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WIPO/IPTK/RT/99/6A

ORIGINAL: English

DATE: October 27, 1999

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

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ROUNDTABLE ON INTELLECTUAL PROPERTY AND TRADITIONAL KNOWLEDGE

Geneva, November 1 and 2, 1999

**EFFORTS AT PROTECTING TRADITIONAL KNOWLEDGE:
THE EXPERIENCE OF THE PHILIPPINES***

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INTRODUCTION

In the Philippines, traditional knowledge touches on almost all facets of the economic and social development of a community from agriculture to literature and from customary law to arts and crafts, and so on. Despite colonization, the Philippines has retained a substantial portion of its traditional knowledge. Credit is given to the vigilance of diverse indigenous peoples (IPs) who persevered in protecting and promoting their indigenous knowledge to the younger generation.

The indigenous peoples of the Philippines are generally regarded as those who have opted to retain their customs and traditions, most of whom remain steadfast to their ancestral domains. As defined by the Indigenous Peoples Rights Act (IPRA), IPs are those groups of homogenous societies identified by self ascription, who continually lived as organized communities on communally bounded and defined territories which they have occupied since time immemorial, sharing common bonds of language, customs, traditions and who became historically differentiated from the majority of Filipinos.*

The recently passed IPRA was the result of the IPs' tenacity, on one hand and on the other, government's recognition of the importance of traditional knowledge in the pursuit of sustainable development. Traditional knowledge is basically rooted in the environment (e.g., ancestral domains) and thus a significant factor in the protection, conservation and rehabilitation of natural resources (Saway, 1998).

The presentation focuses on four aspects, namely; Traditional Knowledge in Philippine Setting, the Emergence of the Awareness to Protect Traditional Knowledge, the Legal Framework for Protecting Traditional Knowledge, and Community-Based Initiatives at Protecting Traditional Knowledge. The paper includes current trends and issues and initial actions taken to protect traditional knowledge in the Philippines. Future plans/agenda to fully implement the provision of the Indigenous Peoples Rights Act (IPRA) on the protection of community intellectual property rights and biogenetic resources are also presented.

A. TRADITIONAL KNOWLEDGE IN PHILIPPINE SETTING

The Philippine Archipelago of more than 7,000 islands is home to 126 ethnolinguistic groups (Fox and Florie, 1974), most retaining their traditional identity by virtue of non-submission to foreign domination. Population-wise, however, the indigenous peoples comprise only about eighteen percent (18%) of the total Filipino population (ONCC and OSCC, 1990).

The Filipino traditional knowledge is as varied as the number of known ethnolinguistic groups. This is caused by the nature of resources that abound within the localities, e.g., ancestral domains. The Philippine islands are rich with diverse biogenetic resources on land

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and water, minerals, and the like. There is also variation in the degree of sophistication of traditional knowledge such as the finesse of artifacts and bodily ornaments.

However, despite the variance, similarity is observed particularly on the petition of deities and the one Almighty Creator as giver of life revered in many different names such as Manama for the Manobo of the South and Kabunyan for the Kankanaey of the North. (Filipino Heritage, 1985).

Traditional health care employs herbs for curative as well as preventive medicine, including pain relievers and anesthesia. However, these are accompanied by rituals invoking the intercession of ancestral spirits and the Almighty Father. Even in modern times, indigenous peoples stand witness to certain afflictions treated only through traditional healing.

Some Philippine herbal medicines are the *gumamela* (hibiscus rosa-sinensis) used as poultice, *sambong* (blumea balsamifera) as expectorant, *kolintang* (barleria crista) as antidote to snake bite, and *bulac-bulacan* (thespesia lampas) as remedy for gonorrhoea and syphilis. These are applied directly and/or taken orally, some requiring simple processing to generate the desired results.

It is ironic that the Philippines, a rich source of traditional medicine, is a big market of foreign drugs that are often not affordable to the marginalized sectors of society like the indigenous peoples. Traditional practice is replaced, worse, it is being commercially exploited in the international market.

