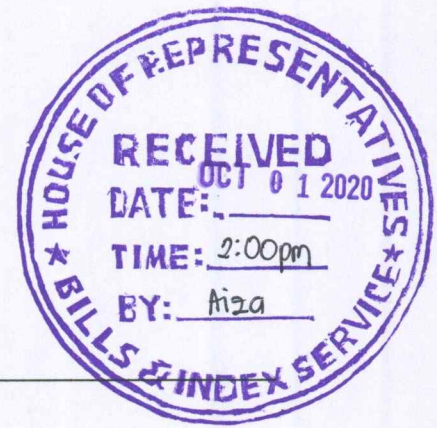




Eighteenth Congress
Second Regular Session

HOUSE BILL NO. **7811**



Introduced by
REPRESENTATIVE LOREN B. LEGARDA

AN ACT
SAFEGUARDING THE TRADITIONAL PROPERTY RIGHTS OF INDIGENOUS PEOPLES

Explanatory Note

The Philippines has 14-17 million indigenous peoples who belong to 110 ethno-linguistic groups¹. 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, performances, etc), traditional arts and crafts, to name a few.

Traditional cultural heritage, whether tangible or intangible, is a vital right of indigenous communities, which must be respected and protected. However, the present law protecting indigenous peoples' rights, namely the Indigenous Peoples' Rights Act (R.A. 9371) does not provide for specific provision for the protection of their cultural properties.

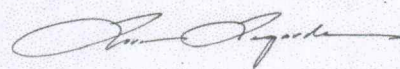
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http://www.ph.undp.org/content/philippines/en/home/library/democratic_governance/Facts-Facts-IPs.html

Through 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 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 the 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.

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



LOREN LEGARDA



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AN ACT
SAFEGUARDING THE TRADITIONAL PROPERTY RIGHTS OF INDIGENOUS PEOPLES

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

8 **SECTION 3.** Definition of Terms. – For purposes of this Act, the following terms
9 shall be defines as follows:

10 a) “Commission” shall refer to the National Commission for Culture and the
11 Arts (NCCA);

- 1 b) "Cultural agencies" shall refer to the following national government agencies
2 with their specific areas of responsibility: National Museum (cultural
3 property); the National Library (books); National Historical Institute
4 (Philippine history); National Archives (documents); Cultural Center of the
5 Philippines (culture and arts); and Komisyon sa Wikang Filipino (language);
- 6 c) "Cultural heritage" shall refer to the totality of cultural property preserved
7 and developed through time and passed on to posterity;
- 8 d) "Cultural property" shall refer to all products of human creativity by which a
9 people and a nation reveal their identity, including churches, mosques and
10 other places of religious worship, schools and natural history specimens and
11 sites, whether public or privately owned, movable or immovable, and
12 tangible or intangible.
- 13 e) "Intangible cultural heritage" shall refer to the practices, representations,
14 expressions, knowledge, skills as well as the instruments, objects and artifacts
15 associated therewith, that communities, groups and individuals recognize as
16 part of their cultural heritage, such as (1) oral traditions, languages,
17 expressions; (2) performing acts; (3) social practices, rituals and festive events;
18 (4) knowledge and practices concerning nature and the universe; and (5)
19 traditional craftsmanship;
- 20 f) "Intangible cultural property" shall refer to the people's learned processes
21 along with the knowledge, skills and creativity that inform and are developed
22 by them, the products they create and the resources, spaces and other aspects
23 of social and natural context necessary for their sustainability;

- 1 g) "Registry" shall refer to the Philippine Registry of Cultural Property which is
2 the registry of all cultural property of the country deemed of significant
3 importance to our cultural heritage as defined in RA 10066;
- 4 h) "Tangible cultural property" shall refer to a cultural property with historical,
5 archival, anthropological, archeological, artistic and architectural value, and
6 with exceptional or traditional production, whether of Philippine origin or
7 not, including antiques and natural history specimens with significant value;
- 8 i) "Tradition" shall refer to the beliefs, customs, practices, industries,
9 expressions, whether tangible or intangible, maintained and shared
10 differentially by society, and handed down from generation to generation.
11 Tradition in this respect is a continuum that change and may arise in time
12 shall not therefore be subject to time limitation;
- 13 j) "Community" refers to the congregation of people with social cohesion and
14 identity organized among common values interacting with intimacy and
15 reciprocity in a shared circumscribed location in units larger than a
16 household; and has more similarities in the types and forms of their material
17 goods;
- 18 k) "Indigenous peoples" are people, communities and nations who claim a
19 historical continuity and cultural affinity with societies endemic to their
20 original territories. They have historically formed and still currently form the
21 minority/non-dominant sectors within majority-culture societies and are
22 intentioned towards preserving, reviving, and enhancing the efficacy,
23 cohesion, and uniqueness of their traditional social values and customary ties
24 along with a conscientious effort to transmit this knowledge to future
25 generations;

