

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Constitution Hills
Quezon City

SIXTEENTH CONGRESS
First Regular Session

House Bill No. **3163**



Introduced by: Rep. Josephine Y. Ramirez Sato

EXPLANATORY NOTE

The Philippine news media will always have reports of species being poached or smuggled out of the country in order to be sold - be it the cockatoo birds and pangolins from Palawan and before that, in 2011, black corals, some twenty containers full of them, stopped in Zamboanga port.

And we can further go back in time on various Philippine biological resources that were taken from us - medicinal plants from Coron, Palawan, soil samples from Panay Island, mollusk species from Balicasag Island. There was also a reported research group that tried to get blood samples of Aetas, perhaps to explore why most of them were resistant to tuberculosis, but these were rejected by the NGO that helped these communities.

Actually there are a lot more, of reports of takings of biological resources, of indigenous and local communities who entertained researchers who went to their areas to document their traditional knowledge of biodiversity.

Getting a sense of these reports, you will realize that along with actual acts of poaching of our biological resources, there is also a less-noticed part of taking of these resources, but from way back this was called biopiracy.

These are the instances where Philippine biological and genetic resources were either taken from our shores or the knowledge by our

indigenous peoples and local communities of some unique properties of our plants or animals were further developed, and they are patented.

When these patented natural compounds get further developed into useful products in the market that are commercialized, some become successful, some don't but most of these things we have no idea have happened and ultimately the benefits from these resources do not immediately come back to the country.

Take for example the plant *banaba* or what is scientifically called *Lagerstroemia speciosa*. When one takes a simple patent search on the internet on this species, one can see that there are numerous patents and patent applications to the active compounds of this plant, which by way is not entirely endemic to the Philippines but is also found in other countries of Southeast Asia.

There is even a dedicated website <http://tgs.freshpatents.com/Banaba-bx1.php>, that tracks the patent applications of mostly foreign researchers on the beneficial properties of this plant, a sample of which include the following :

- a) Dietary supplement for use in a weight loss program
- b) Dietary therapeutic composition for ameliorating disease symptoms and conditions associated with diabetes
- c) Compositions for preventing and reducing delayed onset muscle soreness

The Philippines is a mega-diverse country, a country with high endemism, where most of the species found in its territory cannot be found anywhere else in the world.

From what we submitted in 2009 to the United Nations Convention on Biological Diversity as our 4th National Report, species endemism is very high covering at least 25% of plant genera and 49% of terrestrial wildlife; we are ranked 4th in bird endemism; 5th in the number of plant species and we hold 5% of the world's flora.

This proposed measure is part of the Philippines' continuing efforts in strengthening its rules and regulations on access to Philippine genetic resources and the indigenous knowledge systems and practices including the associated traditional knowledge therein or the so-called access and benefit-sharing or ABS regulations.

Being a country with unique biodiversity, we haven't even completed our inventory of what we have, and judging at the rate of what our researchers discover and what current biological diversity is lost through human interventions, we are running against time.

A 2008 Technical Paper of the Convention on Biological Diversity on Access and Benefit-Sharing: *Trends in Partnerships Across Sectors* show the following US \$ 896.8 billion market value per sector in 2006 broken down as follows:

- a) pharmaceutical industry - US\$ 643 billion;
- b) biotechnology industry (pharmaceutical, agricultural and industrial process technology) - US \$70 billion;
- c) seed, crop protection and plant biotechnology industry - US\$ 30 billion;
- d) ornamental horticulture (live trees, plants, bulbs, roots, cut flowers and foliage) - US\$ 14,386 million;
- e) botanicals (herbal dietary supplements) - US\$ 21.8 billion (2005 figures)
- f) herbal personal care and cosmetic sector - US 12 billion (2005 figures)
- g) "healthy foods" (functional foods, natural and organic foods) and "lesser evil foods" - US market value alone is US\$ 120 billion

With just a fraction of this estimated economic value being shared to developing countries from which most of these genetic resources have come from, there is now an opportunity to strengthen the implementation of existing ABS regulations in countries where they have them, so that more countries get benefits if the genetic resources coming from their jurisdictions are utilized by industry.

This opportunity is provided by the international instrument adopted in Nagoya, Japan last October 2010, during the 10th Meeting of the Conference of the Parties to the Convention on Biological Diversity.

This international instrument, called the Nagoya Protocol will go a long way in tracking the way genetic resources are used, enabling provider countries to claim benefits from the use of their resources and therefore

generating money not only for conservation of the remaining patches of biological diversity that we have but also money for the well-being of the indigenous and local communities of the developing and least developing countries of the world.

This will also generate funds so countries on their own can take steps to support their attainment of the Millennium Development Goals which is currently beset by lack of actual money being put forward by the donor governments.