From the traditional knowledge on the medicinal values of herbs, pharmaceutical companies have further researched and are now gaining millions worldwide. Recently, the talong or eggplant, ampalaya or bitter gourd and makopa or rose apple was "discovered" to remedy diabetes and now owned by a US firm (Baguio Midland Courier, 9/19/99).

Traditional agriculture has reached a certain level of technology exemplified by the world famous rice terraces of the Ifugao in northern Philippines, acknowledged as one World Heritage site. The farming system of the Ifugao and other Cordillera IP groups employ terracing for agriculture and the deliberate nurturing of the forests known as *muyong* or *tayan* to sustain irrigation even at high elevations.

Forest preservation and conservation is an integral part of traditional farming among the different IP groups. The Tausugs in Southern Mindanao engage agroforestry systems or a combination of agriculture and forestry of various types such as intercropping agroforestry, random-block agroforestry, coconut-based agroforestry, fruit tree-based agroforestry, and modified swidden farming (Cabanilla and Kaing, 1996). Even the commonly practiced 'kaingin system' which is falsely regarded as destructive actually allows the soil to regenerate when it is abandoned for some time. Among the Ivatans, from the northern tip of the Archipelago, a *paynihahun* is observed where planting is prohibited in communal pasturelands at a certain period of the year (Castro, 1998).

The different Philippine IPs have their own respective *traditional forestry systems*. Vast forests are communally owned but individual families or clans maintain forest spots close to the village/hamlet. However, the traditional concept of communal forest ownership had mutated with the "takeover" of the central government. The result is community neglect of sustainable forest practices.

In fishing, certain technologies or practices were developed to sustain fishing. To allow the fish to recreate / propagate, fishing is done only in a particular time of the year. Unfortunately, traditional fishing is threatened by destructive cyanides and other large-scale fishing techniques compounded by foreign intrusion in Philippine fishing territories.

Likewise, rituals or the veneration of unseen forces to bring bountiful harvests are integrated into the whole agriculture cycle including fishing. Customary laws such as *abtas* among Ivatans also regulate the use of resources as illustrated by *mataw* fishing where only mature fish is allowed to be harvested (Castro).

Evidence also show that prehistoric IPs were engaged in *mining* (Filipino Heritage and Kasaysayan, 1998). Acknowledged as God's gift and with a spirit of its own, the extraction of gold and other minerals from the earth's bosom requires rituals. Extraction and processing of ores, though very crude, are environment friendly.

Traditional arts and crafts are numerous such as pottery, brasswares, woodcrafts, rattancrafts, body tattoos, beads and other ornaments, textile designs, designs of bladed weapons, etc (Filipino Heritage). Pottery designs were evident as early as 890 B.C. in the *Manunggul* jar which is now a National Cultural Treasure. Body tattoos are elaborately intricate and common among IPs of the north. Traditional weaving materials and designs gained world acclaim as when the Philippines won the recent international fashion design contest in Paris.

Traditional music, dances and literature, likewise, are being appreciated by the international community, thanks to the tourism program of government. Better known traditional music include the *kundiman* and *harana* of the majority Filipinos. Currently, traditional IP music is being exploited commercially.

Traditional architectural designs are adaptive to the environment: topography, climate and local materials available. Among all traditional architecture, the Ifugao architecture stands out as to artistic and functional design. Unfortunately, the introduction of modern architecture replaced traditional architecture to extinction.

B. THE EMERGENCE OF THE AWARENESS TO PROTECT TRADITIONAL KNOWLEDGE

Four centuries of colonization in the second half of the Second Millennium (AD) had its imprint on the majority of Filipinos but not so much on the indigenous peoples. Fortunately, the indigenous peoples have surmounted foreign aggression. However, the American occupation at the turn of the Twentieth Century, witnessed the drastic change in the Philippine landscape and its population. Devastation of natural resources was all over with the massive logging and large-scale mining. A legacy perpetuated by Filipinos themselves towards the end of the Millennium. This resulted to the total exploitation and destruction of once lush and biogenetically rich forests, the mineral deposits, the corals and fishes, and folklore.

