Safeguarding Traditional Knowledge and Traditional Cultural Expressions in the Philippines

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"Masaganang Katutubong Pamayanan: Sandigan ng Pambansang Kaunlaran"

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Legal Framework: Philippine laws and policies

- **1987 Constitution of the Republic of the Philippines**
- **Republic Act (RA) No. 8371: Indigenous Peoples' Rights Act of 1997 (IPRA)**
- **Bangsamoro Autonomy Act No. 64, or the Bangsamoro Indigenous Peoples' Act of 2024**
- **RA 8293:** Intellectual Property Code of the Philippines (IP Code), as amended by RAs 9150, 9502, and 10372
- **RA 8423** : Traditional and Alternative Medicine Act of 1997
- **RA 9147:** Wildlife Resources Conservation and Protection Act of 2001
- **Executive Order No. 247:** Guidelines and Regulatory Framework for the Prospecting of Biological and Genetic Resources
- **RA 9168:** Philippine Plant Variety Protection Act
- **RA 10066:** National Cultural Heritage Act, as amended by RA 11961

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The 1987 Constitution of the Republic of the Philippines

Section 22, ARTICLE II - The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

Section 17, ARTICLE IV - The State shall recognize, respect, and protect the rights of 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.

Section 5, ARTICLE XII - The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

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Republic Act No. 8371: Indigenous Peoples' Rights Act of 1997 (IPRA)

CORE FEATURES:

1)Rights to ancestral domains
2)Right to self-governance and empowerment
3)Social justice and human rights
4)**Right to Cultural Integrity**

- creation of the National Commission on ICCs/IPs (**NCIP**), which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains, as well as the rights thereto

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IPRA	Bangsamoro Autonomy Act No. 64: The Bangsamoro Indigenous Peoples' Act of 2024 (Bangsamoro Indigenous Peoples' Code)
Section 29: Protection of Indigenous Culture, Traditions and Institutions. **Section 32**: Community Intellectual Rights. ICCs/IPs have the **right to practice and revitalize their own cultural traditions and customs**… **Section 34**: Right to Indigenous Knowledge Systems and Practices and to Develop own Sciences and Technologies. ICCs/IPs are entitled to the **recognition of the full ownership and control and protection of their cultural and intellectual rights**. **Section 35:** Access to Biological and Genetic Resources. Access to biological and genetic resources and to indigenous knowledge related to the conservation, utilization and enhancement of these resources shall be allowed within ancestral lands and domains of the ICCs/IPs only with a **free and prior consent** of such communities, obtained in accordance with customary laws of the concerned community.	SEC. 50. Protection of Indigenous Culture, Traditions, and Institutions. SEC. 51. Right to Indigenous Knowledge Systems and Practices, and to Develop Own Science and Technology. - ICCs/IPs have the **right to the full ownership, control, and protection of their cultural and intellectual rights**. SEC. 59. Community Intellectual Rights. - IKSP shall be the Intellectual Property Right of the ICCs/IPs concerned. As such, they shall have the right to practice and revitalize their own cultural traditions and customs. **Public dissemination or exhibition of the said Intellectual Property Right must go through the IPS.**

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NCIP Administrative Order No. 1, series of 1998: RULE VI

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 violation 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.

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Joint IPOPHL-NCIP Administrative Order No.1, series of 2016

Rule 3. *Objective.-* This Joint IPOPHL-NCIP Administrative Order aims to provide a harmonized rules and regulations of the IPOPHL and the NCIP to protect the intellectual creations including the IKSP of the indigenous peoples and indigenous cultural communities. The rules and regulations seek to provide institutional arrangement between the IPOPHL and the NCIP to prevent the misappropriation of the IKSP of the indigenous peoples and indigenous cultural communities and encourage tradition-based creations and innovations.

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Joint IPOPHL-NCIP Administrative Order No.1, series of 2016

CORE FEATURES:

- disclosure requirement > compliance with the FPIC requirement (Rule 6)

- established an inter-agency referral mechanism for validating the use of IKSP (TK/TCE) in an intellectual property application and ensuring compliance with FPIC requirements (Rule 6 and 11)

- establishment of IKSP registry (Rule 8)

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Other related policies

- NCIP AO No. 1, series of 2012: The Indigenous Knowledge Systems and Practices (IKSPs) and Customary Laws (CLs) Research and Documentation Guidelines of 2012
- NCIP AO No. 3, series of 2012: The Revised Guidelines on Free and Prior Informed Consent (FPIC) and Related Processes of 2012
- IPOPHL Memorandum Circular No. 2022-022: Rules and Regulations on Geographical Indications
- Examination Guidelines on Patents, Utility Models, and Designs Involving Biodiversity, Genetic Resources, Traditional Knowledge, Traditional Cultural Expressions, and Indigenous Knowledge, Systems and Practices

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Local government and community initiatives:

- Regional Development Council Cordillera Administrative Region Resolution No. 79, series of 2024: REQUESTING ALL PROVINCES, CITIES, AND MUNICIPALITIES IN THE CORDILLERA ADMINISTRATIVE REGION TO ENACT COMPREHENSIVE ORDINANCES FOR THE IDENTIFICATION OF CULTURAL OR TRADITIONAL ATTIRES WITHIN THEIR LOCALITY AND PROVIDING GUIDELINES FOR THE PROPER USE THEREOF

- Mountain Province Provincial Ordinance No. 573: AN ORDINANCE PROHIBITING ALL SOUVENIR SHOPS, DEPARTMENT/GARMENT STORES, AND ONLINE SELLING STORES IN MOUNTAIN PROVINCE FROM MANUFACTURING, DISTRIBUTING AND SELLING MACHINE-MADE REPLICA OF CORDILLERA INDIGENOUS WOVEN MATERIALS AND APPARELS IN MOUNTAIN PROVINCE

- Mountain Province Provincial Ordinance No. 585: AN ORDINANCE PROMOTING, SAFEGUARDING, AND REGULATING THE PROPER WEARING AND REPRESENTATION OF THE TRADITIONAL AND CULTURAL ATTIRES OF THE INDIGENOUS PEOPLES OF MOUNTAIN PROVINCE

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SUMMARY:

POSITIVE PROTECTION	DEFENSIVE PROTECTION
❖ Sui generis laws (IPRA and Bangsamoro Indigenous Peoples' Code)* ❖ FREE AND PRIOR INFORMED CONSENT ❖ Application of Geographical Indications framework ❖ Local government ordinances	❖ Establishment of a centralized database/registry on TK and TCEs ❖ Disclosure requirement in IP applications

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Thank you

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