This proposed measure in the implementing legislation to enable the Philippines to fully avail of the benefits of the provisions of the Nagoya Protocol, after it has acceded to it, in the usual manner of taking on obligations from an international instrument on which it had a part in negotiating.

If the use of biodiversity is likened to mining especially through what is called biodiversity prospecting, at least the promise of benefits that can be secured from the use of the biological resources can be extended even many years after the actual resources has been collected, the obligation to share benefits also includes the various derivatives and products arising from the original specimens initially collected, depending on how the source country can negotiate the terms and conditions of the access to the biological resources, the authority to do so is lodged by the Convention on Biological Diversity as part of the sovereign rights of states to their natural resources. Part of the benefits that can be secured include technology transfer including through, among others, preferential and concessional terms for technology capacity building.

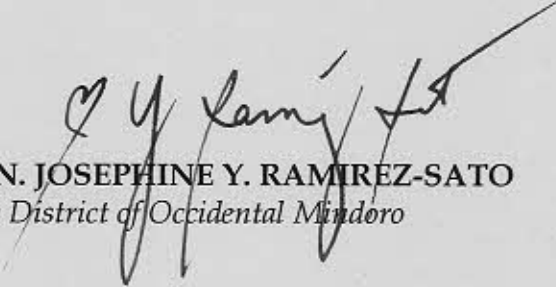
Another important highlight of the ABS Protocol is to show to the world that "another knowledge is possible", especially when it comes to how the biological resources are utilized, nurtured and conserved by the indigenous peoples and local communities of the world.

The Philippines, with its 110 recognized indigenous peoples as set by its National Commission on Indigenous Peoples, shows how this is done by recognizing the ways and approaches of these communities as another means of how to conserve, protect and maintain looking these resources. If we go back to the examples of all those specimens taken out from our country, perhaps if we were able to follow through how they were developed and eventually commercialized, maybe just one of them may be a good basis for one thriving industry.

The proposed measure also 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.

Given the potential benefits this measure will give to the country, this proposed measure should be considered and approved by the House of Representatives with all deliberate dispatch.

In view of the foregoing, the passage of this measure is earnestly urged.



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***“AN ACT INSTITUTING REFORMS IN THE EXISTING
POLICY ON ACCESS AND BENEFIT-SHARING FROM
THE UTILIZATION OF PHILIPPINE GENETIC
RESOURCES AND FOR OTHER PURPOSES”***

Section 1. TITLE - This Act shall be known and referred to as the “ACCESS AND BENEFIT-SHARING FROM THE UTILIZATION OF PHILIPPINE GENETIC RESOURCES ACT AND FOR OTHER PURPOSES” or the Philippine Genetic Resources Access and Benefit-Sharing Act or PGRABS Act of 2014.

Section 2. DECLARATION OF POLICY - All natural resources belong to the State and it is hereby declared the policy of the State to secure the fair and equitable sharing of benefits arising from the utilization of all the genetic resources in the country in order to generate wealth for poverty alleviation and to secure the necessary means within which to pursue the strategic programs and initiatives on conservation and sustainable use of biological diversity in the country. This policy will be pursued by promoting and facilitating the conduct of scientific researches and enabling them to have speedier regulatory approvals from the key agencies while at the same time enhancing the tracking of the progress of these researches from the initial effort of collection on the ground and in the fields and from the indigenous and local communities including the provision of necessary support and incentive for investments to be made from the utilization of Philippine genetic resources.

Section 3. DEFINITION OF TERMS - As used in this Act, the following words and phrases shall have the following meaning:

- (a) *"Access"* - means the collection, taking and gathering of genetic resources from the field, in order that they may be utilized for further academic or scientific research and bioprospecting; this also includes the conduct of field research, interviews and surveys involving the indigenous knowledge systems and practices including the associated traditional knowledge of indigenous and local communities in the Philippines;
- (b) *"Biotechnology"* - as defined in article 2 of the United Nations Convention on Biological Diversity, means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use;
- (c) *"Derivatives"* - means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity
- (d) *"Fair and equitable benefit-sharing"* - the principle derived from art. 3 of the United Nations Convention on Biological Diversity which will form the basis in asserting that the benefits that may be derived by the Philippines as a country or its researchers is appropriate taking into account the level of effort applied to secure the resources and would take into account the country's current socio-economic and cultural standing.
- (e) *"Genetic material"* - means any material of plant, animal, microbial or other origin containing functional units of heredity.
- (f) *"Genetic resources"* - means genetic material of actual or potential value.
- (g) *"Nagoya Protocol"* - means the Nagoya Protocol On Access To Genetic Resources And The Fair And Equitable Sharing Of Benefits Arising From Their Utilization To The Convention On Biological Diversity;
- (h) *"Utilization of genetic resources"* - means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in Article 2 of the United Nations Convention on Biological Diversity.