Moreover, contrasting population movements occurred. IP communities affected by logging and mining concessions were driven into the hinterlands, some lost in unfamiliar mountain peaks. In contrast, families from major Filipino societies migrated permanently into logging and mining communities for employment.

The abnormal occurrences heightened the awareness of IPs on the injustice inflicted on them. At first, the consciousness of struggle was on warding off physical intrusion into ancestral domains and commercial exploitation of natural resources. Then the outrage was focused on the wanton display and commercialization of traditional arts and artifacts. Sadly, IPs themselves helped facilitate the export of materials from indigenous cultural communities.

With the introduction of centralized government, at the beginning of the Century, the IPs were duped. Unlike armed invasion, centralized government is totally a new concept to IPs. A foreign invasion which amassed IP wealth not with the use of arms but with legalities. The IP had no counter attack and had no choice but be part of the Philippine government. However, highly passive, thus, was able to retain much of its culture through the end of the Millennium.

Indigenous knowledge is also threatened from three sources: (1) loss of the indigenous peoples territorial base through the destruction of the rainforests, and their displacement by government projects or through commercial utilization of natural resources. This makes it impossible for many indigenous communities to sustain their knowledge as well. (2) The introduction of the so-called “modern” practices of agriculture and medicine. (3) Indigenous knowledge is increasingly endangered by misappropriation of this knowledge by outside researchers. (La vina, 1995).

C. THE LEGAL FRAMEWORK FOR PROTECTING TRADITIONAL KNOWLEDGE

In the Philippine context, any discussion regarding the protection of indigenous knowledge systems through an intellectual property regime must necessarily be linked to the indigenous peoples struggle for the protection of their ancestral domain and natural resource management (Yu, 1995). To make protection of indigenous knowledge systems meaningful, it is important to resolve the issue of who controls the utilization of these resources. The issue of control over indigenous knowledge is directly linked to the issue of control over their ancestral domain and natural resources. (Peria, 237).

The life of a community and its members revolves around land: the sustenance, beliefs, religion, social organization, the interactions with other villages - these are all formed by a particular concept about the land and land resources. The utilization of land and land resources is guided by a set of rules and regulations (which form the customary system or that of national law). Custom law promotes a sustainable level of utilization of biodiversity resources. Custom law and state law are not complementary as regard the use and ownership of land, resulting in problems crucial to the promotion of ecosystem sustainability. (Boquiren 10)

It is in communities where the indigenous system is still strong that the basic ecological principles on which most indigenous peoples rely can be maximally observed to ensure the sustainability of the ecosystem. The appreciation of the basic relationship between human beings and the other elements of the ecosystem is integral in most indigenous knowledge systems. Among the usual elements of sustainability is inter-generational equitability which is found and better safeguarded in the indigenous knowledge systems. This is because, the sense of collective responsibility is strong among the indigenous peoples. How land is accessed, used and controlled forms the fundamental integrating principle in the cultural system of indigenous communities. The nurturing and defense of land is an ecological principle within the indigenous system, because life is rooted on land.

Accordingly, indigenous knowledge about biodiversity management is linked with the system of utilization and ownership of land. The rich indigenous knowledge is borne by centuries of direct experiences in land and resources nurturing, guided by a prescribed set of regulations and beliefs for each type of land use. Ethnic identity and socio-cultural integrity relies on the persistence of these regulations and beliefs. (Boquiren, 16).

The process by which custom law would evolve and transform by access and property concepts derived from actual management practices would now find competition from a system of governance introduced by the colonial state. As time passed, the understandings among the local communities about custom law and state law became confusing, just as the exchange between the two legal systems had become more complicated. There are instances when the interactions between the legal systems resulted in the regulation of customary practices into the structure of national or state law, just as state law would every now and then be used to buttress (or undermine) the customary system vis-à-vis the nurturing and protection of land and its resources.

To cope with the challenges of state law and larger economic forces, indigenous villages had creatively strengthened or developed appropriate mechanisms to safeguard their cultural and ecological tradition. Actual biodiversity management practices have become integrated into customary system. In time, even state law would gradually include the element of the traditional system. (Boquiren 11).

