

UPDATES ON EMERGING INTELLECTUAL PROPERTY RIGHTS IN THE PHILIPPINES

By:

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This report covers the period from 1 January 2015 to August 2016.

1. Updates on Traditional Knowledge, Genetic Resources and Traditional Cultural Expression

I. TRADITIONAL KNOWLEDGE

- a. AN ACT CREATING THE DEPARTMENT OF INDIGENOUS PEOPLES DEFINING ITS POWERS AND FUNCTIONS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES*¹- seeks to create a Department of Indigenous People (DIP), which shall become the primary Government agency tasked to formulate and implement national policies, plans, and programs relating to the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs).

Section 6. Powers and Functions. The Department shall exercise the following powers, jurisdictions and functions:

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- k. To implement relevant provisions of international treaties and agreements;
- l. To collect and maintain records and facilitate research relating to rights and cultural heritage of ICCs/IPs;
- m. To promote public awareness and insure proper dissemination of information on understanding of Indigenous rights and heritage.

¹ House Bill No. 577.

b. Philippines, DOST hosted APEC Workshop on the Development of Herbal Medicine Database in Asia Pacific Region²

The Philippines, through the Department of Science and Technology (DOST)-Philippine Council for Health Research and Development (PCHRD), hosted the Asia-Pacific Economic Cooperation (APEC) Workshop on the Development of Herbal Medicine Database in Asia Pacific Region on 28 to 29 June 2016 at Hotel Jen Manila.

The two-day workshop discussed strategies on establishing a Herbal Medicine Portal in the Asia Pacific region, which was proposed and supported during the 2014 and 2015 APEC Policy Partnership on Science, Technology and Innovation (APEC-PPSTI) meetings in China and Philippines respectively.

The creation of an internet-based portal of scientifically-validated herbal medicine information hopes to improve access to information on herbal medicine in the Asia Pacific and identify areas of research on herbal medicine which can be a basis for research collaboration.

The Herbal Medicine Database will also help in establishing a network of researchers and information providers working on herbal medicine in Asia Pacific.

II. GENETIC RESOURCES

- a. AN ACT INSTITUTING REFORMS IN THE EXISTING POLICY ON ACCESS AND BENEFIT-SHARING FROM THE UTILIZATION OF PHILIPPINE GENETIC RESOURCES AND FOR OTHER PURPOSES³***- the proposed measure ensures that the customary laws as well as the community protocols of indigenous and local communities, where available, will also be taken into account in discussions relating to the access and benefit-sharing from the utilization of indigenous knowledge systems and practices including the associated traditional knowledge of the genetic resources.

The relevant provisions are:

² <http://www.pchrd.dost.gov.ph/index.php/news/5464-philippines-dost-to-host-apec-workshop-on-the-development-of-herbal-medicine-database-in-asia-pacific-region>

³ House Bill No.2163.

SECTION 5. ACCESS TO GENETIC RESOURCES – The existing policies on access to genetic resources as currently implemented by the appropriate government agencies under Republic Act 9147 shall continue to exist and be implemented for all purposes; however, to facilitate harmonization of these policies with the Nagoya Protocol, the following shall also be implemented:

- (a) Any existing Philippine government agency requiring prior informed consent before access to genetic resources is granted shall provide for the issuance at the time of access an evidence of the decision to grant prior informed consent and the establishment of the mutually agreed terms or the agreement relating to access and benefit-sharing involving the genetic resource. These agencies shall also take administrative and policy measures to notify the Access and Benefit-Sharing (ABS) Clearing-house of the United Nations Convention on Biological Diversity of such issuances;
- (b) Any mutually agreed terms or agreement relating to access and benefit-sharing involving the genetic resource established between the agency or community concerned shall provide for clear provisions on third-party use including the change of intent relating to the utilization of this genetic resource from its non-commercial or scientific stage; any existing implementing regulations of existing agencies for this purpose shall be amended and updated accordingly.