- 1 l) "Derivative work" is one that is primarily a new work but incorporated some
2 previously published material. This previously published material makes the
3 work a derivative work under the copyright law. To be copyrightable, a
4 derivative work must be different enough from the original to be regarded as
5 a "new work" or must contain a substantial amount of new material. Making
6 minor changes or additions of little substance to a preexisting work will not
7 qualify the work as a new version for copyright purposes. The new material
8 must be original and copyrightable in itself. Titles, short phrases and format
9 for example, are not copyrightable;
- 10 m) "Communal ownership" refers to common ownership within a community;
- 11 n) "Royalty" refers to the payment to the holder of a patent or copyright or
12 resource for the right to use their property;
- 13 o) "Craft" describes the family of artistic practices within the decorative arts,
14 traditionally, is defined by their relationship to functional or utilitarian
15 products (such as sculptural forms in the vessel tradition) or by their use of
16 such natural media as wood, clay, glass, textiles and metal;
- 17 p) "Social process" refers to the means by which culture and social organization
18 change or are preserved due to process or practice;
- 19 q) "Oral expression" refers to the expression uttered by the mouth; spoken; oral
20 testimony or transmitted by speech;
- 21 r) "Rites" refer to formal or ceremonial acts or procedures prescribed or
22 customary in religious or other solemn use, or a particular form of system of
23 religious or other ceremony;
- 24 s) "Rituals" refer to an established or prescribed procedure for a religious or
25 other rite, a system or collection of religious or other rites; observance of set

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

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

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

14 v) "Culture" - The UNESCO World Conference on Cultural Policies (Mexico,
15 1982) defines culture, in its widest sense, as the whole complex of distinctive
16 spiritual, material, intellectual, and emotional features that characterize a
17 society or a social group. This includes not only the arts and letters but also
18 modes of life, value systems, tradition and beliefs. Culture, however, can also
19 be looked at as an aggregate and internally inconsistent body of knowledge
20 and meanings, unevenly distributed among individuals of a community, and
21 acquired by these individuals through experiences and transactions in
22 everyday life.

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

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

7 **SECTION 6.** Under the guidance of the Commission and National Museum (NM),
8 or any other pertinent national cultural agency, the Local Government Units (LGU)
9 with the assistance of the National Commission for Indigenous Peoples (NCIP) shall
10 organize inventories of cultural properties of the different ethno-linguistic groups of
11 the Philippines that are distinctive, characteristic of or derived from their particular
12 traditional culture, to the exclusion of those of others and shall submit these to the
13 Commission thru the National Museum to establish communal ownership, and to be
14 registered under the group's name for protection within existing copyright law.
15 Further that these registries of the tangible and intangible cultural properties thus
16 accomplished shall be incorporated in the Philippines Registry of Cultural Property
17 (PRECUP) as established by Republic Act 10066 and administered by the
18 Commission.

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

22 **SECTION 8.** The infusion of personal or individual variations on a traditional object
23 would result in a derivative work or craft, which is one that is primarily a new work
24 but incorporates some previously published material. A derivative work must be
25 different enough from the original to be regarded as a "new work" or must contain a

1 substantial amount of new material. Making minor changes or additions of little
2 substance to a pre-existing work will not qualify the work as a new version for
3 copyright purposes. The new material must be original and copyrightable in itself.

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

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

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

17 **SECTION 12.** Deposit and Notice. - Moral rights would vest upon creation; hence,
18 authorship would have to be established to avail of moral rights such as right of
19 attribution. Moral rights to ownership of newly created items by members of an
20 ethno-linguistic group should be registered with the Commission for protection
21 under copyright law. Copyright vests from the moment of creation; and registration
22 is one of the ways to prove authorship, although it is not exclusive.

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

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

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

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

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

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

21 **SECTION 16. Appropriations.** – For the initial implementation of this Act, the
22 amount of Fifty Million Pesos (Php 50,000,000) is hereby appropriated and shall be
23 sourced from the President’s Contingent Fund.

24 **SECTION 17. Implementing Rules and Regulations.** – The Commission, in
25 consultation with other relevant cultural agencies mentioned in this Act, shall

1 promulgate the implementing rules and regulations within ninety (90) days after the
2 effectivity of this Act.

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

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

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

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

17

18 *Approved,*