

FIFTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session

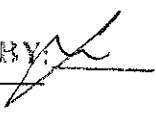
)
)
)



Senate
Office of the Secretary

'11 MAY 17 P5:58

SENATE
S.B. No. **2831**

RECEIVED BY: 

Introduced by Senator LOREN LEGARDA

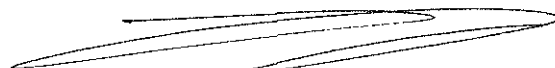
EXPLANATORY NOTE

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 put salt in their many wounds, there have been 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 8371) does not provide for specific provisions for the protection of their cultural properties, both intangible and tangible. Furthermore, the Intellectual Property Office of the Philippines does not have the legal mandate nor the expertise or capability to undertake such protection of our indigenous cultural treasures. It is with the passage of this bill that this void is sought to be filled.

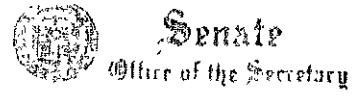
With the help of the National Commission for Culture and the Arts, National Museum, National Commission on Indigenous Peoples, and local government units, this bill shall create a comprehensive cultural archive which shall organize and make an inventory of all cultural properties of the different ethno-linguistic 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 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

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



'11 MAY 17 P5:58

SENATE
S.B. No. **2831**

RECEIVED BY:

Introduced by Senator LOREN LEGARDA

AN ACT
SAFEGUARDING THE TRADITIONAL PROPERTY RIGHTS OF
INDIGENOUS PEOPLES

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

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

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

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

- a. "Commission" shall refer to the National Commission for Culture and the Arts (NCCA);
- b. "Cultural agencies" shall refer to the following national government agencies with their specific areas of responsibility: National Museum (cultural property); the National Library (books); National Historical Institute (Philippine history); National Archives (documents); Cultural Center of the Philippines (culture and the arts); and Komisyon sa Wikang Filipino (language).
- c. "Cultural heritage" shall refer to the totality of cultural property preserved and developed through time and passed on to posterity.

- d. "Cultural property" shall refer to all products of human creativity by which a people and a nation reveal their identity, including churches, mosques and other places of religious worship, schools and natural history specimens and sites, whether public or privately-owned, movable or immovable, and tangible or intangible.
- e. "Intangible cultural heritage" shall refer to the practices, representations, expressions, knowledge, skills as well as the instruments, objects and artifacts associated therewith, that communities, groups and individuals recognize as part of their cultural heritage, such as: (1) oral traditions, languages and expressions; (2) performing arts; (3) social practices, rituals and festive events; (4) knowledge and practices concerning nature and the universe; and (5) traditional craftsmanship;
- f. "Intangible cultural property" shall refer to the people's learned processes along with the knowledge, skills and creativity that inform and are developed by them, the products they create and the resources, spaces and other aspects of social and natural context necessary for their sustainability.
- g. "Registry" shall refer to the Philippine Registry of Cultural Property which is the registry of all cultural property of the country deemed of significant importance to our cultural heritage as defined in RA 10066;
- h. "Tangible cultural property" shall refer to a cultural property with historical, archival, anthropological, archeological, artistic and architectural value, and with exceptional or traditional production, whether of Philippine origin or not, including antiques and natural history specimens with significant value.
- i. "Tradition" shall refer to the beliefs, customs, practices, industries, expressions, whether tangible or intangible, maintained and shared differentially by society, and handed down from generation to generation. Tradition in this respect is a continuum that change and may arise in time shall not therefore be subject to time limitation.
- j. "Community" refers to the congregation of people with social cohesion and identity organized around common values interacting with intimacy and reciprocity in a shared circumscribed location in units larger than a household; and has more similarities in the types and forms of their material goods.

