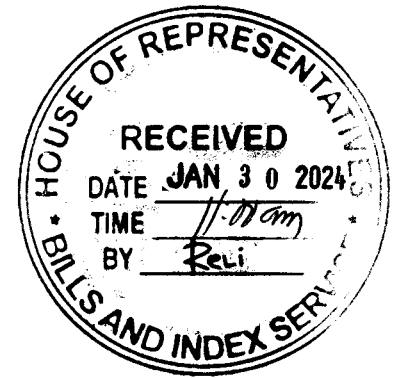


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

NINETEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 9839



Introduced by Rep . Loreto B. Acharon

EXPLANATORY NOTE

The Philippines is a megadiverse country with most of its biodiversity found only within the country. Around 81% of its amphibians, 69% of its reptiles, 59% of its mammals, 50% of its flora and 36% of its birds, are found nowhere else in the world according to data provided by the Biodiversity Management Bureau (BMB) of the Department of Environment and Natural Resources (DENR). Given more support for taxonomic research and discovery, 123 fauna or mammals and 170 flora or flowering plants have been newly-discovered from 1987. This high endemism means there is a large potential for these biological and genetic resources to provide economic returns to the country once the country's policy framework on ABS or access and benefit-sharing from the utilization of these biological and genetic resources and the associated traditional knowledge therein is enhanced and optimized such that these benefit-sharing opportunities are maximized.

The Philippines is the first country in the world to come up with a national measure on ABS particularly the Executive Order No. 247 signed by President Fidel V. Ramos in 1995. It has since been updated by the Wildlife Act or Republic Act 9147 whose implementing regulations in 2005 on bioprospecting laid out the general procedure on which competent national authorities or the permit-granting agencies such as the Department of Environment and Natural Resources (DENR), the Department of Agriculture (DA), the Palawan Council for Sustainable Development (PCSD) as well as the National Commission on Indigenous Peoples (NCIP) may work together towards issuing the necessary prior informed consent certificates as well as determining the terms and conditions for the sharing of benefits from the utilization of these biological and genetic resources and their associated traditional knowledge through a bioprospecting undertaking for such purpose.

This ABS regulatory framework is underpinned by article 15.1 of the Convention on Biological Diversity (CBD) which recognized the sovereign rights of States over their natural resources, and provided that the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.

Later, in 2010, this provision of the Convention was reiterated and given more detail by 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*, or the Nagoya Protocol.

Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, or the Nagoya Protocol.

The Philippines acceded to this Protocol on September 29, 2015 and it entered into force in the country on December 28, 2015.

Given the current above-mentioned ABS regulatory framework that pre-dated the entry into force of the Nagoya Protocol, it is imperative that Congress update the existing regulatory framework particularly the *Joint DENR-DA-PCSD-NCIP Administrative Order No. 1, series of 2005* and put into effect the various provisions of the Nagoya Protocol among which are its user measures including the tracking and monitoring provisions and the measures on the institutionalization of mechanisms on access to and the sharing of benefits from the utilization of traditional knowledge associated with genetic resources.

As a practical matter, this proposed measure seeks to expand the list of agencies that are now mandated to tackle the issue of ABS on a regular basis especially now that more and more international instruments have incorporated ABS to enable biodiversity-endowed countries like the Philippines maximize the benefits it may possible get from the development and utilization of its biological and genetic resources and the associated traditional knowledge therein including the recognition of digital sequence information or genetic sequence data that is regularly used by researchers on biological and genetic resources.

As we speak, there are various Philippine genetic resources that are being patented or are undergoing patent application; a recent example involves the much-publicized *Aquilaria mallacensis*, or agarwood tree species that is endemic to the country. If this species is subjected to a patent search, it appears that there are currently several patent applications and granted patents a large part of which does not involve Filipinos or excludes Filipinos, thus giving basis for asserting that this is an example of a species subjected to biopiracy, the global phenomenon where a country's genetic resources or the associated traditional knowledge and its derivatives, or the genetic sequence data or digital sequence information therein is commercialized by outsiders without any economic return going back to the country of origin or without any participation of the local communities who may have provided leads for these resources to be identified in the first place.

Truly, there are current international agreements that seek to diminish the opportunities for biopiracy, thus enhancing the fair and equitable sharing of benefits from the utilization of these biodiversity resources which was initially mandated by the Convention on Biological Diversity. When this is adequately pursued and consistently sought for by countries rich in biological diversity, then its prospects for enhancing its basic R&D capacity and ability to use its genetic resources and the associated traditional knowledge therein is eventually realized.

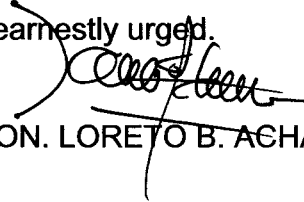
Countries such as Brazil and Peru, including our Southeast Asian neighbors from Viet Nam, Indonesia and Malaysia have taken steps to minimize the opportunity for instances of biopiracy, by enhancing its existing regulatory frameworks on access and benefit-sharing from the utilization of their genetic resources and the associated traditional knowledge therein, and this was before international instruments on ABS

are only lodged within the Convention on Biological Diversity. Through time however, there were other international instruments that saw fit to pursue ABS internationally, including the regularization of general policy measures and approaches to deal with digital sequence information. .

