Used in Part II, The Law on Patents.

12 – As used in Part II, the following terms shall have the following meanings:

13 "20.1. "Bureau" means the Bureau of Patents;

14 "20.2. "Director" means the Director of Patents;

15 "20.3. "Regulations" means the Rules of Practice in Patent Cases
16 formulated by the Director of Patents and promulgated by the Director
17 General;

18 "20.4. "Examiner" means the patent examiner;

1 **"20.5 "GENETIC RESOURCE" MEANS ANY GENETIC MATERIAL**
2 **OF A BIOLOGICAL RESOURCE CONTAINING GENETIC INFORMATION**
3 **HAVING ACTUAL OR POTENTIAL VALUE FOR HUMANITY AND**
4 **INCLUDES DERIVATIVES AND FAUNA AND FLORA OF TERRESTRIAL,**
5 **AQUATIC, AND ANY OTHER ORIGIN WHICH MAY BE USED BY THE**
6 **HOLDER TO OBTAIN SPECIFIC PRACTICAL OUTPUTS IN ANY FIELD**
7 **OF HUMAN ACTIVITY OR DERIVATIVE;**

8 ~~"[20.5]~~ **20.6.** "Patent application" or "application" means an
9 application for a patent for an invention except in Chapters XII and XIII,
10 where application means an application for a utility model and an industrial
11 design, respectively; **and**

12 ~~"[20.6]~~ **20.7.** "Priority date" means the date of filing of the foreign
13 application for the same invention referred to in Section 31 of this Act; **AND**

14 **"20.8 "TRADITIONAL KNOWLEDGE" MEANS ANY KNOWLEDGE,**
15 **NOT LIMITED TO A SPECIFIC SUBJECT AREA, TECHNICAL, OR**
16 **MEDICAL FIELD ASSOCIATED WITH GENETIC RESOURCES,**
17 **ORIGINATING FROM A TRADITIONAL COMMUNITY, INDIVIDUAL,**
18 **OR GROUP THAT IS THE RESULT OF INTELLECTUAL ACTIVITY AND**
19 **INSIGHT IN A TRADITIONAL CONTEXT AND WHERE THE**
20 **KNOWLEDGE IS EMBODIED IN THE TRADITIONAL LIFESTYLE OF A**
21 **TRADITIONAL COMMUNITY OR IS CODIFIED IN KNOWLEDGE**
22 **SYSTEMS AND PASSED ON FROM ONE GENERATION TO ANOTHER."**

23 **Section 3.** A new Section 31-A of the same Act is hereby inserted to read as
24 follows:

25 **"SECTION 31-A. OWNERSHIP OF GENETIC RESOURCES AND**
26 **TRADITIONAL KNOWLEDGE. – 31-A.1. INDIGENOUS CULTURAL**
27 **COMMUNITIES/INDIGENOUS PEOPLES HAVE THE RIGHT TO**
28 **CONTROL, DEVELOP, AND PROTECT THEIR TRADITIONAL**
29 **KNOWLEDGE AND GENETIC RESOURCES.**

30 **"31-A.2. ACCESS TO GENETIC RESOURCES AND TO**
31 **TRADITIONAL KNOWLEDGE RELATED TO THE CONSERVATION,**

1 UTILIZATION, AND ENHANCEMENT OF THESE RESOURCES SHALL BE
2 ALLOWED WITHIN ANCESTRAL LANDS AND DOMAINS OF THE
3 INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES
4 ONLY WITH THE FREE AND PRIOR INFORMED CONSENT OF SUCH
5 COMMUNITIES OBTAINED IN ACCORDANCE WITH THEIR
6 CUSTOMARY LAWS.”

7 **Section 4.** Section 35 of the same Act is hereby amended to read as follows:

8 “SECTION 35. Disclosure and Description of the Invention. – 35.1.
9 Disclosure. – The application shall disclose the invention in a manner
10 sufficiently clear and complete for it to be carried out by a person skilled in
11 the art. Where the application concerns a microbiological process or the
12 product thereof and involves the use of a micro-organism which cannot be
13 sufficiently disclosed in the application in such a way as to enable the
14 invention to be carried out by a person skilled in the art, and such material is
15 not available to the public, the application shall be supplemented by a deposit
16 of such material with an international depository institution.

17 “35.2. Description. - The Regulations shall prescribe the contents of the
18 description and the order of presentation.