Section 4. - OVER-ARCHING POLICY FRAMEWORK ON ACCESS AND BENEFIT-SHARING FROM THE UTILIZATION OF PHILIPPINE GENETIC RESOURCES- The policy framework on access and benefit-sharing from the utilization of genetic resources institutionalized in this Act implements the Philippine commitments to the Nagoya Protocol with some key changes in specific policy areas relating to access to genetic resources, compliance mechanisms to ensure similar legislation or policy relating to access and benefit-sharing arising from the utilization of genetic resources from another country used in the Philippines are respected and implemented, tracking and monitoring mechanisms, traditional knowledge associated with genetic resources, capacity-building and technology transfer. The special mandates of identified government agencies are also amended, to fully implement the policy established in this Act.

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.

Section 6. - COMPLIANCE MECHANISMS - There shall be established compliance mechanisms that will ensure that Philippine agencies will implement any relevant policy or measure on access and benefit-sharing of any Party to the United Nations Convention on Biological Diversity and/or the Nagoya Protocol in the following manner and shall cooperate as far as possible and as appropriate in cases of alleged violation of domestic access and benefit-sharing legislation or regulatory requirements of another country and shall take appropriate, effective and proportionate measures to address situations of non-compliance with such measures of another country Party to the United Nations Convention on Biological Diversity and/or the Nagoya Protocol :

- (a) *Compliance with Domestic Legislation.* The appropriate agency shall enact appropriate, effective and proportionate policy and administrative measures to provide that genetic resources utilized within the Philippines have been accessed in accordance with the prior informed consent as well as the mutually agreed terms that have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of a Party to the United Nations Convention on Biological Diversity and/or the Nagoya Protocol;
- (b) *Compliance with Domestic Legislation on Access and Benefit-Sharing for Traditional Knowledge Associated with Genetic Resources.* The appropriate agency shall enact appropriate, effective and proportionate policy and administrative measures to provide that traditional knowledge associated with genetic resources utilized within the Philippines have been accessed in accordance with the prior informed consent as well as the mutually agreed terms that have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of a Party to the United Nations Convention on Biological Diversity and/or the Nagoya Protocol.
- (c) *Compliance with Mutually Agreed Terms.* It is hereby ensured that there will be provided an opportunity to seek recourse is available under the Philippine judicial system, consistent with applicable jurisdictional requirements as provided for by existing rules of procedure and any relevant amendments thereto as may be provided by the Philippine Supreme Court, in cases of disputes arising from mutually agreed terms. There shall likewise be measures that will be taken by the Department of Justice to ensure, as appropriate :

- (1) Access to justice; and
- (2) The utilization of mechanisms regarding mutual recognition and enforcement of foreign judgments and arbitral awards

Section 7. TRACKING AND MONITORING THE UTILIZATION OF GENETIC RESOURCES - There shall be established tracking and monitoring mechanisms to be implemented by existing agencies to monitor and to enhance transparency about the utilization of genetic resources in the Philippines through the following :

- (a) The designation of checkpoints at any stage of the research, development, innovation, pre-commercialization and commercialization of the genetic resources and its derivatives utilized in accordance with this Act including from the point of collection in the field and in product marketing approvals; there shall also be the appropriate disclosure of prior informed consent, mutually agreed terms and the utilization of genetic resources in each of the checkpoints;
- (b) Encouraging the users and providers of genetic resources to include provisions in mutually agreed terms or agreement relating to access and benefit-sharing involving the genetic resource to share information on the implementation of such terms, including through reporting requirements.
- (c) Encouraging the use of cost-effective communication tools and systems among the users and the providers of the genetic resource.

Section 8. MATTERS RELATING TO THE UTILIZATION OF ASSOCIATED TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES - Whenever the indigenous knowledge systems and practices including the associated traditional 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 the first instance, 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.

Section 9. CAPACITY-BUILDING AND TECHNOLOGY TRANSFER - The Department of Environment and Natural Resources, in collaboration with the agencies implementing the Wildlife Act, shall take the lead in initiating capacity-building activities in relation to the implementation of existing and future policies on access and benefit-sharing in collaboration with key implementing agencies and partners.

There shall also be established a unit within the Department of Environment and Natural Resources that will handle matters relating to technology development and transfer relating to the conservation and sustainable use of biological diversity including the cooperation in technical and scientific research and development programs, including biotechnological research in order to enable the development and strengthening of a sound and viable technological and scientific base of the country. Where possible and appropriate such collaborative activities shall take place in the Philippines.

