

NINTH CONGRESS OF THE REPUBLIC OF THE PHILIPPINES
THIRD REGULAR SESSION

SENATE BILL NO. 1841

Introduced by Senator Orlando S. Mercado

EXPLANATORY NOTE

The objective of this bill as its main title indicates to provide for a system of community intellectual rights protection which acknowledges the innovative contribution of local and indigenous communities with respect to the development of genetic resources and the conservation of the country's biological diversity. The bill explicitly concedes that biodiversity has and should remain the commons of local communities with both resources and knowledge being freely exchanged among different communities who are also users of the innovation. Free sharing, however, as provided for in this bill does not apply if commercial utilization of the innovation is involved. It therefore follows that anyone wishing to access these resources and knowledge must pay the community for such access.

The existing legal framework for intellectual property rights (IPR) in the country today recognizes on the dominant industrial model of innovation. It has failed to recognize the more informal, communal system of innovation through which farmers and indigenous communities produce, select, improve and breed a diversity of crop and livestock varieties - a process which takes place over a long period of time. The existing IPR framework effectively sidesteps the traditional knowledge of indigenous communities, even though it is widely acknowledged that without the input of indigenous knowledge, many products used extensively throughout the modern world would not exist today.

For example, a World Health Organization bulletin reports that of the 120 active compounds currently isolated from the higher plants and widely used in medicine today, 74% show a positive correlation between their modern therapeutic use and the traditional use of the plant from which they were derived.

Dr. Vandana Shiva of the New Delhi-based Research Foundation for Science, Technology and Natural Resources Policy captures the unfortunate circumstances besetting local innovations best when she said in a recent article that "centuries of innovation in the Third World are totally (being) devalued to give monopoly rights to plant materials to transnational corporations who make minor modifications compared to the evolutionary changes that nature and Third World farmers have made."

This bill therefore seeks to re-define "innovation" to recognize both the collective and cumulative intellectual rights of the country's cultural communities over the same innovations. In addition, the bill's definition of innovation recognizes such indigenous knowledge howsoever recorded, whether formally or informally (orally, anecdotal, etc.). This is in consideration of the fact that many indigenous communities in the country do not have a written tradition or culture.

This proposed measure likewise seeks to complement and realize one of the provisions embodied in the Biodiversity Convention, which the Philippines ratified recently, pertaining to the "equitable sharing of (the) benefits" arising from the utilization of the knowledge, innovations, and practices of indigenous and local communities. The bill's provisions towards this end are meant to emphasize the non monopolistic facet of community innovations.

To overcome the difficulty of defining local communities, communities can register as an organization which will then have a legal personality with rights like any other legal entity. But it is emphasized that failure to register does not alter the fact that the community concerned is and will remain the custodian of the innovation.

These and the other provisions of this proposed measure, are intended to attenuate and prevent the assault upon our country's genetic resources by major multinational corporations, (especially those working in the areas of drugs and agriculture) and their home governments. Its central thesis aims to overthrow the long standing paradigms embodied in such international institutions as the General Agreement on Tariffs and Trade (GATT) and the Food and Agriculture Organization (FAO) which recognize genetic resources as a "universal heritage" in order to guarantee the First World commercial interests free access to the raw materials of the South.

Thus the "common heritage principle" is being abandoned in favor of "sovereignty over natural resources" as recognized in the Biodiversity Convention.

Approval of this bill is therefore earnestly request.

[signature]

ORLANDO S. MERCADO

NINTH CONGRESS OF THE REPUBLIC OF THE PHILIPPINES

Third Regular Session

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SENATE BILL NO. 1841

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Introduced by Senator Orlando S. Mercado

AN ACT PROVIDING FOR THE ESTABLISHMENT OF A SYSTEM OF COMMUNITY INTELLECTUAL RIGHTS PROTECTION WITH RESPECT TO BIOLOGICAL AND GENETIC RESOURCES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Title

This Act shall be known as the "Community Intellectual Rights Protection Act of 1994" or CIRPA.

