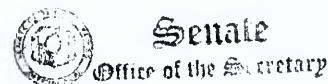


NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



'22 JUL 25 P2:11

SENATE

S. No. 862

RECEIVED BY

Introduced by SENATOR RAMON BONG REVILLA, JR.

**AN ACT
PROMOTING AND SAFEGUARDING COMMUNITY INTELLECTUAL RIGHTS
(CIR) OF INDIGENOUS CULTURAL COMMUNITIES AND INDIGENOUS
PEOPLES**

EXPLANATORY NOTE

The Philippines is home to around 14 to 17 million indigenous peoples (IPs) who belong to one hundred and ten (110) ethno-linguistic groups. With their unique traditions, cultures and practices, they have been set apart from the conventional world and away from the mainstream society. Part of the many struggles of the IPs is protecting their traditional cultural heritage – their artistic expressions (writings, songs, performance, etc.), traditional arts and crafts, to name a few.

Article II, Section 22 of the Philippine Constitution declares that, "The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development." Further, Article XIV, Section 17 states that, "The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national plans and policies."

Along this constitutional mandate, Republic Act No. 8371, otherwise known as "The Indigenous Peoples Rights Act of 1997" was enacted to recognize, protect and promote the rights of indigenous cultural communities and indigenous people.

However, the law does not provide for specific provision for the protection of their cultural properties.

Traditional cultural heritage, whether tangible or intangible, is a vital right of indigenous communities, which must be respected and protected. This is the objective of the proposed "Community Intellectual Rights of Indigenous Cultural Communities / Indigenous Peoples Act".

Through the National Commission for Culture and the Arts, National Museum, National Commission on Indigenous Peoples, and the local government units, this bill shall create a comprehensive cultural archive, which shall organize and provide an inventory of all cultural properties of the different ethno-linguistic groups of the Philippines. This bill also mandates the payment of royalties for the use of cultural property of the indigenous groups.

To prevent possible abuses on the exploitation of our IPs' cultural heritage, this bill will be a source of their traditional intellectual property using the standards of the conventional intellectual property system. This will also fill the gap in the legal protection afforded to the works resulting from traditional knowledge and apply the conventional forms of intellectual property like copyright, royalty, and ownership.

This measure was filed by Representative Loren B. Legarda and was deliberated upon by the House Committee on Indigenous Cultural Communities and Indigenous Peoples.

In view of the foregoing, the immediate passage of this bill is highly recommended.


RAMON BONG REVILLA, JR.

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PEOPLES

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

1 Section 1. *Short Title.* – This Act shall be known as the “*Community Intellectual*
2 *Rights of Indigenous Cultural Communities / Indigenous Peoples Act*”.

3 Sec. 2. *Declaration of Principles and Policy.* – It shall be a declared policy of the
4 State to recognize, respect, protect, and safeguard the traditional cultural heritage of
5 indigenous cultural communities/indigenous peoples (ICCs/IPs), both tangible and
6 intangible; preserve and protect their culture, traditions and institutions; and to
7 recognize and support traditional knowledge (TK), traditional arts and artisans for their
8 contribution to their cultures, national heritage, and social and economic development.

9 Towards this end, the state shall take measures to protect and guarantee
10 respect for the cultural integrity of ICCs/IPs, and their right to practice and revitalize
11 their own cultural traditions and customs. The State shall preserve, protect, and
12 develop the past, present, and future manifestations of their cultures as well as the
13 right to the restitution of cultural, intellectual, religious, and spiritual property taken
14 without their free, prior and informed consent (FPIC) or in violation of their laws,
15 traditions, and customs.

1 Sec. 3. *Definition of Terms.* – For purposes of this Act, the following terms
2 shall be defined as follows:

3 a) *Commission* shall refer to the National Commission on Indigenous
4 Peoples (NCIP);

5 b) *Community Intellectual Rights* shall refer to the rights of indigenous
6 cultural communities/indigenous peoples (ICCs/IPs) to own, control,
7 develop, protect, and enjoy their indigenous knowledge or creative
8 intellectual activity and their manifestations, such as but not limited to:

9 1. archeological and historical sites, artifacts, ceremonies, oral
10 traditions, visual and performing arts and literature, as well as
11 religious and spiritual properties;