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SECTION 8. MATTERS RELATING TO THE UTILIZATION OF ASSOCIATED TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES – Whenever the indigenous knowledge associated with genetic resources of indigenous and local communities are utilized, the following shall be implemented by the appropriate agencies, particularly the National Commission on Indigenous Peoples, the Palawan Council for Sustainable Development as well as the Philippine Institute for Traditional and Alternative Health Care:

- (a) The customary laws as well as the community protocols of indigenous and local communities, where available, will apply at first stance, in matters relating to access and benefit-sharing from the utilization of indigenous knowledge systems and practices including the traditional knowledge associated with genetic resources;

- (b) Establishment of mechanisms with the effective participation of indigenous and local communities to inform users of their obligations as relates to the utilization of indigenous knowledge systems and practices including traditional knowledge associated with genetic resources;
- (c) Establishment of mechanisms to indigenous and local communities to develop their own community protocols, minimum requirements for mutually agreed terms and model contractual clauses;
- (d) The customary use of indigenous knowledge systems and practices including traditional knowledge associated with genetic resources by the indigenous and local communities themselves shall continue to be respected; this principle will not be recognized if asserted by non-indigenous and local communities.

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SECTION 10. SPECIAL MANDATES OF IDENTIFIED AGENCIES – The following mandates of existing agencies are hereby reinforced to enable them to assist in the implementation of this Act:

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(d) The National Plant Genetic Resource Laboratory – Sec.1 of Presidential Decree 729, as amended by Presidential Decree 1046-a, is hereby further amended as follows:

“(c) To systematically collect, introduce, preserve and maintain a germplasm bank of important and potentially useful agricultural crops AND TO ESTABLISH A SYSTEM OF CHECKPOINTS TO GENERATE INFORMATION CONCERNING THE UTILIZATION OF THE GENETIC RESOURCE TAKING INTO ACCOUNT THE STANDARD MATERIAL TRANSFER AGREEMENT SYSTEM UNDER THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE.

(e) The Philippine Institute for Traditional and Alternative Health Care - there is hereby inserted the following provision, to be known as Sec.12-A, in Republic Act 8423, to implement Art. 2 of the Act, to read as follows:

“SEC. 12-A – RECOGNITION OF BASIC RIGHTS OF INDIGENOUS SOCIETIES, ALSO KNOWN AS INDIGENOUS

CULTURAL COMMUNITIES UNDER REPUBLIC ACT 8371, OR LOCAL COMMUNITIES, IF THEY DO NOT COME UNDER THE DEFINITION OF SUCH INDIGENOUS CULTURAL COMMUNITIES UNDER EPUBLIC ACT 8371,

- (1) THE RIGHT OF OWNERSHIP BY INDIGENOUS SOCIETIES OVER THEIR KNOWLEDGE OF TRADITIONAL MEDICINE;
- (2) THE RIGHT OF THESE INDIGENOUS SOCIETIES TO REQUIRE THE USERS TO ACKNOWLEDGE WHERE THE USERS GOT THE MATERIALS THE USERS ARE UTILIZING AND TO GET SOME SHARE OF BENEFITS, PARTICULARLY OF A FINANCIAL NATURE, FROM ANY OF THE COMMERCIAL USES OF THIS KNOWLEDGE OF TRADITIONAL MEDICINE; AND
- (3) THE RIGHT TO REQUIRE AUTHORIZATION FOR ANY COMMERCIAL USE OF THE TRADITIONAL MEDICINE FROM THE CONCERNED INDIGENOUS SOCIETIES”

b. Genetically engineered rice with high levels of iron and zinc is developed⁴

A transdisciplinary group of scientists has succeeded in increasing iron (Fe) and zinc (Zn) levels in rice through biofortification—a breakthrough in the global fight against micronutrient deficiency or “hidden hunger.” Their research was recently published in Nature’s Scientific Reports.

According to the World Health Organization, Fe deficiency is the most pervasive form of malnutrition and a leading cause of anemia in women and children. Zn deficiency causes stunting and has serious consequences for health, particularly during childhood.

