

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

TWENTIETH CONGRESS

First Regular Session

HOUSE BILL NO. 3940



Introduced by the Honorable ANIELA BIANCA D. TOLENTINO

EXPLANATORY NOTE

The Philippines has the Intellectual Property Code to protect intellectual properties such as patents, trademarks, and copyrights. However, genetic resource and traditional knowledge of indigenous cultural communities and indigenous peoples remain to be inadequately protected.

Genetic resource and traditional knowledge are intellectual properties that emanate from indigenous cultural communities and indigenous peoples that need to be protected. Genetic resource pertains to any genetic material of a biological resource containing genetic information having actual or potential value for humanity. Traditional knowledge on the other hand pertains to any knowledge originating from a traditional community, individual, or group that resulted from intellectual activity and insight in a traditional context and where such knowledge is passed from one generation to another.

The proposed law herein seeks to formalize the inclusion of traditional knowledge and genetic resources under the protection of the Intellectual Property Code. In this manner, indigenous cultural communities and indigenous peoples will have ample protection of their intellectual properties, which were developed over time and now are being easily passed on because of the advancement of technology.

It should be stressed that the Constitution declares that: "*The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.*"

For the Filipino people, passage of the proposed law is earnestly being prayed.

A handwritten signature in black ink, appearing to be "Aniel", written in a cursive style.

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**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"**

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

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

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

"SECTION 20. Definition of Terms Used in Part II, The Law on Patents.
– As used in Part II, the following terms shall have the following meanings:

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

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

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

"20.4. "Examiner" means the patent examiner;

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

"[20-5] **20.6.** "Patent application" or "application" means an application for a patent for an invention except in Chapters XII and XIII, where application

means an application for a utility model and an industrial design, respectively;
and

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

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

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

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

"31-A.2. ACCESS TO GENETIC RESOURCES AND TO TRADITIONAL KNOWLEDGE RELATED TO THE CONSERVATION, UTILIZATION, AND ENHANCEMENT OF THESE RESOURCES SHALL BE ALLOWED WITHIN ANCESTRAL LANDS AND DOMAINS OF THE INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES ONLY WITH THE FREE AND PRIOR INFORMED CONSENT OF SUCH COMMUNITIES OBTAINED IN ACCORDANCE WITH THEIR CUSTOMARY LAWS."

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

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

"35.2. Description. - The Regulations shall prescribe the contents of the description and the order of presentation.

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

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

"B. OF TRADITIONAL KNOWLEDGE OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES OF GENETIC RESOURCES TO WHICH THE INVENTOR OR THE PATENT APPLICANT HAD ACCESS, PROVIDED THE INVENTION IS DIRECTLY BASED ON THIS KNOWLEDGE.

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

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

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

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

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

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

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

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

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

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

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

"x x x

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

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

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

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

"(D) TANGIBLE EXPRESSIONS, INCLUDING PRODUCTIONS OF ART, DRAWINGS, DESIGNS, PAINTINGS, BODY PAINTING, CARVINGS, SCULPTURES, POTTERY, TERRACOTTA, MOSAIC, WOODWORK, METAL WARE, JEWELRY, BASKETS, NEEDLEWORK, TEXTILES, GLASSWARE, CARPETS, COSTUMES, HANDICRAFTS, MUSICAL INSTRUMENTS, AND ARCHITECTURAL FORMS; AND

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

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

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

"x x x

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

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

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

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

"(a) Dramatizations, translations, adaptations, abridgments, arrangements, and other alterations of literary or artistic works; ~~and~~

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

"(C) COLLECTIONS OF FOLKLORE SUCH AS ENCYCLOPEDIAS OR ANTHOLOGIES, AND DATABASES, READABLE EITHER BY COMPUTER OR OTHER MEANS, AS LONG AS CREATIVITY EXISTS IN THE SELECTION OR ARRANGEMENT OF THE CONTENTS OF THOSE COLLECTIONS AND DATABASES.

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

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

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

"x x x

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

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

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

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

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

Approved,