12 2. science, technologies, human and other genetic resources, including
13 derivatives of these resources, seeds, medicines, health practices,
14 vital medicinal plants, animals and minerals, resource management
15 systems, agricultural technologies, knowledge of the properties of
16 fauna and flora, scientific discoveries; and,

17 3. language, script, histories, and teaching and learning systems;

18 which are distinctively associated with and integral to the cultural and social
19 identity of the ICCs/IPs or groups of ICCs/IPs generated, preserved, and
20 transmitted from one generation to another either orally or by practice, and are
21 constantly evolving, developing, and being recreated within the community, and
22 such other new indigenous knowledge or creative intellectual activity which are
23 identifiable and adopted as community owned.

24 c) *Cultural agencies* shall refer to the following national government
25 agencies with their specific areas of responsibility: National Commission
26 for Culture and the Arts (registry of cultural property); National Museum
27 of the Philippines (inventory); National Library of the Philippines (books);
28 National Historical Commission of the Philippines (Philippine history);
29 National Archives of the Philippines (documents); Cultural Center of the
30 Philippines (culture and arts); and Komisyon sa Wikang Filipino
31 (language);

- 1 d) *Derivative* shall refer to any naturally occurring biochemical compound
2 resulting from the genetic resources or metabolism of biological or
3 genetic resources even if it does not contain functional units of heredity;
- 4 e) *Derivative work* shall refer to the infusion or incorporation of variations
5 on a community intellectual right that would result in a derivative work
6 or craft, which is one that is primarily a new work, but incorporates
7 preexisting works or previously published material. A derivative work
8 must be different enough from the original to be regarded as a "new
9 work," or must contain a substantial amount of new material. Making
10 minor changes or additions of little substance to a pre-existing work will
11 not qualify the work as a new version;
- 12 f) *Genetic material* shall refer to any material of plant, animal, microbial or
13 other origin containing functional units of heredity;
- 14 g) *Genetic resources* shall refer to genetic material of actual or potential
15 value;
- 16 h) *Misappropriation* shall refer to any access or use of community
17 intellectual rights of the indigenous peoples or indigenous cultural
18 communities without their free, prior and informed consent or approval
19 and involvement and, where applicable, without mutual agreed terms,
20 for whatever purpose, be it commercial, research, academic, and
21 technology transfer, in violation of customary law and established
22 practices governing the access or use of such community intellectual
23 rights;
- 24 i) *Misuse* shall refer to any act wherein the user had secured prior consent
25 from the ICCs/IPs for the use of the community intellectual rights,
26 however, the same is used in a manner violative of customary laws and
27 established practices, or those contrary to or beyond what was agreed
28 upon;
- 29 j) *Registry* shall refer to the registry of community intellectual rights to be
30 established and managed by the Commission;
- 31 k) *Royalty* shall refer to the fair and equitable sharing of benefits as
32 provided in the mutually agreed terms (MAT) in the memorandum of

1 agreement (MOA) after the conduct of the FPIC process or to the
2 payment to the owner of the registered cultural property for the right to
3 use their property;

4 l) *Traditional Knowledge* shall refer to knowledge originating from ICCs/IPs
5 that may be dynamic and evolving and is the result of intellectual
6 activity, experiences, spiritual means, or insights in or from a traditional
7 context, which may be connected to land and environment, including
8 know-how, skills, innovations, practices, teaching or learning; and

9 m) *Traditional Cultural Expressions* shall refer to any form in which
10 traditional culture practices and knowledge are expressed by ICCs/IPs,
11 in or from a traditional context, and may be dynamic and evolving and
12 comprise verbal forms, musical forms, expressions by movement,
13 tangible or intangible forms of expression, or combinations thereof;

14 Sec. 4. *Coverage of Protection.* – The ICCs/IPs shall have full ownership,
15 control, and protection from misappropriation, misuse, and false designation of origin
16 of the community intellectual rights of ICCs/IPs, and they shall have the right to the
17 restitution of cultural, intellectual, religious, and spiritual property taken without their
18 free, prior and informed consent or in violation of their laws, traditions, and customs.
19 The protection of the community intellectual rights of the ICCs/IPs shall also cover
20 their economic and moral interests to be enumerated in the implementing rules and
21 regulations of this Act.

