

*DRAFT ARTICLES ON INTELLECTUAL PROPERTY AND TRADITIONAL
KNOWLEDGE/TRADITIONAL CULTURAL EXPRESSIONS:
PERSPECTIVE OF INDIGENOUS PEOPLES FROM THE PHILIPPINES
ON SUBJECT MATTER AND SCOPE OF PROTECTION*

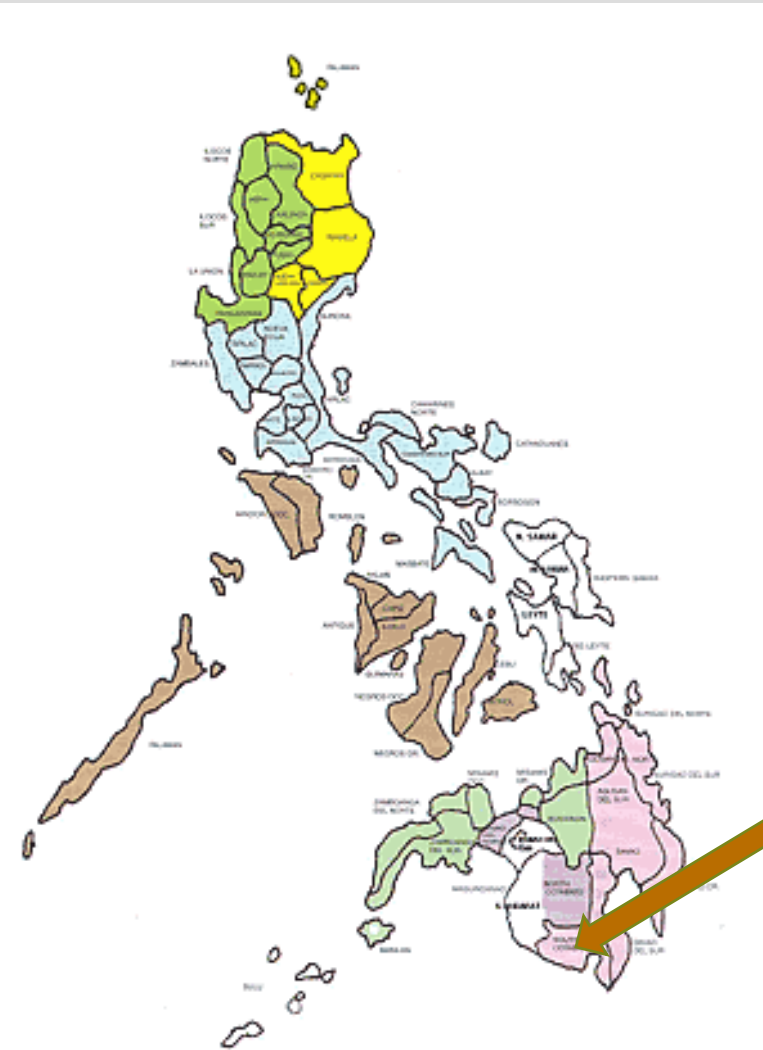
Jennifer Tauli Corpuz

Legal Advisor, Tebtebba, Philippines

SUBJECT MATTER: A “CONCEPTUAL DIVIDE”?

- Approach: Minimum Standards / Framework Approach or a Fully Elaborated International Instrument?
 - Must be precise yet broad enough to cover TK/TCEs in all contexts
 - Must NOT be too prescriptive and should not prevent countries from providing appropriate protection for TK/TCEs (temporal aspect)
- Key Qualifiers for a Definition / Eligibility Criteria
 - Collective nature, governed by indigenous peoples’ customary laws and governance structures
 - Part of an indigenous knowledge system
 - Linked with the cultural identity of indigenous peoples

EXAMPLE: THE T'NALAK CLOTH OF THE T'BOLI



© Patricia Araneta



© trekero



© mirandablue

EXAMPLE: THE T'NALAK CLOTH OF THE T'BOLI



© mirandablue



© mirandablue

EXAMPLE: THE T'NALAK CLOTH OF THE T'BOLI



T'NALAK TAU SEBU
LAKE SEBU, SOUTH COTABATO, PHILIPPINES

Collective Trademark



IPOPHL Ceremony



Ms. Universe 2019 Catriona Gray
wears T'nalak Fabric

All images from ipophl.gov.ph

EXAMPLE: THE T'NALAK CLOTH OF THE T'BOLI

- Is it T'nalak TK/TCEs?
 - Under Philippine Law, yes
 - Part of an indigenous knowledge system
 - Created, maintained, developed & governed in a collective context
 - Linked with the cultural identity of the T'boli
 - Passed from generation to generation
 - Dynamic and evolving
 - No temporal requirement

EXAMPLE: IFUGAO DEATH BLANKET



© Lauren Alimondo



© R. M. Nunes /
Shutterstock

EXAMPLE: IFUGAO DEATH BLANKET



nationalmuseum.gov.ph



Photo of Ifugao death blanket courtesy of Christine de Vera via Flickr

Photo of Ifugao death blanket courtesy of Yale Peabody Museum of Natural History's website

INJUSTICE OF A TEMPORAL REQUIREMENT

- “Before 50 years, TK/TCEs can be protected using conventional IP.”
- Owner of Sagada Weaving applied for an industrial design over a traditional weaving pattern
- The registration is about to expire
- Upon expiration, the pattern goes into the public domain



INTERNATIONAL JURISPRUDENCE ON RIGHT TO CULTURE

- ***Länsman v. Finland I*** (Communication No. 511/1992):
- The case was related to the **harmful effects of a stone quarry/mine in relation to traditional Sami reindeer herding in the area**
- **Conclusion:** **No violation.**
- **However**, HRC established several important principles for the interpretation of art. 27:
 - **Art. 27** does not protect only traditional means of livelihood, but even their **adaptation to modern times** [technology]

INTERNATIONAL JURISPRUDENCE ON RIGHT TO CULTURE

- HRC view expressed in *Länsman v. Finland I*, with regard to adaptation to modern times:
 - 'The right to enjoy one's culture cannot be determined in abstracto but has to be placed in context. In this connection, the Committee observes that article 27 does not only protect traditional means of livelihood of national minorities, as indicated in the State party's submission. Therefore, that the authors may have adapted their methods of reindeer herding over the years and practice it with the help of modern technology does not prevent them from invoking article 27 of the Covenant.'

SUBJECT MATTER: KEY QUALIFIERS

- Created, maintained, developed and governed in a collective context by indigenous peoples
- Linked with the cultural identity of indigenous peoples
- Transmitted between generations, whether consecutively or not
- Part of an indigenous knowledge system
- Dynamic and evolving

SCOPE OF PROTECTION: THE TIERED OR DIFFERENTIATED APPROACH

- Intent, as determined by indigenous customary law and usage, is important.
- Some TK/TCEs are meant to be diffused (usually narrowly), some are not
 - Moral rights
 - Economic rights
 - Other rules



SCOPE OF PROTECTION: THE TIERED OR DIFFERENTIATED APPROACH

- Rights-based and measures-based approach
- Intent, based on customary law
- Right to petition / repatriation
- Burden of proof / administrative burden
- Role of indigenous peoples in administration of rights

***Iyaman!
Maraming Salamat!
Thank You!***

Jennifer T. Corpuz
Program Coordinator
Indigenous Peoples' Rights Program
Tebtebba – Indigenous Peoples'
International Center for Policy
Research and Education
Email: corpuz.jennifer@gmail.com
jing@tebtebba.org
Tel./Fax: 02 441 0336



© E. Masferre