

IGC DRAFT ARTICLES ON THE PROTECTION OF TRADITIONAL KNOWLEDGE

Observations from the Perspective of Indigenous
Peoples in the Philippines

Jennifer Tauli Corpuz, Tebtebba
19 September 2016, WIPO HQ



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

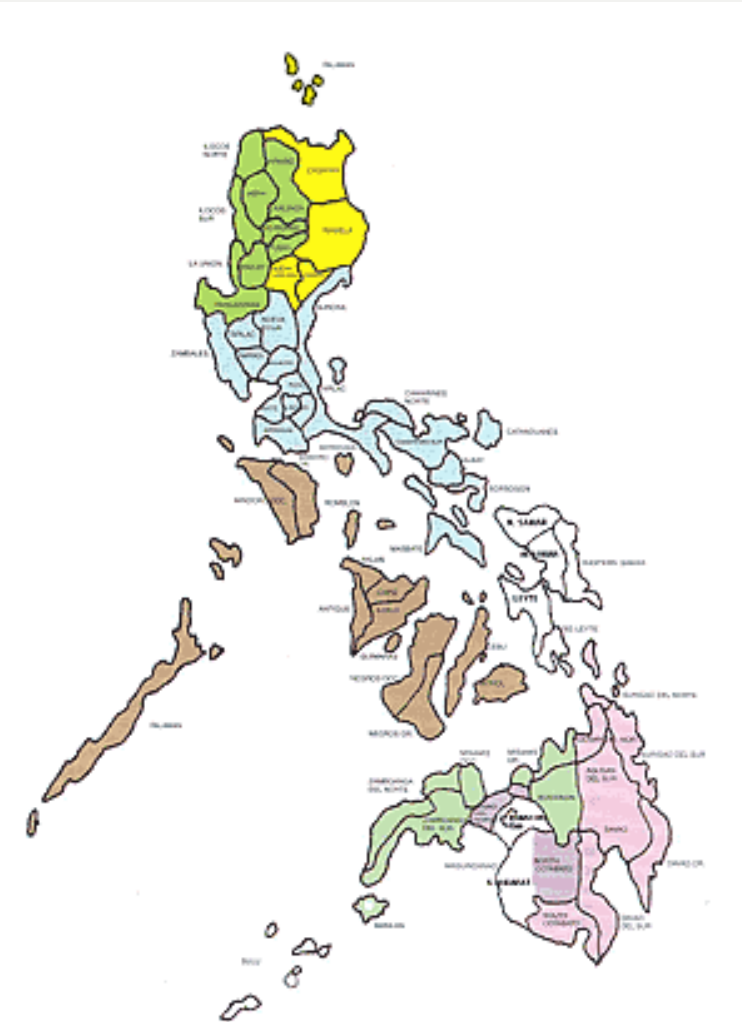


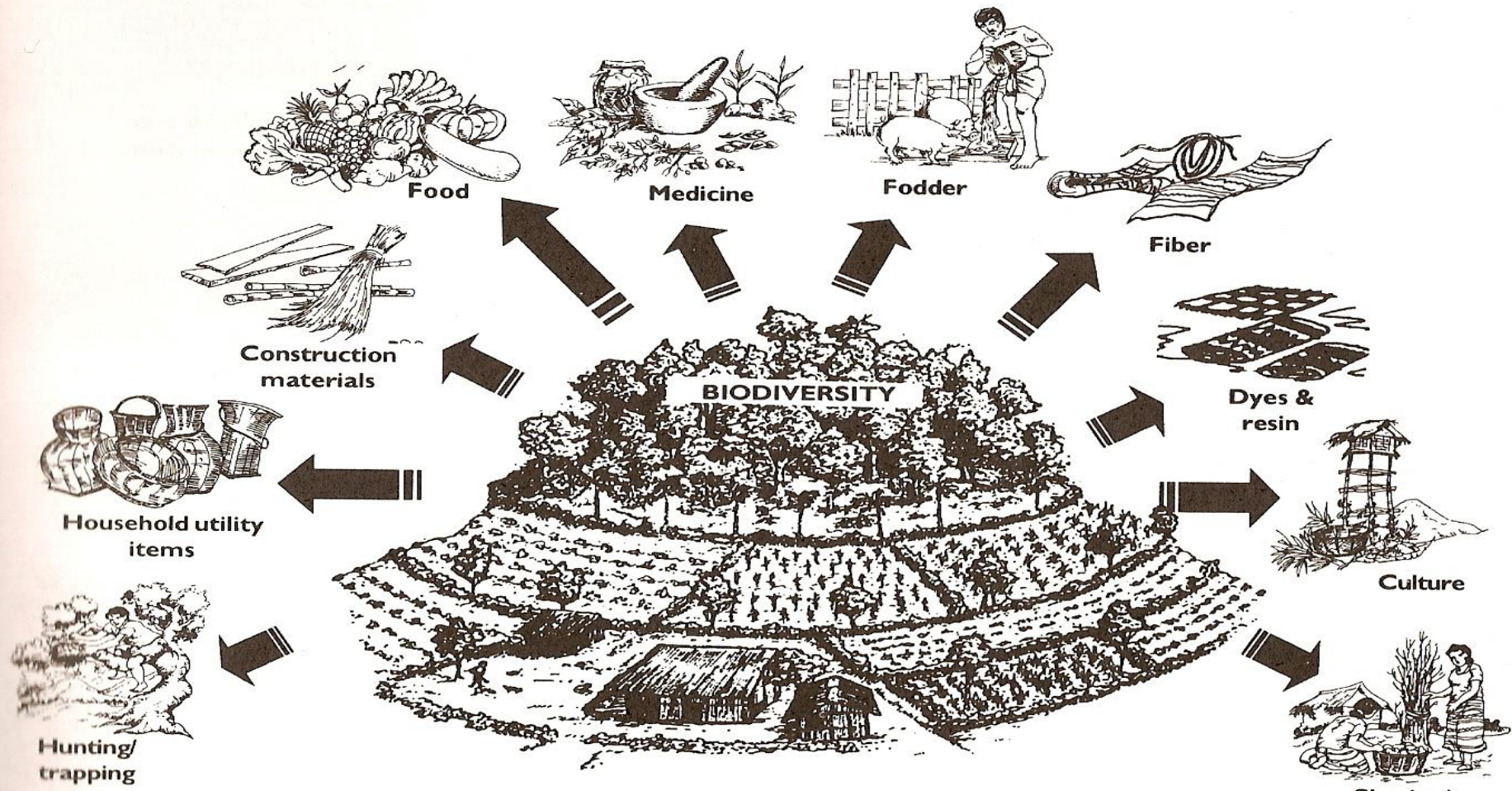
Indigenous Peoples of the Philippines

- 110 Ethnolinguistic Groups

ETHNOGRAPHIC REGIONS

	CAR and Region I
	Region II
	Region III and Rest of Luzon
	Island Group
	Southern and Eastern Mindanao
	Central Mindanao
	Northern and Western Mindanao





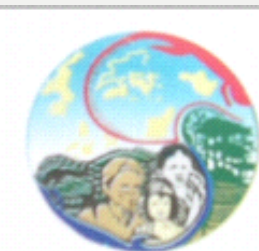
Early humans enjoyed a close relationship with nature and believed that their life and well-being were dependent on the good health of their ecosystems, leading to the belief that all creatures have a **RIGHT TO LIFE**

FOR INDIGENOUS PEOPLES, THIS REMAINS THEIR REALITY

Traditional Knowledge of Indigenous Peoples in the Philippines



Traditional Knowledge of Indigenous Peoples in the Philippines



TK PROTECTION AT NATIONAL LEVEL



Legislation	SUBJECT MATTER
Indigenous Peoples' Rights Act (IPRA. Republic Act 8371)	-rights to self-determination; cultural integrity; free and prior informed consent (FPIC); ancestral domains
Cultural Heritage Act (Republic Act 10066)	Protection of elements of cultural heritage
Wildlife Act (Republic Act 9147)	Traditional use; right to FPIC in bioprospecting activities
Traditional and Alternative Medicine Act (Republic Act 8423)	Right to a share from the commercialization of traditional medicine knowledge
