IGC DRAFT ARTICLES ON THE PROTECTION OF TRADITIONAL KNOWLEDGE

Observations from the Perspective of Indigenous Peoples in the Philippines

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Indigenous Peoples of the Philippines

- No actual count - estimated number is 12.8 million (1995)
- Approximately 10% to 15% of Philippine Population of 100 million
Indigenous Peoples of the Philippines

- 110 Ethnolinguistic Groups
Early humans enjoyed a close relationship with nature and believed that their life and well-being were dependent on the good health of their ecosystems, leading to the belief that all creatures have a RIGHT TO LIFE.

FOR INDIGENOUS PEOPLES, THIS REMAINS THEIR REALITY.
Territory Management of the Igorots: Keeping the balance
Traditional Knowledge of Indigenous Peoples in the Philippines
Traditional Knowledge of Indigenous Peoples in the Philippines
TK PROTECTION AT NATIONAL LEVEL
<table>
<thead>
<tr>
<th>Legislation</th>
<th>SUBJECT MATTER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indigenous Peoples' Rights Act (IPRA. Republic Act 8371)</td>
<td>rights to self-determination; cultural integrity; free and prior informed consent (FPIC); ancestral domains</td>
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<tr>
<td>Cultural Heritage Act (Republic Act 10066)</td>
<td>Protection of elements of cultural heritage</td>
</tr>
<tr>
<td>Wildlife Act (Republic Act 9147)</td>
<td>Traditional use; right to FPIC in bioprospecting activities</td>
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<tr>
<td>Traditional and Alternative Medicine Act (Republic Act 8423)</td>
<td>Right to a share from the commercialization of traditional medicine knowledge</td>
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<tr>
<td>Plant Variety Protection Act (Republic Act 9168)</td>
<td>Farmers’ rights to save, exchange, use, share and sell seeds</td>
</tr>
<tr>
<td>Intellectual Property Code (Republic Act 9283)</td>
<td>Sui generis protection of plant varieties and animal breeds and a system of protection for community intellectual rights</td>
</tr>
</tbody>
</table>

The Legal Landscape (1): At a Glance
<table>
<thead>
<tr>
<th>Legislation/ Administrative Issuance</th>
<th>SUBJECT MATTER</th>
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</thead>
<tbody>
<tr>
<td>Animal Welfare Act</td>
<td>-grant of exception to the killing of animals when made part of a ritual required by tribal or ethnic custom of indigenous cultural communities</td>
</tr>
<tr>
<td>(Republic Act 8485)</td>
<td></td>
</tr>
<tr>
<td>Magna Carta of Women</td>
<td>Protection of the rights of Moro and indigenous women to their indigenous knowledge systems and practices, traditional livelihood, and other manifestations of their cultures and ways of life</td>
</tr>
<tr>
<td>(Republic Act 9710)</td>
<td></td>
</tr>
<tr>
<td>Technology Transfer Act</td>
<td>Research and devt institute or institution (RDI) to disclose any biodiversity and genetic resource, TK,IKSP in all applications for intellectual property protection</td>
</tr>
<tr>
<td>(Republic Act 10055)</td>
<td></td>
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The Legal Landscape (2): At a Glance
Proposed Philippine Laws and Policies

- National Implementing Law for the Nagoya Protocol on Access and Benefit-Sharing (Ratified in 2015)
- Draft IPOPHL-NCIP Administrative Order
- Other bills discussed by Congress/Senate:
  - H. No. 4420 – Declaring August 9 as National Indigenous Peoples Day
  - S. Nos. 857 and 2209 - Creating and establishing the centers for indigenous cultural communities/indigenous peoples to enhance and ensure delivery of essential services
  - On S. No. 2440 - National Writing System Act
  - S. No. 2580 - Indigenous Community Conserved Areas Act
Draft IPOPHL-NCIP Administrative Order

Draft IPOPHL-NCIP Administrative Order

■ Scope:

“examination and registration on intellectual property applications that use indigenous knowledge, systems and practices (IKSP) of indigenous peoples”

■ Objectives:

1. Harmonized rules to protect intellectual creations of indigenous peoples
2. Provide institutional arrangements between IPOPHL and NCIP
3. Prevent misappropriation of IKSP
Salient Features of the Draft Joint Administrative Order

- IPRs applicants required to disclose IKSP used (mandatory disclosure)
- If registration not required – disclosure in all communication of subject matter to the public
- IPOPHL may, motu proprio or upon request, refer applications to NCIP for verification of ownership and compliance with free, prior and informed consent (FPIC) requirements
- Registration only upon compliance with disclosure and evidence of FPIC and benefit-sharing
- IPOPHL reserves judgment to determine registration, existence of misappropriation
- Collective management by IPs of artistic/literary work
SOME COMMENTS ON THE DRAFT ARTICLES ON TK PROTECTION
(WIPO/GRTKF/IC/31/4)
<table>
<thead>
<tr>
<th></th>
<th>Traditional Knowledge</th>
<th>Intellectual Property</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Creation</strong></td>
<td>Collective</td>
<td>Individual</td>
</tr>
<tr>
<td><strong>Maintenance</strong></td>
<td>Collective</td>
<td>Individual</td>
</tr>
<tr>
<td><strong>Ownership</strong></td>
<td>Collective</td>
<td>Individual</td>
</tr>
<tr>
<td><strong>Term of Ownership</strong></td>
<td>Indefinite</td>
<td>Fixed</td>
</tr>
<tr>
<td><strong>Public domain</strong></td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Objectives

- The objectives can be further streamlined
- Indispensable objectives for indigenous peoples & most related to intellectual property & ABS:
  1. Prevent the misappropriation of TK
  2. Promote equitable sharing of benefits arising from TK use
  3. Prevent the grant of erroneous intellectual property rights over TK and TK associated with GRs
Beneficiaries

- Beneficiaries means the rights-holders or creators and owners of traditional knowledge
- Beneficiaries are indigenous peoples and local communities
- Concept of “competent authority” that includes full and effective participation of indigenous peoples can be considered
Scope of Protection

- Tiered approach may be considered, as this can bring balance and unblock some of the contentious issues.
- However, as they say, “the devil is in the details”
  - Publicly shared TK – moral rights, economic rights
  - Secret and sacred TK – moral rights, economic rights, free, prior and informed consent (FPIC)
- Determination of whether the TK is available for sharing or not should rest with indigenous peoples and local communities – example is TK that has become publicly available but is not intended by IPLCs to be shared widely.
Other Core Issues

■ Exceptions and limitations – need to conform with a tiered approach
■ Public domain – public domain is not the same as publicly available
■ A definition of misappropriation is necessary – any access or use of TK without FPIC (not approval and involvement) and benefit-sharing
■ Preamble – can be further streamlined
■ Disclosure requirement & databases
■ Administration of rights – need for full and effective participation of IPLCs
■ Non-diminishment clause on indigenous peoples’ rights
Iyaman!
Maraming Salamat!
Thank You!