These international instruments include the International Treaty on Plant Genetic Resources for Food and Agriculture, the United Nations High Seas Treaty or the Biodiversity Beyond National Jurisdiction Treaty and the upcoming World Health Organization (WHO) convention, agreement or other international instrument on pandemic prevention, preparedness and response, also known as the Pandemic Treaty, the negotiation of which is set to be finalized in 2024.

It is therefore imperative that the Philippines unifies and consolidates its current ABS system and optimizes it so that the Philippines can maximize the benefits it may be able to share from those who undertake the utilization of these biological and genetic resources and the associated traditional knowledge therein including their digital sequence information or genetic sequence data.

The passage of this proposed measure is earnestly urged.


HON. LORETO B. ACHARON

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

NINETEENTH CONGRESS

Second Regular Session

HOUSE BILL NO. 9839

Introduced by Rep . Loreto B. Acharon,

AN ACT
STRENGTHENING THE NATIONAL POLICY ON WEALTH GENERATION BY
MAXIMIZING THE BENEFITS DERIVED FROM THE DEVELOPMENT AND
UTILIZATION OF PHILIPPINE GENETIC RESOURCES AND FOR OTHER
PURPOSES

Sec. 1. **Title** – This Act shall be known and referred to as the “PHILIPPINE BIODIVERSITY BENEFITS MAXIMIZATION ACT AND FOR OTHER PURPOSES” or the PBBM Act.

Sec. 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.

Sec. 3. **Scope.** This Act shall apply to:

- (a) Philippine genetic resources and their digital sequence information or genetic sequence data, whether found in Philippine territory and in areas where the country enjoys sovereign rights and jurisdiction, originating from the same, or exported to other countries for development and utilization; and
- (b) Genetic resources originating from other countries and imported into the Philippines for development and utilization.

Sec. 4. **Definition of Terms** – As used in this Act, the following words and phrases shall have the following meaning :

Sec. 4. 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) Biopiracy – the unethical or unlawful appropriation or commercial exploitation of biological materials such as medicinal plant extracts that are native to a particular country or territory without providing fair financial compensation to the people of government of that country or territory.
- (d) Bioethics – is the study of ethical issue and moral implications emerging from advances in biology and medicine.
- (e) 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.
- (f) 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.
- (g) Genetic material – means any material of plant, animal, microbial or other origin containing functional units of heredity.
- (h) Genetic resources – means genetic material of actual or potential value.
- (i) 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;
- (j) 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

Sec. 5. 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.

Sec. 6. Creation and Composition of Inter-Agency Committee on Genetic Resources and Associated Traditional Knowledge.

a) The Inter-Agency Committee on Genetic Resources and Associated Traditional Knowledge (Inter-Agency Committee) is hereby created to coordinate national government efforts to harmonize, integrate, enhance, implement and monitor compliance with treaty, statutory and regulatory provisions on ABS and utilization of Philippine genetic resources.

b) The Inter-Agency Committee shall be composed of the following offices:

b.1 Department of Environment and Natural Resources (DENR)

a. Biodiversity Management Bureau (BMB)

b. Ecosystems Research and Development Bureau (ERDB)

b.2 Department of Agriculture (DA)

a. Bureau of Fisheries and Aquatic Resources (BFAR)

b. Bureau of Animal Industry (BAI)

c. Bureau of Plant Industry (BPI)

b.3 Department of Science and Technology (DOST)

a. Philippine Council for Health Research and Development (PCHRD)

b. Philippine Council for Agriculture, Aquatic and Natural Resources Research and Development (PCAARRD)

c. Philippine Council for Industry, Energy and Emerging Technology and Research and Development

b.4 Department of Health (DOH)

a. Philippine Institute of Traditional and Alternative Health Care (PITAHC)

- b. Food and Drug Administration
- b.5 Department of Foreign Affairs (DFA)
- b.6 Department of Justice (DOJ)
- b.7 Department of the Interior and Local Government (DILG)
- b.8 Department of Health
- b.9 Department of Trade and Industry
- b.10 Palawan Council for Sustainable Development
- b.11 National Commission on Indigenous Peoples (NCIP)
- b.12 Intellectual Property Office of the Philippines (IPOPHIL)
- b.13 National Museum of the Philippines (NM)
- b.14 University of the Philippines (UP) System

c) DENR and DA shall be the Chairperson and Co-Chairperson of the Inter-Agency Committee, respectively.

d) Each member Department of the Inter-Agency Committee shall designate a permanent representative with the rank of Undersecretary or Assistant Secretary. Member Bureaus and Offices shall be represented by their respective Directors and Heads of Office.

e) The Inter-Agency Committee shall be supported by a Secretariat to be headed jointly by BMB and ERDB.

