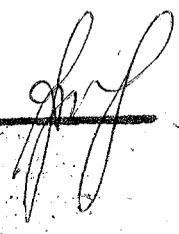


THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'04 JUN 30 P12:11

SENATE
S. NO. 35

RECEIVED BY: 

Introduced by Senator Juan M. Flavier

EXPLANATORY NOTE

The objective of this bill as its main title indicates is to provide for a system of community intellectual rights protection which acknowledges the innovative contribution of local and indigenous cultural 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 been 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.

The existing legal framework for intellectual property rights (IPR) in the country today recognizes only the dominant industrial model of innovation. It has failed to recognize the more informal, communal system of innovation through which the 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 if it is widely acknowledged that without the input of indigenous knowledge, many products used extensively throughout the modern world not exist today.

For example, a World Health Organization bulletin reports that one 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 the "centuries of innovation in the Third World are totally (being) devalued to give monopoly rights to plant 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 of the collective and cumulative intellectual right 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 (oral, 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 more important provisions embodied in the international Biodiversity Convention, which the Philippines ratified during the last Congress, 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 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 have a legal personality with rights similar to any other legal entity. But it is also 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 against our country’s genetic resources by major multinational companies, (especially those working in the areas of drugs and agriculture) and their home government. Its central thesis aims to overthrow the long-standing paradigms embodied in such international institutions as the World Trade Organization (WTO) —formerly the GATT – and the Food and Agriculture Organization (FAO) which recognize genetic resources as a “universal heritage” in order to guarantee free access for the “First World commercial interests to the raw materials of the South.

Thus the “common heritage principle” is being abandoned in favor of “sovereignty over natural resources” as enshrined in the Biodiversity Convention.

Approval of this bill is therefore earnestly requested.


JUAN M. FLAVIER
Senator

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SENATE

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RECEIVED BY: 

Introduced by Senator Juan M. Flavio

**AN ACT
PROVIDING FOR THE ESTABLISHMENT OF A SYSTEM OF COMMUNITY
INTELLECTUAL RIGHTS PROTECTION**

*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 or CIRPA”.

SECTION 2 Declaration of Policies

- (a) State Recognition of Traditional Knowledge- The states recognizes the original rights of indigenous peoples and local communities over plant and genetic resources, traditional medicines, agricultural methods and local technologies they have discovered and developed. As such; these communities shall become the general owners, with primary and residuary title to: (i) the formal or informal communal systems of innovation through which they produce, select, improve, and breed a diversity of crop and livestock varieties; and to (ii) the plant varieties, genetic resources, traditional medicines, agricultural practices and devices, and technologies produced through these systems.

(b) Registration as a Form of Intellectual Property Protection- It shall be the policy of the state to document and make a systematic inventory of plant and genetic resources and knowledge originating from indigenous and local communities, and from all other sectors without the usual access to journals of the scientific, business and academic communities, especially those who do not have a written tradition or culture. The registration of indigenous and traditional knowledge' while distinct and separate from the awarding of patents, shall become a basis for proprietary ownership.

(c) Community Ownership of Traditional Knowledge - All benefits arising from the knowledge and innovations by indigenous and local communities should accrue to their development and welfare and should therefore be equitably shared. Any commercial utilization of such knowledge and innovations should be made only with the free and informed consent of its general owners or custodians under terms mutually agreed upon. The state shall also strive to protect and encourage the customary use of biological resources in accordance with traditional cultural practices which are compatible and which promote conservation and sustainable use:

SECTION 3 Definition of Terms. As used in and for purposes of this Act, the following terms shall mean:

