

Special System for the Collective Intellectual Property Rights of Indigenous Peoples

ACT 20

June 26, 2000

(Published in *Gaceta Oficial* (Official Gazette) No. 24,083 of June 27, 2000)

Concerning the Special System for the Collective Intellectual Property Rights of Indigenous Peoples, for the Protection and Defense of their Cultural Identity and Traditional Knowledge, and Setting out other Provisions

THE LEGISLATIVE ASSEMBLY

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I. Chapter I Purpose

Article 1. The purpose of this Act is to protect the collective intellectual property rights and traditional knowledge of indigenous peoples in their creations, such as inventions, models, drawings and designs, innovations contained in the images, figures, symbols, graphics, stone carvings and other details; as well as the cultural elements of their history, music, art and traditional forms of artistic expression suitable for commercial use, via a special system to register, promote and market their rights, in order to highlight the social and cultural values of indigenous cultures and guarantee social justice for them.

Article 2. The customs, traditions, beliefs, spirituality, religion, worldview, expressions of folklore, artistic expressions, traditional knowledge and all other traditional forms of expression of indigenous peoples are part of their cultural heritage; they may not therefore be the subject of exclusive rights of any kind on the part of third parties that have not been authorized via the intellectual property system, such as copyright, industrial designs, marks, geographical indications and other indications, unless expressly requested by the indigenous peoples. Nevertheless, the rights recognized above shall be observed and unaffected pursuant to existing legislation.

II. Chapter II Items suitable for protection

Article 3. That worn by the Kuna, Ngöbe and Buglé, Emberá and Wounaán, Naso and Bri-bri peoples is hereby recognized as traditional indigenous dress, such as:

1. *Dule mor*. Consists of the combination of clothing with which Kuna men and women identify the culture, history and portrayal of their people. It is made up of the *morsan*, *saburedi*, *olassu* and *wini*.
2. *Jio*. Consists of the combination of clothing with which Embera and Wounaán men and women identify the culture, history and portrayal of their people. The women use the *wua* (*paruma*), *boró barí*, *dyidi dyidi*, *kondyita*, *neta*, *parata kerá*, *manía*, *sortija*, *kipará* (*jagua*), *kanchí* (*achiote*) and *kera patura*. The men use the same pieces of clothing, except the *paruma*; men also use the *amburá* and *andiá* ear and chest coverings.
3. *Nahua*. Consists of the dress with which Ngöbe and Buglé women identify the culture, history and portrayal of their people. It is a one-piece, calf-length dress that is made of smooth, brightly coloured cloth and decorated with geometric appliqués of contrasting colours, and it includes a wide necklace made with beads.

The technical description of these traditional forms of dress shall be recorded in their respective registers.

Article 4. This Act recognizes the collective rights of indigenous peoples in their musical instruments, music, dances or performances, the oral and written expressions that are part of their traditions and make up their historical, cosmological and cultural expression.

Requests for registration of these collective rights shall be made by the respective Congresses or traditional indigenous authorities to the Directorate General of Registration of Industrial Property of the Ministry of Commerce and Industry, hereinafter DIGERPI, or to the National Copyright Directorate of the Ministry of Education, as appropriate, for approval and registration.

Article 5. The collective rights of indigenous peoples in their traditional artistic and work tools, as well as in the technique for their manufacture, expressed in national raw materials, through the elements of nature, their processing, preparation, combination of natural dyes, including the ivory palm and semi-precious wood (*cocobolo* and *nazareno*) carvings, traditional baskets, *nuchus*, beads, leather bags, and all other traditional cultural expressions of these peoples, are hereby recognized.

These rights shall be registered upon the request of indigenous general congresses or traditional authorities to the departments mentioned in the previous article.

Article 6. Those objects incurring protection that may be registered as set out in this Act are hereby designated collective rights of indigenous peoples, in order to protect their originality and authenticity.

III. Chapter III Registration of collective rights

Article 7. The *Departamento de Derechos Colectivos y Expresiones Folclóricas* (Department of Collective Rights and Expressions of Folklore), through which shall be

granted, *inter alia*, the registration of the collective rights of indigenous peoples, is hereby created within DIGERPI.

