

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

TWENTIETH CONGRESS
First Regular Session

House Bill No. 4308



Introduced by Representative Dibu S. Tuan

EXPLANATORY NOTE

The 1987 Philippine Constitution provides that “The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development” (Article II, Section 22). Our fundamental law further mandates the State to “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.” (Art. XIV, Sec. 17)

One aspect of indigenous culture worth protecting and developing is the T’nalak weaving tradition of the T’boli community. T’nalak is a sacred, traditional textile woven from abaca fibers by the indigenous T’boli people of South Cotabato, Philippines, known for its intricate, colorful patterns derived from spirit-inspired dreams. This *ikat*-dyed fabric (process which involves dyeing the threads before weaving them on a backstrap loom) is a vital part of T’boli culture, used in significant ceremonies and as a form of trade. The weaving process is a treasured skill for T’boli women, who are called “Dreamweavers” due to their ability to translate dream patterns into these cultural artifacts. The creation of a single piece of T’nalak is a lengthy, labor-intensive process requiring significant skill and precision.

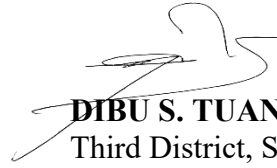
T’nalak is considered sacred and a connection to the spirit world. It plays a crucial role in important life events like births, weddings, and deaths. Historically, T’nalak was highly valued and used as a form of currency and a valuable item of trade. T’boli women believe the designs for T’nalak are gifted to them by Fu Dalu, the T’boli goddess of abaca, through their dreams.

An entire festival, the T’nalak Festival, is held annually in South Cotabato to celebrate this important heritage which unites the province's diverse people.

This bill is being proposed to address a gap in our "Indigenous Peoples Rights Act of 1997" (Republic Act No. 9371) which does not contain a specific provision for the protection of indigenous knowledge or creative intellectual activity and their manifestations. Throughout the years, local T’boli weavers have been deprived of the fruits of their cultural tradition due to the

absence of a law protecting their community intellectual property rights. Further, the T'nalak weaving industry, an indisputable gem of our indigenous cultures, is justly deserving of State support for its further development.

In view of the foregoing, the passage, at the earliest possible time, of this measure into law is earnestly recommended.



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HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

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AN ACT
PROVIDING FOR THE PROTECTION AND DEVELOPMENT OF
THE T’NALAK WEAVING INDUSTRY

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

SECTION 1. *Short Title.* This Act shall be known and referred to as the "*T’nalak Weaving Industry Act.*"

SEC. 2. *Declaration of Policy.* It is the policy of the State to instill patriotism and nationalism, promote the preferential use of locally manufactured goods that utilize local resources and technologies, celebrate Filipino culture and heritage through the adoption of measures to elevate its value and prestige, thereby generating employment and inclusive growth for our people.

Towards this end, the State shall take measures to protect the intellectual property rights of indigenous cultural communities/indigenous peoples (ICCs/IPs) with the end in view of ensuring that local communities preserve collective pride as well as obtain reasonable return from the practice of their arts and crafts, including restitution in the event that their cultural properties are appropriated without their free, prior and informed consent (FPIC) or in violation of their laws, traditions and customs. Further, the state shall support the development and further revitalization of indigenous customs and traditions.

SEC. 3. *Definition of Terms.* Under this Act:

- a) "**Community intellectual rights**" shall refer to the rights of the T’boli people to own, control, develop, protect, and enjoy their indigenous knowledge or creative intellectual activity and their manifestations, particularly with reference to the T’nalak weaving industry;

