

TITLE:	<p style="text-align: center;">COMBATING BIOPIRACY: HARMONIZING THE CONVENTION ON BIODIVERSITY (CBD) AND THE WTO TREATY ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS) IN RELATION TO THE PROTECTION OF INDIGENOUS TRADITIONAL KNOWLEDGE AND GENETIC RESOURCES</p>
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DATE:	<p style="text-align: center;">2012</p>
<p>ABSTRACT:</p> <p><i>Biopiracy or the theft of traditional knowledge and genetic resources without just compensation is a global environmental issue related to two international agreements — the Convention on Biological Diversity (CBD) and the World Trade Organization (WTO) Treaty on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The CBD establishes sovereign national rights over biological resources and commits member countries to conserve them, develop them for sustainability, and share the benefits resulting from their use. The TRIPS, on the other hand, aims to promote adequate and effective protection of intellectual property rights (IPRs) to reduce impediments to international trade.</i></p> <p><i>However, there are perceived inconsistencies between the two laws, which have been the subject of international debate. While the CBD promotes the right of indigenous or local communities to prohibit IPRs on genetic resources, TRIPS requires the provision of IPRs on these resources. Moreover, the CBD provides that access to genetic resources shall be subject to prior informed consent from these communities, just compensation and equitable benefit sharing. In TRIPS, there are no such provisions, leading some developing countries, communities and authors to believe that TRIPS facilitates biopiracy. Despite this, many countries, including the Philippines, are signatories to both treaties.</i></p> <p><i>Generally, when a conflict exists between two treaties dealing with the same subject matter, the applicable rule, as provided for by Article 30 of the Vienna Convention on the Law of Treaties, is that the latter law prevails over the first. Applying this, TRIPS will prevail since it came into force after the CBD. The problem, however, is that the subject matter of the CBD and TRIPS basically differ. CBD deals with the protection of biodiversity, while TRIPS deals with the protection of IPRs. States should thus endeavor to simultaneously implement and harmonize both treaties to fully ratify them and provide greater protection against biopiracy.</i></p>	

One way to do this is to allow communities the right to patent their traditional knowledge and genetic resources, in line with the current IPR system. However, a deeper analysis of the CBD, TRIPS and other related laws will show that traditional knowledge and genetic resources do not fit into the current IPR system. For instance, inventions protected by patent law must be new, non-obvious and useful. Indigenous knowledge may be an invention, but because it is passed down from one generation to another, it may not meet the level of novelty needed for patent protection. Moreover, patents are limited in duration and are vested on "inventors." On the other hand, traditional knowledge is normally not attributed to a single "inventor" but is communally held. Finally, maintaining and enforcing a patent can be quite expensive and burdensome for indigenous communities.

Thus, the better solution would be to identify a sui generis system of IPRs that will specifically cater to the subject matter. This can be done on the international level through an amendment of the TRIPS, and on the national level, through sui generis laws. This way, the TRIPS and CBD can be harmonized and consequently, greater protection can be afforded to traditional knowledge and genetic resources in order to prevent biopiracy.

TITLE:	LIVE AND LET DIE: ESTABLISHING THE LEGAL STATUS OF ADVANCE DIRECTIVES FOR REFUSAL OF LIFE-SUSTAINING MEDICAL TREATMENT, THEIR ENFORCEABILITY AND LIMITATIONS
AUTHOR:	JUAN PAOLO MIGUEL B. LEIDO
DATE:	2012

ABSTRACT:

Death is a fate that awaits everyone—there is no surer event in life than its end. Yet despite its certainty, there is a deep-rooted cultural aversion to the idea of death: we knock on wood when we speak of it, we grow superstitious when we are bereaved by the death of a loved one, we euphemise the very word. At most, we have a secret morbid fascination for it; sensationalist media reminds us of its actuality, and yet we engage it at arms length, and only through the framed reality of the TV screen, the computer monitor, or the printed word. Such regard for death is reflected in our laws, or rather, for purposes of this thesis, the lack of such laws, for the Philippine legal setting has not explicated any true recognition of our control over the circumstances that surround our death. Several jurisdictions outside of the Philippines have already recognized such ability to control, limited in the medical field, by capacitating a patient to determine the extent of his treatment at the end of his life through mechanisms called advance directives.