- k. "Indigenous peoples" are people, communities and nations who claim a historical continuity and cultural affinity with societies endemic to their original territories. They have historically formed and still currently form the minority/non-dominant sectors within majority-culture societies and are intentioned towards preserving, reviving, and enhancing the efficacy, cohesion, and uniqueness of their traditional social values and customary ties along with a conscientious effort to transmit this knowledge to future generations.
- l. "Derivative work" is one that is primarily a new work but incorporated some previously published material. This previously published material makes the work a derivative work under the copyright law. To be copyrightable, 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 preexisting work will not qualify the work as a new version for copyright purposes. The new material must be original and copyrightable in itself. Titles, short phrases and format for example, are not copyrightable.
- m. "Communal ownership" refers to common ownership within a community.
- n. "Royalty" refers to the payment to the holder of a patent or copyright or resource for the right to use their property.
- o. "Craft" describes the family of artistic practices within the decorative arts, traditionally, is defined by their relationship to functional or utilitarian products (such as sculptural forms in the vessel tradition) or by their use of such natural media as wood , clay, glass, textiles and metal.
- p. "Social process" refers to the means by which culture and social organization change or are preserved due to process or practice.
- q. "Oral expression" refers to the expression uttered by the mouth; spoken; oral testimony or transmitted by speech.
- r. "Rites" refer to formal or ceremonial acts or procedures prescribed or customary in religious or other solemn use, or a particular form of system of religious or other ceremony.
- s. "Rituals" refer to an established or prescribed procedure for a religious or other rite, a system or collection of religious or other rites; observance of set forms in

public worship; a prescribed or established rite, ceremony, proceeding or service: the ritual of the dead; prescribed, established or ceremonial acts or features collectively, as in religious services; any practice or pattern of behavior regulating social conduct.

- t. "Performance" refers to the acting out of a ceremony, play, piece of music, etc., the execution or accomplishment of work acts, feats, etc., a particular action, deed or proceeding the manner in which or the efficiency with which something reacts or fulfills its intended purpose, and not necessarily as part of social process.
- u. "Ownership" refers to the legal right of possession or proprietorship; the state, relation, or fact of being an owner; also, the rights or interests of an owner, ownership especially by a single person that is free of any encumbrances or limitations other than statutory.
- v. "Culture" - The UNESCO World Conference on Cultural Policies (Mexico, 1982) defines culture, in its widest sense, as the whole complex of distinctive spiritual, material, intellectual, and emotional features that characterize a society or a social group. This includes not only the arts and letters but also modes of life, value systems, traditions and beliefs. Culture, however, can also be looked at as an aggregate and internally inconsistent body of knowledge and meanings, unevenly distributed among individuals of a community, and acquired by these individuals through their experiences and transactions in everyday life.

SECTION 4. The National Commission for Culture and the Arts (NCAA) hereinafter referred to as the Commission, shall implement the provisions of the Act.

SECTION 5. Traditional cultural property, whether tangible or intangible, of all the ethno-linguistic groups that make up the people of the Philippines shall not lapse into public domain after 50 years from creation, and shall continue indefinitely to be exclusive property of these ethno-linguistic groups that communally own them. Traditional heritage, both tangible and intangible are to be held in perpetuity in ethnic memory and considered valid as ethnic intellectual property.

SECTION 6. Under the guidance of the Commission and National Museum (NM), or any other pertinent national cultural agency, the Local Government Units (LGU) with the assistance of the National Commission for Indigenous Peoples (NCIP) shall organize inventories of cultural properties of the different ethno-linguistic groups of the Philippines that are distinctive, characteristic of or derived from their particular traditional culture, to the exclusion of those of others and shall; submit these to the

Commission thru the National Museum to establish communal ownership, and to be registered under the group's name for protection within existing copyright law.

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

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

SECTION 8. The infusion of personal or individual variations on a traditional object would result in a derivative work or craft which is one that is primarily a new work but incorporates some 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 for copyright purposes. The new material must be original and copyrightable in itself.

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

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

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

SECTION 12. Deposit and Notice. - Moral rights would vest upon creation; hence, authorship would have to be established to avail of moral rights such as right of attribution. Moral rights to ownership of newly created items by members of an ethno-linguistic group should be registered with the commission for protection

under copyright law. Copyright vests from the moment of creation; and registration is one of the ways to prove authorship, although this is not exclusive.

- a. The Commission thru the relevant government cultural agency, shall assist in identifying works and attributing authorship, and further shall be responsible for maintaining and populating this registry;
- b. The Commission shall assist claimants and relevant government agencies in resolving conflicts of ownership and attribution who will give permission to people who wish to use the work upon discovery of the same in the database;
- c. The Commission shall assist relevant government agencies in the prosecution of unauthorized use of intellectual property of indigenous peoples.

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

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

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

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

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

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

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

SECTION 20. 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.

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

Approved,