The factors that bring about opportunities and constraints in improved biodiversity management system can be better ascertained if guided by an understanding of such interactions. These insights provide the bases for future directions in biodiversity work that must be pursued in the region. (Boquiren, 17).

The criteria for patent claim are the following: it must be new, must involve an inventive step, and must be capable of industrial application. This criterion is one basis of saying that the intellectual property rights regime embodied in TRIPS is contradictory to our basic values and perspectives. Our innovations, practices and knowledge systems were developed collectively, accretionally over time, and inter-generationally. Nobody can claim exclusive ownership over this knowledge which is what patent claims is all about. In TRIP, however, the once who can apply for IPR protection are individuals, corporations or states. It is not for communities or collectivities such as tribes, clans or nations. When this system is applied to biodiversity or products of nature and to indigenous knowledge and innovations, many problems arise. This is why asking indigenous peoples to make use of this system to protect their knowledge systems and biological diversity is tantamount to telling us to forget our cosmovision and cultural diversity. (Corpuz)

The reason for this view is that existing or western Intellectual property right system is seen as promoting the commercialization and commodification of cultural products and expressions at the expense of indigenous and local cultures. They see these systems as based on western notions of property that emphasize individual ownership and alienability. The property rights established by these systems are essentially managed as commercial transactions, and are not designed to protect cultural products and expressions. Furthermore, the intellectual property rights system totally ignores the close interrelationship between indigenous peoples, their knowledge, genetic resources and their environment. (Peria 238)

Another problem with existing IPR system is that it promotes the misappropriation of indigenous knowledge, with the result that the benefits derived from the commercialization of

this knowledge do not flow back to the source communities who freely shared the knowledge with outsiders. (Peria, 238).

Tourism in Banaue is the primary mover of industrial growth in Banaue and its immediate environment. There is no doubt that tourists visiting Banaue poured in much needed cash to make for a local economy booming. Thus, Banaue, is now the trade center in the province. Beneficiaries of this economic boom are the handicraft industries, hotels and restaurants and other service-oriented business providers. While the tourism industry contributes to business, it has corresponding negative effects on the management of the Ifugao agroecosystem. The dawning of cash market economy and the need for new goods and services has substantially altered the life of the Ifugao farmers drawing many away from traditional farming. Younger generations of Ifugaos refuse to accept the subsistence type of living, and the rugged type of work associated with the terraces. The older folks are concerned that once they are gone, terraces and its immediate environment will just be neglected and abandoned by the younger generations.

Economic forces brought about by tourism industry are changing traditionally accepted procedures of resource utilization. The expanding woodcarving industry, which caters to the need of tourists, had depleted muyong resources of primary wood species. Thus, economic forces directed against natural resources are compounding ecological problems of the watershed.

The tribal economy comes from financial contributions of Overseas Contract workers (OCWs) which has direct impact on indigenous arrangement. There are 137 OCWs in two barangays of Hingyon that has a total population of less than 1,500. Xxx With readily available cash, the inhabitants find it doubly difficult to stick to the old bayanihan system replacing it with paid labor. In most cases however, people are not interested in paid labor arrangements. Terrace labor becomes highly dependent on family members. When family labor is not available, terraces are left uncultivated. Cash availability, outmigration and lack of water for irrigation are factors affecting the increasing number of neglected terraces and forest areas.

Both education and the radical teachings of modern biblical Christianity are reshaping the minds of many Ifugaos. Although education and Christianity have much to positively contribute to the reshaping of Ifugao life and society, they also caused negative effects mainly on the Ifugao cultural fabric. Xxx Both education and Christianity cast doubts in the minds of many Ifugaos regarding the validity of pursuing age-old beliefs and traditions associated with Ifugao production cycle. Many educated Ifugaos also shun terrace cultivation in favor of higher income-earning opportunities. It seems that adhering to the baki has become outmoded or out of fashion. Although rituals do not produce practical results on biodiversity conservation, rituals are regulations which govern actions related to resource use. The erosion of culture may also mean the disintegration of social mechanisms governing resource use and allocation. Absence of cultural identity may lead to the setting in of an individualistic approach to property rights that may eventually lead to resource commercialization.