- b) **"Derivative work"** shall refer to the infusion or incorporation of variations on a community intellectual right over the T'nalak that would result in a derivative work or craft, which is one that is primarily a new work, but incorporates preexisting works or previously published material. A derivative work must be different enough from the original to be regarded as a "new work," or must contain a substantial amount of new material. Making minor changes or additions of little substance to a pre-existing work will not qualify the work as a new version;
- c) **"Misappropriation"** refers to any access or use of community intellectual rights over the T'nalak of the T'boli without their free, prior and informed consent or approval and involvement and, where applicable, without mutual agreed terms, for whatever purpose, be it commercial, research, academic, and technology transfer, in violation of customary law and established practices governing the access or use of such community intellectual rights;
- d) **"Misuse"** refers to any act wherein the user had secured prior consent from the T'boli for the use of the community intellectual rights over the T'nalak, however, the same is used in a manner violative of customary laws and established practices, or those contrary to or beyond what was agreed upon;
- e) **"Royalty"** refers to the fair and equitable sharing of benefits as provided in the mutually agreed terms (MAT) in the memorandum of agreement (MOA) after the conduct of the FPIC process or to the payment to the owner of the registered cultural property for the right to use their property;
- f) **"T'boli"** refers to an indigenous ethnic group primarily from South Cotabato, Mindanao, Philippines, known for their unique culture, especially their T'nalak textile, beadwork and traditional arts.
- g) **"T'nalak"** refers to a sacred, traditional textile woven from abaca fibers by the indigenous T'boli people of South Cotabato, Philippines, known for its intricate, colorful patterns derived from spirit-inspired dreams. This *ikat*-dyed fabric (process which involves dyeing the threads before weaving them on a backstrap loom) is a vital part of T'boli culture, used in significant ceremonies and as a form of trade.

SEC. 4. Coverage of Protection. The T'bolis shall have full ownership, control, and protection from misappropriation, misuse, and false designation of origin of the T'nalak weaving industry, and they shall have the right to the restitution of the community intellectual property rights over the T'nalak taken without their free, prior and informed consent or in violation of their laws, traditions, and customs. The protection of the community intellectual rights of the T'bolis shall also cover their economic and moral interests to be enumerated in the implementing rules and regulations of this Act.

SEC. 5. Establishment of the T'nalak Weaving Development Council. The T'nalak Weaving Development Council (hereinafter Council, for brevity) shall be composed of the following:

- a. Head of the Philippine Textile Research Institute of the Department of Science and Technology as Chair of the Council;
- b. Head of the Garments and Textile Industry Development Office of the Department Trade and Industry as Co-Chair;
- c. Head of the National Commission for Culture and the Arts as Member;
- d. Head of the National Commission on Indigenous People as Member;
- e. Head of the Technical Education and Skills Development Authority as Member;
- f. Head of the Philippine Fiber Industry Development Authority of the Department of Agriculture as Member;
- g. Head of the Philippine Creative Industry Development Council as Member;
- h. Head of the Intellectual Property Office of the Philippines as Member; and
- i. A representative of the T'nalak weaving industry as Member.

The National Commission on Indigenous Peoples (NCIP) shall serve as the Secretariat of the Council.

SEC. 6. *The T'nalak Weaving Industry Development Policy.* The Council shall formulate one (1) year after it is created, the National T'nalak Weaving Industry Development Policy. This shall include, but shall not be limited to, the following:

- a. Formulation of the T'nalak Weaving Industry Roadmap;
- b. Innovations in t'nalak design and engineering;
- c. Technical support mechanism for sustainable t'nalak weaving activities;
- d. Development and promotion of neo-ethnic Philippine textiles;
- e. Development of Philippine Standards for T'nalak Woven Textiles;
- f. Intellectual property protection framework for t'nalak textiles;
- g. Development of a database of Philippine textiles;
- h. Development of T'nalak textile-related technical and skills and vocational programs; and
- i. Education and Training.

The Council shall implement and monitor compliance with the National T'nalak Weaving Industry Development Policy.

SEC. 7. *Promotion of Community Intellectual Rights over the T'nalak.* The Council shall undertake activities to promote intellectual rights of T'bolis, including building their capacity of to enhance the protection and management of their rights.

SEC. 8. *Registry.* The community intellectual rights over the T'nalak shall be registered with the Council. The application for registration shall contain the pertinent information necessary for examination of the community intellectual rights which shall include, but not limited to, the following information:

- a) Identity of ICCs/IPs community intellectual right holder;
- b) Location;
- c) Detailed description of the community intellectual right registered;
- d) Disclosure of agreements/partnerships with private or public individuals/entities for the use of their community intellectual rights over the T'nalak.