22 Sec. 5. *Implementing Body.* – The National Commission on Indigenous Peoples
23 (NCIP) shall implement the provisions of this Act.

24 Sec. 6. *Promotion of Community Intellectual Rights.* – The Commission shall
25 undertake activities to promote intellectual rights of ICCs/IPs, including building the
26 capacity of ICCs/IPs to enhance the protection and management of their rights.

27 Sec. 7. *Registry.* – The Commission shall establish and maintain a registry in
28 which indigenous knowledge systems and practices (IKSPs) shall be registered for the
29 purpose of this Act and which shall be recorded in the order of their registration.

30 The registration of community intellectual rights shall be filed before the
31 nearest NCIP Office. The application for registration shall contain the pertinent

1 information necessary for examination of the community intellectual rights which shall
2 include but not limited to the following information:

- 3 a) Identity of ICCs/IPs community intellectual right holder;
- 4 b) Location;
- 5 c) Detailed description of the community intellectual right registered;
- 6 d) Disclosure of agreements/partnerships with private or public
7 individuals/entities for the use of their community intellectual rights, if
8 any.

9 Enrollment of community intellectual rights in the Registry shall be *prima facie*
10 evidence of community intellectual rights of the ICCs/IPs.

11 The State recognizes the existence of community intellectual rights of ICCs/IPs
12 without need of prior approval from any licensing agency or other undertaking,
13 including registration.

14 *Sec. 8. Coordination by the NCIP with the NCCA and IPOPHL on the Registry of*
15 *Community Intellectual Rights, Cultural Property, and Intellectual Property Rights. –*
16 The Commission, together with the National Commission for Culture and the Arts and
17 the IPOPHL shall establish a system of coordination that will be consistent with the
18 policy of this Act, including the streamlining of the procedures for the registration of
19 community intellectual rights. They may jointly or individually promulgate the
20 appropriate mechanisms to ensure the effective implementation of the policies and
21 objectives of this Act, and they shall undertake activities geared toward building the
22 capacity of ICCs/IPs to enhance the protection and management of their community
23 intellectual property rights.

24 *Sec. 9. Period of Ownership. –* The community intellectual rights of ICCs/IPs
25 shall continue indefinitely to be their exclusive intellectual right and shall not expire
26 and shall not become part of the public domain.

27 *Sec. 10. Original Rights of Ownership. –* Though the State recognizes the
28 dynamic evolution of community intellectual rights, the ICCs/IPs shall retain these
29 intellectual rights as well as derivative works.

30 *Sec. 11. Royalties. –* The concerned ICCs/IPs are entitled to royalties and other
31 benefits as may be negotiated by the parties. When the community intellectual rights

1 are used commercially, the royalty payment due the concerned ICCs/IPs shall, in no
2 case, be less than five percent (5%) of the gross proceeds of the sale.

3 Sec. 12. *Free, Prior and Informed Consent (FPIC)*. – The use of ICCs/IPs
4 community intellectual rights shall be governed by the provisions of Republic Act No.
5 8371 or the Indigenous Peoples Rights Act of 1997, its Implementing Rules and
6 Regulations, and guidelines on Free, Prior and Informed Consent.

7 Sec. 13. *Role of Government Agencies and Local Government Units*. – All
8 government agencies, government-owned and controlled corporations, public
9 educational institutions, local government units (LGUs) and other entities shall
10 endeavor to promote ICCs/IPs community intellectual rights. They shall endeavor to
11 develop, produce and publish information education campaign materials on
12 community intellectual rights, the importance of registration, and the prohibited acts
13 under this Act.

14 For this purpose, all national government agencies and LGUs shall allocate
15 funds for the implementation of programs, projects and activities that will recognize,
16 respect, promote and protect the rights of the ICCs/IPs, including the protection and
17 promotion of their community intellectual rights pursuant to IPRA and this Act.

