

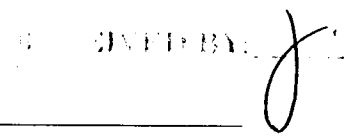
**SEVENTEENTH CONGRESS**  
**REPUBLIC OF THE PHILIPPINES**  
First Regular Session

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 **Senate**  
(Office of the Secretary)

16 JUL 18 25:57

**S E N A T E**  
**S.B. No. 379**



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**Introduced by SENATOR LOREN LEGARDA**

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**AN ACT SAFEGUARDING THE TRADITIONAL PROPERTY RIGHTS OF  
INDIGENOUS PEOPLES**

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.

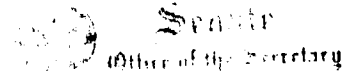
The law protecting indigenous peoples' rights, namely the Indigenous Peoples Rights' Act (RA 9371) does not provide for specific provisions for the protection of their cultural properties, both intangible and tangible. It is with the passage of this bill that this void is sought to be filled.

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  
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**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 **Sec. 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  
8 their contributions to their respective ethnic cultures and national  
9 heritage by ensuring that their rights are safeguarded.  
10

11 **Sec. 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  
15 the Arts (NCCA);  
16

17 b) "Cultural agencies" shall refer to the following national government  
18 agencies with their specific areas of responsibility: National Museum  
19 (cultural property); the National Library (books); National Historical  
20 Institute (Philippine history); National Archives (documents); Cultural  
21 Center of the Philippines (culture and the arts); and Komisyon sa Wikang  
22 Filipino (language);  
23

24 c) "Cultural heritage" shall refer to the totality of cultural property  
25 preserved and developed through time and passed on to posterity;  
26

27 d) "Cultural property" shall refer to all products of human creativity by  
28 which a people and a nation reveal their identity, including churches,  
29 mosques and other places of religious worship, schools and natural  
30 history specimens and sites, whether public or privately-owned, movable  
31 or immovable, and tangible or intangible.  
32

33 e) "Intangible cultural heritage" shall refer to the practices,  
34 representations, expressions, knowledge, skills as well as the instruments,  
35 objects and artifacts associated therewith, that communities, groups and  
36 individuals recognize as part of their cultural heritage, such as (1) oral

- 1 traditions, languages, expressions; (2) performing acts; (3) social practices,  
2 rituals and festive events; (4) knowledge and practices concerning nature  
3 and the universe; and (5) traditional craftsmanship;  
4
- 5 f) "Intangible cultural property" shall refer to the people's learned  
6 processes along with the knowledge, skills and creativity that inform and  
7 are developed by them, the products they create and the resources, spaces  
8 and other aspects of social and natural context necessary for their  
9 sustainability;  
10
- 11 g) "Registry" shall refer to the Philippine Registry of Cultural Property  
12 which is the registry of all cultural property of the country deemed of  
13 significant importance to our cultural heritage as defined in RA 10066;  
14
- 15 h) "Tangible cultural property" shall refer to a cultural property with  
16 historical, archival, anthropological, archeological, artistic and  
17 architectural value, and with exceptional or traditional production,  
18 whether of Philippine origin or not, including antiques and natural history  
19 specimens with significant value;
- 20 i.) "Tradition" shall refer to the beliefs, customs, practices, industries,  
21 expressions, whether tangible or intangible, maintained and shared  
22 differentially by society, and handed down from generation to generation.  
23 Tradition in this respect is a continuum that change and may arise in time  
24 shall not therefore be subject to time limitation;
- 25 j.) "Community" refers to the congregation of people with social cohesion  
26 and identity organized around common values interacting with intimacy  
27 and reciprocity in a shared circumscribed location in units larger than a  
28 household; and has more similarities in the types and forms of their  
29 material goods;
- 30 k) "Indigenous peoples" are people, communities and nations who claim a  
31 historical continuity and cultural affinity with societies endemic to their  
32 original territories. They have historically formed and still currently form  
33 the minority/non- dominant sectors within majority-culture societies and  
34 are intentioned towards preserving, reviving, and enhancing the efficacy,  
35 cohesion, and uniqueness of their traditional social values and customary  
36 ties along with a conscientious effort to transmit this knowledge to future  
37 generations;
- 38 l.) "Derivative work" is one that is primarily a new work but incorporated  
39 some previously published material. This previously published material  
40 makes the work a derivative work under the copyright law. To be  
41 copyrightable, a derivative work must be different enough from the original  
42 to be regarded as a "new work" or must contain a substantial amount of  
43 new material. Making minor changes or additions of little substance to a  
44 preexisting work will not qualify the work as a new version for copyright  
45 purposes. The new material must be original and copyrightable in itself.  
46 Titles, short phrases and format for example, are not copyrightable;
- 47 m.) "Communal ownership" refers to common ownership within a  
48 community;
- 49 n.) "Royalty" refers to the payment to the holder of a patent or copyright or  
50 resource for the right to use their property;

