WHY IS MUTUALLY SUPPORTIVE IMPLEMENTATION IMPORTANT?

Perspectives of Indigenous Peoples

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Who are Indigenous Peoples?

- From Convention No. 169 of the International Labor Organization (ILO) on Indigenous and Tribal Peoples (ILO 169)
  - Peoples in independent countries
  - who are regarded as indigenous on account of their descent from the populations which inhabited the country or a geographical region to which the country belongs
  - at the time of conquest or colonisation or the establishment of present State boundaries and
  - who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
  - Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.
Indigenous Peoples in Asia

- Philippines – Igorot, Aeta, Lumad, Mangyan
- Indonesia – Masyarakat Hukum Adat, Dayak
Indigenous Peoples in Asia

- Cambodia – “ethnic minorities”, “indigenous ethnic minorities”, Bunong, Kuy
- Nepal – “indigenous nationalities”, “Adivasi janajati”, Sherpa, Gurung, Tharu, Newari
Farmers’ Rights (ITPGRFA) and Traditional Knowledge (NP)

<table>
<thead>
<tr>
<th>Coverage</th>
<th>ITPGRFA</th>
<th>NP</th>
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<tbody>
<tr>
<td>All PGRFA used for food and agriculture</td>
<td>All GRs, except human GRs, used for research and development</td>
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</table>

**Provision on indigenous peoples’**

<table>
<thead>
<tr>
<th>ITPGRFA</th>
<th>NP</th>
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| Article 9 (Farmers’ Rights):  
• Recognizes contribution of farmers & IPLCs to genetic diversity  
• Protection of TK  
• Benefit sharing  
• Participation in decision-making  
• No limit to traditional use of seeds | Article 6 (access to GRs), 7 (Access to TK associated with GRs) and 12 (TK associated with GRs):  
• PIC for access to GRs  
• PIC & MAT for TK associated with GRs  
• Respect for customary laws  
• Effective participation in awareness raising  
• Capacity building |
TK PROTECTION: NATIONAL LEVEL
Indigenous Peoples of the Philippines

- The IPs comprise 17 percent of the total Philippine population
- Majority are in Mindanao
Philippine Indigenous Peoples

- 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
CORDILLERA & REGION I
Isnag, Kalinga, Bontok, Tinguian, Kankanaey, Ifugao, Ibaloi, Balangao, Karao, Bago, Kalanguya

ISLAND GROUPS

NORTHERN & WESTERN MINDANAO
Subanen, Manobo, Higaonon, Matigsalug, Kamigin, Tigwahanan, Badjao, Kalibugan Muslim IPs: Tausog, Sama, Yakan, Jama Mapun

REGION II, CARABALLO MOUNTAINS
Ivatan, Itbayat, Agta, Malaweg, Ibanag, Gaddang, Iwak, Bugkalot, Isinai, Yogad, Dumagat, Itawis, Kalanguya, Paranan

REST OF LUZON, SIERRA MADRE MOUNTAINS
Aeta, Atta, Abelling, Aburlin, Sambal, Dumagat, Remontado, Cimaron, Itom, Kabihug, Tabangnon, Abiya, Isarog

SOUTHERN & EASTERN MINDANAO
Mamanwa, Manobo, Mandaya, Mansaka, Bagobo, Dibabawon, Banwaon, Talaingod, Higaonon, Tagabawa, Mangguangan, Tigwahanon, Isamal

CENTRAL MINDANAO
B’aan, Manobo, Aromanon, T’boli, Teduray, Bagobo, Ubo, Lambangian, Sangil Muslim IPs: Maguindanaon, Maranao, Iranon

