

The Philippines' Approach to Access and Benefit Sharing for Genetic Resources and Indigenous Knowledge

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1.0 Ratification of the Convention on Biological Diversity

The Philippines was one of the earliest signatories of the Convention on Biological Diversity (CBD). The Philippine Government acceded to the CBD in 1992. The Philippine Congress ratified the CBD on 31 May 1993. With this the country became the thirty-first State to ratify the CBD.

The primary issue the Philippine Congress weighed when it considered ratifying the Convention was the complementarity of the CBD's goals and objectives with the goals of the Philippine Constitution. The Philippine Constitution espouses indirectly the goals of the Convention such as:

- Conserving nature through a balanced and healthy ecology in accord with its rhythm and harmony;
- Using equitably natural resources by recognising and promoting the rights of indigenous cultural communities within the framework of unity and national development; and
- Using natural resources sustainably.

Consideration was also given to the technical and financial benefits/assistance that the Philippines could access especially since it is classified as a "conservation hotspot" because of its high rate of biodiversity loss.

Furthermore, the Philippines Congress recognised the importance of concerted actions to sustainably use biological resources, particularly at the international level.

While waiting for the Convention to be ratified, a multi-sectoral consultation took place in November 1992. It involved scientists, academicians, policy makers, NGOs and professionals from the private sector.

The goals were for stakeholders to share information between themselves and to help them to better understand the concept and value of biodiversity and the salient provisions of the CBD. The consultation further enhanced the national framework plan, known then as the Philippine Strategy for Biological Diversity Conservation (PSBDC), which was being finalised.

In 1994, the Philippines President approved the PSBDC and issued Memorandum Circular No. 289. The Memorandum Circular mandated governmental agencies to integrate the PSBDC into their sectoral plans, programmes and projects. It also mandated government agencies to operationalise the PSBDC's sustainable biodiversity and resource management objectives.

The Strategy assesses the state of biodiversity in the Philippines. It has eighteen broad objectives. These address the issues of biodiversity policy, sustainable use, sustainable agriculture, biotechnology and property rights, community-based management, participation of local communities in research, recognition of ancestral domain and traditional knowledge and practices, public education and awareness and institutional capacity building.

The PSBDC was further refined by the Philippine Biodiversity Country Study (PBCS), a nine month project funded by the United Nations Environment Programme (UNEP). The PBCS specifically addresses Article 6 of the CBD. This Article requires Contracting Parties to (1) develop national strategies, plans and programmes to conserve and sustainably use biodiversity, and (2) integrate biodiversity into relevant sectoral or cross sectoral plans, programmes and policies.

The National Biodiversity Strategy and Action Plan includes a list of programmes, projects and activities as well as resource requirements. It is one of the major PBCS outputs. It consolidates the legal and institutional foundations for a concrete plan of action to conserve and sustainably develop the country's biodiversity.

2.0 Genetic Resources and Benefit Sharing

The 1987 Philippine Constitution states that all lands of the public domain, water, minerals, fisheries, forests, wildlife, flora and fauna, and other natural resources, among others, are owned by the State (Section 2, Article XII). The State fully controls and supervises the disposition, development and utilisation of these resources. Likewise, it is also a State policy to manage, protect, sustainably develop or use biological and genetic resources to ensure their conservation.

Executive Order No. 247 (Prescribing Guidelines and Establishing a Regulatory Framework for the Prospecting of Biological and Genetic Purposes, and for other Purposes) was issued on 18 May 1995 by President Fidel V. Ramos to implement the CBD's provisions. The Department of Environment and Natural Resources (DENR) subsequently issued Department Administrative Order No. 96-20 to implement E.O. 247. This order details how the DENR and other concerned institutions and agencies will administer and operationalise regulation, research, collection and use of the country's biological and genetic resources.

E.O. 247 was developed out of the need for a comprehensive policy to regulate access to Philippine genetic resources. It underwent several consultations with academic institutions and other sectoral groups before the President finally signed it.

The E.O. primarily aims to regulate biological and genetic resources prospecting to ensure that these resources are protected, conserved developed and put to the sustainable use and benefit of the national interest. The E.O. aims also to promote the development of local capability in science and technology to achieve technological self-reliance in selected areas.

E.O. 247 covers prospecting of all biological and genetic resources in the public domain. Also covered are natural growths on private lands which foreign and local individuals, entities, organisations, whether government or private, intend to use. All bioprospecting activities aimed at discovering, exploring or using biological and genetic resources for pharmaceutical development, agricultural and commercial applications are covered as well. Traditional uses by indigenous cultural communities and local communities are exempted.