- a) **Biological Diversity**- refers to the wide and rich variety of species and plants and animals, their genetic material, and the ecosystems of which they are part.
- b) **Biological Resources**- includes all species of plants and animals and other organisms, their genetic material and any other biotic component of ecosystems with actual or potential use for humanity.
- c) **Commercial Utilization**- occurs when any process or product is made available for sale with profits in the market.
- d) **Community Process**- knowledge produce through a community process are those whose discovery or development could not be ascribed to a single individual or juridical person, and/or which resulted from the contributions of different groups or generations.
- e) **Ex-situ conservation or use**- means the conservation or use of genetic resources outside of their natural habitats. For example, gene banks and botanical gardens hold ex-situ (or off site) collections. In-situ means onsite conservation or use.
- f) **Farmer**- refers to all those engaged in the cultivation of crops living within the territory of the Philippines. A farmer-innovator means: i) an individual who has provided or was the source of parent strains used in the development of new plant variety; ii) the local community which has helped to conserve and develop the genetic stocks which have gone into the pedigree of new variety; or iii) the residents of an area rich in plant genetic resources from where breeders or breeding institutions responsible for the new variety

have obtained donors of genes for resistance /tolerance/avoidance to biotic and /or abiotic stress or other valuable characters.

- g) Gene bank- refers to a temperature and humidity controlled facility used to store seed (or other reproductive materials) for future use in research and breeding programs. Also called a seed bank.
- h) Germplasm- means the total genetic variability, represented by germ cells or seeds, available to a particular population of organisms.
- i) Indigenous people- or indigenous groups or 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.
- j) Innovation - refers to the processes or products derived from such processes, whether documented in written, recorded, or oral form, which constitute an introduction of new changes, including alternation, modifications, or improvements.
- k) Plant variety - includes cultivar, clone, folk variety hybrid and strain.
- l) Reproductive material - in relation to a plant will mean a) the sexual seed of a plant; b) a cutting from a plant; or c) any other

part or product of that plant from which another plant can be produced by different technologies including tissue culture method.

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

n) Traditional material- are discoveries, innovations and technologies made by indigenous peoples and local communities that are usually not recorded in written form, and are transmitted orally from generation to generation. Indigenous knowledge form part of traditional knowledge, and refers to knowledge distinct to indigenous peoples. Both terms may be used interchangeably.

SECTION 4 Community Intellectual Property - The following are hereby declared as the intellectual property of their communities of origin, and these communities shall at all times and in all perpetuity be the lawfully recognized holders of the primary and residuary titles to these property:

- a. parent strains and genetic material discovered or selected and conserved by local communities, which were used in the development of new plant varieties, and which can be harnessed for other potential uses;
- b. seeds and reproductive materials selected, cultivated, domesticated and developed by local communities in situ;

- c. agricultural practices and devices developed from indigenous materials, customs, and knowledge;
- d. medicinal products and processes developed from the identification, selection, cultivation, preparation, storage and application of medicinal herbs by local communities and indigenous peoples;
- e. cultural products from local communities, such as weaving patterns, pottery, painting, poetry, folklore, music, and the like;
- f. all other products or processes not made by a single person or juridical personality, which was discovered through a community process, or when the individual making the innovation does not claim the knowledge as his own, provided that any individual or juridical personality making such a claim should present proof of innovation or a history leading to the discovery that would justify his claim.

SECTION 5 Community Ownership of Intellectual Property - A community is any group of people living in a geographically defined area with common history and definitive patterns of relationship. It may be registered with the appropriate government agency as a tribal council, foundation, cooperative, people's organization, or any other form or organization that would effectively represent its interests, provided: that their failure to do so shall not prejudice its status as custodians or stewards of its traditional knowledge, as provided for in Section 4 of this Act.

A community shall automatically become the general owners of any form or product of traditional knowledge, once this is entered in any of the registers provided in Section 6 of this Act. As general owners, they are entitled to collect justifiable

percentage from all profits derived from the commercial use of their knowledge, for a period of ten years starting from the date of registration.

All benefits shall be given directly to the organization that effectively represents the community's interests. In the absence of such an organization, the benefits will be held in trust by the State and will be released only by legislation enacted in favor of the community.

SECTION 6 Registration of Community Intellectual Property - In consultation with the concerned local communities, academic experts, and non-government organizations, the State shall take the initiative in providing technical and other related forms of assistance in the documentation, identification and characterization of community intellectual property. The State shall also promote rules whereby non-government organizations can extend similar assistance to local communities.