Coupled with population growth is the need for alternative sources of income. To cushion the impact of increasing family size, the inhabitants are forced to alter traditional farming systems in favor of cash crops such as bean cultivation. It is major industry for the last five years which started in the Municipality of Kiangnan and now moves northward toward the Banaue area. Under this scheme, terraces traditionally planted to native rice are freed of water for dry land cultivation. This type of industry undermines the terraces' structure and pollutes the environment due to the massive use of inputs such as pesticides and fertilizers. Commercial vegetable production is now expanding to other municipalities and endangering more terraces. Once all farmers in the Banaue rice terraces fully shifted from rice to vegetables, the Banaue rice terraces as a national treasure would be part of history.

EFFORTS AT PROTECTING TRADITIONAL KNOWLEDGE

To know the efforts in protecting traditional knowledge in the Philippines, one has to know the legal developments on the protection of intellectual property rights and the rights of the indigenous peoples, the initiatives made by the government organizations, the non-government organizations, the academe and by the community themselves.

Legal Protection of Traditional Knowledge

1. The Protection of Intellectual Property

The New Civil Code of the Philippines, approved on June 8, 1949 and replaced the old Spanish Civil Code of 1889, classifies property into three, the immovable property, the movable property and the special property. The latter includes waters, minerals and trademarks and tradenames. It also classifies property in relation to the person to whom it belongs. Thus, property is either of public dominion, of private ownership or of the State.

Ownership of property is acquired by occupation and by intellectual creation. Art 721. Through the latter, ownership is acquired by the author with regard to his literary, dramatic, historical, legal, philosophical, scientific or other work, by the composer as to his musical composition, by the painter, sculptor or other artist with respect to the product of his art and by the scientist or technologist or any other persons with regard to his discovery or invention.

The protection of intellectual property is enunciated in the 1987 Philippine Constitution which provides that the State shall protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be provided by law. This State policy was operationalized with the passage of laws protecting intellectual property, the recent is the Intellectual Property Code (Republic Act No. 8293) which repealed the Decree on Intellectual Property (Presidential Decree No. 49), the Patent Law (Republic Act No. 165) and the Trademark Law (Republic Act No. 166).

The Intellectual Property Code of the Philippines, however, does not provide protection of traditional knowledge. Like all the other intellectual property regimes, it provides protection to creative works which are original to persons (either natural or juridical) for a certain period of time. Traditional knowledge, which by nature existed and developed through time and collectively owned by the community, is considered as part of public domain, hence, could be used by anybody.

2. *The Protection of Traditional Knowledge*

The protection of traditional knowledge is hinged on the 1987 Philippine Constitution which mandates, in numerous provisions, the recognition, respect and protection of the rights of the indigenous cultural communities, a concern that is not enunciated in the 1935 and 1971 Philippine Constitutions. Specifically, Section 17 of Article XIV provides that:

“The State shall recognize, respect and protect the rights of the 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.”

This mandate was realized with the passage of the Indigenous Peoples Rights Act (Republic Act No. 8371) on 29 October 1997. The law recognizes the rights of the indigenous peoples to their ancestral domains and lands, to self-governance and empowerment, to self-justice and human rights and to cultural integrity. In the latter, the law provides protection to the community intellectual property rights, to religious, cultural sites and ceremonies, to indigenous knowledge and practices and to biological resources.

The right of the indigenous peoples over their community intellectual property rights is found in Section 32 which provides that the:

“Indigenous cultural communities/indigenous peoples have the right to practice and revitalize their own cultural traditions and customs. The State shall preserve, protect and develop the past, present and future manifestations of their cultures as well as the right to the restitution of cultural, intellectual, religious and spiritual property taken without their free and prior informed consent or in violation of their laws, traditions and customs.”