SEC. 2. Declaration of Policy

It shall be the policy of the State to develop the use of indigenous and traditional technologies in the pursuance of its aims of protecting and conserving the country's biological diversity. Towards this end, the State shall recognize the role of indigenous and local communities in conserving and sustainably using the country's biological diversity. It is hereby recognized that the benefits arising from the knowledge and innovation on the country's biological resources by the country's indigenous and local communities should accrue to their development and welfare and should therefore be equitably shared. The State shall also strive to protect and encourage the customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

SEC. 3 Definition of Terms

As used in and for purposes of this Act, the following terms shall mean:

- a) Biological diversity - means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.
- b) Biological resources - includes genetic resources, organisms, or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.
- c) Commercial utilization - occurs when the innovation and any process relating to it or product embodying it is made available for sale in the modern market sector.
- d) Genetic material - means any material of plant, animal, microbial or other origin containing functional units of heredity.
- e) Genetic resources - means genetic material of actual or potential value.
- f) Indigenous cultural communities - refers to a group of people sharing common bonds of language, customs, traditions, and other distinctive cultural traits, and who have, since time immemorial, occupied, possessed and utilized a territory except when such possession is either prevented or interrupted by war, force majeure, displacement by force, deceit or stealth, or other usurpation.
- g) Innovator - refers to the local community responsible for the innovation.
- h) Innovation - shall include any collective and cumulative knowledge or technology of the use, properties, values and processes of any plant variety and any plant or part thereof rendered of any or enhanced use or value as a result of the said cumulative knowledge or technology whether documented, recorded, oral, written or howsoever otherwise existing including any alteration, modification, improvement thereof and shall also include derivatives which utilize the knowledge of indigenous groups or communities in the commercialization of any product as well as to a more sophisticated process for extracting, isolating or synthesizing the active chemical in the plant extracts or compositions used by the indigenous cultural community.
- i) Local community - refers to a group of people having a long standing social organization that binds them together whether in a defined area or otherwise and shall include indigenous peoples, and local populations, and shall where appropriate refer to any organization duly registered under the provisions of this Act to represent its interests.
- j) Plant variety - shall include a plant species or category of a lower level or any part thereof or germplasm therein whether domesticated or not used in accordance with established

customs, practices, and laws by local communities for a particular purpose that requires a prior knowledge of a particular property of the plant as food, medicine, and dye.

k) Sustainable use - means the use of components of biodiversity in a way and at a rate that does not lead to the long term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

SEC. 4 Custodianship

The local community shall at all times and in perpetuity be the lawful and sole custodians and stewards of an innovation. No innovation shall be sold, assigned, transferred or dealt with in any way whereby the status of the local community as custodians and stewards of the innovation is impaired.

SEC. 5 Free Exchange Among Communities

The local communities shall make available its innovation and practices in relation to other communities wherever situated, without any payment or reward, provided that such innovation is not acquired for commercial utilization. Such acquirer shall make the said innovation available to any other community on the same basis and terms set out in Section 6 of this Act.

SEC. 6 Use for Commercial Purposes

Any person, body, organization or corporation using any innovation or any part thereof for commercial utilization shall pay to the local community which is the custodian or steward of the said innovation, a sum representing not less than 50% of the net sales of any product or process incorporating the said innovation. Any local community may opt to be paid a non-monetary equivalent as may be determined by the local community in accordance with its customs, practices and usages. Nothing in this section shall prevent more than one person, body, organization or corporation from using any innovation or any part thereof for commercial utilization at the same time and/or any other time.

Payments to local communities shall be made to an organization duly registered under the provisions of this Act as representing the local communities. Where no such organization exists, payments shall be made to the State which shall hold it in trust for the local community pending its registration under the provisions of this Act. With respect to an innovation developed by any community prior to the effectivity of this Act, payments shall be made to the State which shall then utilize such monies for the protection, development, and maintenance of its genetic resources.

All monies or their equivalent received by the local community or the State as its trustee shall be applied for purposes as the local community may decide, including but not limited to the protection, development, and maintenance of its genetic resource.

