

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



Senate
Office of the Secretary

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SENATE

S.B. No. 669

RECEIVED BY: *ju*

Introduced by Senator LOREN LEGARDA

EXPLANATORY NOTE

Our indigenous peoples have suffered historical injustices in the form of discrimination, deprivation of their ancestral domains and lands, among many other human rights violations. To add salt to their wounds, there have been many reported incidences wherein their indigenous knowledge, dances, designs are being stolen by local and foreign entities, further marginalizing our indigenous communities and depriving them of their cultural property, their identity which has been passed on from their ancestors.

The law protecting indigenous peoples' rights, namely the Indigenous Peoples Rights' Act (RA 9371) does not provide for specific provisions for the protection of their cultural properties, both intangible and tangible. It is with the passage of this bill that this void is sought to be filled.

With the help of the National Commission for Culture and the Arts, National Museum, National Commission on Indigenous Peoples and local government units, this bill shall create a comprehensive cultural archive which shall organize and make an inventory of all cultural properties of the different ethno-linguistic groups of the Philippines. This inventory of cultural properties shall then be submitted to the Commission thru the National Museum who shall ensure the registration of the ownership to the proper ethno-linguistic group for protection of their intellectual property. This bill also mandates the payment of royalties for the use of the cultural property of indigenous groups.

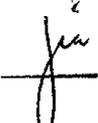
In view of the foregoing considerations, approval of this bill is earnestly sought.


LOREN LEGARDA
Senator



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SENATE
S.B. No. 669

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Introduced by Senator LOREN LEGARDA

AN ACT
SAFEGUARDING THE TRADITIONAL PROPERTY RIGHTS OF
INDIGENOUS PEOPLES

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

1 **SECTION 1.** This Act shall be known as the "Traditional Property Rights of
2 Indigenous Peoples Act."

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

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

13
14 a) "Commission" shall refer to the National Commission for Culture and the
15 Arts (NCCA);

16
17 b) "Cultural agencies" shall refer to the following national government agencies
18 with their specific areas of responsibility: National Museum (cultural
19 property); the National Library (books); National Historical Institute
20 (Philippine history); National Archives (documents); Cultural Center of the
21 Philippines (culture and the arts); and Komisyon sa Wikang Filipino
22 (language);

1 c) "Cultural heritage" shall refer to the totality of cultural property preserved and
2 developed through time and passed on to posterity;

3
4 d) "Cultural property" shall refer to all products of human creativity by which a
5 people and a nation reveal their identity, including churches, mosques and
6 other places of religious worship, schools and natural history specimens and
7 sites, whether public or privately-owned, movable or immovable, and
8 tangible or intangible.

9
10 e) "Intangible cultural heritage" shall refer to the practices, representations,
11 expressions, knowledge, skills as well as the instruments, objects and artifacts
12 associated therewith, that communities, groups and individuals recognize as
13 part of their cultural heritage, such as (1) oral traditions, languages,
14 expressions; (2) performing acts; (3) social practices, rituals and festive events;
15 (4) knowledge and practices concerning nature and the universe; and (5)
16 traditional craftsmanship;

17
18 f) "Intangible cultural property" shall refer to the people's learned processes
19 along with the knowledge, skills and creativity that inform and are developed
20 by them, the products they create and the resources, spaces and other aspects
21 of social and natural context necessary for their sustainability;

22
23 g) "Registry" shall refer to the Philippine Registry of Cultural Property which is
24 the registry of all cultural property of the country deemed of significant
25 importance to our cultural heritage as defined in RA 10066;

26
27 h) "Tangible cultural property" shall refer to a cultural property with historical,
28 archival, anthropological, archeological, artistic and architectural value, and with
29 exceptional or traditional production, whether of Philippine origin or not,
30 including antiques and natural history specimens with significant value;

31 i.) "Tradition" shall refer to the beliefs, customs, practices, industries, expressions,
32 whether tangible or intangible, maintained and shared differentially by society,
33 and handed down from generation to generation. Tradition in this respect is a
34 continuum that change and may arise in time shall not therefore be subject to
35 time limitation;

1 j.) "Community" refers to the congregation of people with social cohesion and
2 identity organized around common values interacting with intimacy and
3 reciprocity in a shared circumscribed location in units larger than a household;
4 and has more similarities in the types and forms of their material goods;