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:

- (a) The Philippine National Museum - Sec. 7.2 of Republic Act 8492 is hereby amended as follows :

"Section 7. Duties and Function. – The Museum shall have the following duties and functions:

7.2 Conduct researches, archaeological and scientific, on Philippine flora and fauna; collect, preserve, identify and exhibit to the public systematically all types of plants and animals found in the Philippines, prepare for publication manuscripts and scientific papers on them and maintain a reference collection on such objects INCLUDING THE ESTABLISHMENT OF A SYSTEM OF CHECKPOINTS TO DETERMINE THE PROGRESS IN THE UTILIZATION OF THE GENETIC RESOURCE IN THE RELEVANT MUSEUM REFERENCE COLLECTIONS WORLDWIDE;"

(b) The Philippine National Museum – Sec. 17 of Republic Act 10066 is hereby amended as follows :

"Section 17. Systematic Research in Natural History. - The National Museum shall have the authority to collect, maintain and develop the national reference collections of Philippine flora and fauna, rocks and minerals through research and field collection of specimens including important cultural property within the territorial jurisdiction of the Philippines. It shall be exempt from any and all permit systems regulating the same PROVIDED IT ESTABLISHES A SYSTEM OF CHECKPOINTS TO DETERMINE THE PROGRESS IN THE UTILIZATION OF THE GENETIC RESOURCE IN THE RELEVANT MUSEUM REFERENCE COLLECTIONS WORLDWIDE.

The National Museum shall inform the Department of Environment and Natural Resources and the Department of Agriculture of such collection AS WELL ANY RELEVANT INFORMATION GENERATED FROM THE CHECKPOINTS. All types of specimen collected in the Philippine territory shall be deposited in the National Museum."

(c) The National Commission for Culture and the Arts – Sec. 23 of Republic Act 10066 is hereby amended as follows :

"Section 23. Export of Cultural Property. - Whoever desires to export cultural property registered in the Philippine Registry of Cultural Property shall adhere to the following requirements:

- (a) Authorization from the Commission through the appropriate cultural agencies;*
- (b) Application for export permit shall be submitted thirty (30) days before the intended export from the Philippines; and*

(c) Application for export permit must include the following: (1) the purpose of the temporary export; (2) the export date of the cultural property; (3) the repatriation date of the cultural property; (4) a description of the cultural property; and (5) the inventory of the cultural property in the Philippine Registry of Cultural Property.

(d) COMMITMENT TO PROVIDE INFORMATION ON THE PROGRESS OF THE UTILIZATION OF THE GENETIC RESOURCES EXPORTED AS CULTURAL PROPERTY TO THE SYSTEM OF CHECKPOINTS THAT MAY BE ESTABLISHED BY THE CULTURAL AGENCIES IN COLLABORATION WITH THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FOR THE PURPOSE OF TRACKING AND MONITORING THE UTILIZATION OF THE GENETIC RESOURCES;"

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

"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 REPUBLIC 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

Section 11. VOLUNTARY BENEFIT-SHARING MECHANISMS -

There shall be established a voluntary benefit-sharing mechanism in cases where it is not possible to secure prior informed consent and the researcher and his/her partner or collaborating institution will commit to provide a minimum level of benefits that may be derived from the utilization of the genetic resources and/or the indigenous knowledge systems or practices including the associated traditional knowledge therein and as the utilization progresses from research, development, innovation, pre-commercialization and commercialization. The implementing agencies of this Act will conduct the necessary consultations to determine the levels of these benefits, which will be adjusted from time to time depending on the level of advancement of researches in these types of activities.

Section 12. IMPLEMENTING RULES AND REGULATIONS - The implementing agencies of Republic Act 9147, including the agencies which issued the 2005 *Guidelines* or the Joint DENR-DA-PCSD-NCIP Administrative Order No. 1, series of 2005, are hereby tasked to issue the implementing regulations of this Act. The Department of Environment and Natural Resources shall take the lead in the implementation of this Act.

Section 13. PENALTIES - The user of genetic resources who does not comply with the provisions of this Act, including any relevant administrative issuance that may be issued by the appropriate agencies as indicated by this Act shall be penalized with the crime of biopiracy and

shall be subject to a penalty of six years and one day up to eight years, with the appropriate fine not less than FIVE HUNDRED THOUSAND PESOS, as may be determined by the appropriate court.

Section 14. SEPARABILITY CLAUSE - In case any provision of this Act is found to be unconstitutional upon final declaration by the appropriate Court, the other provisions not so declared unconstitutional or unaffected by the declaration shall remain valid and effective and shall continue to be implemented by the Department of Environment and Natural Resources and other relevant agencies.

Section 15. - EFFECTIVITY CLAUSE - this Act shall take effect fifteen (15) days after its publication in a newspaper of general circulation in the Philippines.

Approved,

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