Enrollment of community intellectual rights over the T'nalak in the Registry shall be prima facie evidence of community intellectual rights of the T'bolis.

The State recognizes the existence of community intellectual rights of the T'bolis over the T'nalak without need of prior approval from any licensing agency or other undertaking, including registration.

SEC. 9. *Period of Ownership.* The community intellectual rights over the T'nalak of the T'bolis shall continue indefinitely to be their exclusive intellectual right and shall not expire and shall not become part of the public domain.

SEC. 10. *Original Rights of Ownership.* Though the State recognizes the dynamic evolution of community intellectual rights over the T'nalak, the T'bolis shall retain these intellectual rights as well as derivative works.

SEC. 11. *Royalties.* The T'bolis are entitled to royalties and other benefits as may be negotiated by the parties. When the community intellectual rights are used commercially, the royalty payment due the T'bolis shall, in no case, be less than five percent (5%) of the gross proceeds of the sale.

SEC. 12. *Free, Prior and Informed Consent (FPIC).* The use of T'boli's community intellectual rights over the T'nalak shall be governed by the provisions of Republic Act No. 8371 or the Indigenous Peoples Rights Act of 1997, its Implementing Rules and Regulations, and guidelines on Free, Prior and Informed Consent.

SEC. 13. *Role of Government Agencies and Local Government Units.* All government agencies, government-owned and controlled corporations, public educational institutions, local government units (LGUs) and other entities shall endeavor to promote T'boli's community intellectual rights. They shall endeavor to develop, produce and publish information education campaign materials on community intellectual rights over the T'nalak, the importance of registration, and the prohibited acts under this Act.

For this purpose, all national government agencies and LGUs shall allocate funds for the implementation of programs, projects and activities that will recognize, respect, promote and

protect the rights of the T'bolis, including the protection and promotion of their community intellectual rights pursuant to IPRA and this Act.

SEC. 14. *Prohibited Acts.* Under this Act, the following are prohibited:

- a) Misappropriation - any access, infringement, copying, or use of community intellectual rights over the T'nalak of the T'bolis without their free, prior and informed consent or approval and involvement and, where applicable, without mutual agreed terms, for whatever purpose, be it commercial, research, academic, and technology transfer.
- b) Misuse - any act wherein the user had secured prior consent from the T'bolis for the use of the community intellectual rights over the T'nalak, however, the same is used in a manner violative of national laws or customary laws known to the user, and established practices, or those contrary to or beyond what was agreed upon during the FPIC process.
- c) False Designations of Origin - any act which will likely cause confusion or mistake, or cause deception as to the affiliation, connection, or association of the T'bolis, including, but not limited, to the following:
 - 1. false designation of an origin, false or misleading description of fact, or false or misleading representation of fact; and
 - 2. Misrepresentation of the nature, characteristics, qualities, or geographic origin of the community intellectual property over the T'nalak.

SEC. 15. *Limitations on Community Intellectual Rights.* Notwithstanding the protection given to the community intellectual right over the T'nalak of the T'bolis, the following shall not be prohibited:

- a) Government use in cases of national emergencies, national security, health, or the development of vital sectors in the national economy as determined by the Department of Economy, Planning, and Development (DEPDev); and
- b) Acts necessary to address the needs of non-commercial use, including teaching and research for educational purposes, personal or private use, criticism or review, reporting of current events, use in the course of legal proceedings, the making of recordings and reproductions of traditional knowledge or cultural expressions for inclusion in an archive or inventory exclusively for the purposes of safeguarding knowledge or cultural heritage, and incidental uses:

Provided, that the relevant community's customary laws, protocols, and practices will be considered and the T'boli community shall be acknowledged as the source of the T'nalak weaving tradition: *Provided, further*, That researches affecting the T'bolis including their community intellectual right and their ancestral domains of which the T'bolis themselves are the primary source of data, shall require consultations with them, including undertaking acts to obtain the free, prior and informed consent: *Provided, finally*, That these acts do not conflict with the interests of, or are not derogatory to, the T'bolis and do not unduly prejudice the implementation of their rights.

