


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



Senate
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SENATE
S. No. 839

RECEIVED BY: 

Introduced by Senator Loren B. Legarda

**AN ACT
SAFEGUARDING THE TRADITIONAL PROPERTY RIGHTS OF
INDIGENOUS PEOPLES**

EXPLANATORY NOTE

The Philippines is home to many indigenous peoples (IPs) and indigenous cultural communities (ICCs) who belong to different ethnolinguistic groups. They are known for their unique traditions, cultures, and practices.

Republic Act 8371, the Indigenous Peoples' Rights Act (IPRA), recognizes and promotes the rights of IPs and ICCs. Indigenous communities have a fundamental right to preserve their traditional cultural legacy, tangible or intangible, and this right must be maintained. The IPRA, however, does not provide specific provisions for protecting their cultural properties. The IPs and ICCs lack protection for their traditional cultural heritage, which includes their expressions through writings, songs, performances, and traditional arts and crafts, among others.

Through this measure, all cultural assets belonging to the various ethnolinguistic groups in the Philippines will be organized and given an inventory. Additionally, this bill requires the payment of royalties for the use of indigenous peoples' cultural property.

By applying the norms of the traditional intellectual property system, this measure will serve as a source of their traditional intellectual property rights. This will also apply the traditional forms of intellectual property like copyright, royalties, and ownership and close the gap in the legal protection provided to works originating from traditional knowledge.

In view of the foregoing consideration, approval of this bill is earnestly sought.




LOREN LEGARDA

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

1 Section 1. *Short Title.* - This Act shall be known as the "*Traditional Property*
2 *Rights of Indigenous Peoples Act*".

3 Sec. 2. *Declaration of Principles and Policies.* - It is declared the policy of the
4 State to protect the traditional cultural heritage of the indigenous peoples of the
5 Philippines; and safeguard the intrinsic values, whether tangible or intangible;
6 and to support traditional artists and artisans in their contribution to their
7 respective ethnic cultures and national heritage by ensuring that their rights are
8 safeguarded.

9 Sec. 3. *Definition of Terms.* - For purposes of this Act, the following terms shall
10 be defined as follows:

- 11 a. *Commission* shall refer to the National Commission for Culture and
12 the Arts (NCCA);
- 13 b. *Cultural agencies* shall refer to the following national government
14 agencies with their specific areas of responsibility: National Museum
15 (cultural property); National Library (books); National Historical
16 Institute (Philippine history); National Archives (documents);
17 Cultural Center of the Philippines (culture and arts); Komisyon sa
18 Wikang Filipino (language);

- 1 c. *Cultural heritage* shall refer to the totality of cultural property
2 preserved and developed through time and passed on to posterity;
- 3 d. *Cultural property* shall refer to all products of human creativity by
4 which a people and a nation reveal their identity, including churches,
5 Mosques, and other places of religious worship, schools, and natural
6 history specimens and sites, whether public or privately owned,
7 movable or immovable, and tangible or intangible;
- 8 e. *Intangible cultural heritage* shall refer to the practices, representations,
9 expressions, knowledge, skills as well as instruments, objects, and
10 artifacts associated therewith, that communities, groups, and
11 individuals recognize as part of their cultural heritage, such as (1)
12 oral traditions, languages, expressions; (2) performing acts; (3) social
13 practices, rituals, and festive events; (4) knowledge and practices
14 concerning nature and the universe; and (5) traditional
15 craftsmanship;
- 16 f. *Intangible cultural property* shall refer to the people's learned
17 processes along with the knowledge, skills, and creativity that
18 inform and are developed by them, the products they create, and the
19 resources, spaces, and other aspects of social and natural context
20 necessary for their sustainability;
- 21 g. *Registry* shall refer to the Philippine Registry of Cultural Property
22 which is the registry of all cultural property of the country deemed
23 of significant importance to our cultural heritage as defined in RA
24 10066;
- 25 h. *Tangible cultural property* shall refer to a cultural property with
26 historical, archival, anthropological, archeological, artistic, and
27 architectural value, and with exceptional or traditional production,
28 whether of Philippine origin or not, including antiques and natural
29 history specimens with significant value;
- 30 i. *Tradition* shall refer to the beliefs, customs, practices, industries,
31 expressions, whether tangible or intangible, maintained and shared
32 differentially by society, and handed down from generation to

1 generation. Tradition in this respect is a continuum that changes and
2 may arise in time shall not, therefore, be subject to time limitation;

3 j. *Community* shall refer to the congregation of people with social
4 cohesion and identity organized among common values interacting
5 with intimacy and reciprocity in a shared circumscribed location in
6 units larger than a household; and has more similarities in the types
7 and forms of their material goods;