The researchers, who represent institutions in the Philippines, Colombia, Indonesia, USA, Australia, and Japan, have found proof of concept in confined field trials for increasing Fe and Zn levels in rice without a yield penalty or a change in

⁴ <http://ricetoday.irri.org/genetically-engineered-rice-with-high-levels-of-iron-and-zinc-is-developed/>

grain quality. This development, a result of research funded by HarvestPlus, could potentially help several nations reach nutritional targets for Fe and Zn.

c. Genetic makeup of thousands of rice varieties placed in global seed data pool⁵

Genome sequences of more than 3,000 rice varieties have been placed with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) by the world's leading rice research institute in a move boosting plans to set up a global data exchange system for crop genetic resources.

The Philippines-based International Rice Research Institute (IRRI) and the Treaty (ITPGRFA) made the announcement at the 6th session of the Governing Body of the FAO-based 136-member nation plant treaty that held in Rome.

Around the world governments and organizations are storing genetic material in seed banks, but without one single gateway to genetic resource data, it is very difficult for researchers and plant breeders to know what is held where and what genetic resources are contained in the seeds.

d. German envoy helps open new seed processing lab at IRRI⁶

A new seed laboratory has opened at the International Rice Research Institute (IRRI). It will increase the capacity and speed at which seeds are prepared for entry into the International Rice Genebank, where the germplasm of more than 127,000 rice varieties from around the world are kept for conservation, scientific research, and breeding purposes.

e. Big data on 3,000 rice genomes available on the Amazon Web Services (AWS) Cloud⁷

The International Rice Genebank of the T.T. Chang Genetic Resources Center at the International Rice Research Institute (IRRI) in the Philippines contains more than 127,000 rice varieties and accessions from all over the world. These accessions hold a virtually untapped reservoir of genes/traits that can be used to make rice cultivation more sustainable, with a smaller environmental footprint. Traits targeted for improvement include higher nutritional quality; tolerance of pests, diseases, and environmental stresses, such as flood and drought; and reduced greenhouse gas emissions.

⁵ <http://ricetoday.irri.org/genetic-makeup-of-thousands-of-rice-varieties-placed-in-global-seed-data-pool/>

⁶ <http://irri.org/news/media-releases/german-envoy-helps-open-new-seed-processing-lab-at-irri>

⁷ <http://irri.org/news/media-releases/big-data-on-3-000-rice-genomes-available-on-the-aws-cloud>

Three research institutions—the Chinese Academy of Agricultural Sciences (CAAS), the Beijing Genomics Institute (BGI) Shenzhen, and IRRI—collaborated to sequence the genomes of 3,024 rice varieties and lines housed in the IRRI (82%) and the CAAS (18%) genebanks. The sequencing and initial analysis was funded by grants from the Bill & Melinda Gates Foundation and the Chinese Ministry of Science and Technology. This dataset contains millions of genomic sequences from a diverse set of rice varieties that, when combined with phenotyping observations, gene expression, and other information, provides an important step in establishing gene-trait associations, building predictive models, and applying these models to breeding.

Through funding from the Global Rice Science Partnership, the 3,024 genomes were re-analyzed against five popular varieties that represent the three main subgroups of cultivated rice—indica, japonica, and aus. This new 3K RGP data analysis set is massive at 120 terabytes, which is well beyond the computing capacities of most research institutions. However, these new results are now publicly available online, as an Amazon Web Services (AWS) Public Data Set. Accessing the data is free, and use is governed by the stipulations for data analysts and users from the Toronto Statement.

*f. Philippines: IRRI and partners launch Heirloom Rice Project in North Cotabato*⁸

The International Rice Research Institute (IRRI), Philippine Rice Research Institute (PhilRice), Department of Agriculture (DA), and the University of Southern Mindanao (USM) launched the Heirloom Rice Project North Cotabato at a two-day workshop in Davao City on 13-14 January 2015. The project was formally opened with the ceremonial signing of a memorandum of agreement with representatives from the North Cotabato provincial government and the municipalities of Alamada and Banisilan. Located in the southern part of the Philippines, the province is home to several heirloom rice varieties including Dinorado, Kasagpi, Azucena, Hinumay, and Awot.