To this end, the indigenous peoples have the right to own, control, develop and protect:

- a) The past, present and future manifestations of their cultures, such as but not limited to, archeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature as well as religious and spiritual properties;
- b) Science and technology including but not limited to, human and other genetic resources, seeds, medicines, health practices, vital medicinal plants, animals, minerals, indigenous knowledge systems and practices, resource management systems, agricultural technologies, knowledge of the properties of flora and fauna, and scientific discoveries; and
- c) Language, music, dance, script, histories, oral traditions, conflict resolution mechanisms, peace building processes, life philosophy and perspectives and teaching and learning systems. (Section 10, Rule Vi, IRR).

The right of the indigenous peoples to their indigenous knowledge systems and practices and to develop their own science and technologies is provided by Section 34 which states that:

“Indigenous cultural communities / indigenous peoples are entitled to the recognition of the full ownership and control and protection of their cultural

and intellectual rights. They shall have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, including derivatives of these resources, traditional medicines and health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, knowledge of the properties of flora and fauna, oral traditions, literature, designs and visual and performing arts.”

In the context of IPRA, indigenous knowledge systems and practices are systems, institutions, mechanisms, technologies comprising a unique body of knowledge evolved through time embodying patterns of relationships between and among peoples and between peoples, their lands and resource environment, including such spheres of relationship which may include social, political, cultural and economic, religious, and which are the direct outcome of the indigenous peoples to survive and thrive within their given socio-cultural and biophysical conditions. The infusion of science and technology in the field of agriculture, forestry and medicine to the indigenous peoples is subject to their free and prior informed consent and shall build upon existing indigenous peoples knowledge and systems and self-reliant and traditional cooperative systems of the particular community.

To safeguard the indigenous knowledge systems and practices of the indigenous peoples, the following guidelines are adopted:

- a) The ICCs/Ips have the right to regulate the entry of researchers into their ancestral domains/lands or territories. Researchers, research institutions, institutions of learning, laboratories, their agents or representatives and other like entities shall secure the free and prior informed consent of the ICCs/Ips, before access to indigenous peoples and resources could be allowed;
- b) A written agreement shall be entered into with the ICCs/Ips concerned regarding the research, including its purpose, design and expected output;
- c) All data provided by the indigenous peoples shall be acknowledged in whatever writings, publications, or journals authored or produced as a result of such research. The indigenous peoples will be definitely named as sources in all such papers.
- d) Copies of the outputs of all such researches shall be freely provided the ICC/IP community; and
- e) The ICC/IP community concerned shall be entitled to royalty from the income derived from any of the researches conducted and resulting publications. To ensure effective control of research and documentation of their IKSPs, the IPOs initiatives in this regard shall receive technical and financial assistance from sources of their own choice.

Access to biological and genetic resources and to indigenous knowledge related to conservation, utilization and enhancement of these resources, is allowed within ancestral lands and domains of the indigenous peoples only with a free and prior informed consent of such communities, obtained in accordance with customary laws of the concerned community. (Section 35). The indigenous peoples may, on their initiative, make an inventory of biological and genetic resources found inside their domains/lands, for their exclusive use. They retain and reserve all rights pertaining to the storage, retrieval, and dissemination of the information, in whatever form and system, gathered as a result of the inventory. A certificate of free and prior informed consent is required in case the concerned indigenous peoples enters into a joint undertaking with natural or juridical persons for the use of biological and genetic

resources for industrial, commercial, pharmaceutical and other profit-making purposes and ventures. Violation of this rule is strictly prohibited and subject to penalties under customary laws and as provided for by the IPRA.

The free and prior informed consent is a built in mechanism in the IPRA which protect the protection of the traditional knowledge of the indigenous peoples. It means the consensus of all members of the indigenous peoples to be determined in accordance with their respective customary laws and practices, free from external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community. Policies, programs, projects, plans and activities subject to free and prior informed consent shall include but not limited to the following:

- a) Exploration, development, exploitation and utilization of natural resources within ancestral domains/lands;
- b) Research in indigenous knowledge, systems and practices related to agriculture, forestry, watershed and resource management systems and technologies, medical and scientific concerns, bio-diversity, bio-prospecting and gathering of genetic resources;
- c) Displacement and relocation;
- d) Archeological explorations, diggings and excavations and access to religious and cultural sites;
- e) Policies affecting the general welfare and the rights of the ICCs/Ips; and
- f) Entry of the military or paramilitary forces or establishment of temporary or permanent military facilities within the domains.

