



**SEMINAR ON INTELLECTUAL
PROPERTY AND GENETIC
RESOURCES**

**Theme 1: Disclosure Requirements
relating to GRs and ATK**

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International Context

- UN Declaration on the Rights of Indigenous Peoples (2007)
 - right to maintain, control, protect and develop their traditional knowledge and genetic resources
 - right to maintain, control, protect and develop their intellectual property over such TK and GRs
- Nagoya Protocol (2010)
 - Governs access to GRs and ATK of IPLCs, including fair and equitable benefit-sharing
 - 128 Parties – many have enacted disclosure requirements

Disclosure Requirements relating to GRs and ATK in the Philippines

Legal Framework

- Philippine Constitution (1987)
- Intellectual Property Code (1997)
- Indigenous Peoples' Rights Act (1997)
- Wildlife Resources Conservation and Protection Act (2001)
 - Regulates "bioprospecting"; requires FPIC of Indigenous Peoples
- Bioprospecting Guidelines (2005)
- Party to the Nagoya Protocol (2015)
 - Revising bioprospecting regulations; identification of checkpoints
 - GEF ABS Project

Disclosure Requirements relating to GRs and ATK in the Philippines

An intellectual property right application filed in the IPOPHL shall disclose:

- any IKSP that is used in the subject matter of the application including the source or geographical origin of the IKSP used in the application. **[TRIGGER: "USE" OF IKSP]**
- The intellectual property right application shall contain the disclosure of IKSP including a statement of compliance to the requirement of free and prior informed consent of the indigenous cultural communities concerned. **[CONTENT: IKSP used & compliance with FPIC]**

Disclosure Requirements relating to GRs and ATK in the Philippines

Pre-grant remedies / sanctions:

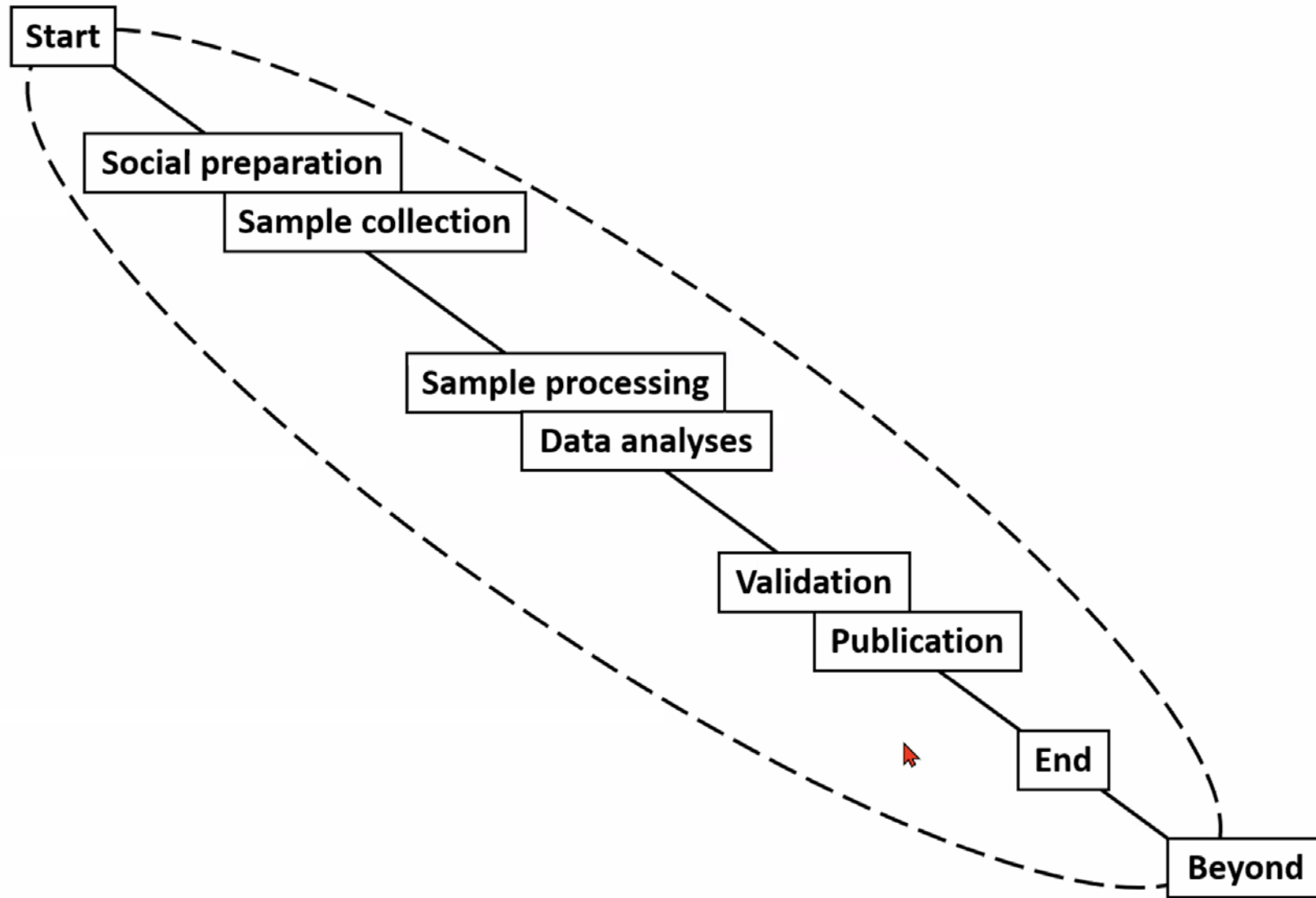
- Notwithstanding the lack of declaration of the use of an IKSP in an intellectual property right application, the IPOPHL may, motu proprio or upon request by any person and after initial evaluation by the IPOPHL, refer the application to the NCIP for purposes of verifying the use or ownership of the IKSP and compliance to the requirement of free and prior informed consent of the indigenous cultural communities and, thereafter, determine in accordance with pertinent rules and regulations whether the intellectual property right can be registered.

Disclosure Requirements relating to GRs and ATK in the Philippines

Post-grant remedies / sanctions:

- In case a registration has been issued in violation of these Rules and Regulations, the IPOPHL may, in accordance with its rules and regulations, cancel the registration.

A relevant research framework



Recommendations

- Clarity around trigger: “use”, “based on”, “materially based on”
- Content: country of origin, source, evidence of FPIC
- Obligation of IP Office: preliminary assessment, referral system
- Sanctions and remedies: include rules under Indigenous customary law
- Supportive measures: registries, Indigenous Peoples commissions & agencies