The Heirloom Rice Project, initially started in the Cordillera Administrative Region (CAR) in Northern Luzon in March 2014, aims to enhance the productivity and enrich the legacy of heirloom or traditional rice through empowered communities in unfavorable rice-based ecosystems through varietal development to market linkages.

⁸ http://asia.ifad.org/en_GB/web/cure/home/-/news/10865/work-tools

g. EXPERT BATS FOR CRYO-CONSERVATION OF TAMARAW, PHILIPPINE DEER IN DOST FORUM⁹

An expert has stated in a National Academy of Science and Technology (NAST) roundtable discussion that native wildlife species which are genetically diverse, such as the tamaraw, Philippine deer, and small ruminants should be considered for cryo-conservation or the process of preserving cells by subjecting them to very low temperatures.

Dr. Lerma C. Ocampo, senior science research specialist at the Philippine Carabao Center, was one of the speakers at the discussion conducted last June 5 by NAST, an attached agency of the Department of Science and Technology (DOST). The discussion tackled the topic “Animal Genetic Resource Management and Cryobanking” and aims to develop policy recommendations for animal genetic resource conservation and guidelines on cryobanking in the Philippines.

III. TRADITIONAL CULTURAL EXPRESSION

a. The Indigo Project: Reviving the Art of Traditional Dye Weaving¹⁰

The Indigo Project promotes the development and implementation of environmental and social standards in hand-woven textiles production. It supports production and sourcing of environmentally friendly natural dyes and fibers, establishes eco-friendly product standards, and scales production of eco-textiles.

In the Philippine, NTFP-EP partnered with CustomMade Crafts Center (CMCC) as its integrated design and marketing arm to give project beneficiaries proper skills training that will allow them to combine modern technology with age-old practices. The goal is to produce world-class materials made of natural dye and fiber that can be promoted not only locally but to the international market as well.

Modi or Modern Indigenous, CMCC’s banner program, for instance, is a lifestyle line that fuses traditional crafts with contemporary design and function. It is a synergy of Philippine tribal artisans and city-bred designers to make culture-

⁹ <http://www.dost.gov.ph/knowledge-resources/news/44-2015-news/715-expert-bats-for-cryo-conservation-of-tamaraw-philippine-deer-in-dost-forum>

¹⁰ <http://newsroom.globe.com.ph/press-release/lifestyle/indigo-project-reviving-art-traditional-dye-weaving>

bound crafts up to date. CMCC, incidentally is one of the social enterprises being supported by leading telecommunications company Globe Telecom.

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Globe helped establish natural indigo dye powdering facilities not only in Aklan but also in Occidental Mindoro, Oriental Mindoro, Zamboanga, and Palawan.

By preserving this craft which is a traditional expression of the art and identity of indigenous and rural peoples, NTFP-EP, CMCC, and Globe are not only able to keep such customs alive but are also able to provide the communities a way to a better life in the face of growing marginalization.

2. Updates on Geographical Indications/ Collective Marks

a. The Intellectual Property Office of the Philippines posted a Notice to Submit Comments and Invitation to the 3rd Public Consultation on the Revised Draft Rules and Regulations on Geographical Indication¹¹

The Bureau of Trademarks of the Intellectual Property Office of the Philippines invited all the interested parties to the 3rd public consultation on the revised draft Rules and Regulations on Geographical Indication on June 25 and 26, 2015, 10 am, at the IPOPHL Multi-Purpose Hall, Intellectual Property Center, 28 Upper McKinley Road, McKinley Hill Town Center, Fort Bonifacio, Taguig City.

b. IPO, UNCTAD Sign Cooperation Deal On IP & Development¹²

The Intellectual Property Office of the Philippines (IPO) signed an agreement with the United Nations Conference on Trade and Development (UNCTAD) that establishes a longer-term cooperation between the two parties in the field of IP and development.