SEC. 7 Registration of Local Community

Any local community may apply to be registered with the appropriate government agency as a tribal council, foundation, cooperative, people's organization, or any other form of organization that would effectively represent its interests, provided that its failure to do so shall not prejudice its status as custodian or stewards of its innovation as provided for in Section 4 of this Act.

SEC. 8 Registry of Innovation

The local community may register its innovation in the Bureau of Patents: Provided, that non-registration shall not mean that the community was/is not the custodian or steward of the innovations as defined in Sec. 3 of this Act.

SEC. 9 Proof of Invention

An innovation shall be deemed to vest in the local community upon a declaration coming from the duly constituted representatives of the community, in a form or manner valid by their laws, customs or practices, that they have been using the said innovation, and that they are the custodians or stewards of the same. Anyone wishing to challenge this shall bear the legal and evidentiary burden of proof for doing so.

SEC. 10 Technical Assistance

In consultation with the concerned local communities, the State shall make available any of its instrumentalities, agencies or entities to provide technical and other related forms of assistance to local communities in the identification and characterization of their innovation.

SEC. 11 Co-ownership

Nothing in this Act shall prevent any other community or communities wherever situated from establishing their rights to the custodianship of an innovation. In the event that more than one community may have contemporaneously developed an innovation, the innovation shall in such circumstances vest jointly in all these communities and each shall have complete rights and duties in relation thereto. These communities shall therefore act as co-stewards of an innovation. As such, all benefits that accrue to one steward shall inure to the benefit of the other co-steward or co-stewards. Each co-steward shall hold in trust all rights, obligations, rewards, and remuneration for the other co-steward or co-stewards.

SEC. 12 Right to Enforce, Monitor, or Further the Innovation

It shall be within the right of the State, any non-governmental organization or the local community and/or its duly registered organization to enforce, monitor, and further the local community's innovation and any matters in relation to its utilization, exchange or impairment, whether in the Courts or elsewhere, provided always that the duly registered organization of the local community shall be informed of the progress of the same.

SEC.13 Inter-Agency Committee on Biological and Genetic Resources

An Inter-Agency Committee on Biological and Genetic Resources is hereby created as the regulatory body to ensure that the provisions of this Act are enforced and implemented. The Inter-Agency Committee shall be composed of the following:

- a) a representative of the Secretary of the Department of Environment and Natural Resources, whose must be an expert or specialize in biological diversity and who shall be the Chairperson of the Committee.
- b) a representative of the Department of Science and Technology, who must be knowledgeable about biodiversity and/or biotechnology.
- c) a representative of the Secretary of the Department of Agriculture, who must be knowledgeable about biodiversity and/or biotechnology.
- d) a representative of the Secretary of the Department of Health who must be knowledgeable about pharmaceutical research and development.
- e) a representative of the Department of Trade and Industry who must be knowledgeable about patent laws and intellectual property rights.

- f) a representative of the Secretary of the Department of Interior and Local Governments.
- g) two representatives from the Non-Government Organization sector active in the protection of biological diversity selected by the NGOs themselves through a process designed by them.
- h) two representatives from People's Organizations or Tribal Councils with a membership consisting of indigenous cultural communities and/or their organizations, selected by the aforementioned groups through a process designed by them.

SEC. 14 Implementing Rules and Regulations

After the lapse of ninety (90) days from the effectivity of this Act, the Inter-Agency Committee as provided for in Sec. 13 of this Act shall promulgate the rules and regulations for the implementation of this Act.

SEC. 15 Separability Clause

If any of the provisions of this Act is held or declared to be unconstitutional or invalid by a competent court, the other provisions hereof not so declared shall continue to be in force as if the provision as annulled or voided had never been implemented in this Act.

SEC. 16 Repealing and Amending Clause

All laws, executive orders, presidential decrees, rules and regulations or parts thereof which are inconsistent with any part of this Act are hereby repealed or amended accordingly.

SEC. 17 Effectivity Clause

This Act shall take effect after thirty (30) days following its publication in two (2) newspapers of general circulation in the Philippines.

Approved.

NB: This Act was still pending as of August 1997