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

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

21 m.) "Communal ownership" refers to common ownership within a community;

22 n.) "Royalty" refers to the payment to the holder of a patent or copyright or
23 resource for the right to use their property;

24 o.) "Craft" describes the family of artistic practices within the decorative arts,
25 traditionally, is defined by their relationship to functional or utilitarian products
26 (such as sculptural forms in the vessel tradition) or by their use of such natural
27 media as wood, clay, glass, textiles and metal;

28 p.) "Social process" refers to the means by which culture and social organization
29 change or are preserved due to process or practice;

30 q.) "Oral expression" refers to the expression uttered by the mouth; spoken; oral
31 testimony or transmitted by speech;

32 r.) "Rites" refer to formal or ceremonial acts or procedures prescribed or

1 customary in religious or other solemn use, or a particular form of system of
2 religious or other ceremony;

3 s.) "Rituals" refer to an established or prescribed procedure for a religious or
4 other rite, a system or collection of religious or other rites; observance of set
5 forms in public worship; a prescribed or established rite, ceremony, proceeding
6 or service: the ritual of the dead; prescribed, established or ceremonial acts or
7 features collectively, as in religious services; any practice or pattern of behavior
8 regulating social conduct;

9 t.) "Performance" refers to the acting out of a ceremony, play, piece of music, etc.,
10 the execution or accomplishment of work acts, feats, etc., a particular action,
11 deed or proceeding the manner in which or the efficiency with which something
12 reacts or fulfills its intended purpose, and not necessarily as part of social
13 process;

14 u.) "Ownership" refers to the legal right of possession or proprietorship; the state,
15 relation, or fact of being an owner; also, the rights or interests of an owner,
16 ownership especially by a single person that is free of any encumbrances or
17 limitations other than statutory.

18 v.) "Culture" - The UNESCO World Conference on Cultural Policies (Mexico,
19 1982) defines culture, in its widest sense, as the whole complex of distinctive
20 spiritual, material, intellectual, and emotional features that characterize a society
21 or a social group. This includes not only the arts and letters but also modes of
22 life, value systems, traditions and beliefs. Culture, however, can also be looked at
23 as an aggregate and internally inconsistent body of knowledge and meanings,
24 unevenly distributed among individuals of a community, and acquired by these
25 individuals through their experiences and transactions in everyday life.

26 **SECTION 4.** The National Commission for Culture and the Arts (NCCA)
27 hereinafter referred to as the Commission, shall implement the provisions of the
28 Act.

29 **SECTION 5.** Traditional cultural property, whether tangible or intangible, of all
30 the ethno-linguistic groups that make up the people of the Philippines shall not
31 lapse into public domain after 50 years from creation, and shall continue
32 indefinitely to be exclusive property of these ethno-linguistic groups that
33 communally own them. Traditional heritage, both tangible and intangible are to

1 be held in perpetuity in ethnic memory and considered valid as ethnic
2 intellectual property.

3 **SECTION 6.** Under the guidance of the Commission and National Museum
4 (NM), or any other pertinent national cultural agency, the Local Government
5 Units (LGU) with the assistance of the National Commission for Indigenous
6 Peoples (NCIP) shall organize inventories of cultural properties of the different
7 ethno-linguistic groups of the Philippines that are distinctive, characteristic of or
8 derived from their particular traditional culture, to the exclusion of those of
9 others and shall; submit these to the Commission thru the National Museum to
10 establish communal ownership, and to be registered under the group's name for
11 protection within existing copyright law.

12 Further that these registries of the tangible and intangible cultural properties
13 thus accomplished shall be incorporated in the Philippines Registry of Cultural
14 Property (PRECUP) as established by Republic Act 10066 and administered to by
15 the Commission.

16 **SECTION 7.** While recognizing that traditions change through time, the rights of
17 the ethno-linguistic groups to their intellectual property changing in continuum
18 shall retain original rights to these properties.