¹¹ <http://www.ipophil.gov.ph/releases/archive-2015/316-notice-to-submit-comments-and-invitation-to-the-3rd-public-consultation-on-the-revised-draft-rules-and-regulations-on-geographical-indication>

¹² <http://www.ipophil.gov.ph/releases/archive-2015/368-ipophil-unctad-sign-cooperation-deal-on-ip-development>

The agreement allows the Philippines to engage longer with UNCTAD and benefit more from the UN agency's advisory services and capacity building activities on cross-cutting IP and development issues. UNCTAD has been providing technical assistance in the form of ad hoc advisory services and capacity building activities to the Philippines in various subject areas related to IP and development since 2013.

The issues at the intersection of IP and development include access to knowledge and access to medicine and with the link between IP and development proving to be crucial in other related and important areas such as food security, geographical indications and traditional knowledge, and climate change.

c. EC: Include geographical indications in EU-PHL FTA¹³

The European Commission (EC) is urging its Philippine counterpart to include the use of geographical indications (GI) in the proposed European Union-Philippines free-trade agreement (EU).

Geographical indications, according to the World Trade Organization, are place names (in some countries also words associated with a place) used to identify the origin and quality, reputation or other characteristics of products.

d. Political and Economic relations¹⁴

Negotiations for an EU-Philippines Free Trade Agreement were launched on 22 December 2015. A first round takes place in May 2016 in the EU. The aim is to conclude an agreement that covers a broad range of issues, including tariffs, non-tariff barriers to trade, trade in services and investment, as well as trade aspects of public procurement, intellectual property, competition and sustainable development.

¹³ <http://www.businessmirror.com.ph/2015/03/11/ec-include-geographical-indications-in-eu-phl-fta/>

¹⁴ http://eeas.europa.eu/delegations/philippines/eu_philippines/political_relations/political_economic/index_en.htm

3. Other Updates

*ASEAN Economic Community (AEC) Blueprint 2025*¹⁵

The AEC Blueprint 2025, adopted by the ASEAN Leaders at the 27th ASEAN Summit on 22 November 2015 in Kuala Lumpur, Malaysia, provides broad directions through strategic measures for the AEC from 2016 to 2025. Along with the ASEAN Community Vision 2025, and the ASEAN Political-Security Community (APSC) Blueprint 2025 and the ASEAN Socio-Cultural Community (ASCC) Blueprint 2025, the AEC Blueprint 2025 forms part of ASEAN 2025: Forging Ahead Together. It succeeded the AEC Blueprint (2008-2015), which was adopted in 2007.

The AEC Blueprint 2025 provides for the following provision:

B.3. Strengthening Intellectual Property Rights Cooperation

31. Strategic measures include the following:

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iv. Enhance regional mechanisms to promote asset creation and commercialization, including the development of supporting schemes for Micro, Small and Medium Enterprises (MSME) and creative sectors through the following key measures:

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c. Promote the commercialization of geographical indication (GI) products in ASEAN by improving the capacity of the productive sector in the development of protection and branding strategies; and

d. Promote a protection mechanism for GIs and genetic resources, traditional knowledge, and traditional cultural expressions (GRTKTCE) and assist in their protection in ASEAN and foreign markets.

¹⁵ <http://asean.org/asean-economic-community/>

Philippines, Mexico sign strengthened IP cooperation deal at APEC¹⁶

The Philippines and Mexico signed a new and expanded intellectual property (IP) cooperation agreement that aims to assist in growing trade and transfer of innovation between the two countries.

The agreement builds on the technical collaboration agreement signed by the Philippines and Mexico in September 2013 in Geneva, Switzerland. Under the agreement, the IPOPHL and the Mexican Institute of Industrial Property (IMPI) vowed to work together to promote innovation, creativity and technological advancement. The two IP offices agreed to cooperate to ensure the proper administration, protection, use and enforcement of industrial property rights such as invention patents, utility models, industrial designs, trademarks and geographical indications.