8 k. *Indigenous peoples* shall refer to people, communities, and nations
9 who claim a historical continuity affinity with societies endemic to
10 their original territories. They have historically formed and are still
11 currently forming the minority/non-dominant sectors within
12 majority-culture societies and are intentioned towards preserving,
13 reviving, and enhancing the efficacy, cohesion, and uniqueness of
14 their traditional social values and customary ties along with a
15 conscientious effort to transmit this knowledge to future generations;

16 l. *Derivative work* is one that is primarily a new work but incorporated
17 some previously published material. This previously published
18 material makes the work a derivative work under the copyright law.
19 To be copyrightable, a derivative work must be different enough
20 from the original to be regarded as a "new work" or must contain a
21 substantial amount of new material. Making minor changes or
22 additions of little substance to a preexisting work will not qualify the
23 work as a new version for copyright purposes. The new material
24 must be original and copyrightable in itself. Titles, short phrases, and
25 format, for example, are not copyrightable;

26 m. *Communal ownership* shall refer to common ownership within a
27 community;

28 n. *Royalty* shall refer to the payment to the holder of a patent or
29 copyright or resource for the right to use of their property;

30 o. *Craft* describes the family of artistic practices within the decorative
31 arts, traditional, is defined by their relationship to functional or
32 utilitarian products (such as sculptural forms in the vessel tradition)

1 or by their use of such natural media as wood, clay, glass, textiles,
2 and metal;

3 p. *Social process* shall refer to the means by which culture and social
4 organization change or are preserved due to process of practice;

5 q. *Oral expression* shall refer to the expression uttered by the mouth,
6 spoken, oral testimony or transmitted by speech;

7 r. *Rites* shall refer to formal or ceremonial acts or procedures prescribed
8 or customary in religious or other solemn use, or a particular form of
9 system of religious or other ceremonies;

10 s. *Rituals* shall refer to an established or prescribed procedure for a
11 religious or other rite, a system or collection of religious or other
12 rites; observance of set forms in public worship; a prescribed or
13 established rite, ceremony, proceeding, or service: the ritual of the
14 dead; prescribed, established or ceremonial acts or features
15 collectively, as in religious services; any practice or pattern of
16 behavior regulating social conduct;

17 t. *Performance* shall refer to the acting out of a ceremony, play, piece of
18 music, etc., the execution or accomplishment of work acts, feats, etc.,
19 a particular action, deed, or proceeding the manner in which or the
20 efficiency with which something reacts or fulfills its intended
21 purpose, and not necessarily as part of the social process;

22 u. *Ownership* shall refer to the legal right of possession or
23 proprietorship; the state, relation, or fact of being an owner; also, the
24 rights or interests of an owner, ownership especially by a single
25 person that is free of any encumbrances or limitations other than
26 statutory;

27 v. *Culture* shall be defined based on the UNESCO Conference on
28 Cultural Policies (Mexico, 1982) which defines culture, in its widest
29 sense, as the whole complex of distinctive spiritual, material,
30 intellectual, and emotional features that characterize a society or a
31 social group. This includes not only the arts and letters but also
32 modes of life, value systems, traditions, and beliefs. Culture,

1 however, can also be looked at as an aggregate and internally
2 inconsistent body of knowledge and meanings, unevenly distributed
3 among individuals of a community and acquired by these
4 individuals through experiences and transactions in everyday life.

5 Sec. 4. *Implementing Agency.* - The National Commission for Culture and the
6 Arts (NCCA) hereinafter referred to as the Commission, shall implement the
7 provisions of this Act.

8 Sec. 5. *Period of Ownership.* - Traditional cultural property, whether tangible or
9 intangible, of all the ethnolinguistic groups that make up the people of the Philippines
10 shall not lapse into public domain after fifty (50) years from creation and shall
11 continue indefinitely to be exclusive property of these ethnolinguistic groups that
12 communally own them. Traditional heritage, both tangible and intangible, are to be
13 held in perpetuity in ethnic memory and considered valid as ethnic intellectual
14 property.

15 Sec. 6. *Inventory and Registration of Cultural Properties.* - Under the guidance of
16 the Commission and the National Museum (NM), or any other pertinent national
17 cultural agency, the Local Government Units (LGUs) with the assistance of the
18 National Commission for Indigenous Peoples (NCIP) shall organize inventories of
19 cultural properties of the different ethnolinguistic groups of the Philippines that are
20 distinctive, characteristic of or derived from their particular traditional culture, to the
21 exclusion of those of others and shall submit these to the Commission through the
22 National Museum to establish communal ownership, and to be registered under the
23 group's name for protection within existing copyright laws.

24 Further that these registries of the tangible and intangible cultural properties
25 thus accomplished shall be incorporated in the Philippines Registry of Cultural
26 Property (PRECUP) as established by Republic Act 10066 and administered by the
27 Commission.