This registration shall be requested by indigenous general congresses or traditional authorities to protect their dress, arts, music and any other traditional rights incurring protection.

The registration of the collective rights of indigenous peoples shall neither lapse nor have a fixed duration; application for such registration to DIGERPI shall not require the services of a lawyer and shall be exempt from all payment. Appeals against said registration shall be notified personally to the representatives of indigenous general congresses or traditional authorities.

Article 8. The provisions concerning collective and guarantee marks contained in Act 35 of 1996 shall be applicable to the present system, insofar as they do not infringe the rights recognized in the present Act.

Article 9. DIGERPI shall create the position of collective indigenous rights examiner, to protect the intellectual property and other traditional rights of indigenous peoples. This public servant shall be empowered to examine all applications made to DIGERPI in relation to the collective rights of indigenous peoples, to prevent registrations in violation of this Act.

IV. Chapter IV Promoting indigenous art and cultural expressions

Article 10. The arts, crafts, dress and other forms of cultural expression of indigenous peoples shall be the subject of promotion and encouragement by the National Directorate General of Crafts of the Ministry of Commerce and Industry.

The National Directorate General of Crafts or the Provincial Offices of said Ministry, with the consent of local indigenous authorities and upon request by the interested party, shall stamp, print or affix, free of charge, a certification on the work of art, item of dress, craft or other form protected by patent or copyright, which testifies to the fact that it was created using traditional indigenous methods and/or by indigenous hands. For this purpose, the office issuing the certification has the authorization to inspect the workshops, materials, finished products and processes used.

Article 11. The Ministry of Commerce and Industry shall do what is necessary for indigenous craftspeople to participate and exhibit their work in national and international exhibitions. The National Directorate General of Crafts shall contribute to the celebration of Indigenous Craftspeople Day under the auspices of the Ministry.

Article 12. In national and international presentations of Panamanian indigenous culture, the exhibition of indigenous people's dress, dances and traditions shall be mandatory.

Article 13. The Ministry of Education shall include content in the school curriculum referring to indigenous artistic expressions as an integral part of national culture.

Article 14. Competent public institutions shall be empowered to publicize and promote, in conjunction with indigenous general congresses and traditional

authorities, the history, customs, values, and artistic and traditional expressions (including dress) of indigenous peoples as an integral part of national culture.

The exhibition and sale of indigenous crafts made by students shall be allowed at school fairs for the benefit of the students' education center.

V. Chapter V Use and Marketing Rights

Article 15. The right to use and market the art, crafts and other cultural expressions based on the traditional heritage of indigenous peoples must be governed by each people's rules for use, approved and registered with DIGERPI or with the National Copyright Department of the Ministry of Education, as the case may be.

Article 16. Folkloric dance troupes that give artistic performances on the national and international stage shall be hereby exempt from the previous article. Nevertheless, the natural or legal persons organizing artistic performances to highlight all or part of an indigenous culture shall include members of said culture in the performance. If it is not possible to hire these persons, the authorization of the respective indigenous general congress or traditional authority shall be required in order to preserve the authenticity of the performance. The National Institute of Culture shall enforce the fulfillment of this obligation.

VI. Chapter VI Prohibitions and Sanctions

Article 17. Subparagraph j is hereby added to Article 439 of the Administrative Code (*Código Fiscal*), as follows:

Article 439. Shall be importable into the Republic foreign goods from all countries except those listed below: ...

j. Non-original products, be they printed, embroidered, woven or any other article that imitates, completely or partly, the workmanship of the traditional dress of indigenous peoples, as well as said peoples' musical instruments and traditional works of art.

Article 18. Paragraph 7 is hereby added to Article 16 of Act 30 of 1984, as follows:

Article 16. The following acts shall constitute the crime of smuggling:
...

1. The hidden, undeclared possession, without transitional authorization under customs law, of non-original products that imitate, in whole or in part, the workmanship of the traditional dress of the indigenous peoples of Panama, as well as the materials and musical instruments, and works of art or crafts of said peoples.