The requirement of the free and prior informed consent on activities that may affect the indigenous peoples are also found in other laws such as the Executive Order No. 247 which prescribes guidelines and establishes a regulatory framework for the prospecting of biological and genetic resources, their by-products and derivatives, for scientific and commercial purposes and for other purposes and the Republic Act No. 7076 known as the People's Small-scale Mining Act of 1991.

3. Current Legislative Initiatives

At present, there are three bills pending at the Congress of the Philippines (Eleventh Congress) providing for the establishment of a system of Community Intellectual Rights protection. These bills, though filed in separate houses and by several authors (two bills filed at the House of Representatives and one bill filed at the Senate), are reintroductions of the previous bill filed at the Senate of the Philippines but was not pass into law during the Ninth Congress (1992 - 1995). Hence, they are similar in content save for some changes.

These bills seek for the State recognition of traditional knowledge. Traditional Knowledge is defined as discoveries, innovations and technologies made by indigenous peoples and local communities that are usually not recorded in written form, and are transmitted orally from generation to generation. Indigenous knowledge form part of traditional knowledge, and refers to knowledge distinct to indigenous peoples. Both terms are used interchangeably.

Community Intellectual Property, is also defined to cover parent strains and genetic material discovered or selected and conserved by local communities, which were used in the development of new plant varieties, and which can be harnessed for other potential uses;

seeds and reproductive material selected, cultivated, domesticated, and developed by local communities in situ; agricultural practices and devices developed from indigenous materials, customs, and knowledge; medicinal products and processes developed from the identification, selection, cultivation, preparation, storage and application of medicinal herbs by local communities and indigenous peoples; cultural products from local communities, such as weaving patterns, pottery, painting, poetry, folklore, music and the like; all other products or processes not made by a single person or juridical personality, which was discovered through a community process, or when the individual making the innovation does not claim knowledge as his own, provided, that any individual or juridical personality making such a claim should present proof of innovation or a history leading to the discovery that would justify his claims; and microbial genetic resources and genetic materials from animal (and, as far as practicable, humans) and other organisms.

It vests rights to the community as general owner of their traditional knowledge at all times and in all perpetuity. As owners, all benefits arising from the knowledge and innovations by indigenous and local communities shall accrue to their development and welfare and therefore shall be equitably shared. The commercial utilization of such knowledge and innovations, however, shall be made only with the free and informed consent of its general owners or custodians under terms mutually agreed upon.

It also provides that the State shall also strive to protect and encourage the customary use of biological resources in accordance with traditional cultural practices which are compatible and which promote conservation and sustainable use.

The registration of indigenous and traditional knowledge, which is distinct and separate from the awarding of patents, is considered as the basis of proprietary ownership. Hence, the bills seek that it shall be the policy of the State to document and make a systematic inventory of plant and genetic resources and knowledge originating from indigenous and local communities, and from all other sectors without the usual access to journals of the scientific, business and academic communities, especially those who do not have a written tradition or culture. To this end, the bills seek to create registries, namely: The National Inventory of Plant Varieties for plant varieties, seeds and other plant reproductive materials; the National Registers of Indigenous Cultural Heritage for cultural products and heritage; and National Register of Indigenous Inventions, Designs and Utility Models for inventions, industrial designs and utility models which include agricultural practices and devices developed from indigenous material, customs and knowledge as well as medicinal products and processes developed from the identification, selection, cultivation, preparation, storage and application of medicinal herbs by local communities and indigenous peoples. It shall also include all other products which are parts of community intellectual property not included in two other registers.

A community, defined as a group of people living in a geographically defined area with a common history and definitive patterns of relationship registered with the appropriate government agency as a tribal council, foundation, cooperative, people's organizations that would effectively represent its interests, shall automatically become the general owners of any form or product of traditional knowledge, once this is entered in any of the above mentioned registers. Their failure to do so, however, will not prejudice its status as custodians or stewards of its traditional knowledge.