19 **SECTION 8.** The infusion of personal or individual variations on a traditional
20 object would result in a derivative work or craft, which is one that is primarily a
21 new work but incorporates some previously published material. A derivative
22 work must be different enough from the original to be regarded as a "new work"
23 or must contain a substantial amount of new material. Making minor changes or
24 additions of little substance to a pre-existing work will not qualify the work as a
25 new version for copyright purposes. The new material must be original and
26 copyrightable in itself.

27 **SECTION 9.** However, the rights of an ethno-linguistic group to a traditional
28 item will lapse into public domain in 50 years, if after such period, it is no longer
29 in production or used in cultural context within the society.

30 **SECTION 10.** Pursuant to the above, the Commission will create an office within
31 its structure to coordinate all efforts of government and private agencies that
32 have forms of tangible and intangible cultural heritage in making the above-
33 mentioned registry; and to undertake the safeguarding of national cultural

1 heritage stipulated therein that are viable.

2 **SECTION 11. Reorganization** - With the approval of the Board, the Commission
3 shall have the authority to reorganize its structure and staffing pattern in order
4 to carry out its functions. The incumbents in the leadership structure of the
5 existing Commission shall automatically be upgraded to these analogous
6 positions, with respect to the rest of the personnel.

7 **SECTION 12. Deposit and Notice.** - Moral rights would vest upon creation;
8 hence, authorship would have to be established to avail of moral rights such as
9 right of attribution. Moral rights to ownership of newly created items by
10 members of an ethno-linguistic group should be registered with the commission
11 for protection under copyright law. Copyright vests from the moment of
12 creation; and registration is one of the ways to prove authorship, although this is
13 not exclusive.

14 a. The Commission thru the relevant government cultural agency, shall assist in
15 identifying works and attributing authorship, and further shall be responsible for
16 maintaining and populating this registry;

17 b. The Commission shall assist claimants and relevant government agencies in
18 resolving conflicts of ownership and attribution who will give permission to
19 people who wish to use the work upon discovery of the same in the database;

20 c. The Commission shall assist relevant government agencies in the prosecution
21 of unauthorized use of intellectual property of indigenous peoples.

22 **SECTION 13. Free, Prior and Informed Consent:** - Free, prior and informed
23 consent for the use of indigenous peoples' intellectual property should be
24 articulated by a defined authority that is provided with a circumscribed
25 jurisdiction, associated with the culture of an ethno-linguistic group. The
26 corresponding elected official, as the case may be, assisted by cultural experts,
27 shall dispense the required free, prior and informed consent for the item(s) in
28 question for the concerned intellectual property owners.

29 **SECTION 14. Indigenous communal copyright (intellectual property) owners**
30 may designate a society with legal personality to act in their behalf to enforce
31 their economic and moral rights;

32 **SECTION 15. Royalties.** - Indigenous communal copyright (intellectual

1 property) owners shall be compensated for the use of their work. The amount,
2 process of collecting and distributing this royalty and other pertinent details will
3 be determined by the Commission.

4 **SECTION 16. Appropriations.** - For the initial implementation of this Act, the
5 amount of fifty million pesos (Php 50,000,000) is hereby appropriated and shall
6 be sourced from the President's Contingent Fund.

7 **SECTION 17. Implementing Rules and Regulations.** - The Commission, in
8 consultation with other relevant government cultural agencies mentioned in this
9 Act, shall promulgate the implementing rules and regulations within ninety (90)
10 days after the effectivity of this Act.

11 **SECTION 18. Penalties** - In addition to the penalties under existing laws, any
12 person found guilty of violating any provision of this Act shall be imprisoned for
13 a term not exceeding ten (10) years or a fine not exceeding one hundred
14 thousand pesos (P100,000.00) or both such imprisonment and fine at the
15 discretion of the court.

16 **SECTION 19. Repealing Clause** - The provisions of Philippine copyright law
17 and other related laws to the extent that they are inconsistent with this Act, are
18 hereby repealed or amended accordingly.

19 **SECTION 20. Separability Clause** - If, for any reason, any part or provision of
20 this Act is declared invalid or unconstitutional, the parts or provisions not
21 affected thereby shall remain in full force and effect.

22 **SECTION 21. Effectivity Clause** - This Act shall take effect fifteen (15) days
23 following its publication in the Official Gazette or in two (2) newspapers of
24 general circulation, whichever comes first.

25 Approved,