Though recognized by practice in the Philippine medical setting, the lack of an explicit legal framework for advance directives in end-of-life care raises problems in the enforceability of such directives and muddles the scope of patients' rights. Read however in conjunction with the constitutionally granted rights of liberty and privacy, and the state policy of protecting and promoting the health of the citizenry, a patient nearing death may—subject to certain conditions—assert a right of self-determination in choosing his or her end-of-life care, including a right to refuse treatment ranging from the refusal of resuscitative efforts to the withdrawal of life-sustaining treatment.

This thesis is about death, and the choices that people may make in their dying—the very right to die. It focuses on those circumstances—those very real and cruel situations—wherein people's lives are so deprived of the inherent and essential qualities of living, by reason of grave illness or physical incapacity, that they would rather choose to end their lives than suffer the burdens such a debilitated manner of living leaves them. In recognizing the right to die, this study aims to further expand what it means to enjoy the right to life and liberty—for one cannot be said to possess such rights if one is deprived of the control of the conditions, within the bounds of the law and under particular circumstances, on which it will end.

TITLE:	<p style="text-align: center;">RAISING THE WHITE FLAG THE EFFECTS OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION ON EXTRADITION AND MUTUAL LEGAL ASSISTANCE IN THE PHILIPPINES</p>
AUTHOR:	<p style="text-align: center;">FAY IRENE L. GURREA</p>
DATE:	<p style="text-align: center;">2012</p>

ABSTRACT:

Clever and ingenious are the ways in which Corruption seeps and masks itself in society, and fighting it has to be equally, if not more, innovative. As new opportunities to pursue wealth and power abound, so do new ways to maneuver them illicitly. With today's technology and fast-paced lifestyle, pocketing and concealing illegal wealth has become a piece of cake, especially now that the proceeds of Corruption, and the offenders themselves, can cross borders almost instantaneously.

Recognizing this, and the need of States to combat Corruption through mutual cooperation, the United Nations in 2003 adopted the United Nations Convention Against Corruption or the "UNCAC." The Philippines recognized the same ideals in 2006 when it ratified the UNCAC as part of its efforts to combat Corruption.

One of the primary objectives of the UNCAC is to facilitate International Cooperation between States. In doing so, the UNCAC mandatorily provides that State-Parties shall cooperate in criminal matters relating to Corruption, primarily through Extradition and Mutual Legal Assistance.

Extradition and Mutual Legal Assistance are instruments of International Cooperation wherein States assist each other in investigating and bringing to trial persons suspected of having committed transnational crimes on the basis of treaties, customary practice and national laws.

Extradition and Mutual Legal Assistance, however, are granted only pursuant to a treaty or convention. As of the end of 2011, the Philippines only has Extradition treaties with thirteen countries, and Mutual Legal Assistance treaties with eight countries. Thus, with respect to other countries that the Philippines has no treaty or agreement with, International Cooperation remains a far-fetched reality.

Now, the UNCAC offers a stark solution. By allowing the Convention to be used as the legal basis for international Cooperation, the 159 State-Parties to the Convention can now cooperate with each other without resorting to the cumbersome treaty-making process.

As a State-Party to the Convention, the Philippines is tasked with the responsibility of ensuring its laws are compliant to the Convention, particularly with the International Cooperation aspect of the agreement.

However, with regard to Extradition, the Republic of the Philippines has made a reservation declaring that it does not consider the Convention as a legal basis for cooperation on Extradition with other States.

With regard to Mutual Legal Assistance, the Philippines has no implementing legislation, making the UNCAC of no legal force and effect. In complying with its obligations set forth in the Convention, and in promoting the interest of best practices for International Cooperation, the Philippines' reservation must be formally withdrawn, not only because it is incompatible with the object and purpose of the treaty, but also because its reasoning is illogical, and because it goes against the Philippines' other treaty commitments.

Further, in order to comply with its obligation to expedite International Cooperation procedures and to simplify evidentiary requirements, the Philippines' Mutual Legal Assistance protocols must be supplemented by the enactment of legislation. Without the proper legislation, our anti-corruption agencies would be lacking the teeth necessary to curb corruption in the transnational level.

These means of combating Corruption, in the form of International Cooperation, are instrumental in serving justice to transnational criminal offenders, which have grown in number since the prevalence of modern transportation and technology. Unless the Philippines allows itself to breach its international obligations, impair its Financial Action Task Force standing, and become a safe haven for corrupt offenders, sufficient measures must be taken in the here and now to prevent and prosecute Corruption, before it is too late.

In the words of former U.N. Secretary General Kofi Annan, one thing is certain: If crime crosses borders, so must law enforcement.