All identified and documented community intellectual property shall be entered by the concerned agencies of government in the following registers:

a). For plant varieties, seeds, and other plant reproductive materials: The National Commission on Plant Genetic Resources, which is created through Section 7 of this Act shall keep and update a National Inventory of Plant varieties, which is composed of different Regional Registers of Plant varieties maintained by the Commission.

b). For Cultural Products and Heritage: The National Museum shall keep and maintain a National Register of Indigenous Cultural Heritage.

c) For Inventions, Industrial Designs and Utility Models: Republic Act 165 and the Rules and Procedure of the Technology Transfer Registry under DTI Administrative Order 6, series of 1992 is hereby amended to include as a function of the Bureau of Patents, Trademarks, and Technology Transfer (BPTTT), the maintenance and updating of a

National Register of Indigenous Inventions, Designs and Utility Models, which will include agricultural practices and devices developed from indigenous materials, customs, and knowledge as well as medicinal products and processes developed from the identification, selection, cultivation, preparation, storage, and application of medicinal herbs by local communities and indigenous peoples. All other products and processes which become community intellectual property not covered by the National Inventory of Plant varieties or the National Register of Indigenous Cultural Heritage shall be the jurisdiction of the BPTTT.

SECTION 7 The National Commission on Plant Genetic Resources -

The National Commission on Plant Genetic Resources, hereinafter referred to as the commission, is hereby created under the Office of the President to keep an updated National Inventory of Plant Varieties in pursuit of a mandate to record and recognize the contributions of local communities and indigenous peoples to the development and discovery of new plant varieties, and to provide for the protection of Philippine plant genetic resources from unfair and inequitable exploitation.

SECTION 8 Composition of the Commission. - The

Commission shall be composed of nine commissioners, one of which shall be appointed as Chairperson by the President. The Chairperson must be an eminent agriculturist with expertise in the fields of crop improvement, seed science and technology, and genetic resources conservation and management. She/he shall be in charge of administering procedures giving recognition and protection of genetics resources in the country as provided for in this Act.

Aside from the Chairperson, the Commission shall be composed of the following:

- a). a representative of the Secretary of the Department of Science and Technology, who must be knowledgeable about biodiversity and biotechnology;
- b). a representative of the Secretary of the Department of Agriculture, who must be knowledgeable about biodiversity and/or biotechnology;
- c). a representative of the Secretary of the Department of Health, who must be knowledgeable about pharmaceutical research and development;
- d). a representative of the Secretary of the Department of Trade and Industry who must be knowledgeable about patent laws and intellectual property;
- e). a representative from the non-government organization sector active in the protection of biological diversity to be selected by the NGO's themselves through a process designed by them;
- f). a representative from the farmers' sector active in the promotion of farmers' rights selected through a process designed by the said sector; and
- g). 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.

SECTION 9 Implementing Rules and Regulations. - After the lapse of ninety (90) days from the approval of this Act, the Commission shall be convened to draft the implementing rules and regulations that will ensure the enforcement and implementation of the provisions of this Act. The implementing rules and regulations shall cover the creation or organization of Regional Registers of Plant Varieties in every region of the country, and Genetic Resource Centers suitable for the storage and maintenance of germplasm material, the recognition of Community Gene Banks

organized under non-government auspices, Genetic Identity Centers competent to establish the novel and inventive nature of varieties submitted for the recognition and protection under this Act, and an autonomous Trust to administer a community Gene Fund, deriving its funds from the contributions coming from national and international institutions and others interested in strengthening genetic conservation by local communities.

SECTION 10 Separability Clause. - If any of the provisions of this Act is held or declared to be unconstitutional or invalid by the 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 incorporated in this Act.

SECTION 11 Repealing and Amending Clause. - All laws, executive orders, presidential decrees, rules and regulations or parts thereof which are inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SECTION 12 Effectivity Clause- This Act shall take effect after thirty (30) days following its publication in at least two(2) newspaper of general circulation.

Approved.