18 Sec. 14. *Prohibited Acts*. – Under this Act, the following are prohibited:

- 19 a) Misappropriation – any access, infringement, copying, or use of
20 community intellectual rights of the indigenous cultural
21 communities/indigenous peoples without their free, prior and informed
22 consent or approval and involvement and, where applicable, without
23 mutual agreed terms, for whatever purpose, be it commercial, research,
24 academic, and technology transfer.
- 25 b) Misuse – any act wherein the user had secured prior consent from the
26 ICCs/IPs for the use of the community intellectual rights, however, the
27 same is used in a manner violative of national laws or customary laws
28 known to the user, and established practices, or those contrary to or
29 beyond what was agreed upon during the FPIC process.
- 30 c) False Designations of Origin – any act which will likely cause confusion
31 or mistake, or cause deception as to the affiliation, connection, or

1 association of such ICCs/IPs IKSPs, including but not limited to the
2 following:

- 3 1. false designation of an origin, false or misleading description of fact,
4 or false or misleading representation of fact; and,
- 5 2. Misrepresentation of the nature, characteristics, qualities, or
6 geographic origin of an ICCs/IPs' IKSP.

7 Sec. 15. *Limitations on Community Intellectual Rights.* – Notwithstanding the
8 protection given to the community intellectual right of ICCs/IPs, the following shall not
9 be prohibited:

- 10 a) Government use in cases of national emergencies, national security,
11 health, or the development of vital sectors in the national economy as
12 determined by the National Economic and Development Authority
13 (NEDA); and,
- 14 b) Acts necessary to address the needs of non-commercial use, including
15 teaching and research for educational purposes, personal or private use,
16 criticism or review, reporting of current events, use in the course of legal
17 proceedings, the making of recordings and reproductions of traditional
18 knowledge or cultural expressions for inclusion in an archive or inventory
19 exclusively for the purposes of safeguarding knowledge or cultural
20 heritage, and incidental uses.

21 *Provided,* That the relevant community's customary laws, protocols, and
22 practices will be considered and the relevant community shall be acknowledged as
23 the source of the traditional knowledge or cultural expressions: *Provided further,*
24 That in researches affecting the ICCs/IPs, their IKSPs including their community
25 intellectual right and their ancestral domains of which the ICCs/IPs themselves are
26 the primary source of data shall require consultations with the relevant ICCs/IPs,
27 including undertaking acts to obtain the free, prior and informed consent: *Provided,*
28 *finally,* That these acts do not conflict with the interests of, or are not derogatory
29 to, the ICCs/IPs and do not unduly prejudice the implementation of the rights of
30 ICCs/IPs.

31 Sec. 16. *Penalties.*

- 1 A. For Administrative Penalties. – After the conduct of a formal investigation
2 and following due process, the Commission, may impose one (1) or more
3 of the following administrative penalties:
- 4 a) Issuance of a cease-and-desist order which shall specify the acts that
5 the respondent shall cease and desist from and shall require him to
6 submit a compliance report within a reasonable time which shall be
7 fixed in the Order;
 - 8 b) The acceptance of a voluntary undertaking of compliance or
9 discontinuance as may be imposed;
 - 10 c) The condemnation or seizure of products which are subject of the
11 offense. The goods seized hereunder shall be disposed of in such
12 manner as may be deemed appropriate by the Commission;
 - 13 d) The forfeiture of paraphernalia and all real and personal properties
14 which have been used in the commission of the offense;
 - 15 e) The imposition of administrative fines in such amount as deemed
16 reasonable by the Commission;
 - 17 f) The cancellation of any permit, license, authority, or registration
18 which may have been granted by the Commission, or the suspension
19 of the validity thereof for such period of time as the Commission may
20 deem reasonable;
 - 21 g) The withholding of any permit, license, authority or registration
22 which is being secured by the respondent from the Commission;
 - 23 h) The assessment and award of damages;
 - 24 i) Censure;
 - 25 j) Other analogous penalties or sanctions.
- 26 B. For criminal penalties. - Independent of the civil and administrative
27 sanctions imposed by law, any person found guilty in a criminal action
28 for violating any provisions of this Act, shall be imprisoned for not less
29 than nine (9) months but not more than nine (9) years or a fine of not
30 less than One hundred thousand pesos (P100,000) nor more than Five
31 hundred thousand pesos (P500,000) or both such fine and imprisonment
32 upon the discretion of the court.

1 C. If a person is found to have committed any of the prohibited acts and is
2 found to be in good faith, or one who is considered as an innocent
3 infringer, the community intellectual rights holders shall be entitled as
4 against such infringer to an injunction against future use, payment of
5 reasonable damages, and/or such other sanctions provided in this Act.