As general owners, they are entitled to protect a justifiable percentage from all profits derived from the commercial use of their knowledge. Such benefits shall be given directly to the organization that effectively represents the community's interest and in the absence of

such organization, the benefits will be held in trust by the State and will be released only by legislation enacted in favor of the community.

These bills, however, though included cultural products in the definition of community intellectual property rights, focused on the protection of the biogenetic resources. This lopsided vent which complements the provisions of the International Biodiversity Convention which was recently ratified by the Philippines, is a result of the active consciousness raising initiatives made by non-government organizations, environmentalists and scholars on the protection of biodiversity and plant genetic resources from unfair and inequitable exploitation. Such may also be explained by the increasing concerns among Filipinos on piracy activities of multi-nationals on resources which are central to their culture. This could be gleaned from the explanatory note of one of the authors of the bills which states:

x x x These and the other provisions of this proposed measures are intended to counter and prevent the assault against the country's genetic resources by major multi-national companies (especially those working in the areas of drugs and agriculture) and their home governments. Its central thesis aims to overthrow the long-standing models embodied in such international institutions as the World Trade Organization (WTO), formerly GATT, and the Food and Agriculture Organization (FAO), which recognize genetic resources as a "universal heritage" in order to guarantee free access for First World Commercial interests to the raw material of the Third world. (Cappleman).

The non-elaboration of the protection of traditional knowledge vis-à-vis cultural products in the bills may be due to the fact that cultural traditions, including its expression, i.e. traditional art, is not seen as having economic value. Hence, protecting is only for reasons of preserving cultural identity and not for enhancing one's economic power. The western mode of classifying art had resulted to a low regard on traditional art as compared to high art, the former being always seen as crude, primitive, utilitarian and folk.

Likewise, while traditional culture is recognized as being threatened by social change, there is difficulty in coming up with measures that will protect it from its sudden and uncontrollable loss and in enforcing the protection provided for by law on something which is orally transmitted, conceptual or intangible. Moreover, the inherent nature of traditional knowledge, which is its ability to be passed on from one generation to another created an impression that it is part of the public domain, hence, it is for general consumption.

RP-ILO Initiatives for the Protection and Promotion of Indigenous Knowledge, Systems and Practices

Pursuant to the spirit and intent of the ILO convention No. 169 on the Indigenous and Tribal Peoples, the ILO, in partnership with the Philippine Government, has undertaken the following initiatives to advance the protection and promotion of IKSP as follows:

1. Promotion of the Concept of IKSPs - The most common point of reference in relation to indigenous peoples is their indigenous culture, as this is no doubt what distinguishes them from the mainstream population. But now, with the help of current related initiatives, there is an emerging focus of attention on the concept of IKSPs as differentiated from the broader concept of indigenous culture. IKSPs are getting recognized as the expression of native technology and are therefore being highlighted in relation to socio-economic

development. The potential of IKSPs as a foundation of sustainable development is beginning to be recognized.

2. Promotion of Community Documentation of IKSPs - Under the same initiative, the documentation of IKSPs through community-driven processes, was pilot implemented in six I6) communities located in various areas of the country. The lessons learned from this undertaking generally indicate that community documentation of IKSPs could be a significant step forward in the concerned community's effort to protect this body of knowledge as their own, and to promote the same among the young.
3. Support to Establishment of Community Resource Centers - Preparations are now underway to support community initiatives for the setting up and establishment of their own community IK Resource Centers. During community level consultations, it became clear that indigenous communities have different ideas on how community IK centers should be set up and operated. What came out as a common concept however is that these community IK centers (some communities want to call them differently) are being eyed by the communities as a means for them to effectively take control and manage their IKSPs. They feel that with these centers, they can regulate and prevent the arbitrary outflow of information on their IKSPs. Also, these centers would facilitate the incorporation of valuable indigenous knowledge into their community development processes and the enrichment of the same knowledge through responsible interaction and exchanges with other communities.

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