28 Sec. 7. *Retention of Original Rights of Ownership.* - While recognizing that
29 traditions change through time, the rights of the ethnolinguistic groups to their
30 intellectual property changing in continuum shall retain original rights to these
31 properties.

1 Sec. 8. *Derivative Work.* – The infusion of personal or individual variations on a
2 traditional object would result in a derivative work or craft, which is one that is
3 primarily a new work but incorporates some previously established material. A
4 derivative work must be different enough from the original to be regarded as a “new
5 work” or must contain a substantial amount of new material. Making minor changes
6 or additions of little substance to a pre-existing work will not qualify the work as a
7 new version for copyright purposes. The new material must be original and
8 copyrightable in itself.

9 Sec. 9. *Term of Rights.* – The rights of an ethnolinguistic group to a traditional
10 item will lapse into public domain in fifty (50) years, if after such period, it is no longer
11 in production or used in cultural context within the society.

12 Sec. 10. *Creation of an Office.* – Pursuant to the above, the Commission will
13 create an office within its structure to coordinate all efforts of government and private
14 agencies that have forms of tangible and intangible cultural heritage in making the
15 above-mentioned registry; and to undertake the safeguarding of national cultural
16 heritage stipulated therein that are viable.

17 Sec. 11. *Reorganization.* – With the approval of the Board, the Commission shall
18 have the authority to reorganize its structure and staffing pattern in order to carry out
19 its functions. The incumbents in the leadership structure of the existing Commission
20 shall automatically be upgraded to these analogous positions, with respect to the rest
21 of the personnel.

22 Sec. 12. *Deposit and Notice.* – Moral rights would vest upon creation; hence,
23 authorship would have to be established to avail of moral rights such as right of
24 attribution. Moral rights to ownership of newly created items by members of an
25 ethnolinguistic group should be registered with the Commission for protection under
26 copyright law. Copyright vests from the moment of creation; and registration is one
27 of the ways to prove authorship, although it is not exclusive.

- 28 a. The Commission through the relevant government cultural agency,
29 shall assist in identifying works and attributing authorship, and
30 further shall be responsible for maintaining and populating this
31 registry;

- 1 b. The Commission shall assist the claimants and relevant government
2 agencies in resolving conflicts of ownership and attribution who will
3 give permission to people who wish to use the work upon discovery
4 of the same in the database; and
- 5 c. The Commission shall assist relevant government agencies in the
6 prosecution of unauthorized use of intellectual property of
7 indigenous peoples.

8 Sec. 13. *Free, Prior, and Informed Consent.* – Free, prior, and informed consent for
9 the use of indigenous peoples’ intellectual property should be articulated by a defined
10 authority that is provided with a circumscribed jurisdiction, associated with the
11 culture of an ethnolinguistic group. The corresponding elected official, as the case
12 may be, assisted by cultural experts, shall dispense the required free, prior, and
13 informed consent for the item/items in question for the concerned intellectual
14 property owners.

15 Sec. 14. *Designation of Society.* – Indigenous communal copyright (intellectual
16 property) owners may designate a society with legal personality to act in their behalf
17 to enforce their economic and moral rights.

18 Sec. 15. *Royalties.* – Indigenous communal copyright (intellectual property)
19 owners shall be compensated for the use of their work. The amount, process of
20 collecting, and distributing this royalty and other pertinent details will be determined
21 by the Commission.

22 Sec. 16. *Appropriations.* – For the initial implementation of this Act, the amount
23 of Fifty Million Pesos (Php 50,000,000.00) is hereby appropriated and shall be sourced
24 from the President’s Contingent Fund.

25 Sec. 17. *Implementing Rules and Regulations.* – The Commission, in consultation
26 with other relevant cultural agencies mentioned in this Act, shall promulgate the
27 implementing rules and regulations within ninety (90) days after the effectivity of this
28 Act.

29 Sec. 18. *Penalties.* – In addition to the penalties under existing laws, any person
30 found guilty of violating any provisions of this Act shall be imprisoned for a term not
31 exceeding ten (10) years or a fine not exceeding One Hundred Thousand Pesos (Php
32 100,000.00) or both such imprisonment and fine at the discretion of the court.

1 Sec. 19. *Repealing Clause.* – The provisions of Philippine copyright law and other
2 related laws to the extent that they are inconsistent with this Act are hereby repealed
3 or amended accordingly.

4 Sec. 20. *Separability Clause.* – If, for any reason, any part or provision of this Act
5 is declared invalid or unconstitutional, the parts or provisions not affected thereby
6 shall remain in full force and effect.

7 Sec. 21. *Effectivity Clause.* – This Act shall take effect fifteen (15) days following
8 its publication in the Official Gazette or in two (2) newspapers of general circulation,
9 whichever comes first.

Approved,