As a framework to regulate biodiversity prospecting, the E.O. has four basic elements. These are:

- (1) A system of mandatory research agreements between collectors and the government with minimum terms on providing information and samples, technology co-operation and benefit sharing;
- (2) An Inter-Agency Committee to consider, grant, monitor, and enforce compliance with research agreements and to co-ordinate further institutional, policy and technology development;
- (3) A requirement of and minimum process standards for prior informed consent from local and indigenous communities where collecting materials is carried out; and

- (4) Minimum requirements to conform to environmental protection laws and regulations.

The research agreement is the legal instrument issued by the Philippine Government to authorise prospecting for biological and genetic resources in the country. E.O. 247 provides for two types of research agreements: academic research agreements and commercial research agreements.

Academic research agreements are for academic and scientific activities. They are valid for five years. This agreement is issued to recognised Philippine academic and research institutions, government agencies and inter-governmental institutions.

Commercial research agreements are intended for direct or indirect commercial uses. They are valid for three years. They are issued to all private persons or commercial corporations, whether foreign or domestic. These entities are legally presumed to have commercial motives.

At times it is quite difficult to distinguish commercial agreements from academic agreements since academic research particularly in the field of biotechnology often leads directly or indirectly to commercial applications (Mugabe, et al., 1996). This is the reason why E.O. 247 presumes foreign collectors have commercial intent.

Box 10 lists the minimum terms and conditions of academic and commercial research agreements. These are based on E.O. 247.

BOX 10: Minimum Terms and Conditions for Research Agreements

Collection, Transport, Export and Deposition

- Collecting is limited to the specimens/species allowed under the agreement.
- Collecting is limited to designated collection sites only.
- Specimens/species collected and/or transported outside the country must be free from any diseases.
- A complete set of voucher specimens must be deposited with the National Museum of the Philippines (NMP) or a duly designated entity in the area; holotypes shall only be deposited at the NMP.
- A complete set of all living specimens collected is to be deposited in mutually agreed and duly designated depositories.
- Specimens shall be subject to strict quarantine procedures, existing CITES rules and regulations and bioprospecting guidelines for export.
- Specimens shall be subject to transport permit or postal clearance secured from the concerned government agency.

Ownership, Access and Collaboration

- Specimens collected remain the property of the Philippine Government.
- Filipino citizens and any Philippine Government entities shall have complete access to specimens collected and data/information generated from the research/project undertaking.
- All discoveries of commercial products derived from Philippine biological and genetic resources shall be made available to the Philippine Government and local communities concerned.
- The researcher shall bear the cost of collaborating with and involving local scientists/researchers/individuals in any bioprospecting activity and subsequent technology development.
- Technology developed shall be made available to the Philippine Government without royalty to the principal.

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BOX 10: Minimum Terms and Conditions for Research Agreements

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Benefit Sharing

- All benefits resulting directly or indirectly from bioprospecting activities are to be shared equitably and fairly between the Philippines Government, the communities concerned and the researcher.
- Equity is to be remitted where technology/commercial product development is based on resources taken from the country.
- Royalties, benefits and technology will be transferred to the Philippine Government and local communities concerned through a separate agreement.
- Equipment used in research will be donated to the concerned Philippine Government agency, institutions or universities.

Fees and Bonds

- Bioprospecting fees are to be paid when the research agreement is approved.
- A performance, compensation, ecological and rehabilitation bond is to be remitted.

Reporting

- Quarterly and semi-annually reporting is required to monitor progress on research, status of the collection areas and the technology developed.

The commercial research agreement requires Filipino scientists to be identified as collaborators for the research to be undertaken. This is designed to ensure that local experts are involved. Local collaborators may either be from the academic institutions, national research agencies or from the private sector.

Since approving E.O. 247 in 1995, the Philippines has yet to issue a research agreement for bioprospecting. The DENR, as the lead-implementing agency for E.O. 247, has yet to develop a database to show the commercial and non-commercial demand for genetic and biological resources. Under the DENR's permit system most of the biological and genetic resources used for academic and scientific purposes included samples of plant and animal parts as well as the seeds, hairs, tissues, by-products and derivatives of biological resources.

Several difficulties have been encountered while implementing E.O. 247. These include: the (1) E.O.'s scope and coverage, (2) the prior informed consent requirement, (3) fair and equitable benefit sharing and (4) the processing period

for the research agreement. Some of these problems may be symptomatic of the Convention itself.

2.1 Scope and coverage of the Executive Order

Bioprospecting is very broadly defined in the E.O. Not only does it apply to the activities of all bioprospectors, but it also applies to the activities of academic and scientific institutions, their researchers, as well as Philippine Government entities primarily involved in biodiversity conservation work. For example, scientific inventories to conserve biodiversity are considered bioprospecting under the E.O because collecting is involved. Similarly, conserving traditional crop varieties and endangered, endemic wild fauna involves collecting. Several NGOs and scientific groups in several fora have raised this issue.