Article 19. A paragraph is hereby added to Article 55 of Act 30 of 1984, as follows:

Article 55. ...

When the customs offense involves goods that imitate products belonging to the indigenous peoples of Panama, of the fifty per cent (50%) of the fine that is not transferable to the informers and apprehending parties mentioned in the present article, fifty per cent (50%) shall go to the National Treasury, and the other fifty per cent (50%) shall be earmarked for the investment expenses of the corresponding indigenous reserve or people, according to the process established by law.

Article 20. The industrial reproduction, in whole or in part, of traditional dress and other collective rights recognized in this Act is hereby prohibited, unless authorized by the Ministry of Commerce and Industry, with the prior express consent of indigenous general congresses and councils, and as long as it does not contravene the provisions of this Act.

Article 21. In cases not covered by customs law and industrial property law, infringements of this Act shall be sanctioned, according to severity, with fines from one thousand Balboas (B/.1,000.00) to five thousand Balboas (B/.5,000.00). For repeat offenses, the fine shall be double the above amount. The sanctions established in this standard shall be enforced in addition to the confiscation and destruction of the products used to commit the infringement.

Of the fines levied pursuant to this Article, fifty per cent (50%) shall go to the National Treasury, and the other fifty per cent (50%) shall be earmarked for the investment expenses of the corresponding indigenous region or people.

Article 22. The following authorities shall be empowered to apprehend the transgressors of this Act, take preventive measures with regard to the respective products and articles, and hand them over to the appropriate officials:

1. The Chief of the region or the Governor of the province, in cases where the former does not exist.
2. The General Assembly of the corresponding indigenous region. For this purpose, the traditional authorities may request the help and co-operation of the Police Force.

Article 23. Small-scale non-indigenous craftspeople who earn their living producing, reproducing and selling replicas of Ngöbe and Buglé indigenous crafts and who reside in the districts of Tolé, Remedios, San Félix and San Lorenzo in the province of Chiriquí shall be exempt from the present Act. These small-scale non-indigenous craftspeople may manufacture and market these replicas, but they may not claim the collective rights of indigenous peoples recognized by this Act.

VII. Chapter VII Final provisions

Article 24. The non-indigenous Panamanian craftspeople who, at the time of entry into force of this Act, earn their living producing, reproducing and selling replicas of traditional indigenous crafts and are registered with the National Directorate General of Crafts, shall be allowed to carry out such activities with the consent of traditional indigenous authorities.

The Ministry of Commerce and Industry, after checking the date of registration and the date on which the craftsperson's license was issued, shall grant the corresponding permits and authorizations. However, non-indigenous Panamanian craftspeople shall affix, print, write or indicate, in a clear manner, that the work is a replica, as well as its place of origin.

Article 25. For the purposes of protection, use and marketing of the collective intellectual property rights of the indigenous peoples covered by this Act, the indigenous artistic and traditional forms of expression from other countries shall enjoy the same benefits established by said Act, provided they are the result of reciprocal international agreements with said countries.

Article 26. This Act shall be regulated by the Executive via the Ministry of Commerce and Industry.

Article 27. The present Act adds paragraph 7 to Article 16, and a paragraph to Article 55 of Act 30 of November 8, 1984, as well as subparagraph j to Article 439 of the Administrative Code, and repeals all contrary provisions.

Article 28. This Act shall come into effect upon enactment.

FOR COMMUNICATION AND EXECUTION

Approved upon third reading, at the *Palacio Justo Arosemena*, Panama City, on the *fifteenth* day of the month of May of the year 2000.

President

Secretary General

Enrique Garrido Arosemena

José Gómez Núñez

**NATIONAL EXECUTIVE AUTHORITY – PRESIDENCY OF THE REPUBLIC –
PANAMA, REPUBLIC OF PANAMA, JUNE 26, 2000.**

MIREYA MOSCOSO

JOAQUIN JACOME DIEZ

President of the Republic

Minister of Commerce and Industry