IPOPHL-UKIPO strengthen ties on IP enforcement¹⁷

Officials of the Intellectual Property Office of the Philippines (IPOPHL) and the Intellectual Property Office of the United Kingdom (UKIPO) met on 15 March 2016 to discuss the work program between the two offices as stipulated in the Memorandum of Understanding (MOU) signed in 8 October 2015 in Geneva, Switzerland. Included in the work program is a workshop on enforcement measures for online infringement, participation in relevant trainings of both offices, and an exchange of personnel under a study visit program.

PH-JP Strengthens Bilateral Cooperation through IP Work Program¹⁸

The Philippines and Japan through the Intellectual Property Office of the Philippines (IPOPHL), Japan Patent Office (JPO) and the Japan External Trade Organization (JETRO) held a bilateral meeting last 9-10 February 2016 to discuss the work program to be undertaken by IPOPHL and JPO under the Memorandum of Cooperation (MOC) covering IP cooperation signed in May 2015.

¹⁶ <http://www.ipophil.gov.ph/releases/archive-2015/350-philippines-mexico-sign-strengthened-ip-cooperation-deal-at-apec>

¹⁷ <http://www.ipophil.gov.ph/releases/2014-09-22-06-26-21/417-ipophil-ukipo-strengthen-ties-on-ip-enforcement>

¹⁸ <http://www.ipophil.gov.ph/releases/2014-09-22-06-26-21/409-ph-jp-strengthens-bilateral-cooperation-through-ip-work-program>

The work program allows an exchange of knowledge and training schemes between the two IP offices aimed to further enhance the capacity of patent examiners, speed up the examination process, and improve the quality of examination.

IPOPHL Inks Cooperation Agreement with INTA¹⁹

The Intellectual Property Office of the Philippines (IPOPHL) signed a cooperation agreement with the global organization of trademark owners and legal advisors, the International Trademark Association (INTA) on 4 May 2015.

Signed on the sidelines of the 137th INTA Annual Meeting in San Diego, California, the cooperation agreement has established a framework for broader cooperation between the two parties in the areas of promotion, protection and enforcement of trademarks, research and information, and capacity-building. It has also strengthened the link between the government and the private sector as INTA represents the world's top global brands.

IPSO Angeles holds IPR BOS at DTI's Food Packaging and Labeling Training²⁰

IPFOU Field Specialist Ms. Marirose Lozano gave the group an overview of the various type of intellectual property, namely patent, industrial design, utility model and copyright. Aware of the relevance in the business operation of the group, Ms. Lozano tackled Trademarks in detail by discussing, among others, kinds of trademarks according to distinctiveness, criteria for registrability, application requirements and process, as well as fees. She also emphasized the importance of IP as a tool for product development.

PH Pilots Inventor Assistance Program²¹

The Philippines was selected by the World Economic Forum (WEF) and the World Intellectual Property Organization (WIPO) to be one of the pilot countries for the

¹⁹ <http://www.ipophil.gov.ph/releases/archive-2015/319-ipophl-inks-cooperation-agreement-with-inta>

²⁰ <http://www.ipophil.gov.ph/releases/2014-09-22-06-26-21/406-ipso-angeles-holds-ipr-bos-at-dti-s-food-packaging-and-labeling-training>

²¹ <http://www.ipophil.gov.ph/releases/2014-09-22-06-26-21/400-ph-to-pilot-wef-and-wipo-s-inventors-assistance-program>

implementation of the Inventors Assistance Program (IAP). Through the Program, eligible inventors and businesses seeking patents for their inventions will receive pro bono advice from IP lawyers for their IP filings in the Philippines or abroad.

The IAP was launched in the country on March 2016 in a joint activity among WEF, WIPO and the Intellectual Property Office of the Philippines (IPOPHL).