6 *Sec. 17. Administrative Adjudication of Cases in Violation of This Act.* – The
7 Commission, in addition to the jurisdiction and enforcement powers given to it under
8 Republic Act No. 8371 or the Indigenous Peoples Rights Act of 1997, shall have the
9 following functions and powers to adjudicate administrative cases in violation of this
10 Act:

- 11 a) Exercise original jurisdiction over complaints for violations of the
12 community intellectual rights of the ICCs/IPs;
13 b) Issue a cease-and-desist order which shall specify the acts that the
14 respondent shall cease and desist from and shall require the respondent
15 to submit a compliance report within a reasonable time which shall be
16 fixed in the order;
17 c) Issue such other provisional remedies as provided under the Rules of
18 Court;
19 d) After a formal investigation and following due process, issue appropriate
20 sanctions and penalties for the violation of community intellectual rights.

21 The Commission shall promulgate the rules and procedures to govern the
22 adjudication of violations of community intellectual rights of ICCs/IPs.

23 *Sec. 18. Administrative Decisions or Orders of the Commission.* – The final
24 decision or order of the Commission shall be immediately executory even pending
25 appeal. The process of appeal in the Commission in the adjudication of administrative
26 complaints involving community intellectual rights (CIRs) shall be provided in the rules
27 of procedure.

28 *Sec. 19. Criminal Action for Community Intellectual Rights Violation.* – If the
29 prohibited acts are repeated by the violator or by anyone in connivance with him, the
30 offenders shall, without prejudice to the institution of a civil and administrative action
31 for damages, be criminally liable therefor. However, if the act committed is done with
32 malice, the element of repetition is not required to institute the criminal action.

1 The criminal action shall be filed with the proper court. The offense shall be
2 prescribed in five (5) years from date of the commission thereof.

3 *Sec. 20. Correction of Mistakes of the Commission.* – The Commission shall
4 have the power to correct, without fee, any mistake in the entry of data during the
5 community intellectual rights processing of registration incurred through the fault of
6 the Commission when clearly disclosed in the records thereof, to make the community
7 intellectual rights application and registration conform to the records.

8 *Sec. 21. Correction of Mistake in the Application.* – On request of any interested
9 person and payment of the prescribed fee, the Commission is authorized to correct
10 any mistake in the community intellectual rights application of a formal and clerical
11 nature, not incurred through the fault of the Commission.

12 *Sec. 22. Creation of Offices and Plantilla Positions.* – The Commission shall
13 create offices and corresponding *plantilla* positions necessary for the implementation
14 of the provisions of this Act.

15 *Sec. 23. Appropriations.* – For the initial implementation of this Act, the amount
16 of Fifty million pesos (Php50,000,000.00) is hereby appropriated and shall be sourced
17 from the President's Contingent Fund. Funds for the succeeding years shall be
18 included in the General Appropriations Act.

19 *Sec. 24. Implementing Rules and Regulations (IRR).* – The Commission, in
20 consultation with other cultural agencies, Intellectual Property Office of the Philippines
21 (IPO-PHIL), the Palawan Council on Sustainable Development, the Department of
22 Environment and Natural Resources, the Department of Agriculture, the Philippine
23 Institute of Traditional and Alternative Health Care (PITAHC), civil society
24 organizations, and other relevant government agencies, shall promulgate the IRR of
25 this Act, including, but not limited to CIR belonging to several ICCs/IPs, mechanisms
26 for the registry, positive and defensive protection of CIR, treatment of derivative
27 works, validation, dispute settlement/resolution, and rules of procedure, within one
28 hundred and twenty (120) days after the effectivity of this Act.

29 *Sec. 25. Repealing Clause.* – The provisions of existing laws, to the extent that
30 they are inconsistent with this Act, are hereby repealed or amended accordingly.

1 Sec. 26. *Separability Clause.* – If, for any reason, any part or provision of this
2 Act is declared invalid or unconstitutional, the parts or provisions not affected thereby
3 shall remain in full force and effect.

4 Sec. 27. *Effectivity.* – This Act shall take effect fifteen (15) days following its
5 publication in the Official Gazette or in two (2) newspapers of general circulation,
6 whichever comes first.

Approved,