- 5 MILLION HECTARES
- 12 MILLION IPs
- 110 ETHNOLINGUISTIC GROUPS
<table>
<thead>
<tr>
<th>INTERNATIONAL INSTRUMENT/ARENA</th>
<th>SUBJECT MATTER</th>
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</thead>
<tbody>
<tr>
<td>Intl Convention on the Elimination of All Forms of Racial Discrimination (ICERD)</td>
<td>Non-discrimination esp on equal participation in all cultural activities</td>
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<tr>
<td>WTO-TRIPS Agreement (art. 27.3[b])</td>
<td>Protection of traditional knowledge &amp; folklore</td>
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<tr>
<td>Convention on Biological Diversity</td>
<td>Sustainable use</td>
</tr>
<tr>
<td>- Nagoya Protocol on ABS</td>
<td>Customary law, community protocols</td>
</tr>
<tr>
<td>FAO-ITPGRFA</td>
<td>Farmers' Rights- Art. 9</td>
</tr>
<tr>
<td>- Standard Matls Transfer Agrmt</td>
<td>Benefit-Sharing</td>
</tr>
<tr>
<td>UNESCO Conventions</td>
<td>Preservation of cultural heritage</td>
</tr>
<tr>
<td>- Intangible Cultural Heritage</td>
<td></td>
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<tr>
<td>- Diversity of Cultural Expressions</td>
<td></td>
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<tr>
<td>UN Declaration on the Rights of Indigenous Peoples (UNDRIP)</td>
<td>Right to self-determination; Cultural heritage protection</td>
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<tr>
<td>WIPO-IGC</td>
<td>Protection of Intellectual property aspects of genetic resources, traditional knowledge, TCEs</td>
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<tr>
<td>Legislation</td>
<td>SUBJECT MATTER</td>
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<tr>
<td>Indigenous Peoples' Rights Act (IPRA. Republic Act 8371)</td>
<td>- rights to self-determination; cultural integrity; free and prior informed consent (FPIC); ancestral domains</td>
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<tr>
<td>Cultural Heritage Act (Republic Act 10066)</td>
<td>Protection of elements of cultural heritage</td>
</tr>
<tr>
<td>Wildlife Act (Republic Act 9147)</td>
<td>Traditional use; right to FPIC in bioprospecting activities</td>
</tr>
<tr>
<td>Traditional and Alternative Medicine Act (Republic Act 8423)</td>
<td>Right to a share from the commercialization of traditional medicine knowledge</td>
</tr>
<tr>
<td>Plant Variety Protection Act (Republic Act 9168)</td>
<td>Farmers' rights to save, exchange, use, share and sell seeds</td>
</tr>
<tr>
<td>Intellectual Property Code (Republic Act 9283)</td>
<td><em>Sui generis</em> protection of plant varieties and animal breeds and a system of protection for community intellectual rights</td>
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The Legal Landscape (1):
At a Glance
## The Legal Landscape (2):
### At a Glance

<table>
<thead>
<tr>
<th>Legislation/Administrative Issuance</th>
<th>SUBJECT MATTER</th>
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<tbody>
<tr>
<td>Animal Welfare Act</td>
<td>grant of exception to the killing of animals when made part of a ritual required by tribal or ethnic custom of indigenous cultural communities</td>
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<tr>
<td>Magna Carta of Women</td>
<td>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</td>
</tr>
<tr>
<td>Technology Transfer Act</td>
<td>Research and devt institute or institution (RDI) to disclose any biodiversity and genetic resource, TK,IKSP in all applications for intellectual property protection</td>
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**Animal Welfare Act** *(Republic Act 8485)*

**Magna Carta of Women** *(Republic Act 9710)*

**Technology Transfer Act** *(Republic Act 10055)*
An Example of a *Sui Generis* approach:
Joint IPOPHL-NCIP Administrative Order

Joint IPOPHL-NCIP Administrative Order

- **Scope**
  “examination and registration on intellectual property applications that use IKSP of IPs”

- **Objectives**
  1. *Harmonized rules to protect intellectual creations of IPs*
  2. *Provide institutional arrangements between IPOPHL and NCIP*
  3. *Prevent misappropriation of IKSP*
Salient features of Joint IPOPHL-NCIP Administrative Order

- IPRs applications required to disclose IKSP used
- If registration not required – disclosure in all communication of subject matter to the public
- IPOPHL may motu proprio or upon request refer application to NCIP for verification of ownership and compliance with FPIC
- Registration only upon compliance with disclosure and compliance with FPIC
- IPOPHL reserves judgment to determine registration and misappropriation
- Collective management by IPs of artistic/literary work
Key issues for mutually supportive implementation

- IP lands are private lands – Native Title Doctrine
  - *ITPGRFA – PGRFAs within IP lands are not within the control of the State and not in the public domain*
  - Will only be part of the MLS if so included, by IPs or with the consent of IPs
  - What incentive can be offered for IPs to include their PGRFAs in the MLS?

- Balancing of the desire to share TK and to control TK

- What to do with *ex-situ* collections that have obtain GRs of IPs without consent?

- Equitable benefit-sharing

- An MLS that is accessible for indigenous peoples

- Role of Customary Laws and Community protocols

- Cooperation between implementation bodies
IYAMAN!

THANK YOU!