19 “35.3. DISCLOSURE OF GENETIC RESOURCES OR
20 TRADITIONAL KNOWLEDGE. – THE PATENT APPLICATION MUST
21 CONTAIN A DOCUMENT SHOWING THE FREE AND PRIOR INFORMED
22 CONSENT OF THE INDIGENOUS CULTURAL COMMUNITIES/
23 INDIGENOUS PEOPLES, AND INFORMATION ON THE SOURCE:

24 “A. OF THE GENETIC RESOURCE TO WHICH THE
25 INVENTOR OR THE PATENT APPLICANT HAD ACCESS,
26 PROVIDED THE INVENTION IS DIRECTLY BASED ON THIS
27 RESOURCE; AND/OR

28 “B. OF TRADITIONAL KNOWLEDGE OF INDIGENOUS
29 CULTURAL COMMUNITIES/INDIGENOUS PEOPLES OF
30 GENETIC RESOURCES TO WHICH THE INVENTOR OR THE

1 PATENT APPLICANT HAD ACCESS, PROVIDED THE INVENTION
2 IS DIRECTLY BASED ON THIS KNOWLEDGE.

3 "IF THE SOURCE IS UNKNOWN TO THE INVENTOR OR
4 THE PATENT APPLICANT, THE PATENT APPLICANT MUST
5 CONFIRM THIS IN WRITING.

6 "35.4. DEFICIENCIES IN DISCLOSURE OF GENETIC RESOURCE
7 AND TRADITIONAL KNOWLEDGE. – IF THE PATENT APPLICATION
8 DOES NOT MEET THE DISCLOSURE REQUIREMENTS IN SECTION
9 35.3, THE IPO SHALL SET A TIME LIMIT FOR THE PATENT
10 APPLICANT BY WHICH THE DEFICIENCIES MUST BE REMEDIED.

11 "THE IPO SHALL REJECT THE PATENT APPLICATION IF THE
12 DEFICIENCIES MENTIONED HAVE NOT BEEN REMEDIED."

13 **Section 5.** A new Section 73-A of the same Act is hereby inserted to read as
14 follows:

15 "SECTION 73-A. RIGHTS INVOLVING GENETIC RESOURCES
16 AND TRADITIONAL KNOWLEDGE. – 73-A.1 INDIGENOUS CULTURAL
17 COMMUNITIES/INDIGENOUS PEOPLES HAVE THE EXCLUSIVE
18 RIGHT TO:

19 "A. AUTHORIZE THE EXPLOITATION OF GENETIC
20 RESOURCES AND TRADITIONAL KNOWLEDGE; AND

21 "B. PREVENT ANYONE FROM EXPLOITING THEIR
22 GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE
23 WITHOUT THEIR FREE AND PRIOR INFORMED
24 CONSENT.

25 "73-A.2. INDIGENOUS CULTURAL COMMUNITIES/
26 INDIGENOUS PEOPLES HAVE THE RIGHT TO WITHDRAW OR PLACE
27 RESTRICTION OR DEMAND THE RESTRICTION OR WITHDRAWAL ON
28 ANY FREE AND PRIOR INFORMED CONSENT GIVEN WHERE THE
29 CONSENT IS LIKELY TO BE DETRIMENTAL TO THEIR
30 SOCIOECONOMIC LIFE OR CULTURAL HERITAGE.

1 **"73-A.3. THE PROTECTION OF TRADITIONAL KNOWLEDGE**
2 **AND GENETIC RESOURCES SHALL NOT BE PREJUDICIAL TO THE**
3 **CONTINUED AVAILABILITY, USE, ACCESS, AND EXCHANGE OF THE**
4 **TRADITIONAL KNOWLEDGE AND GENETIC RESOURCES BY OR**
5 **AMONG INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS**
6 **PEOPLES."**

7 **Section 6.** Section 171 the same Act is hereby further amended to read as
8 follows:

9 "SECTION 171. Definitions. – For the purpose of this Act, the following
10 terms have the following meaning:

11 "x x x

12 **"171.12. "EXPRESSSION OF FOLKLORE" MEANS ANY FORM,**
13 **WHETHER TANGIBLE OR INTANGIBLE, IN WHICH TRADITIONAL**
14 **CULTURE AND KNOWLEDGE IS EXPRESSED, APPEARS, OR**
15 **MANIFESTS, WHICH CANNOT BE ATTRIBUTED TO A KNOWN**
16 **AUTHOR, AND INCLUDES THE FOLLOWING FORMS OF EXPRESSIONS**
17 **OR COMBINATIONS:**

18 **"(A) VERBAL EXPRESSIONS, INCLUDING STORIES,**
19 **EPICS, LEGENDS, POETRY, RIDDLES, AND OTHER**
20 **NARRATIVES, WORDS, SIGNS, NAMES, AND SYMBOLS;**

21 **"(B) MUSICAL EXPRESSIONS, INCLUDING SONGS AND**
22 **INSTRUMENTAL MUSIC;**

23 **"(C) EXPRESSIONS BY MOVEMENT OR INCORPORATING**
24 **MOVEMENT, INCLUDING DANCES, PLAYS, ARTISTIC FORMS,**
25 **RITUALS, AND OTHER PERFORMANCES, WHETHER OR NOT**
26 **REDUCED TO A MATERIAL FORM;**

27 **"(D) TANGIBLE EXPRESSIONS, INCLUDING**
28 **PRODUCTIONS OF ART, DRAWINGS, DESIGNS, PAINTINGS,**
29 **BODY PAINTING, CARVINGS, SCULPTURES, POTTERY,**
30 **TERRACOTTA, MOSAIC, WOODWORK, METAL WARE, JEWELRY,**
31 **BASKETS, NEEDLEWORK, TEXTILES, GLASSWARE, CARPETS,**

1 COSTUMES, HANDICRAFTS, MUSICAL INSTRUMENTS, AND
2 ARCHITECTURAL FORMS; AND

3 "(E) ANY OTHER OUTPUT OF CREATIVE AND
4 CUMULATIVE INTELLECTUAL ACTIVITY CHARACTERISTIC OF
5 AN INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS
6 PEOPLES' DISTINCTIVE CULTURAL IDENTITY AND
7 TRADITIONAL HERITAGE DEVELOPED AND MAINTAINED BY
8 THAT COMMUNITY, INDIVIDUALS, OR GROUPS."