Sec. 7. Powers and Duties of the Inter-Agency Committee. The Inter-Agency Committee shall have the power to issue rules/guidelines pertaining to the access, benefit-sharing and utilization of Philippine genetic resources, the grant of incentives under existing laws, the third-party use in any mutually agreed terms or agreements relating to access and benefit sharing involving genetic resources, and the standard procedures and process flow of national checkpoint agencies, among others. It shall likewise be responsible in the following:

- a) Designation of Checkpoint National Government Agency at any stage of research, development, innovation, pre-commercialization and commercialization of genetic resources and its derivatives including its digital sequence information or genetic sequence data.
- c) Establishment of the Philippine Clearing House and the formulation of the Philippine Clearing House Mechanism which shall serve as a means for

sharing of information related to access and benefit-sharing and shall provide access to information made available by each Party to the Nagoya Protocol relevant to the implementation of the same;

d) Creation of appropriate sub-committees to handle specific concerns such as inventory of genetic resources, ABS compliance, monitoring, wealth creation, communication, capacity building and technology transfer;

e) Call of other government agencies and instrumentalities to act as resource person as necessary and civil society organizations, indigenous peoples' organizations, private sector and members of the academe in its deliberations;

f) Analysis and monitoring of technological and policy developments in various international fora not limited to the Convention on Biological Diversity including the International Treaty on Plant Genetic Resources for Food and Agriculture, the High Seas Treaty on Biodiversity Beyond National Jurisdiction and the International Health Regulations of the World Health Organization including the outcome of the negotiations relating to the Pandemic Treaty and other relevant international instruments, processes and mechanisms;

g) Establishment of a (1) national inventory of genetic resources within one (1) year from the adoption of the implementing guidelines of this Act, prioritizing those with potential commercial application; (2) reporting mechanism of biodiversity resources including genetic/DNA characterization of genetic resources and other living organisms; (3) tracking and monitoring mechanism to enhance transparency of utilization of genetic resources in the Philippines taking into account the existing information systems that are in place or under development at the time of the effectivity of this Act;

h) Strict application of guidelines, processes and protocols on the utilization of traditional knowledge associated with genetic resources as well as applicable customary laws and community protocols of indigenous peoples and local communities, particularly in securing free prior and informed consent; and

i) Capacity building in the implementation of existing and future policies in access, benefit-sharing and utilization of genetic resources and development of a sound and viable technological and scientific base taking into account any existing international frameworks on ABS as provided by other international agreements to which the Philippines is a Party and

j) establishment of any relevant environmental and social safeguards as well as measures that address matters arising from gender considerations across the value chain of the biological and genetic resources and associated traditional knowledge that may need to be taken into account in the formulation and negotiation of any relevant mutual agreed terms or ABS

agreements involving the said resources and associated traditional knowledge as may be raised by the communities concerned.

Sec. 8. Designation of National Focal Point and Competent National Authorities. The BMB of DENR shall continue to be the Philippine National Focal Point on Access and Benefit Sharing. The designated Philippine Competent National Authorities for access and benefit-sharing and for ensuring Philippine compliance with obligations under the CBD and Nagoya Protocol shall be DENR, DA, NCIP and PCSD.

Sec. 9. Coordination and Cooperation of Other National Government Agencies. To ensure compliance with the rules or guidelines on access, benefit-sharing and utilization of genetic resources, policy and administrative measures shall be adopted by the national government agencies to notify the Access and Benefit-Sharing Clearing-House created through the Philippine Clearing House Mechanism. All national government agencies with research and development functions relating to genetic resources shall provide the Inter-Agency Committee with the relevant information on the status of researches with potential commercial application and prioritize studies aimed at better understanding genetic resources or in developing commercial products through bio-technology or through other means.

Sec. 10. Access to Information. Access to information collected by virtue of this Act as well as to government research data used as basis for policy development shall be in accordance with the source agency's People's Freedom of Information (FOI) Manual prepared and adopted in accordance with Executive Order No. 2, series of 2016.

Sec. 11. 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.

Sec. 12. – 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 including the grant of the requisite free and prior informed consent as provided by sec. 35 of the Indigenous Peoples' Rights Act;
- (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.

Sec. 13. 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.

Sec. 14. Appropriations. All concerned government agencies included in the Inter-Agency Committee shall allocate necessary funds for the implementation of this Act in accordance with regular government budget procedures, for the first year of implementation of this Act. For the subsequent years, agencies in the Inter-Agency

Committee shall include in their respective programs funding for the implementation of this Act which shall be included in the Annual General Appropriations Act.

Sec. 15. Implementing Rules and Regulations - Within six (6) months from the effectivity of this Act, the DENR and DA as Co-Chairpersons of the Inter-Agency Committee shall issue the implementing rules and regulations of this Act. The Department of Environment and Natural Resources shall take the lead in the implementation of this Act.

Sec. 16. – Penalties - Except in the relation to plant genetic resources for food and agriculture covered under the provisions of the international treaty on plant genetic resources for food and agriculture, including the multilateral system of access and benefit-sharing and its standard material transfer agreement (SMTA), specifically Articles 7 and 8 of the SMTA, 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.

Sec. 17. – 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.

Sec. 18. Effectivity Clause – this Act shall take effect fifteen (15) days after its publication in a newspaper of general circulation in the Philippines.

Approved,