- 1 o.) "Craft" describes the family of artistic practices within the decorative  
2 arts, traditionally, is defined by their relationship to functional or  
3 utilitarian products (such as sculptural forms in the vessel tradition) or by  
4 their use of such natural media as wood, clay, glass, textiles and metal;
- 5 p.) "Social process" refers to the means by which culture and social  
6 organization change or are preserved due to process or practice;
- 7 q.) "Oral expression" refers to the expression uttered by the mouth;  
8 spoken; oral testimony or transmitted by speech;
- 9 r.) "Rites" refer to formal or ceremonial acts or procedures prescribed or  
10 customary in religious or other solemn use, or a particular form of system  
11 of religious or other ceremony;
- 12 s.) "Rituals" refer to an established or prescribed procedure for a religious  
13 or other rite, a system or collection of religious or other rites; observance of  
14 set forms in public worship; a prescribed or established rite, ceremony,  
15 proceeding or service: the ritual of the dead; prescribed, established or  
16 ceremonial acts or features collectively, as in religious services; any  
17 practice or pattern of behavior regulating social conduct;
- 18 t.) "Performance" refers to the acting out of a ceremony, play, piece of  
19 music, etc., the execution or accomplishment of work acts, feats, etc., a  
20 particular action, deed or proceeding the manner in which or the efficiency  
21 with which something reacts or fulfills its intended purpose, and not  
22 necessarily as part of social process;
- 23 u.) "Ownership" refers to the legal right of possession or proprietorship;  
24 the state, relation, or fact of being an owner; also, the rights or interests of  
25 an owner, ownership especially by a single person that is free of any  
26 encumbrances or limitations other than statutory.
- 27 v.) "Culture" - The UNESCO World Conference on Cultural Policies  
28 (Mexico, 1982) defines culture, in its widest sense, as the whole complex of  
29 distinctive spiritual, material, intellectual, and emotional features that  
30 characterize a society or a social group. This includes not only the arts  
31 and letters but also modes of life, value systems, traditions and beliefs.  
32 Culture, however, can also be looked at as an aggregate and internally  
33 inconsistent body of knowledge and meanings, unevenly distributed  
34 among individuals of a community, and acquired by these individuals  
35 through their experiences and transactions in everyday life.
- 36 **Sec. 4.** The National Commission for Culture and the Arts (NCCA)  
37 hereinafter referred to as the Commission, shall implement the provisions  
38 of the Act.
- 39 **Sec. 5.** Traditional cultural property, whether tangible or intangible, of all  
40 the ethno-linguistic groups that make up the people of the Philippines  
41 shall not lapse into public domain after 50 years from creation, and shall  
42 continue indefinitely to be exclusive property of these ethno-linguistic  
43 groups that communally own them. Traditional heritage, both tangible and  
44 intangible are to be held in perpetuity in ethnic memory and considered  
45 valid as ethnic intellectual property.
- 46 **Sec. 6.** Under the guidance of the Commission and National Museum  
47 (NM), or any other pertinent national cultural agency, the Local

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

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

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

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

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

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

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

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

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

48 b. The Commission shall assist claimants and relevant government

1 agencies in resolving conflicts of ownership and attribution who will give  
2 permission to people who wish to use the work upon discovery of the same  
3 in the database;

4 c. The Commission shall assist relevant government agencies in the prose-  
5 cution of unauthorized use of intellectual property of indigenous peoples.

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

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

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

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

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

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

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

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

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

41

42 Approved,