Traditional uses are exempted from the E.O. The difficult problem is identifying traditional users and monitoring their use of genetic resources.

The E.O. is not clear whether it applies to human genes, although the Conference of the Parties to the CBD explicitly stated that the CBD does not apply to human genomes. Some people believe that the E.O. should apply to human genes since indigenous communities in the Philippines have already been subjected to blood, saliva and root hair sample collecting for medical research (Pollisco, 1998). The DENR believes that another policy, not E.O. 247, should address regulating access to human genes due to the moral issues associated with using such a resource.

2.2 Prior informed consent requirement

Bioprospecting in the Philippines is allowed only when prior informed consent (PIC) from the concerned local communities is presented. A PIC Certificate is issued only after a sixty-day period has lapsed. This is counted from the date the proposal was received. The E.O. also requires affected groups to be notified through a public notice. Sectoral consultation with the affected groups is also required. Researchers are to bear all the expenses for the PIC process.

Prospective bioprospectors complain that complying with these requirements is too tedious, time-consuming and costly. Most research proponents view the sixty-day waiting period as too long and that it might adversely effect research schedules.

2.3 Fair and equitable benefit sharing

Several scientists view the terms and conditions to promote equitable benefit sharing as too demanding. They believe that access to data/information/specimens, and involving local experts in technology development, may deprive them of the confidentiality needed to obtain intellectual property protection on commercially viable products (Pollisco and De Leon, 1998)

2.4 Processing requirements for research agreements

The process to obtain a formal research agreement is viewed as too long. Application to final approval, including the PIC and negotiation processes, requires at least five months. Most researchers/scientists find the process too long, to the detriment of both researchers and development aims. Most local researchers find the bioprospecting policy a barrier to research growth and development.

3.0 Traditional Knowledge and Benefit Sharing

Indigenous knowledge and practices denote local knowledge unique to a given culture or society. It is the basis for local-level decision-making in agriculture, aquaculture, health care, natural resources management and other activities in rural communities (Calanog, 1996). It includes local information, practices and techniques that local people of all cultural backgrounds have developed and used. It is not, however, confined to cultural communities alone.

About ten percent of the Philippine population, or six million people, constitutes so-called “tribal Filipinos”, often referred to as indigenous cultural communities. They live in upland forest zones and practice continuously their time-tested indigenous ways despite the influences posed by lowland communities. They retain many of their attitudes and beliefs, as well as those that relate to land and natural resources use.

The types of traditional knowledge available, the scale of demand for it and the process by which it is accessed remains to be documented. A comprehensive and integrated database does not exist to address traditional knowledge. Information is still scattered and patchy.

E.O. 247 indirectly regulates access to and use of traditional knowledge for commercial application although, with the exception of the Preamble, it has no explicit provisions. The Prior Informed Consent Certificate from indigenous

peoples, required to process a research agreement application, indicates that traditional knowledge may be used.

The provisions of RA 8317, better known as the “Indigenous Peoples’ Rights Act” of 1997, are more explicit. They protect the rights of indigenous peoples over their traditional knowledge. This legislation is quite new. Under the law, Section 34 provides that:

ICCs/IPs are entitled to the recognition of the full ownership and control and protection of their cultural and intellectual rights. They shall have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, including derivatives of these resources, traditional medicines and health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, knowledge of properties of fauna and flora, oral traditions, literature, designs and visual and performing arts.

Section 35 of RA 8371 further provides that:

Access to biological and genetic resources and to indigenous knowledge related to the conservation, utilisation and enhancement of these resources, shall be allowed within ancestral lands and domains of the Indigenous Cultural Communities/Indigenous Peoples only with a free and prior informed consent of such communities, obtained in accordance with customary laws of the concerned community.

The mechanism to implement the provisions of R.A.8371 is presently being formulated by the DENR.

Prior informed consent is one of the mechanisms to ensure benefits are provided to indigenous and local communities when others use their traditional knowledge. Furthermore, the terms and conditions of the research agreement provide explicitly that the benefits should accrue to the local communities for using their traditional knowledge.

4.0 National Planning for Access and Benefit Sharing

The Philippines currently implements the National Biodiversity Strategy and Action Plan formulated through the Philippines Biodiversity Country Study Project. One of the strategies in the Action Plan involves formulating an

integrated policy and legislative framework to conserve, sustainably use and share equitably benefits of biological diversity. Developing a realistic system of economic instruments such as access fees, incentives and penalties to use biological resources and biodiversity would be in keeping with the Action Plan.

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