

**NATIONAL EXPERIENCES WITH THE PROTECTION OF
EXPRESSIONS OF FOLKLORE/TRADITIONAL CULTURAL EXPRESSIONS:
INDIA, INDONESIA AND THE PHILIPPINES**

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for the
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* The views expressed in this Study are those of the author, and not necessarily those of the WIPO Secretariat or its Member States. The Study is current at the time of preparation of the initial draft (1999). It was initially published as WIPO document WIPO/GRTKF/STUDY/1, dated November 25, 2002.

ANNEX III

EXTRACTS FROM THE RULES AND REGULATIONS IMPLEMENTING THE IPRA OF 1997

RULE II DEFINITION OF TERMS

SECTION 1

(j) Community Intellectual Rights

Refer to the rights of ICCs/IPs 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, 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, medicine, health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, resource management systems, Agricultural technologies, knowledge of the properties of fauna and flora, oral traditions and teaching and learning systems.

(l) Indigenous Cultural Communities/ Indigenous Peoples (ICCs/IPs)

Refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos. ICCs/IPs shall, likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization or at the time of inroads of non-indigenous religions and cultures or the establishment of present state boundaries who retain some or all of their own social economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains.

(p) Indigenous Knowledge Systems and Practices

Refer to systems, institutions, mechanisms, and technologies comprising a unique body of knowledge evolved through time that embody patterns of relationships between and among peoples and between peoples, their lands and resource environment, including such spheres of relationships which may include social, political, cultural, economic, religious spheres, and which are the direct outcome of the indigenous peoples, responses to certain needs consisting of adaptive mechanisms which have allowed indigenous people to survive and thrive within their given socio-cultural and biophysical conditions.

RULE VI CULTURAL INTEGRITY

SECTION 3 - Rights to Cultural Integrity

The rights of Indigenous peoples to cultural integrity shall include:

- a) Protection of indigenous culture, traditions and institutions;
- b) Right to establish and control education and learning systems;
- c) Recognition of cultural diversity;
- d) Right to name, identity and history;
- e) Community intellectual property right;
- f) Protection of Religious; Cultural Sites and Ceremonies;
- g) Right to indigenous spiritual beliefs and traditions;
- h) Protection of Indigenous Sacred Places;
- i) Right to protection of indigenous knowledge systems and practices;
and
- j) Right to science and technology.

SECTION 10 - Protection of Community Intellectual Property

The ICCs/IPs have the right to own, control, develop and protect the following:

- 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 Technologies including, but not limited to, human and other genetic resources, seeds, medicines, 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, Dances, Script, Histories, Oral Traditions, Conflict Resolution Mechanisms, Peace Building Processes, Life Philosophy and Perspectives and Teaching and Learning Systems.

In partnership with the ICCs/IPs, and NCIP shall establish effective mechanisms for protecting the indigenous peoples' community intellectual property rights along the principle of first impression first claim, the Convention On Bio-diversity, the Universal Declaration of Indigenous Peoples' Rights, and the Universal Declaration of Human Rights.

SECTION 14 - Right to Indigenous Knowledge systems and Practices and to Develop Own Sciences and Technologies

Indigenous knowledge systems and practices (IKSP) 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, the lands and resource environment, including such spheres of relationships which may include social, political, cultural, economic, religious, and which are the direct outcome of the indigenous peoples responses to certain needs consisting of adaptive mechanisms which have allowed indigenous peoples to survive and thrive within their given socio-cultural and bio-physical conditions.

The infusion of science and technology in the field of agriculture, forestry and medicine to ICCs/IPs 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.

SECTION 15 - Protection and Promotion of Indigenous Knowledge Systems and Practices (IKSPs)

The following guidelines, *inter alia*, are hereby adopted to safeguard the rights of IPs to their indigenous knowledge systems and practices:

- 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 outputs;
- 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 definitively named as sources in all such papers;
- d) Copies of the outputs of all such researches shall be freely provided to 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.

SECTION 16 - Protection of Manifestations of Indigenous Culture

Indigenous Culture shall not be commercialized or used for tourism and advertisement purposes without the free and prior informed consent of the indigenous peoples concerned. Where consent is alleged, the NCIP will ensure that there is free and prior informed consent.

In instances where the presentation of indigenous culture and artistic performances are held, the IPs shall have control over the performance in terms of its content and manner of presentation according to customary laws and traditions, and shall have the right to impose penalties for violations thereof.

Indigenous peoples shall also have the right to equitably share in the benefits of such presentation or performance. All funds collected from these activities shall be managed directly by the community concerned through the registered IPO, otherwise, the same shall be held in trust by the NCIP for the benefit of the concerned IP community.

SECTION 17 - Protection of Biological and Genetic Resources

The ICCs/IPs may, on their own initiative, make an inventory of biological and genetic resources found inside their domains/lands, for their exclusive use. They shall 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 shall be required in case the concerned ICCs/IPs may enter 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 hereof shall be strictly prohibited and subject to penalties under customary law and as provided for by the Act. The NCIP shall assist the concerned ICCs/IPs in the enforcement hereof.

RULE XI PENALTIES AND SANCTIONS

PART III PENALTIES

SECTION 1 - Imposable Penalties in Accordance with Customary Law

The ICC/IP community whose rights have been violated may penalize any violator in accordance with their customary law, except:

- a) where the penalty is cruel; degrading or inhuman; or
- b) where the penalty is death or excessive fine.

SECTION 2 - Penalties Imposed by the Act

All violators shall be punished, as follows:

- a) Imprisonment for not less than nine (9) months but not more than twelve (12) years;
- b) Fine of not less than One hundred thousand Pesos (P100,000.00) but not more than Five hundred thousand Pesos (P500,000.00); or
- c) Both such fine and imprisonment at the discretion of the court.

SECTION 3- Accessory Penalties

In Addition to the penalties referred to in the preceding article, the following may be imposed:

- a) For all violators, payment of damages suffered by the ICCs/IPs as a consequence of the unlawful act;
- b) For corporations or other juridical persons, cancellation of their registration certificate or license; and
- c) For public officials, perpetual disqualification to hold public office.

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