9 Section 7. Section 172 of the same Act is hereby amended to read as
10 follows:

11 "SECTION. 172. Literary and Artistic Works. - 172.1 Literary and artistic
12 works, hereinafter referred to as "works", are original intellectual creations in
13 the literary and artistic domain protected from the moment of their creation
14 and shall include in particular:

15 "x x x

16 "172.2. Works are protected by the sole fact of their creation,
17 irrespective of their mode or form of expression, as well as of their content,
18 quality and purpose.

19 "172.3. EXPRESSION OF FOLKLORE IS A PUBLIC STATE
20 PROPERTY AND CAN ONLY BE EMPLOYED APPROPRIATELY AND PUT
21 TO GOOD USE. THIS MUST NOT INVOLVE THE DEFACEMENT,
22 MISAPPROPRIATION, AND MISUSE OF THAT FOLKLORE AND THE
23 USER MUST MAKE MENTION OF ITS SOURCE. THE STATE HAS THE
24 RIGHT TO PREVENT ANY USE OF FOLKLORE THAT VIOLATES THESE
25 PROVISIONS. THE IPO SHALL MAKE A REPOSITORY OF EXPRESSION
26 OF FOLKLORES."

27 Section 8. Section 173 of the same Act is hereby amended to read as
28 follows:

29 "SEC. 173. Derivative Works. – 173.1. The following derivative works
30 shall also be protected by copyright:

1 “(a) Dramatizations, translations, adaptations, abridgments,
2 arrangements, and other alterations of literary or artistic works; [~~and~~]

3 “(b) Collections of literary, scholarly or artistic works, and compilations
4 of data and other materials which are original by reason of the selection or
5 coordination or arrangement of their contents[~~:-~~];

6 **“(C) COLLECTIONS OF FOLKLORE SUCH AS ENCYCLOPEDIAS
7 OR ANTHOLOGIES, AND DATABASES, READABLE EITHER BY
8 COMPUTER OR OTHER MEANS, AS LONG AS CREATIVITY EXISTS IN
9 THE SELECTION OR ARRANGEMENT OF THE CONTENTS OF THOSE
10 COLLECTIONS AND DATABASES.**

11 “173.2. The works referred to in paragraphs (a) and (b) of Subsection
12 173.1 shall be protected as new works: Provided however, That such new
13 work shall not affect the force of any subsisting copyright upon the original
14 works employed or any part thereof, or be construed to imply any right to
15 such use of the original works, or to secure or extend copyright in such
16 original works.”

17 **Section 9.** Section 184 of the same Act is hereby amended to read as
18 follows:

19 “SEC. 184. Limitations on Copyright. -184.1. Notwithstanding the
20 provisions of Chapter V, the following acts shall not constitute infringement of
21 copyright:

22 “x x x

23 **“184.3. THE PROTECTION OF FOLKLORE SHALL NOT RESTRICT
24 OR HINDER THE NORMAL DEVELOPMENT, USE, EXCHANGE,
25 DISSEMINATION, AND TRANSMISSION OF EXPRESSIONS OF
26 FOLKLORE. THE PROTECTION OF FOLKLORE SHALL BE SUBJECT TO
27 EXCEPTIONS WHICH RELATE TO NON-COMMERCIAL USES, SUCH AS
28 EDUCATION, RESEARCH, PERSONAL OR PRIVATE USE, CRITICISM,
29 REVIEW, REPORTING OF CURRENT EVENTS, LEGAL PROCEEDINGS,
30 THE MAKING OF RECORDINGS AND REPRODUCTIONS FOR
31 INCLUSION IN AN ARCHIVE OR INVENTORY EXCLUSIVELY FOR THE**

1 **PURPOSES OF SAFEGUARDING CULTURAL HERITAGE, AND OTHER**
2 **INCIDENTAL USES.”**

3 **Section 10. *Separability Clause.*** – If any section or provision of this Act
4 shall be declared unconstitutional or invalid, the other sections or provisions not
5 affected thereby shall remain in full force and effect.

6 **Section 11. *Repealing Clause.*** – All laws, decrees, rules and regulations,
7 issuances, or parts thereof which are inconsistent with the provisions of this Act are
8 hereby repealed, amended, or modified accordingly.

9 **Section 12. *Effectivity.*** – This Act shall take effect fifteen (15) days from
10 its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,