Plant Variety Protection Act (Republic Act 9168)	Farmers' rights to save, exchange, use, share and sell seeds
Intellectual Property Code (Republic Act 9283)	<i>Sui generis</i> protection of plant varieties and animal breeds and a system of protection for community intellectual rights

The Legal Landscape (1): At a Glance

**Legislation/
Administrative Issuance**

SUBJECT MATTER

Animal Welfare Act
(Republic Act 8485)

-grant of exception to the killing of animals when made part of a ritual required by tribal or ethnic custom of indigenous cultural communities

Magna Carta of Women
(Republic Act 9710)

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

Technology Transfer Act
(Republic Act 10055)

Research and devt institute or institution (RDI) to disclose any biodiversity and genetic resource, TK,IKSP in all applications for intellectual property protection

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



**“Rules and Regulations on Intellectual Property Rights
Application and Registration Protecting the Indigenous
Knowledge Systems and Practices of the Indigenous Peoples
and Indigenous Cultural Communities”**



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)



Premise

	Traditional Knowledge	Intellectual Property
Creation	Collective	Individual
Maintenance	Collective	Individual
Ownership	Collective	Individual
Term of Ownership	Indefinite	Fixed
Public domain	No	Yes

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



Email contact: corpuz.jennifer@gmail.com



Iyaman!
Maraming Salamat!
Thank You!