SEC. 16. *Penalties.*

A. For Administrative Penalties. - After the conduct of a formal investigation and following due process, the Council, may impose one (1) or more of the following administrative penalties:

- a) Issuance of a cease-and-desist order which shall specify the acts that the respondent shall cease and desist from and shall require him to submit a compliance report within a reasonable time which shall be fixed in the Order;
- b) The acceptance of a voluntary undertaking of compliance or discontinuance as may be imposed.
- c) The condemnation or seizure of products which are subject of the offense. The goods seized hereunder shall be disposed of in such manner as may be deemed appropriate by the Council;
- d) The forfeiture of paraphernalia and all real and personal properties which have been used in the commission of the offense;
- e) The imposition of administrative fines in such amount deemed reasonable by the Council,
- f) The cancellation of any permit, license, authority, or registration which may have been granted by the Council, or the suspension of the validity thereof for such period of time as the Council may deem reasonable;
- g) The withholding of any permit, license, authority or registration which is being secured by the respondent from the Council;
- h) The assessment and award of damages;
- i) Censure;
- j) Other analogous penalties or sanctions.

B. For Criminal Penalties. -Independent of the civil and administrative sanctions imposed by law, any person found guilty in a criminal action for violating any provisions of this Act, shall be imprisoned for not less than nine (9) months but not more than nine (9) years or a fine of not less than One hundred thousand pesos (P100,000) nor more than Five hundred thousand pesos (PS00,000), or both such fine and imprisonment upon the discretion of the court.

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

SEC. 17. *Administrative Adjudication of Cases in Violation of This Act.* The Council shall have the following functions and powers to adjudicate administrative cases in violation of this Act:

- a) Exercise original jurisdiction over complaints for violations of the community intellectual rights over the T'nalak of the T'bolis;
- b) Issue a cease-and-desist order which shall specify the acts that the respondent shall cease and desist from and shall require the respondent to submit a compliance report within a reasonable time which shall be fixed in the order;

- c) Issue such other provisional remedies as provided under the Rules of Court;
- d) After a formal investigation and following due process, issue appropriate sanctions and penalties for the violation of community intellectual rights over the T'nalak.

The Council shall promulgate the rules and procedures to govern the adjudication of violations of community intellectual rights over the T'nalak of the T'bolis.

The final decision or order of the Council shall be immediately executory even pending appeal. The process of appeal in the Council in the adjudication of administrative complaints shall be provided in the rules of procedure.

SEC. 18. *Criminal Action for Community Intellectual Rights Violation over the T'nalak.* If the prohibited acts are repeated by the violator or by anyone in connivance with him, the offenders shall, without prejudice to the institution of a civil and administrative action for damages, be criminally liable therefor. However, if the act committed is done with malice, the element of repetition is not required to institute the criminal action.

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

SEC. 19. *Appropriations.* The amount necessary for the initial implementation of this Act shall be chargeable against the current budget of the NCIP. Funds for the succeeding years shall be included in the General Appropriations Act.

SEC. 20. *Implementing Rules and Regulations (IRR).* The NCIP, in consultation with the member-offices of the Council, shall promulgate the IRR of this Act within one hundred and twenty (120) days after the effectivity of this Act.

SEC. 21. *Repealing Clause.* The provisions of existing laws, rules and regulations, to the extent that they are inconsistent with this Act, are hereby repealed or amended accordingly.

SEC. 22. *Separability Clause.* If, for any reason, any part or provision of this Act is declared invalid or unconstitutional, the parts or provisions not affected thereby shall remain in full force and effect.

SEC. 23. *Effectivity.* This Act shall take effect fifteen (15) days following its publication in the Official Gazette or in a newspaper of general circulation.

Approved,